

Syllabus.

raised for decision, of avoiding rather than expressing any views upon it.

We are of opinion that the writ of error cannot be maintained.

Writ of error dismissed.

PRATHER v. UNITED STATES.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 546. Submitted November 2, 1896. — Decided November 30, 1896.

Chapman v. United States, ante, 436, followed.

MOTION to dismiss.

Mr. Solicitor General for the motion.

Mr. H. E. Davis and *Mr. Jeremiah M. Wilson* opposing.

THE CHIEF JUSTICE: On the question of our appellate jurisdiction this case differs in no material respect from *Chapman v. United States*, just decided, ante, 436. The motion to dismiss the writ of error is sustained.

Writ of error dismissed.

PERRINE v. SLACK.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 549. Submitted October 13, 1896. — Decided November 30, 1896.

The controversy in this case being between the mother and the testamentary guardian of infant children, each claiming the right to their custody and care, the matter in dispute is of such a nature as to be incapable of being reduced to any pecuniary standard of value; and for this, and for the reasons given in *Chapman v. United States*, ante, 436, it is held that this court has no jurisdiction to review judgments of the Court of Appeals under such circumstances.

Opinion of the Court.

The court also declines to pass upon the question whether the action of the Court of Appeals, after the writ of error had been granted, was or was not improvident.

THE case is stated in the opinion.

Mr. Jeremiah M. Wilson, Mr. Calderon Carlisle and Mr. William G. Johnson for plaintiffs in error.

Mr. George E. Hamilton and Mr. A. S. Worthington for defendant in error.

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

This proceeding involves a controversy as to the custody of two children of tender years. Mrs. Perrine is the sister of the deceased father of the children and her co-plaintiff in error is her husband. She had the custody of the children under their father's will. Mrs. Slack, defendant in error, is their mother, and filed a petition for a writ of *habeas corpus* in the Supreme Court of the District of Columbia to obtain custody of them. The writ was issued, and return made by plaintiffs in error, which was demurred to, the demurrer overruled and the writ discharged. From this judgment Mrs. Slack appealed to the Court of Appeals of the District of Columbia, which reversed the judgment, and remanded the case, with directions to sustain the demurrer to the return, and to proceed with the case in conformity with the opinion of the court. Thereupon a writ of error, to operate as a supersedeas upon the filing of a bond in the penal sum of ten thousand dollars, was allowed, and the bond required was filed and approved. After this, an order was entered by the Court of Appeals, the Chief Justice dissenting, as he had from the judgment, directing the judge of the Supreme Court of the District, who had entered the order discharging the writ, to place the children in the custody of their mother, pending the prosecution of the writ of error, upon her giving satisfactory security. This order was entered and complied with, and the children were taken from their

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aunt, their testamentary guardian, and placed in their mother's custody.

The situation being thus, application was made to this court for the issue of a writ of supersedeas, or other proper writ, to the Court of Appeals, or to the judge of the Supreme Court of the District who had entered the order as directed by that court, to supersede, annul and set aside the proceedings taken after the writ of error to this court had been allowed and made a supersedeas. That application having been submitted, we found it necessary to request counsel to file briefs on the question of the jurisdiction of this court to entertain the writ, and this has been done.

We are of opinion that the writ of error will not lie. The controversy is between the mother and the testamentary guardian of the infant children, each claiming the right to their custody and care, and the matter in dispute is of such a nature as to be incapable of being reduced to any pecuniary standard of value. *Barry v. Mercein*, 5 How. 103.

For the reasons given, and on the authorities cited in *Chapman v. United States*, ante, 436, we hold that this court has no jurisdiction to review the judgments of the Court of Appeals under such circumstances, and, as the writ of error must be dismissed, we ought not to consider the question whether the action of the Court of Appeals, after the writ of error had been granted and the judgment of that court superseded, was improvident or not.

Writ of error dismissed.

CHICAGO AND NORTHWESTERN RAILWAY
COMPANY *v.* CHICAGO.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 11. Argued November 6, 9, 1896. — Decided November 30, 1896.

As the plaintiff in error did not specially set up or claim in the state court any right, title, privilege or immunity under the Constitution of the United States, this court is without jurisdiction to review its final judgment.