

Syllabus.

Mr. J. J. Scrivner for plaintiffs in error.

Mr. John A. Wright, Mr. John F. Hanna and Mr. James M. Johnston for defendant in error.

MR. JUSTICE MILLER delivered the opinion of the court.

It has been repeatedly decided by this court that where no return has been made to a writ of error by filing the transcript of the record here, either before or during the term of the court next succeeding the filing of the writ in the Circuit Court, this court has acquired no jurisdiction of the case, and the writ having then expired, can acquire none under that writ, and it must, therefore, be dismissed. *Villabolos v. United States*, 6 How. 81; *Castro v. United States*, 3 Wall. 46; *Mussina v. Cavasos*, 6 Wall. 355, 358; *Murdock v. Memphis*, 20 Wall. 590, 624.

In the case before us the writ of error was filed in the Circuit Court in which the record was March 16, 1882, and the transcript that was returned with it was filed in this court November 28, 1884. Two full terms of the court had passed, therefore, between the filing of the writ of error in the Circuit Court and its return with the transcript into this court.

It must, therefore, be

Dismissed for want of jurisdiction.

CHEONG AH MOY *v.* UNITED STATES.

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

Submitted January 9, 1885.—Decided January 26, 1885.

The court declines to decide a question arising in a case which no longer exists, in regard to rights which it cannot enforce.

The facts are stated in the opinion of the court.

Opinion of the Court.

Mr. H. S. Brown and *Mr. Thomas D. Riordan* for plaintiff in error.

Mr. Assistant Attorney-General Maury for defendant in error.

MR. JUSTICE MILLER delivered the opinion of the court.

The plaintiff in error here is a Chinese woman who, arriving at San Francisco from China, was not permitted to land in that city, by reason of the acts of Congress of May 6, 1882, and the amendatory act of 1884, and, being forcibly kept on board the vessel, sued out a writ of habeas corpus to obtain her release.

On a hearing in the Circuit Court of the United States, it was ordered that she be returned on board the vessel in which she came, or some other vessel of the same line, to be carried back to China; and she was placed in the custody of the marshal who was directed to execute the order.

On undertaking to do this, it was found that the vessel had sailed, and the marshal placed his prisoner in jail for safe keeping, until another vessel should be at hand to remove her.

Her counsel, upon this state of facts, applied to the Circuit Court for permission to give bail on behalf of the woman and have her released from custody. The judges of the Circuit Court were opposed in opinion on the question of granting this motion, and, having overruled it, have certified the division to this court.

In the mean time it is made to appear to us, by the return of the marshal, and by affidavits, that on the 2d day of October, three days after the order was made overruling the motion, and ten days before the writ of error herein was served by filing it in the clerk's office of the Circuit Court, the marshal had executed the original order of the court by placing the prisoner on board the steamship *New York*, one of the Pacific Mail Steamships, about to start for China, and that she departed on said vessel on the 7th day of October. It thus appears that the order of deportation had been fully executed, and the petitioner in the writ of habeas corpus placed without the

Statement of Facts.

jurisdiction of the court, and of the United States, six days before the writ of error was filed in the Circuit Court, and several days before it was issued.

The question, therefore, which we are asked to decide is a moot question as to plaintiff in error, and if she was permitted to give bail, it could be of no value to her, as the order by which she was remanded has been executed, and she is no longer in the custody of the marshal or in prison.

This court does not sit here to decide questions arising in cases which no longer exist, in regard to rights which it cannot enforce.

The writ of error is dismissed.

PRICE & Others v. PENNSYLVANIA RAILROAD
COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

Argued January 15, 1885.—Decided January 26, 1885.

A person travelling on a railroad in charge of mails, under the provision of § 4000 Rev. Stat., does not thereby acquire the rights of a passenger, in case he is injured on the railroad through negligence of the company's servants.

A statute of Pennsylvania, passed April 15, 1851, Purdon, Tit. Negligence 2, 1093, makes the provision, now become common, for a recovery by the widow or children of a person whose death was caused by the negligence of another, of damages for the loss of the deceased.

A statute passed April 4, 1868, Purdon, Tit. Negligence 5, 1094, provides that "where any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the road, works, depot and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employé, the right of