

## 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.

## Opinion of the Court.

Service was had on the attorneys for Crabtree on September 16, 1885. The time intervening between the date of service and the return of the citation was less than thirty days, and the notice to the defendant in error, Crabtree, was not sufficient. Rev. Stat. § 999.

*Mr. O. D. Barrett* opposing: The facts stated in the motion show that plaintiffs in error have fully complied with the fifth section of the eighth rule of this court, which simply provides that the citation be served *before* the return day of the writ. It was so served.

MR. JUSTICE MILLER: This is a motion to dismiss, the ground for which is that the citation was served and made returnable less than thirty days after the writ was granted. We do not think that is a sufficient ground to dismiss the writ of error, whatever may be the ground for relief.

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HUNT *v.* BLACKBURN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF ARKANSAS.

No. 199. Submitted April 2, 1888. — Decided April 9, 1888. — Motion to reinstate submitted April 26, 1888. — Ordered continued April 30, 1888.

A cause under submission having been dismissed by the court of its own motion for want of jurisdictional amount, the appellant moves to reinstate and submits affidavits. The court orders the motion continued, with leave to each party to file further affidavits.

THE case is stated in the opinion.

*Mr. J. B. Haskell* for appellant.

No appearance for appellee.

MR. JUSTICE MILLER: After an examination of the record in this case, which was submitted on printed arguments, we