

Cases Omitted in the Reports.

be, and the same is hereby remanded to the said Circuit Court, to be proceeded in according to law and justice. *Dismissed.*

Mr. H. M. Phillips for appellants. *Mr. Kane* and *Mr. Fallon* for appellee.

SHANNON *v.* CAVAZOS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF TEXAS.

No. 74. December Term, 1857.—Decided April 19, 1858.

One of several codefendants having appealed from a joint decree against all, without summons and severance, the case is dismissed.

THE case is stated in the opinion.

MR. JUSTICE MCLEAN delivered the following order and opinion: This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Texas, and it appearing to the court here, upon the motion of Messrs. Hale and Robinson, of counsel for the appellees, that the decree of the said District Court in this cause is a joint decree against several codefendants, and that Patrick C. Shannon alone has appealed therefrom, without any summons and severance from the rest of his codefendants, it is the opinion of this court that the case is improperly brought here. On consideration whereof, it is now here ordered, adjudged and decreed by this court, that this appeal be, and the same is hereby

Dismissed, with costs.

Mr. J. P. Benjamin for appellants. *Mr. C. Robinson* and *Mr. Wm. G. Hale* for appellees.

PHELPS *v.* EDGERTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 85. December Term, 1860.—Decided March 5, 1861.

It appearing to the court that this writ of error was sued out merely for delay, the judgment is affirmed with ten per cent damages.

ASSUMPSIT on a promissory note, to which the general counts were joined. The pleas were, a general demurrer to the first count, and non assumpsit. The demurrer was overruled, and a verdict taken for plaintiff, and judgment on the verdict, to which this writ

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of error was sued out. On behalf of plaintiff in error it was contended that it was error to overrule the demurrer before joinder by plaintiff, and that by reason of non joinder the action was discontinued. On the part of defendant in error it was claimed that the appeal was taken for delay, and damages were asked for.

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

Upon examining the record in this case, the court is of opinion that the writ of error was sued out merely for delay, and therefore affirm the judgment, with ten per cent damages, according to the second section of the 23d rule of this court. *Affirmed.*

Mr. T. Lyle Dicey and Mr. J. A. Rockwell for plaintiffs in error.
Mr. B. C. Cook and Mr. L. Trumbull for defendants in error.

DAVIDSON *v.* LANIER.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

Nos. 264, 265, December Term, 1860.—Announced March 14, 1861.

On a motion to dismiss for want of jurisdiction, the opposing counsel is entitled to a reasonable notice, having regard to the distance of his residence from the court, and to the time necessary to enable him to arrange his business so as to be able to be present at the hearing: and it is within the discretion of the court to determine whether the notice actually given was reasonable.

MOTION to dismiss. The case is stated in the opinion.

MR. CHIEF JUSTICE TANEY delivered the opinion of the court.

A motion has been made in each of these cases to dismiss it for want of jurisdiction, on account of certain defects, as it is alleged, in the process and proceedings made necessary by the act of Congress, in order to bring it before this court.

It is the practice of this court to receive and hear motions of this kind on the day assigned for business of that description, before the case is reached in the regular call of the docket. And the rule has been adopted, because it would be unjust to the parties to delay the decision until the case is called for trial, if the court are satisfied that they have not jurisdiction, and that the case must be ultimately dismissed without deciding any of the matters in controversy between the parties.

But in order to prevent surprise upon the plaintiff in error, or appellant, the court have always, where the motion is made in