Ex parte Martha Bradstreet: In the Matter of Martha Bradstreet, Demandant.

Mandamus to judge.

In the district court of the northern district of New York, writs of right were prosecuted for lands lying in that district, and neither in the writs nor in the counts, was there an averment of the value of the premises being sufficient in amount to give the court jurisdiction; the tenants appeared, and moved to dismiss the cause for want of jurisdiction; which motion was granted. Subsequently, the demandant moved to re-instate the cases and to amend, by inserting an averment that the premises were of the value of $500; which motion was denied by the court. The demandant also moved the court to compel full records of the judgments and orders of dismissal, and of the process in the several suits, to be made up and filed, so that the demandant might have the benefit of a writ of error to the supreme court, in order to have its decision upon the grounds and merits of such judgments and orders; the district court refused this motion. On a rule in the supreme court, for a *mandamus* to the district judge, and a return to the same, it was held, that the refusal to allow the amendment to the writ and count, by inserting the averment of the value of the property, was not the subject of examination in this court; the allowance of amendments to pleadings is in the discretion of the judge of the inferior court; and no control over the action of the judge in refusing or admitting them will be exercised by this court. The court granted a *mandamus* requiring the district judge to have the records of the cases made up, and to enter judgments thereon, in order to give the demandant the benefit of a writ of error to the supreme court.

In cases where the demand is not for money, and the nature of the action does not require the value of the thing demanded to be stated in the declaration, the practice of this court, and of the courts of the United States has been, to allow the value to be given in evidence.

This court will not exercise any control over the proceedings of an inferior court of the United States, in allowing or refusing to allow amendments in the pleadings, in cases depending in those courts; but every party in such courts has a right to the judgment of this court in a suit brought in those courts, provided the matter in dispute exceeds the value of $2000.

At the January term of this court in 1832, on the motion of Mr. *Jones*, counsel for the demandant, the court granted "a rule on the district judge of the district court of the United States for the northern district of New York, commanding him to be and appear before this court, either in person, or by an *attorney of this court, on the first day of the next January *635] term of this court, to wit, on the second Monday of January Anno Domini, 1833, to show cause, if any he have, why a *mandamus* should not be awarded to the said district judge of the northern district of New York commanding him:

1. To reinstate, and proceed to try and adjudge, according to the law and right of the case, the several writs of right and the *mises* thereon joined, lately pending in said court, and said to have been dismissed by order of said court, between Martha Bradstreet, demandant, and Apollos Cooper *et al.*, tenants.

2. Requiring said court to admit such amendments in the form of pleading, or such evidence as may be necessary to aver or to ascertain the jurisdiction of said court, in the several suits aforesaid.

3. Or, if sufficient cause should be shown by the said judge on the return of this rule, or should otherwise appear to this court, against a writ of *mandamus*, requiring the matters and things aforesaid to be done by the said judge; then to show cause why a writ of *mandamus* should not issue from this court, requiring the said judge to direct and cause full records of the judgments or orders of dismissal in the several suits aforesaid, and of the processes of the same, to be duly made up and filed, so as to enable this

court to re-examine and decide the grounds and merits of such judgments or orders, upon writs of error; such records showing upon the face of each, what judgments or final orders dismissing, or otherwise definitively disposing of, said suits, were rendered by the said district court; at whose instance, upon what grounds, and what exceptions or objections were reserved or taken by said demandant, or on her behalf, to the judgments or decisions of the said district court in the premises, or to the motions whereon such judgments or decisions were found; and what motion or motions, application or applications, were made to said court, by the demandant, or on her behalf, and either granted or overruled by said district court, both before and after said judgments or decisions dismissing or otherwise finally disposing of said suits; especially, what motions or applications were made by said demandant, or on her behalf, to said district court, to be admitted to amend her counts in the said suits, or to produce evidence *to establish the value of the lands, &c., demanded in such counts, together with all the papers filed, and proceedings had in said suit respectively. (6 Pet. 774.) [*636

The Honorable Alfred Conklin, judge of the district court of the United States for the northern district of New York, appeared before the court, by Mr. Beardsley, his counsel; and in pursuance of the rule, made the following statement as a return thereto.

To the supreme court of the United States: In answer to a rule granted by your honorable court, the certified copy whereof, hereunto annexed, was on the 21st of December instant served upon him, the undersigned begs leave respectfully to state, as follows:

1. That after the *mises* had been joined in the several causes mentioned in the rule, motions were made therein, on the part of the tenants, that the same should be dismissed, upon the ground that the counts respectively contained no allegation of the value of the matter in dispute; and that it did not therefore appear by the pleadings, that the causes were within the jurisdiction of the court. In conformity with what appeared to have been the uniform language of the national courts upon the question, and his own views of the law; and in accordance especially with several decisions in the circuit court for the third circuit (see 4 W. C. C. 482, 624), the undersigned granted these motions. Assuming that the causes were rightly dismissed, it follows, of course, that he ought not now to be required to reinstate them, unless leave ought also to be granted to the demandant to amend her counts.

2. After the dismissal of these causes, as above stated, motions were made therein, on the part of the demandant, that the same should be reinstated, and that she should be permitted to amend her counts. These motions the undersigned considered it to be his duty to deny; and he can, perhaps, in no other manner more properly show cause why he should not now be required to do what he then refused to do, than by here inserting a copy of the opinion which he delivered upon that occasion. This opinion is as follows:

"This cause having, at a former term of the court, been dismissed, upon the ground, that it did not appear upon the face of the demandant's count, that the case was one to which the *jurisdiction of the court extends, a motion has been made by the demandant, for leave to amend her [*637

count, and that the cause be reinstated in court. There are also a great number of other causes brought by the same demandant, standing in exactly the same predicament, and depending, of course, upon the decision of this. The question is, therefore, important, and by no means free from difficulty. Under these circumstances, and ample time having been afforded to the parties for thorough investigation, it was expected that the question would have been more fully and satisfactorily argued. It is incumbent upon me, however, now to decide it ; and I shall proceed to perform that duty. The defect in question is clearly one in substance. It consists in the want of any averment in the count, of the value of the land in dispute, an allegation, without which the court will not ever take jurisdiction of the cause.

"The power of the national courts to grant amendments, depends upon the 32d section of the judiciary act of September 24th, 1789, which is as follows: [this quotation is omitted as unnecessary to be here inserted.] With the exception of the last clause of this section, it is understood to relate exclusively to defects in matters of form. No proceeding in civil cases is to be rendered ineffectual, by reason of any such defects ; they are to be disregarded in giving judgment, except when especially set down as causes of demurrer ; and are to be amended, of course, without the imposition of conditions. To this extent, the language of the section is also imperative. The last clause of the section, however, extends, in terms, to defects of every description, in the process and pleadings, and confers upon the courts a discretionary power of permitting amendments therein, upon such conditions as they shall direct. Without stopping, then, to ascertain the precise limits of this authority, it may be safely assumed, that it extends to the case before the court ; and the true question for decision is, whether this is a fit instance for its exercise? No affidavit has been furnished, as the foundation of the motion ; and I do not understand it to be pretended, that there are any circumstances of a special nature, entitling the demandant to favor. Leaving
*638] out of view, therefore, for the present, as peculiarity affecting *the case, which will be noticed in the sequel, the application presents the naked question, whether, as a general rule, the demandant in a writ of right ought to be allowed to amend a defect in substance.

"It is wholly unnecessary to refer to adjudications in the English common pleas (in which court alone this action is cognisable in that country), to show how such an application would be there decided. No one in the least degree conversant with the settled usage of that court, in this respect, can doubt, that it would, without a moment's hesitation, be denied. But as one of the reasons for the great strictness which prevails in England (viz., the long period of limitation against this action), does not exist in an equal degree here, and as it is contended, that this difference would, of itself, warrant a relaxation of the rules which govern there, it is important to advert to a few of the English decisions, in order the more clearly to perceive to what extent this court would be obliged to depart from them, to permit an amendment in the present case. In the case of *Charlwood* v. *Morgan*, 4 Bos. & Pul. 64, a motion was made to amend the mistake of a Christian name in the count, founded upon an affidavit accounting for the mistake. The motion was however denied, upon the ground, that there was no precedent to warrant such an amendment ; the court, at the same time, declaring, that they should have been willing to amend, had not the case before them been a

proceeding by writ of right. The demandant then asked leave to discontinue; but this was also refused. In the case of *Maidment* v. *Jukes*, 5 Bos. & Pul. 429, a side-bar rule to discontinue having been entered, the court ordered it to be set aside, with costs. And in the very recent case of *Adams v. Radmay*, 1 Marsh. 602, a motion was made, on the part of the demandant, for leave to quash the writ of summons to the four knights, on the ground, that no previous notice of executing it had been served on the tenant's attorney. The application, it was urged, was made in the demandant's own delay, *ex majori cautela;* lest it should be objected that the tenant would have a right to challenge the four knights. But the motion was denied, Lord Chief Justice GIBBS declaring the rule adopted, on *consideration, to be, that the court will not assist a demandant in a writ of right in getting over any difficulties that may occur to him. And the other judges concurred in what he said. [*639

"To this brief reference to English cases, I will only add, that so far as I have been able to discover, the records of English jurisprudence furnish no instance of a successful application by the demandant in a writ of right to amend.

"If then, in England, a demandant is not allowed to amend a mistake, even in a simple Christian name, though satisfactorily accounted for, if he is not permitted to quash his own proceeding to enable him to correct a slight informality, nor even to discontinue his own suit; if, in short, no aid whatever will be granted in any difficulty into which he may have the misfortune to fall; it is clear, that to permit the amendment now applied for, would not only be a wide departure from the established rule in that country, but an unqualified rejection of it; for it would be placing the writ of right in this respect upon a footing of perfect equality with the most favored actions. Still, however, could I find myself warranted in such a course by the decisions of the supreme court of this state, I should not hesitate to pursue it; though this is one of those questions upon which the decisions of the state courts are not deemed obligatory upon the national courts. But the only case of this nature in our own courts, referred to upon the argument, or which I have been able to find, is that of *Malcolm* v. *Roberts*, reported in 1 Cow. 1. In that case, the sheriff, in his return to a writ of right, had stated, that he had made proclamation at the most usual door of the Episcopal church in Beekman street, called St. George's chapel, in the second ward of the city of New York, within which the tenements lay. The tenant having been called, on the *quarto die post*, it was objected, that the return was defective, under the statute of this state, although in exact conformity with the English form of a return; in not stating that the church mentioned in the return was the nearest church to the tenements in question. The court having, after advisement, held the objection to be well taken, the question was, whether the sheriff should be permitted to amend his return in this particular, it being admitted, that the church at which the proclamation was made, was in fact the nearest to the tenements, and that the proceeding in itself had, therefore, *been correct. It certainly is not easy to fancy a more favorable case than this for amendment, but I well remember the strenuous and very protracted argument to which the court deemed it their duty to listen, before they determined to grant the application. [*640

"It does not appear, that any such case has arisen in England, nor does it by any means follow, from the decisions of the common pleas, that even there such an application would be denied. Indeed, it is said, in one of the cases above cited, that there might possibly arise a case in which an amendment would be permitted. The case of *Malcolm* v. *Roberts*, therefore, which I have already said is a solitary one in this state, does not warrant the conclusion that the strictness of the English practice in this respect had been relaxed; much less, that it has been wholly repudiated here. It is true, that one of the judges, in that case, remarked, that the ancient strictness which prevailed in real actions had been much relaxed by the late decisions; and as evidence of such a change, he stated, that he recollected a case in which, at the last term of the court, a default and *grand cape* having been taken, the default was set aside. I have searched for this case, but it does not appear to have been reported. But (admitting, which does not appear, that the case referred to by his honor was a writ of right), it is to be observed, that in that case, it was the tenant, and not the demandant, who applied for relief. The indefatigable reporter, however, whose well-known and useful practice it was, to collect all the important decisions tending to confirm or illustrate the point decided, cites, in a note, the case of *Van Bergen* v. *Palmer*, 18 Johns. 504, in which the default of the demandant for not appearing upon the call of the tenant, was set aside, upon an affidavit satisfactorily excusing the default. But this, upon examination, turns out to have been an action of dower; an action favored in law, and to which less strictness has been applied. However the fact may be, therefore, it nowhere appears, as far as I have been able to discover, except in the dictum in *Malcolm* v. *Roberts*, above mentioned, that the ancient strictness against the demandant in the writ of right has been relaxed, even here; while it is abundantly evident, from the recent case of *Adams* v. *Radmay*, cited above (the latest case which I have found), *that no such relaxation has taken place in England. The writ of right is an ancient common-law remedy, injudiciously adopted here, with all its cumbrous machinery and useless appendages; and in the absence of any authority for so doing, I fear, I should hardly be warranted in denying, that its peculiar disadvantages were also adopted along with it; and that he who chooses to resort to it, must be content to take it with all its imperfections on its head.

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"But there is a peculiar feature in this case, which remains to be noticed, and which ought not to be without influence upon its decision. By a recent statute of this state, the remedy by writ of right is wholly abolished. The present action was commenced, after the enactment of this law, and just before it went into operation. Whatever room there may have been, therefore, before the passage of this act, for doubting whether this action ought to be viewed by our courts in the light in which it has already been regarded in England, as one by no means entitled to favor, but to be discouraged; no such doubt can now exist, since it has been abolished as an evil which ought no longer to be tolerated. But this is not all.

"I apprehend, it may safely be assumed, that this act, taken in connection with the rule of this court adopting the practice of the supreme court of this state, is to be regarded as applicable to this court; so that no new action by writ of right can now be prosecuted in this court. If this be so, it

becomes a serious question, whether this, of itself, does not, upon authority, constitute an insuperable objection to this application. By the dismission of the cause, the demandant has lost the power of further prosecuting it; and the application now is, first, for leave to insert in the count an allegation indispensable to her right of recovery in this court; and second, that the cause be thereupon reinstated, without prejudice, in court. Now, there is no action in which the courts have been more liberal in permitting amendments than that of ejectment; insomuch, that it has been the uniform practice of the courts of England, as well as in this state, to allow new demises to be added, even after the lapse of several years. By an act of the legislature of this state, passed in 1813, suits against *bonâ fide* purchasers, for the recovery of military bounty-lands, were required to be commenced *before the 1st day of January 1823. In the case of *Jackson* v. [*642
Murray, 1 Cow. 156, which was commenced before the expiration of this period of limitation; an application was made, soon after its expiration, for leave to amend the declaration, by the insertion of a new demise. This motion was denied, upon the ground, that such an amendment, without which, it was clear, the plaintiff could not recover, would be equivalent to a new action, and would, therefore, be in violation of the act of limitation. And this decision was afterwards referred to and vindicated by the court of errors. Now, I am not able to distinguish the case before me, in principle, from that. Here, too, by an act passed in 1828, the right to prosecute by writ of right was limited to the 1st of January 1830; and if, in the case cited, to grant the amendment prayed for would have been equivalent to permitting a new action to be commenced, it would be no less so here. Upon the whole, therefore, I am of opinion, that it would be against authority, and indiscreet to grant this motion, and it must accordingly be denied."

3. After the denial of these motions, and at a subsequent session of the court, motions were made by the demandant for a rule requiring the tenants to make up and file records in the several causes, for the purpose of enabling the demandant to prosecute writs of error thereon. The application was resisted by the counsel for the tenants, upon the ground, that no final judgment had been rendered in these causes subject to revision by writ of error. After taking time to examine and consider the question thus presented, the undersigned denied these motions, upon the ground assumed by the counsel for the tenants.

With respect to this refusal to permit the demandant to amend her counts, it is hardly necessary to remark, that as the application for this purpose was one, in its very nature, addressed to the discretion of the court, it could not be the foundation of a writ of error. And with regard to the dismissal of these causes, for want of an averment necessary to give the court jurisdiction, he supposed, that a decision having no reference whatever to the merits of the controversy, which adjudicated nothing incompatible with the right of the demandant to institute a new suit for the same cause of action, even in the same court, but which *merely declared, that [*643
she had not shown, as she was bound to do, that her causes were within the jurisdiction of the court, and that on that account the court could not entertain them—could not be regarded as such a final judgment as could be reviewed by writ of error. A final judgment is defined to be an adjudication upon the question, whether the plaintiff is entitled, or is not, to recover

the remedy he sues for. But the adjudication in this case was, not that the demandant had no right to recover, but that she had not shown herself entitled to sue in the *forum* she had chosen. But even admitting this decision to have been a final judgment, and as such subject to revision by writ of error, still it is respectfully submitted, that if your honorable court shall be satisfied, that no error has in fact been committed, you ought not to require records to be made up, for no other purpose than to enable the demandant to prosecute writs of error which you already perceive must be fruitless. All which is respectfully submitted.

Beardsley, in support of the return of Judge Conklin, stated, that the district court of the United States for the northern district of New York, possesses the ordinary jurisdiction of a circuit, as well as a district court. Its judgments, when sitting as a circuit court, may be brought directly before this court for review, by writ of error. (3 U. S. Stat. 121.)

Martha Bradstreet, as demandant, prosecuted sundry writs of right in that court. Neither the original writs, nor the counts in these causes, contained any averment of the value of the premises in question. The tenants appeared and entered pleas in these causes. Subsequent motions were made, on the part of the tenants, to dismiss these causes for want of jurisdiction. The motions were granted. The demandant, at a later period, moved to reinstate the causes, and amend, by inserting an averment that the premises were of the value of $500, &c. This motion was denied. The court was also moved by the demandant to compel records to be made up, in order that the judgments might be reviewed by writ of error. These motions were also refused.

*644] On affidavits disclosing these facts, this court made a rule, *at the last term, requiring the judge of the district court to show cause why a *mandamus* should not issue to compel him, 1. To reinstate and try these causes, &c. 2. To permit such amendments to be made in the pleadings as may be necessary to aver jurisdiction. 3. Or to require records to be made up and filed, so that this court may bring up the judgments by writ of error, &c. To this rule the judge has answered, and has presented the statement which is filed.

1. The first inquiry is, did the court below decide right, in refusing to permit the amendment to be made? The defect is one of substance, not of form; and it is not, therefore, amendable of course. 1 Paine 486. It might, perhaps, well be doubted, whether a court can, in any case, amend in a matter necessary to give jurisdiction. It is, however, believed, that a different rule has prevailed in the courts of the United States, and therefore, the proceeding will not, at this time, be called in question. It is then assumed, that the court below had power to make this amendment. It also had power to refuse to make it. No special grounds were shown for granting these applications to the court below; no affidavit, in fact, was presented as a foundation for the motion. Would the court grant it without affidavit-proof? It was in the discretion of the court. Has a demandant, in a writ of right, a right to amend of course, on mere motion, without showing any cause, in a matter of substance? 1 Paine 492. The answer of the judge cites the authorities. 4 Bos. & Pul. 64; 5 Ibid. 429; 1 Marsh. 602; 1 Cow. 1.

There is a further objection. Before these causes were commenced, a statute was passed in New York, abolishing writs of right, after a certain day, and which day arrived before the motions to amend were made. When the motions to amend, therefore, were made, such actions could not be brought in New York in its own courts. That statute was equally applicable to the district court; so that no writ of right could then be prosecuted in that court. This was a good objection to the amendment. The amendment would have been an evasion of the statute abolishing writs of right: it would, in effect, have given an action which *had been abolished— [*645
virtually repealing the statute. Cited by the judge, 1 Cow. 156; 2 T. R. 707–8; 6 Ibid. 171, 548; 17 Johns. 346.

It is submitted, that the district judge, in refusing to allow the amendments, decided correctly. But if he did not, this court will not proceed by a *mandamus* to correct his errors. Such a proceeding is not an exercise of original jurisdiction; and if it is the employment of the appellate power of this court, it cannot be used in this form. Congress may extend the powers of this court to any cases under the constitution, of judicial cognisance; but they have not given the power, by proceedings for a *mandamus*, to examine into the action of the inferior courts in matters of this description. The power to issue a *mandamus* exists under the 14th section of the judiciary act of 1789, and it does not comprehend this case. The writ of *mandamus* is never used for such purposes. It does not lie, to control or coerce the discretion of a subordinate tribunal. 1 Wend. 299; 1 Cow. 423; 2 Ibid. 458, 483; 6 Ibid. 393; 7 Ibid. 363, 523; 1 Paine 453.

No doubt is entertained of the power of this court to award a *mandamus* for the last purpose indicated in the rule; that is, to compel records to be made up and filed. 1 Paine 455. This court may review the judgments of the district court by writ of error. But no such judgment can be brought up, until a record has been filed. This court may compel such record to be filed. That power is "necessary," to enable this court to exercise its jurisdiction by writ of error. The writ of *mandamus* is, for that purpose, "agreeable to the principles and usages of law." This court, then, for that purpose, may award it. For that purpose, the parties interested in this case have no objection that it should issue.

What will it bring up? A judgment of the court dismissing the cause for want of jurisdiction. If that judgment was correct, it must be affirmed. Let it be brought here, if the demandant asks it. Whether it is a final judgment, has not been examined; nor is it regarded as material. Perhaps, however, the better opinion is, that it is not a final judgment. Judgments of nonsuit cannot be removed by writ of error. *3 Dall. 401; 4 Ibid. [*646
22; 4 Wheat. 73; 5 Cranch 280; 7 Ibid. 152.

On a writ of error to an inferior tribunal, which had given a judgment on the merits, if it appears from the pleadings, that the court below had no jurisdiction, this court cannot award a *venire de novo*. 3 Dall. 19. Then, why require a record to be made out? These matters are stated, not as objections; for none are made, if these were in fact final judgments. So far, the jurisdiction of this court is conceded.

But it may perhaps be said on the other side, that the judgments which have been rendered are not final judgments; and therefore, not removable by writ of error. That it is, therefore, proper to compel the court to rein-

state and try the causes, to the end that final judgments may be rendered. 6 Wheat. 601–2 ; 6 Pet. 657 ; 2 Laws U. S. 64, 22. For what end reinstate, try and determine them ? If judgments should pass in favor of the demandant, they would be erroneous. She, therefore, cannot desire such judgments. The pleadings being defective, and fatally so, she cannot possibly have a valid judgment on them. If rendered in her favor it, would be erroneous ; if rendered against her, she could not reverse it. No *venire de novo* could be awarded in such case. 3 Dall. 19. But if this court may compel the court below by *mandamus* to reinstate and try the causes, and render final judgments therein ; yet it cannot, as it is supposed, compel that court to grant the amendments asked for. The judgments will be just as final without, as with the amendments.

It has already been said, that a *mandamus* does not lie to coerce the discretion of a subordinate tribunal. Now, it is insisted, that it was discretionary with the court below to make, or refuse to make this amendment. That the question was for that court alone, and that it cannot be controlled here. Under the act of congress, amendments, like the one in question, are not demandable of right. 1. The judiciary act of 1789 (§ 32), in its first clause, declares, that no summons, &c., shall be abated, &c., "for any defect or want of form." But this is not a formal defect ; it is one of substance.
*647] *2. That section declares, that the court may amend any defect, upon such conditions as the court, in its discretion, shall prescribe. This section gives, perhaps, full power to the court below to make the amendment. But it is to be made on condition—such condition as the court in its discretion shall prescribe. Permitting amendments is a matter of discretion. 5 Cranch 17 ; 6 Ibid. 267 n. ; Ibid. 217 ; 9 Wheat. 576 ; 11 Ibid. 280 ; 3 Pet. 32 ; 6 Ibid. 656 ; 1 Paine 456–7. The court below, therefore, is not compellable by *mandamus* to allow them.

It is then submitted to the court : 1. That the court below decided correctly in refusing the amendment—it being a writ of right. It would not have been made in England. It should not have been made, when moved, as no writ of right could then have been prosecuted in New York. 2. It was at all events a matter resting in the discredition of that court, which cannot be controlled by a *mandamus*.

Jones, for the defendant.

Marshall, Ch. J., delivered the opinion of the court.—After hearing counsel, and considering the cause shown by the honorable the judge for the court of the United States for the northern district of New York, this court is of opinion, that it ought not to exercise any control over the proceedings of the district court in allowing or refusing to allow amendments in the pleadings ; but that every party has a right to the judgment of this court, in a suit brought by him in one of the inferior courts of the United States, provided the matter in dispute exceeds the sum or value of $2000.

In cases where the demand is not for money, and the nature of the action does not require the value of the thing demanded to be stated in the declaration, the practice of this court, and of the courts of the United States, is, to allow the value to be given in evidence. In pursuance of this practice, the demandant in the suits dismissed by order of the judge of the district court, had a right to give the value of the property demanded in evidence, at or

before the trial of the cause; and would *have a right to give it in evidence in this court. Consequently, he cannot be legally prevented from bringing his case before this tribunal. The court doth, therefore, direct that a *mandamus* be awarded to the judge of the court of the United States for the northern district of New York, requiring the said judge to reinstate, and proceed to try and adjudge according to the right of the case, the several writs of right, and the *mises* thereon joined, lately pending in said court, between Martha Bradstreet, demandant, and Apollos Cooper *et al.*, tenants.

The following *mandamus* was issued by order of the court. United States of America, ss. To the Honorable Alfred Conklin, judge of the district court of the United States for the northern district of New York, greeting: Whereas, one Martha Bradstreet hath heretofore commenced and prosecuted, in your court, several certain real actions, or writs of right, in your court lately pending between the said Martha Bradstreet, demandant, and the following named tenants severally and respectively, to wit, Apollos Cooper and others [naming them]. And whereas, heretofore, to wit, at a session of the supreme court of the United States, held at Washington, on the second Monday of January, in the year 1832, it appeared, upon the complaint of the said Martha Bradstreet, among other things, that at a session of your said court, lately before holden by you, according to law, all and singular the said writs of right then and there pending before your said court, upon the several motions of the tenants aforesaid, were dismissed, for the reason that there was no averment of the pecuniary value of the lands demanded by the said demandant in the several counts filed and exhibited by the said demandant against the several tenants aforesaid; which orders of your said court, so dismissing the said actions, were against the will and consent of demandant; whereupon, the said supreme court, at the instance of said demandant, granted a rule requiring you to show cause, if any you had, among other things, why a writ of *mandamus* from the said supreme court, should not be awarded and issued to you, commanding you to reinstate and proceed to try and adjudge, according to the law and right of the case, the several writs of right aforesaid, and the *mises* therein joined. And whereas, at the late *session of the said supreme court, held at Washington, on the second Monday of January, in the year [*649
1833, you certified and returned to the said supreme court, together with the said rule, that after the *mises* had been joined in the several causes mentioned in the said rule, motions were made therein, on the part of the tenants, that the same should be dismissed, upon the ground, that the counts respectively contained no allegation of the value of the matter in dispute, and that it did not, therefore, appear by the pleadings, that the causes were within the jurisdiction of the court; that, in conformity with what appeared to have been the uniform language of the national courts upon the question, and your own views of the law, and in accordance especially with several decisions in the circuit court for the third circuit (see 4 W. C. C. 482, 624), you granted their motions; and assuming that the causes were rightly dismissed, it follows, of course, that you ought not to be required to reinstate them, unless leave ought also to be granted to the demandant to amend her counts: And whereas, afterwards, to wit, at the same session of the said supreme court last aforesaid, upon consideration of your said return and of the cause shown by you therein against the said rule's being made absolute,

and against the awarding and issuing of the said writ of *mandamus*, and upon consideration of the arguments of counsel, as well on your behalf, showing cause as aforesaid, as on behalf of the said demandant, in support of the said rule, it was considered by the said supreme court, that you had certified and returned to the said court an insufficient cause for having dismissed the said actions, and against the awarding and issuing of the said writ of *mandamus*, pursuant to the rule aforesaid ; the said supreme court being of opinion, and having determined and adjudged upon the matter aforesaid, that in cases where the demand is not made for money, and the nature of the action does not require the value of the thing demanded to be stated in the declaration, the practice of the said supreme court, and of the courts of the United States, is to allow the value to be given in evidence ; that, in pursuance of this practice, the demandant in the suits dismissed by order of the judge of the district court, had a right to give the value of the property demanded in evidence, either at or before the trial of the cause, and would have a right to give it in evidence *in the said supreme court ; consequently, that she cannot be legally prevented from bringing her cases before the said supreme court ; and it was also then and there considered by the said supreme court, that the peremptory writ of the United States issue, requiring and commanding you, the said judge of the said district court, to reinstate and proceed to try and adjudge, according to the law and right of the case, the several writs of right and the *mises* therein joined, lately pending in your said court between the said Martha Bradstreet, demandant, and Apollos Cooper and others, the tenants aforesaid : Therefore, you are hereby commanded and enjoined, that immediately after the receipt of this writ, and without delay, you reinstate and proceed to try and adjudge according to the law and right of the case, the several writs of right and the *mises* therein joined, lately pending in your said court between the said Martha Bradstreet, demandant, and the said Apollos Cooper and others, the tenants herein-above named, so that complaint be not again made to the said supreme court ; and that you certify perfect obedience and due execution of this writ to the said supreme court, to be held on the first Monday in August next. Hereof fail not, at your peril, and have then there this writ.

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Witness the honorable John Marshall, chief justice of said supreme court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-three. W. T. Carroll,

Clerk of the Supreme Court of the United States.

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*651] *State of Rhode Island, Complainant, *v.* State of Massachusetts.

Mr. *Robbins*, solicitor for the complainant, having renewed his motion of last term, in this case, prayed the court to award such process, and in such form, as the court may deem proper.

On consideration of the motion made in this case, it is now here ordered by the court that process of *subpœna* be and the same is hereby awarded, as prayed for by the complainant, and that said process issue against "The Commonwealth of Massachusetts."