

## Syllabus.

the proceedings aforesaid, and the sentence aforesaid, may be declared by this court to be null and void; and that the petitioner be released and discharged from the custody and imprisonment in which he is now held by color of the authority of the United States."

*Mr. Lorenzo Ullo* for petitioner.

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

This motion is denied. As since the act of March 3, 1885, 23 Stat. 437, an appeal lies to this court from the judgments of the Circuit Courts in *habeas corpus* cases, this court will not issue such a writ, even if it has the power — about which it is unnecessary now to express an opinion — in cases where it may as well be done in the proper Circuit Court, if there are no special circumstances in the case making direct action or intervention by this court necessary or expedient. In this case there are no such special circumstances, and the application may as well be made to the Circuit Court for the Northern District of New York as here. Our right to exercise this discretion is shown by the principles on which the decisions in *Ex parte Royall*, Nos. 1 and 2, 117 U. S. 241, and *Ex parte Royall*, 117 U. S. 254, rest. This practice was suggested by us and followed in *Wales v. Whitney*, 114 U. S. 564. *Denied.*

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HANCOCK *v.* HOLBROOK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Submitted December 13, 1886. — Decided January 10, 1887.

A suit cannot be removed from a State Court to a Circuit Court of the United States on the ground of prejudice or local influence, under subsection 3 of § 639 Rev. Stat., unless all the plaintiffs or all the defendants are citizens of the state in which the suit was brought, and of a state other than that of which those petitioning for the removal are citizens.

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This was an appeal from an order of the Circuit Court remanding to a State Court a cause removed thence to the Circuit Court. The case is stated in the opinion of the court.

*Mr. J. D. Rouse* and *Mr. William Grant* for appellant.

*Mr. Thomas J. Semmes* and *Mr. Robert Mott* for appellees.

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

The order remanding this case is affirmed. A suit cannot be removed from a State Court to a Circuit Court of the United States under subsection 3 of § 639 of the Revised Statutes on the ground of "prejudice or local influence," unless all the plaintiffs or all the defendants are citizens of the state in which the suit was brought, and of a state other than that of which those petitioning for the removal are citizens. Here it appears that Hancock, the plaintiff, on whose petition the removal was had, is a citizen of New York, and Eliza Jane Holbrook and George Nicholson, two of the defendants, and those principally interested in the litigation, citizens of Mississippi, while R. W. Holbrook and Richard Fitzgerald, the other defendants, are alone citizens of Louisiana, where the suit was brought. These Louisiana defendants are necessary parties to the suit, but, according to the record, those who are citizens of Mississippi are the real parties in interest.

*Affirmed.*

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BORER *v.* CHAPMAN.APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MINNESOTA.

Argued December 13, 14, 1886.—Decided January 10, 1887.

A, a citizen of New Jersey, recovered judgment in a civil action on a contract against B, a citizen of Minnesota, whose property and estate were situated, principally, in California. B died leaving a will by which he devised real estate and bequeathed legacies to various persons in Minne-