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

advance of the regular call, directed notice to be given to him or his counsel, and required proof that it was served long enough before the motion is heard to give him an opportunity of contesting the motion if he desires to do so. And the time required must depend upon the distance of the counsel or the party from the place of holding the court, and must be sufficient not only to enable him to make the journey, but to arrange business in which he may be engaged when he receives the notice. For, when a case stands so late on the docket of this court as to give no reasonable hope of reaching it during the term, it cannot be expected that distant counsel will leave their usual place of business, and attend here to guard against the possibility of a motion to dismiss.

The motions in these two cases were made about three weeks before the close of the term, but as soon as it could be conveniently made after they were docketed, and the court directed the usual notice to be given. We are satisfied that the counsel for the defendant in error has used every means in his power to comply with the order. But he has no proof that it was actually served. The counsel and client both reside in Mississippi, and the cases stand so late on the docket that a trial could not be expected at this term. Nor could they anticipate that there would be any reason for their attendance. Under these circumstances the court order that the motion be continued, to be heard on the first Friday in next term, provided notice of the motions and the day of hearing be served on the party or his counsel, thirty days before the commencement of the next term.

So ordered.

Mr. R. J. Brent in support of motions. No one opposing.

MIRAMONTES *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 120. December Term, 1863. — Decided February 15, 1864.

A petition to the Mexican government for a surplus of land which was not granted, is no foundation for an equitable claim against the United States.

The case is stated in the opinion.

Mr. Justice Grier delivered the opinion of the court.

The appellant had a valid grant from Alvarado in January, 1841,