

Opinion of the Court.

facilities, greater capital, more thorough knowledge of the business, or more extensive acquaintance, undersell his own licensees, drive them out of business, and utterly destroy the value of their licenses. In my view this cannot be done, and I am, therefore, compelled to dissent from the opinion of the court.

I am authorized to state that The Chief Justice and Mr. Justice Field concur in this dissent.

DAVIS AND RANKIN BUILDING AND MANUFACTURING COMPANY v. BARBER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

No. 818. Submitted March 25, 1895. — Decided April 8, 1895.

On the authority of *Maynard v. Hecht*, 151 U. S. 324, and *Colvin v. Jacksonville*, 157 U. S. 368, this case is dismissed for want of a certificate from the Circuit Court certifying the question of its jurisdiction for decision here.

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

Mr. George A. Knight and *Mr. J. A. McNutt* for the motion.

Mr. L. T. Michener and *Mr. George Shirts* opposing.

THE CHIEF JUSTICE: This was an action brought against certain subscribers to a contract to recover damages for its breach. Defendants demurred upon the grounds that the court had no jurisdiction over the subject-matter of the action, and that the complaint did not state facts sufficient to constitute a cause of action against them. The demurrers were sustained and judgment rendered in favor of defendants on June 28, 1892. The writ of error from this court was sued

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out February 16, 1894. It does not appear by the record, but is conceded by counsel, that a writ of error was taken to the Circuit Court of Appeals for the Seventh Circuit, and dismissed for want of jurisdiction. 60 Fed. Rep. 465. The jurisdiction of this court is invoked upon the ground that the only question in the case was as to the jurisdiction of the Circuit Court, but that question was not certified to this court by the Circuit Court for decision, and the writ of error must be dismissed upon the authority of *Maynard v. Hecht*, 151 U. S. 324; *Colvin v. Jacksonville*, ante, 368, and cases cited.

Writ of error dismissed.

TREAT MANUFACTURING COMPANY v. STANDARD STEEL AND IRON COMPANY.

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

No. 353. Submitted March 25, 1895. — Decided April 8, 1895.

Where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant, and in such case no constitutional question arises; but if the court errs as matter of law in so doing, the remedy lies in a review in the appropriate court.

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

Mr. Charles W. Needham, Mr. William G. Beale, and Mr. Edward S. Isham for the motion.

Mr. John S. Cooper and Mr. George H. Shields opposing.

THE CHIEF JUSTICE: This was an action of trespass on the case. At the conclusion of the trial defendants moved the court to charge the jury to find the issues for defendants, which motion was granted, and the jury was directed, upon the whole case, to return a verdict for defendants, plaintiff duly excepting. Thereupon the jury returned a verdict accordingly; plaintiff moved for a new trial, which was denied,