

Syllabus.

hereinbefore ordered to be paid by the complainant the amount of such incumbrances and notes so produced and cancelled or discharged."

Then follows a decree involving title to sundry tracts of land in Iowa, covering six pages of the record in descriptions.

This decree must be construed as an entirety. Taken as a whole, it shows that it was not to go into effect until the period of ninety days had expired from the time of its rendition. It first provides that the sum of \$14,645.32 shall be paid by the complainant to the administratrix of Jeremiah Folsom, deceased, and that execution shall issue therefor. It then proceeds to provide that the complainant shall have ninety days from the date of the decree in which to satisfy the court that the sum of \$14,084.77, or any part thereof, had been applied by Simeon Folsom for the purchase of certain incumbrances and notes therein specified, and had inured to the benefit of the said Jeremiah Folsom, or his estate, then such amount "*shall be credited on the amount hereinbefore ordered to be paid by the complainant.*"

That amount was the \$14,645.32 above stated. It is manifest that this could not be done if the decree took effect from its date, for its payment might have been coerced by the issuing of an execution, before the expiration of the ninety days.

PER CURIAM: This case is dismissed for want of jurisdiction.

PACIFIC EXPRESS CO. *v.* MALIN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF TEXAS.

No. 1203. Submitted November 19, 1888. — Decided November 26, 1888.

When the defendant below sues out the writ of error, the matter in dispute here is the judgment rendered against him.

In a case which had been dismissed for want of jurisdiction, no opposition

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having been made thereto, the court allowed a mandate, notwithstanding notice of the motion for the mandate had not been given.

MOTION TO DISMISS for want of jurisdiction.

The defendant in error was plaintiff below, and brought his action at law against the plaintiff in error in the District Court of Mitchell County, Texas, for an injury done to his property by the defendant in error, and claimed damages in the sum of \$5850. An answer was filed by the express company. On the 6th January, 1887, the case was removed on the defendant's petition to the Circuit Court of the United States for the Western District of Texas, and there entered as No. 24. Certain proceedings were had in that court, and the case being at issue was tried before a jury on the 12th April, 1888, who rendered a verdict for plaintiff for \$3000. Judgment was entered on this verdict. The plaintiff, at the suggestion of the court, entered on it a remittitur of \$350, thus reducing the judgment from \$3000 to \$2650. The writ of error was sued out by the plaintiff in error to reverse this judgment.

Mr. William Hallett Phillips for the motion.

No one opposing.

PER CURIAM: This case is dismissed for want of jurisdiction.
Dismissed.

Mr. Phillips, at a later day, moved the court for the issuance of a mandate, and, as cause therefor, he stated that no notice of the motion for the mandate had been served on the opposite party; but that no opposition had been made to the dismissal of the case, and, as the dismissal had been made for want of jurisdiction, there would seem to be no reason why the mandate should be withheld.

PER CURIAM: Sufficient cause has been shown, and the mandate may issue at once.

Mandate issued.