

Opinion of the Court.

appellant in accordance with the statement of account made by the master numbered 22, save only that no interest should be charged on \$50,000 of the purchase-money represented by what was accepted as the cash payment. By the express terms of the agreement interest was only to be paid on the deferred instalments.

The decree is reversed as to the amount found due, and affirmed in all other respects, and the cause is remanded, with instructions to modify the decree as originally entered by inserting the amount ascertained to be due on the principle of accounting as indicated in this opinion, and for further proceedings according to law.

HARRINGTON & Another *v.* HOLLER.

IN ERROR TO THE SUPREME COURT OF WASHINGTON TERRITORY.

Submitted April 21st, 1884.—Decided May 5th, 1884.

Practice.

A decision of the Supreme Court of a Territory dismissing a writ of error to a District Court because of failure to docket the cause in time is not a final judgment or decision within the meaning of the statutes regulating writs of error and appeals to this court. Mandamus is the proper remedy in such case.

This came up on motion to dismiss the writ of error.

Mr. John H. Mitchell for defendant in error moving.

Mr. S. S. Burdett for plaintiff in error opposing.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. This motion is granted on the authority of *Insurance Company v. Comstock*, 16 Wall. 258, and *Railroad Company v. Wiswall*, 23 Wall. 507. An order of the Supreme Court of Washington Territory dismissing a writ of error to a District Court, because of the failure of the plaintiff in error to file the transcript and

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have the cause docketed within the time required by law, is not a final judgment or a final decision within the meaning of those terms as used in sections 702 and 1911 of the Revised Statutes regulating writs of error and appeals to this court from the Supreme Court of the Territory. Section 702 provides for the review of final judgments and decrees by writ of error or appeal, and section 1911 regulates the mode and manner of taking the writ or procuring the allowance of the appeal. The use of the term "final decisions" in section 1911 does not enlarge the scope of the jurisdiction of this court. It is only a substitute for the words "final judgments and decrees" in section 702, and means the same thing.

The dismissal of the writ was a refusal to hear and decide the cause. The remedy in such a case, if any, is by mandamus to compel the court to entertain the case and proceed to its determination, not by writ of error to review what has been done. *Ex parte Bradstreet*, 7 Pet. 647; *Ex parte Newman*, 14 Wall. 165.

Dismissed.

FRIEND & Another *v.* WISE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

Submitted April 21st, 1884.—Decided May 5th, 1884.

Jurisdiction.

In ejectment in which several defendants are joined who hold separate tracts adversely to the plaintiff, this court will not dismiss the writ of error because each separate tract is not of the jurisdictional value, if their combined values are sufficient to give jurisdiction.

Motion to dismiss, with which a motion to affirm was united.

Mr. Henry Beard and *Mr. Charles H. Armes* for defendant in error in support of the motion.

Mr. William J. Johnston for plaintiffs in error, opposing.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.