

## Opinion of the Court.

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.

## Opinion of the Court.

These motions are denied. The value of the two sections of land which are in dispute is conceded to be more than \$5,000. The complaint alleges a joint entry and ouster, and the answer does not set up separate claims to distinct parcels of the land by the several defendants. The judgment for the recovery of the possession is against all the defendants jointly. In this respect the case is entirely different from those of *Tupper v. Wise* and *Lynch v. Bailey*, 110 U. S. 398. We have jurisdiction therefore.

The questions arising on the merits are, some of them, of a character that ought not to be disposed of on a motion to affirm.

---

KILLIAN *v.* EBBINGHAUS.

## ORIGINAL.

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

*Mandate—Practice.*

An appeal was taken from the court below by appellant under an incorrect description, not corresponding with the title in the court below. Under this incorrect title proceedings were conducted to final judgment here and a mandate issued. That mandate is now recalled and a new one issued conforming the title and description to those in the court below.

This was a motion to correct an error in the mandate issued on the judgment reported in *Killian v. Ebbinghaus*, 110 U. S. 568.

*Mr. Garnett* and *Mr. Robinson* for the motion.

*Mr. Cuppy* and *Mr. Dye* opposing.

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

This suit was brought against the trustees of the German Evangelical Concordia Church, then in possession of the premises in dispute. They answered by that name, setting up their title to the property and their claim to the possession. The record shows a notice by Ebbinghaus, the appellee and com-