

## Syllabus.

"It is also agreed that a jury is waived in said matter. The above coupons are as *are as* follows: 61 of series 8, 9 and 10 and 51 of series 7, being 234 coupons.

"It is further stipulated that said bonds and coupons are identical in character with the bonds and coupons in the matter of *Skinner v. Town of East Oakland*, tried in this court and appealed to the U. S. Supreme Court, tried there and reported in 94 U. S. 255, and issued in same manner, the only difference being that these bonds and coupons were issued by the town of Paris instead of the town of East Oakland.

"In case of appeal to the U. S. Supreme Court this case may be submitted under rule 20 on written briefs."

Judgment below for the defendant, to review which the plaintiff sued out this writ of error.

*Mr. George A. Sanders* for plaintiff in error.

*Mr. R. B. Lamon* for defendant in error.

PER CURIAM. The judgment in this case is affirmed on the authority of *Glenn v. Fant*, 134 U. S. 398; *Raimond v. Terrebonne Parish*, 132 U. S. 192; *Andes v. Slauson*, 130 U. S. 435; and *Bond v. Dustin*, 112 U. S. 604, and cases cited.

*Affirmed.*

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MASON v. UNITED STATES.

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

No. 214. Submitted May 5, 1890. — Decided May 19, 1890.

A postmaster and the sureties on his official bond being sued jointly for a breach of the bond, he and a part of the sureties appeared and defended; the suit was abated as to one of the sureties who had died; and the other sureties made default, and judgment of default was entered against them.

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On the trial a verdict was returned for the plaintiff, whereupon judgment was entered against the principal and all the sureties for the amount of the verdict. The sureties who had appeared sued out a writ of error to this judgment without joining the principal or the sureties who had made default. The plaintiff in error moved to amend the writ of error by adding the omitted parties as plaintiffs in error, or for a severance of those parties; *Held*, that the motion must be denied.

THIS was an action against the postmaster of Chicago and the sureties upon his official bond, the alleged breach being that he had not accounted to the United States for large sums of money received by him from the sale of postage stamps and other sources connected with the postal service. The principal defence was that the moneys had been deposited in a bank which had failed, and which was a designated depository of public moneys. The process was against the postmaster and seven of the sureties, jointly. Two of the sureties died before trial, and the suit was abated as to them. Two appeared, and, together with the postmaster, went to trial in defence. The default of the remaining three sureties was taken before proceeding to trial. The jury assessed the damages at \$116,559.14, and judgment was entered therein against all the remaining parties impleaded, (the postmaster and five sureties,) "and that the United States have execution thereof." To this judgment two of the sureties sued out a writ of error, without joining the other parties, or summons and severance.

The case was reached on the docket on the 19th of March, 1890. The counsel for plaintiffs in error commenced the opening of the case; but the court, upon examination of the record, declined to hear further argument for the present, and ordered the case to be passed.

On the 5th of May, 1890, the counsel for the plaintiffs in error, made the following motion:

"And now comes Carlisle Mason, John Alston, John McArthur, James Steele, Thomas S. Dobbins and Solomon McKichan, who, jointly, and severally, move for leave to amend the writ of error by inserting therein their names, they being all of the defendants in the judgment rendered by the

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Circuit Court for the Northern District of Illinois, on the 16th day of July, 1886, and also by a similar amendment to the citation and bond ;

“ And that the said John McArthur may be allowed to join in the errors assigned by the said Carlisle Mason, and John Alston ;

“ Or, in case said application cannot be allowed, that an order and judgment of severance be entered so that the judgment rendered in the court below against said John McArthur, James Steele, Thomas S. Dobbins, and Solomon McKichan may be allowed to stand, and the said Carlisle Mason and John Alston permitted to prosecute the writ of error and their assignments made upon the record herein.

“ Or, that such other and further order may be entered as may be consistent with the rules and practice of this court in order to permit a review of the rulings and decisions of the court below.

“ W. C. GOUDY,

“ *Attorney for the above-named persons.*”

The following papers were filed with this motion :

“ The undersigned, John McArthur, James Steele, Thomas S. Dobbins and Solomon McKichan, against whom, with Carlisle Mason and John Alston, a judgment was rendered by the Circuit Court of the United States on the fourteenth day of July, 1886, in favor of the United States of America, for three hundred thousand dollars debt, to be satisfied upon making the sum of \$108,648.50 damages, together with costs, and from which judgment a writ of error was prosecuted and is now pending in the Supreme Court of the United States.

“ Do hereby enter our appearance in the Supreme Court of the United States and consent to an amendment of the writ of error in any way which said court may see proper to allow, and also, if permitted by the court, join in the assignments of error, and, in case that shall not be allowed, consent to a judgment of severance so that the said writ of error may be prosecuted by our co-defendants in said judgment, Carlisle Mason and John Alston, and to any further order that may be neces-

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sary to enable the plaintiffs in error to prosecute said suit in said Supreme Court.

“JOHN McARTHUR,  
 “JAMES STEELE,  
 “SOLOMON McKICHAN,  
 “THOMAS S. DOBBINS,  
 “By his attorney,  
 “WILLIAM C. GOUDY.”

“SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1889.

“Carlisle Mason and John Alston, Plaintiffs in Error, v. The United States.	}	No. 214.
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“In error to the Circuit Court of the United States for the Northern District of Illinois.

“Wm. C. Goudy, being sworn, says that he represented John McArthur, Carlisle Mason, John Alston, James Steele and Thomas S. Dobbins, in the Circuit Court of the United States for the Northern District of Illinois in this suit commenced by the United States against them and others, from about the first of January, 1878, in connection with John W. Ela until some time in the year 1885, when this deponent assumed the sole defence for said persons, the said John W. Ela becoming unable to attend to the business at that time because of sickness.

“That the deponent represented all of said persons on the trial in 1886, which resulted in the judgment of July 14, 1886, and was authorized to take all such steps in their behalf, as were necessary to bring the case to the Supreme Court of the United States for review. That he procured the writ of error, which now appears in the record, from the clerk of the Circuit Court of the United States for the Northern District of Illinois, supposing that the cause would be brought to this court for review of the alleged errors in the court below, the same as if said writ of error had named all of the defendants in said judgment, and that if the same should be reversed, that it would be reversed as to all, that being the practice in

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the State of Illinois; and that his attention was not called to the practice prevailing in the Supreme Court until the cause came on for argument. Deponent further says that he had authority to have used the names of John McArthur, John Alston, Carlisle Mason, James Steele and Thomas S. Dobbins in the prosecution of a writ of error, and that as he understands it, he had the right to use the name of Solomon McKichan in connection with the other defendants, according to the rules of law, but the deponent further says that he now perceives that said writ of error is defective in describing the suit as one between the United States of America, plaintiff, and Carlisle Mason, John Alston and others, defendants, when the writ should have named all of the defendants in the judgment for the purpose of correctly describing the suit, and that the same error exists in the citation, and the suit should have been docketed in this court in the names of all of the defendants in said judgment.

“The deponent further says that he has procured the signatures of John McArthur, James Steele and Solomon McKichan to a paper attached hereto entering their appearance and consent to such proceedings as may be necessary to enable the court to determine the errors assigned, and that he could have procured the personal signature of Thomas S. Dobbins, the remaining defendant, except for the reason of his absence from Chicago, his place of residence, in Colorado at some point which deponent has been unable to ascertain in time to procure the signature during the present term, and for that reason he has exercised the authority which he has as attorney by signing the name of said Thomas S. Dobbins to said paper. And deponent further says that he has been fully authorized to sign all the said names except that of Solomon McKichan, as attorney, without obtaining their consent at the present time, but that he preferred having them append their signatures in person to such consent and has done so as far as possible at the present time.

“WILLIAM C. GOUDY.

“Subscribed and sworn before me this 1st day of May, 1890.

“J. L. MCKITTRICK,

“Notary Public.”

## Opinion of the Court.

PER CURIAM. (May 19, 1890): The motion for leave to amend the writ of error, citation and bond in this cause is denied, and the writ of error is *Dismissed.*

*Mr. W. C. Goudy* for plaintiffs in error.

*Mr. Solicitor General* for defendants in error.

## IN RE BURRUS, Petitioner.

## ORIGINAL.

No. 10. Original. Submitted March 10, 1890. — Decided May 19, 1890.

A District Court of the United States has no authority in law to issue a writ of *habeas corpus* to restore an infant to the custody of its father, when unlawfully detained by its grand-parents.

THE case is stated in the opinion.

*Mr. G. M. Lambertson* for the petitioner.

*Mr. John Schomp* opposing.

MR. JUSTICE MILLER delivered the opinion of the court.

This is an application by Thomas F. Burrus to this court, in the exercise of its original jurisdiction, for a writ of *habeas corpus* to relieve him from the custody and unlawful imprisonment, as he declares, in which he is held by Brad. D. Slaughter, United States marshal of the State of Nebraska, in the jail at Omaha in said State, by virtue of an order of the District Court of the United States for that district. Upon the filing of the petition in this court, a rule was entered and served upon Slaughter to show cause why said writ of *habeas corpus* should not issue. To this rule Slaughter made return. In this return he says that "the said petitioner is in his custody under and by virtue of an order and judgment of the Honor-