

## Syllabus.

before he had made this arrangement, and to enforce it would prejudice them. That motion was heard in this court long enough to have settled a common case. The court said to these parties, if each of you will enter into bonds to pay all costs from this time forward to be adjudged against you, or the appellee, you shall be permitted to intervene and be heard. They were heard and they made all the defence that was made against Craig's claim. In October last, this court decided the case in favor of Craig, and against Leitensdorfer's representatives. The costs were taxed by the clerk, and these parties have neglected to pay them. We are of opinion that they must pay them, and we are of opinion that this court has power, and it is its duty, to enforce the payment without remitting the payees in these bonds to another suit in some other court. We, therefore, make an order that an attachment issue against Mrs. King and her sureties, and Mr. Allen and his sureties, to compel payment of the amount of the taxed costs, unless they do pay it before the last day of this term.

This is a new question, and a more elaborate opinion may be submitted before the end of the term, but this order is made now because the parties ought to have an opportunity to pay, and we make the order now that they pay the costs, and that a writ of attachment issue if they do not pay before the end of this term.

It is proper to observe that if the money is not paid the writ of attachment will be returnable to the next term of the court.

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IN RE BURDETT.

## ORIGINAL.

Submitted April 9, 1888.—Decided April 16, 1888.

When the amount in controversy in a case decided in the Circuit Court is too small to come here by writ of error, this court is without power by writ of mandamus to compel the judge of the Circuit Court to reverse his own judgment.

## Statement of the Case.

THIS was a motion for leave to file a petition for a writ of mandamus, and for a rule to show cause why it should not issue. The petition set forth that the petitioner on the 20th March, 1887, in ignorance of the act of March 3d, 1887, increasing the limit of jurisdiction of Circuit Courts to \$2000, commenced an action in replevin to the Circuit Court of the United States for the Eastern District of Michigan for the recovery of goods and property of the value of \$653.38; that the defendants appeared and pleaded the general issue; that the cause was placed upon the trial docket and was dismissed for want of jurisdiction; "that afterwards, and on or about the 9th day of January, A.D. 1888, the said defendants caused to be brought on to be heard before said court a motion for an order for a return of the property seized under the writ of replevin in said cause, and that the said court thereupon, against the objection of the said plaintiffs, that said court had already dismissed said cause for want of jurisdiction, and consequently had no authority to make and enter such an order, made and entered in said court and cause, an order requiring the said plaintiffs to return to the said defendants the property seized under the writ of replevin in said cause, and the defendants having thereupon waived a return of said property, said court thereupon ordered that the damages for the value of said property, irrespective of the plaintiffs' right, title, interest or ownership therein, be assessed by a jury of said court; that afterwards, and on or about the 17th day of January, A.D. 1888, the said plaintiffs moved the said court to set aside and vacate the order entered in said cause on said 9th day of January," "and that the said court thereupon entered an order denying said motion."

The prayer of the petition which the petitioner asked leave to file was, "that the people's writ of mandamus may be issued out of said court, directed to the judges of the Circuit Court of the United States, for the Eastern District of Michigan, directing and requiring them to set aside and vacate the said order of January 9th, 1888, ordering a return of said property, and an assessment of the value thereof in case of default, and that the people's writ of prohibition may be

## Argument for the Motion.

issued out of said court, directed to the said Circuit Court of the United States for the Eastern District of Michigan, restraining and prohibiting the said court from further proceeding in said cause."

*Mr. Levi T. Griffin* for petitioner.

MR. JUSTICE MILLER: A petition on the part of H. S. Burdett and others, asking for a mandamus against the Judge of the Circuit Court of the United States for the Eastern District of Michigan, has been presented to us. The case arises out of an action of replevin in which the Circuit Court decided that it had no jurisdiction. A proceeding was then had to get damages for the taking of the goods in replevin, which the court entertained and rendered judgment for the damages. The amount in controversy is too small to come to this court by writ of error, and we are asked by the writ of mandamus to direct the judge of that court to set aside the judgment which he rendered. Whether there was error in that matter or not, we do not think that we have any power by writ of mandamus to compel the judge of that court to reverse his own judgment.

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SEAGRIST *v.* CRABTREE.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

No. 386. Submitted April 9, 1888.—Decided April 16, 1888.

It is not sufficient cause for dismissing a writ of error that the citation was served and made returnable less than thirty days after the writ was granted.

MOTION TO DISMISS "because the citation was not served in time."

*Mr. J. G. Zachry* for the motion: The citation in this case was made returnable on the second Monday in October, 1885.