by that court. It nowhere appears from the relator's own showing that the court has expressly refused such an order. The court has refused leave to file a certain petition in the suit, and it has refused an order on the master to show cause why he should not make such a deed. From the whole case as presented by the parties we infer that the court below, as constituted when the application was made, thought the deed ought not to be executed, and it is possible the order now complained of may be the equivalent of a final decree in the cause to that effect, from which an appeal to this court may be taken. But whether that be so or not, we will presume the court below will not hesitate, on a proper application, to put the record in a shape to enable us to pass on that question in the ordinary course of proceeding to obtain our review. Mandamus can only be resorted to when other remedies fail. It is an extraordinary writ, and should only be used on extraordinary occasions. Here the parties have ample remedy by appeal, if they put their case in a condition for such a form of proceeding. As the relator presents his case on this application, he must avail himself of that remedy. We cannot, under the facts he states, expedite the determination of his cause by mandamus. *The application is consequently denied.*

Mr. E. S. Isham, *Mr. Robert T. Lincoln* and *Mr. C. Beckwith* for petitioner. *Mr. George F. Edmunds*, *Mr. Henry S. Monroe*, *Mr. William R. Page* and *Mr. W. C. Goudy* opposing.

HAND *v.* HAGOOD.

ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

No. 2. October Term, 1880. — Decided October 25, 1880.

On the facts set forth in the opinion, it is held that the judgment below, to which the writ of error was directed, was not a final judgment, and that this court was therefore without jurisdiction.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

The judgment from which this writ of error was taken is not a final judgment in the cause. Hand, a creditor of the Savannah and Charleston Railroad Company, sued that company in the Court of Common Pleas of Charleston County, South Carolina, and obtained the appointment of a receiver to hold and operate the railroad of the company and apply the net profits to the payment of its

debts. In this condition of things the comptroller-general of the State applied to the court, by petition in that cause, to permit him to take possession of the road under the provisions of the act of 1869, and, if for any purpose it should be deemed advisable to continue the receivership, that he might be permitted to perform that duty in addition to those imposed on him by the law. The Supreme Court of the State, on appeal, adjudged that the comptroller-general was authorized to take possession of the road with its appurtenances, "and hold and administer the same according to the power conferred by said act." Then followed these words: "The assets of the road to be subject to the direction of the court, and the order now made to be in no wise regarded as affecting the lien obtained by any creditor of the said road established in the principal cause, or in any way affecting the rights of creditors. The petition is remanded to the Circuit Court for such orders as may be necessary to give effect to the judgment of this court." It nowhere appears that the Circuit Court has acted on this mandate. In effect the judgment, as it now stands, is nothing more than a direction to transfer the possession of the road to the comptroller-general, subject to such orders as the Circuit Court shall deem necessary for the protection of the rights of the parties in the principal suit. There is nothing to prevent the Circuit Court from following the suggestion of the comptroller-general in his petition and making him receiver. In fact, as the assets were to be kept subject to the direction of the court, that would seem to be what was expected. As receiver he would be bound to obey the orders of the court for all the purposes of the principal suit, and the practical result of the application of the comptroller-general would be nothing more than a change of receivers. Under these circumstances it seems to us clear that the rights of the comptroller-general, as against the parties to the suit, have not been finally settled, and that the writ of error was prematurely sued out. The suit is, therefore,

Dismissed for want of jurisdiction.

Mr. P. Phillips, *Mr. John L. Cadwalader* and *Mr. James B. Campbell* for plaintiff in error. *Mr. Leroy F. Youmans*, *Mr. John Conner*, *Mr. D. T. Corbin*, *Mr. James Lowndes*, and *Mr. T. J. D. Fuller* for defendant in error.