

Opinion of the Court.

the harbor in which the people of a city or county can find a refuge from ill-advised, unequal, and oppressive State legislation."

As the question raised in these cases is a Federal question (*Spencer v. Merchant, supra*), we will not sustain the motions to dismiss; but as there was, in our judgment, color for those motions, and the contention now made has often been pressed upon our attention before, and as often determined adversely, so that the rule must be regarded as settled, we shall grant the motions to affirm.

*Affirmed.*

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### MEANS *v.* DOWD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA.

No. 47. Submitted and decided December 17, 1888.

The court denies a motion for an order for a mandate, no notice of it having been given to the other party.

It has been the custom with the court to make a general order, immediately before the commencement of the February recess, for the issue of mandates in every case disposed of prior to the 1st of January, if application therefor should be made, except in cases in which a petition for rehearing might be pending, and cases docketed and dismissed under the 9th rule. In this case, which is reported *ante*, page 273, application was made to the court for the immediate issue of a mandate, without giving the other party notice of the intention to make such a motion.

*Mr. W. W. Fleming* for the motion.

No one opposing.

PER CURIAM: No notice having been given to the other side, and there being no agreement of the parties that the mandate may issue, the motion is

*Denied.*