that if the verdict had not been satisfactory to the *plaintiffs, they might have reversed the judgment on a writ of error ; yet the evidence on which those instructions were refused, remained in the cause, for the action of the jury. And as additional evidence was given, as appears by the exception of the defendants below; the cause was submitted to the jury upon the whole evidence.

Whether the jury assessed the damages on account of the injury sustained by the plaintiffs, for the want of cement in the construction of locks, other than those numbered five and six, or on account of other items stated in the bill of particulars ; it is impossible for this court to determine. If the jury failed to observe the instructions of the court, or found excessive damages, the only remedy for the defendants was by a motion for a new trial. As the case now stands, we are limited to the legal questions which arise from the instruction given on the prayer of the plaintiffs, which was excepted to by the defendants, and on which this writ of error has been brought. And as it appears from the views already presented, that the circuit court, in giving this instruction, did not err, the judgment below must be affirmed, with costs.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel : On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs and damages, at the rate of six per centum per annum.

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*571] *The Life and Fire Insurance Company of New York v. Christopher Adams

Mandamus.

Although no rule to show cause why a *mandamus* should not issue to the district judge of Louisiana had been granted by the court, the district judge had agreed to appear, as if a rule had been granted by this court, and had been served upon him ; and copies of the papers on which the motion for a *mandamus* was founded, had been served by the district judge and on the parties in the suit in which the *mandamus* was to operate, during the vacation ; the district judge filed an answer, as if the rule had been served on him, and appeared by counsel, waived the formal rule on notice, and stated his readiness to show cause. Under such circumstances, there is no necessity for directing a rule to be entered and notice to be given ; all the purposes of the rule are accomplished.

This was a motion for a *Mandamus*, to be directed to the District Judge of the district of Louisiana. There had not been any rule taken out and served on the district judge, to show cause why a *mandamus* should not issue. Copies of the papers on which the motion was founded, with notice that the same would be made at this term, had been served on the district judge and the parties in the suit pending before him, during the late vacation. The district judge appeared by counsel, and waived any notice of a rule to show cause, and offered to show cause *instanter*. An objection having been suggested, whether, even by consent on both sides, the rule and service thereof ought to be dispensed with, some discussion took place on the subject between the bench and the bar.

BALDWIN, Justice, was of opinion, that in a cause of this sort, the court ought not to dispense with the regular course of proceedings, by the granting and service of a rule to show cause.

MARSHALL, Ch. J., said, that the grant of a rule to show cause and the service thereof, is a matter in the discretion of the court. The court may, in its discretion, grant an alternative *mandamus*, if it deems it more conducive to public *justice, and to prevent delays. Here, all the [*572 parties express themselves ready to proceed in the cause. The district judge waives any formal rule and notice, and wishes no delay; and states his readiness now to show cause. Under such circumstances, all the purposes of a rule to show cause and notice are accomplished, and there is no necessity for directing such a rule and notice. The court, therefore, in my opinion, may properly proceed at once to the hearing of the cause, for the purpose of ascertaining whether a *mandamus* ought or ought not to be awarded.

The other judges concurred in the opinion of the chief justice; and the court directed the motion to come up on the next motion day.

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*THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *v.* CHRISTOPHER ADAMS.[1] [*573

Mandamus.

In the district court of the United States for the district of Louisiana, the district judge refused to extend a judgment previously entered in the district court, so as to cover other instalments due to the plaintiffs, which became due after it was entered; and to enter a judgment in favor of the plaintiffs, mortgagees, upon a transaction which had been entered into with the mortgagor, in relation to the debt due to the mortgagees, in which it was stipulated, that judgment should be entered for certain instalments to be paid to the plaintiffs, on the non-payment of the same; the district judge not considering the plaintiffs entitled to have the judgment entered, according to the terms of the transaction, without notice to the debtor and his syndics, into whose hands his property had passed under the insolvent law of Louisiana, after the execution of the transaction, and after a judgment for part of the debt had been entered; which was the judgment asked to be extended. The district judge was also required to receive a confession of judgment against the mortgagor and the insolvent, by an agent of the plaintiffs, and whose powers to confess the judgment, the district judge did not consider adequate and legal for the purpose; an execution had been issued for a part of the debt, upon the previous judgment in the district court, and the execution was put into the hands of the marshal of the United States; who, finding the property of the insolvent defendant, the property mortgaged to the plaintiffs in the hands of the syndics of the creditors of the mortgagor, according to the insolvent law of Louisiana, refused to proceed and sell the same, and returned the execution unexecuted. An application was made to the supreme court for a *mandamus*, to command the district judge to enter the judgment required of him, and to receive the confession of the judgment by the agent of the plaintiffs, and award execution thereon; and also to compel him to oblige the marshal to execute the execution in his hands, on the property of the defendant wherever found. The court refused to award a *mandamus*, on any of the grounds, or for any of the purposes stated in the application.

To extend a judgment to subjects not comprehended in it, is to make a new judgment. This court is requested to issue a *mandamus* to the court for the eastern district of Louisiana, to enter a judgment in a cause supposed to be depending in that court; not according to the opinion which it may have formed on the matter in controversy, but according to the opinions which

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[1] For a prior proceeding in this cause, see 8 Pet. 291.