

WILLIAMSON, Plaintiff in error, *v.* KINCAID.

Jurisdiction in error.—Amount in controversy.—Supersedeas.

If the value of the matter in dispute do not appear on the record, it may be shown by affidavit; but in such a case, the writ of error is not a *supersedeas*.¹

ERROR from the Circuit Court of Georgia. It appeared from the record, that "Marian Kincaid, of Great Britain, widow, demanded against John G. Williamson, the one-third of 300 acres of land, &c., in Chatham county, as dower. That the tenant pleaded: 1st. The act of Georgia (passed the 1st of March 1778) attainting G. Kincaid (the defendant's late husband), forfeiting his estate, and vesting it in Georgia, without office. 2d. The act of the 4th of May 1782, banishing G. Kincaid, and confiscating his estate. 3d. The appropriation and sale of the lands in question, by virtue of the said attainer and confiscation, before the 3d of September 1783 (the date of the definitive treaty of peace), and before G. Kincaid's death. 4th. The alienage of the defendant (who was resident abroad on the 4th of July 1776 and ever since), and therefore, incapable of holding lands in Georgia. That the defendant replied, that she and her husband were inhabitants of Georgia, on the 19th of April 1775, then under the dominion of Great Britain; that her husband continued a subject of Great Britain, and never owed allegiance to Georgia, nor was ever convicted, by any lawful authority, of any crime against the state. That the tenant demurred to the replication, the defendant joined in demurrer, and judgment was pronounced by the circuit court (composed of WASHINGTON, Justice, and CLAY, District Judge), for the defendant." On this judgment, the writ of error was brought, and the following errors assigned. 1. The general errors. 2. The attainer of G. Kincaid and the forfeiture and sale of his estate; so no right to dower accrued; and no land out of which it could be enjoyed. 3. The alienage of the widow, on the 4th of July 1776, and ever since, by which she was incapable to take and hold real estate in Georgia.

The principal question (whether an alien British subject was entitled, under the treaty of peace, to claim and hold lands in *dower) was not ^{*21]} discussed, as the judgment was reversed, for want of a sufficient description of the parties to the suit, on the authority of *Bingham v. Cabot*, 3 Dall. 382, and *Turner v. Bank of North America* (*ante*, p. 8). But an important point of practice was previously settled, relative to the mode of ascertaining the value of the matter in dispute, in an action like the present.

For the *plaintiff* in error, it was admitted, in answer to an objection, that the value of the matter in dispute did not appear upon the record; but it was urged that, from the nature of the subject, the demand of the plaintiff could not ascertain it; nor from the nature of the suit (like a case of ejectment, where the damages are only given for the ouster) could it be fixed by the finding of a jury, on the judgment of the court. 3 Bl. Com. 35-6. As, therefore, there was no act of congress, nor any rule of the court, prescribing a mode to ascertain, in such cases, the value in dispute, that the party may have the benefit of writ of error, it was proposed to continue the cause,

Rutherford v. Fisher.

to afford an opportunity to satisfy the court, by affidavits, of the actual value of the property.

BY THE COURT.—Be it so: let the value of the matter in dispute be ascertained by affidavits, to be taken on ten days' notice to the defendant, or her counsel, in Georgia. But, consequently, the writ of error is not to be a *supersedeas*.

Ingersoll and *Dallas*, for the plaintiff in error. *E. Tilghman*, for the defendant in error.

BLAIR *et al.*, Plaintiffs in error, *v. MILLER et al.*

Practice.

A writ of error, not returned at the term to which it is returnable, is a nullity.

WRIT of error from the Circuit Court of Virginia. The judgment was rendered in the circuit court, on the 28th of May 1799, and a writ of error issued, returnable to August term 1799; but the record was not transmitted, nor the writ returned into the office of the clerk of the supreme court, until the 4th of February 1800. *Swift* objected to the acceptance and return of the record and writ: And—

BY THE COURT.—The writ has become a nullity, because it was not returned at the proper term. It cannot, of course, be a legal instrument, to bring the record of the circuit court before us for revision. (a)

*RUTHERFORD *et al.*, Plaintiffs in error, *v. FISHER et al.* [*22

Error.

A writ of error will only lie, in the case of a final judgment.

ERROR from the Circuit Court of New Jersey, sitting in equity. It appeared, that the defendants in the circuit court had pleaded the statute of limitations to the bill of the complainants; and that the plea was overruled, and the defendants ordered to answer the bill. On this decree, the present writ of error was sued out, and *Stockton* (of New Jersey) moved to quash the writ, because it was not a final decree, upon which alone a writ of error would lie. (1 U. S. Stat. 84, § 22.) *E. Tilghman*, for the plaintiff in error, acknowledged the force of the words, "final judgment," in the act of congress; and submitted the case, without argument.

CHASE, Justice.—In England, a writ of error may be brought upon an interlocutory decree or order; and until a decision is obtained upon the writ, the proceedings of the court below are stayed. But here, the words of the act, which allow a writ of error, allow it only in the case of a final judgment.

BY THE COURT.—The writ must be quashed, with costs.

(a) See *Course v. Stead, post*, p. 22.