

Statement of the Case.

ertson v. Cease, 97 U. S. 646, 649; *Anderson v. Watt*, 138 U. S. 694, 702; *Timmons v. Elyton Land Co.*, 139 U. S. 378; *Denny v. Pironi*, 141 U. S. 121.

Reversed and ordered accordingly.

SWAN v. HILL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

No. 101. Submitted December 4, 1894. — Decided December 17, 1894.

It was not error in the Supreme Court of the Territory of Arizona to dismiss an appeal when the appeal bond was without obligees, and not conditioned according to law.

THIS was an action brought by John Hill, A. B. Wild, S. B. Curtis and Samuel Summers, in the District Court of Cochise County, against H. C. Herrick and others, including the Boston Mining and Reduction Company, to establish plaintiff's alleged prior right to the use of the waters of the San Pedro River for irrigation purposes, and to restrain defendants in respect thereof. The defendant company having, previously to the commencement of the action, conveyed its property to Swan, trustee, the latter was made a defendant, as were numerous others averred to be interested in the use of the waters of the river. The case was tried by the court, a jury being waived, and resulted in certain findings of fact and a decree adjudging priority of right to the waters of the river; first, to two of the defendants; second, to plaintiffs; third, fourth and fifth, to various named defendants, respectively; and that the defendant company, and those claiming under it, or the trustee, were entitled to none of the waters for purposes of irrigation as against any of the parties until the other rights as established were satisfied. The cause was dismissed as against many defendants without prejudice. Motion for new trial was made and overruled, and Swan, trustee, appealed to the Supreme Court of the Territory, and tendered a paper as and

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for a bond which was approved and filed by the clerk of the court, and was, omitting the signatures, as follows :

“ In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

<p>“ John Hill <i>et al.</i>, Plaintiffs, <i>v.</i> H. C. Herrick <i>et al.</i>, Defendants.</p>	}	<p>Undertaking for costs and damages on appeal.</p>
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“ Whereas, Robert T. Swan, trustee, one of the defendants in the above-entitled action, is about to appeal to the Supreme Court of the Territory of Arizona from a judgment and decree rendered against him in said action, in the said District Court, and in favor of the plaintiff, to the effect that he, the said defendant, represents a corporation which, under its charter, cannot take the waters of the San Pedro River for the irrigation and cultivation of its lands, and for costs of suit, taxed at \$ —, and entered on the 21st day of October, A.D. 1889 :

“ Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned residents of the county of Cochise and Territory of Arizona, do hereby jointly and severally undertake and promise, on the part of the appellant, that the said appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound. Witness our hands and seals this 16th day of November, 1889.”

The appeal was docketed in the Supreme Court and continued to an adjourned term, when a motion to dismiss it, because, among other reasons, the appeal bond did not comply with the statute of Arizona in that behalf, was made.

Section 859 of the Revised Statutes of Arizona provided : “ The appellant or plaintiff in error, as the case may be, shall execute a bond, with two or more good and sufficient sureties, to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the probable amount of the costs of the suit of both the appellate court and the court below, to be fixed by the clerk, conditioned that such appel-

Syllabus.

lant or plaintiff in error shall prosecute his appeal or writ of error with effect, and shall pay all the costs which have accrued in the court below, or which may accrue in the appellate court." Rev. Stat. Arizona, 1887, c. 20.

The motion was sustained upon that ground, the appeal dismissed with costs, and Swan, trustee, brought the case to this court.

Mr. A. T. Britton and *Mr. A. B. Browne* for appellant.

No appearance for appellees.

THE CHIEF JUSTICE: The alleged bond had no obligees, and was not conditioned according to law. No application to file a sufficient bond was made. The Supreme Court of Arizona did not err in dismissing the appeal, and its judgment is

Affirmed.

In re RICE, Petitioner.

ORIGINAL.

No number. Submitted December 3, 1894. — Decided December 17, 1894.

A party is entitled to a writ of prohibition as a matter of right where it appears that the court whose action is sought to be prohibited had clearly no jurisdiction of the cause originally, or of some collateral matter arising therein, and that he objected to the jurisdiction at the outset, and has no other remedy.

But where there is another remedy, by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful or depends on facts which are not made matter of record, or where the application is made by a stranger, the granting or refusal of the writ is discretionary; and it is not obligatory where the case has gone to sentence, and the want of jurisdiction does not appear on the face of the proceedings.

A writ of mandamus cannot be issued to compel the court below to decide a matter before it in a particular way, or to review its judicial action had in the exercise of legitimate jurisdiction.

A writ of mandamus cannot be used to perform the office of an appeal or writ of error, even if no appeal or writ of error is given by law.

The fact that, in the administration of the assets of an insolvent corporation in the custody of receivers, summary proceedings are resorted to, does