

## Opinion of the Court.

defendant was liable to be sued in the Circuit Court of the United States for the District of Nebraska, and it being clear that it was, and there being color for the motion to dismiss, we sustain the motion to affirm, as we do not need further argument on that question.

*Judgment affirmed.*

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RICHMOND AND DANVILLE RAILROAD COMPANY *v.* THOURON.RICHMOND AND WEST POINT TERMINAL RAILWAY AND WAREHOUSE CO. *v.* THOURON.

## APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

Nos. 1262, 1263. Submitted February 3, 1890. — Decided March 10, 1890.

An order remanding a cause from a circuit court of the United States to the state court from which it was removed is not a final judgment or decree, and this court has no jurisdiction to review it.

MOTIONS TO DISMISS for want of jurisdiction. The case is stated in the opinion.

*Mr. Charles M. DaCosta and Mr. Samuel Dickson* for the motions.

*Mr. Pope Barrow* opposing.

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

These are appeals from orders of the Circuit Court remanding the above-entitled cases to the state court, which appeals the records show were "granted under the provisions of the act of February 25, 1889, on the ground that the court has no jurisdiction of the cause."

## Opinion of the Court.

Before the act of 1875, c. 137, 18 Stat. 470, we held that an order by the Circuit Court remanding a cause was not such a final judgment or decree in a civil action as to give us jurisdiction for its review by writ of error or appeal. The appropriate remedy in such a case was then, by *mandamus*, to compel the Circuit Court to hear and decide. *Babbitt v. Clark*, 103 U. S. 606, 609; *Turner v. Farmer's Loan and Trust Company*, 106 U. S. 552, 555; *Railroad Company v. Wiswall*, 23 Wall. 507. The act of 1875 made such order reviewable (without regard to the pecuniary value of the matter in dispute); but by the act of March 3, 1887, 24 Stat. 552, 555, c. 373, as corrected by the act of August 13, 1888, 25 Stat. 433, c. 866, the provision to that effect was repealed, and it was also provided that no appeal or writ of error should be allowed from the decision of the Circuit Court remanding a cause. In *Morey v. Lockhart*, 123 U. S. 56, 57, Mr. Chief Justice Waite, speaking for the court, said: "It is difficult to see what more could be done to make the action of the Circuit Court final, for all the purposes of the removal, and not the subject of review in this court. First, it is declared that there shall be no appeal or writ of error in such a case, and then, to make the matter doubly sure, the only statute which ever gave the right of such an appeal or writ of error is repealed." And the court held that the language of the act was broad enough to cover all cases, and also that an appeal or writ of error would not lie under § 693 of the Revised Statutes, because that section applied only to final judgments or decrees, and an order remanding was not a final judgment.

The act of February 25, 1889, 25 Stat. 693, c. 236, provides that "in all cases where a final judgment or decree shall be rendered in a Circuit Court of the United States in which there shall have been a question involving the jurisdiction of the court, the party against whom the judgment or decree is rendered shall be entitled to an appeal or writ of error to the Supreme Court of the United States to review such judgment or decree, without reference to the amount of the same; but in cases where the decree or judgment does not exceed the sum of five thousand dollars the Supreme Court shall not re-

## Syllabus.

view any question raised upon the record except such question of jurisdiction."

The words "a final judgment or decree," in this act, are manifestly used in the same sense as in the prior statutes which have received interpretation, and these orders to remand were not final judgments or decrees whatever the ground upon which the Circuit Court proceeded. *Graves v. Corbin*, 132 U. S. 571, 591.

*Appeals dismissed for want of jurisdiction.*

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## ORMSBY v. WEBB.

## ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 179. Argued January 9, 10, 1890.—Decided March 3, 1890.

An order in the Supreme Court of the District of Columbia, at special term, admitting a writing to probate and record as the will of a deceased person, in conformity with the findings of the jury empanelled, in the same court, to try the issue of will or no will, is one involving the merits of the proceeding, and may be reviewed by the same court in general term, and such review will bring before the general term all the questions arising upon bills of exceptions taken at the trial before the jury: and if the value of the matter in dispute be sufficient, this court has jurisdiction to reëxamine a final order of the Supreme Court of the District of Columbia affirming the order of the Probate Court, and to pass upon the questions of law raised by such bills of exceptions. *Van Ness v. Van Ness*, 6 How. 62; and *Brown v. Wiley*, 4 Wall. 165, distinguished.

In the trial before a jury of an issue made up in a Probate Court as to the incompetency of a deceased person, from unsoundness of mind or undue influence, to make a will, declarations made by the deceased to a witness that he received the bulk of his estate by breaking the will of his grandfather, who was also the ancestor of the caveators, and that his estate consisted in a great degree of that property and its accumulations; and also declarations of one of the legatees, made about, or after the date of the execution of the alleged will, that she had knowledge at that time of the execution of the will and of its provisions, should be excluded from the jury.

On the trial of that issue it was proper for the jury to consider whether the undue influence alleged to have been exercised by a particular legatee in