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Pepper et al. v. Dunlap et al.

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Some other points were made in the course of the trial, but it is unimportant to notice them.

Judgment of the court below reversed, with a *venire de novo*.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said Circuit Court, with directions to award a *venire facias de novo*.

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JAMES PEPPER, SARAH H. EVANS, GEORGE McCULLOUGH,  
AND LOUISA McCULLOUGH, PLAINTIFFS IN ERROR, v.  
HUGH W. DUNLAP, CURATOR, &c., AND HIS WIFE.

Where a perpetual injunction was granted by a subordinate State court, and, upon appeal, the highest State court decided that the party in whose favor the injunction had been granted was entitled to relief, and therefore remanded the case to the same subordinate court from which it had come for further proceedings, this is not such a final decree as can be reviewed by this court.<sup>1</sup>

The writ of error must be dismissed, on motion.<sup>2</sup>

THIS case was brought by writ of error, under the 25th section of the Judiciary Act, from the Supreme Court of the State of Louisiana.

\*52] <sup>\*Mr. Crittenden moved to dismiss the writ for want</sup> of jurisdiction in this court.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case is brought here by writ of error to the Supreme Court of the State of Louisiana; and a motion is made to dismiss it for want of jurisdiction in this court.

It is unnecessary to state, at length, the proceedings in the State courts, because it is evident that the decree of the

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<sup>1</sup> FOLLOWED. *Parcels v. Johnson*, 20 Wall., 654. CITED. *Moore v. Robbins*, 18 Wall., 588; *Bostwick v. Brinkerhoff*, 16 Otto, 4.

<sup>2</sup> See note to *McCollum v. Eager*, 2 How., 61.

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*McAfee v. Doremus et al.*

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Supreme Court of the State was not a final one. And as the case must be dismissed on that ground, the other objections to the jurisdiction of this court which were taken in the argument need not be examined.

It appears from the record, that the defendants in error obtained a decree in the District Court of Louisiana for the Ninth Judicial District, for a perpetual injunction, staying all further proceedings upon an order of seizure and sale of certain lands and other property mentioned in the proceedings, which before that time had been issued by the said District Court upon the petition of the present plaintiffs in error. From this decree an appeal was taken to the Supreme Court of the State; and at the hearing in that court it was decided that the present defendants in error, in whose favor the injunction had been granted, were entitled to relief for a large portion of their claim. The decree specifies sundry items which ought to be deducted from the claim of the plaintiffs in error, amounting to a very large sum; but states that the evidence before the court did not enable it to decide finally upon the rights of the parties, and especially upon the amount which the defendants in error were bound in equity to refund to the plaintiffs. And the court, therefore, decreed that the judgment of the District Court, granting a perpetual injunction, should be avoided and reversed; and remanded the case to the District Court for further proceedings in conformity to the opinion expressed in this decree.

This is the decree brought here by the writ of error. It is evidently not a final one, and the writ of error must therefore be dismissed.

#### ORDER.

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Louisiana, holding sessions for the Western District of Louisiana, and was argued by counsel. On consideration whereof, and it appearing to the court here that the judgment of the said Supreme Court is not a final one, it is thereupon now here ordered and adjudged by this court that this writ of error be and the same is hereby dismissed for the want of jurisdiction.

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\*MORGAN MCAFEE, PLAINTIFF IN ERROR, *v.* THOMAS C. DOREMUS, JAMES SUYDAM, CORNELIUS R. SUYDAM, AND JOHN NIXON.      [\*53]

By the laws of Louisiana, a notary is required to record in a book kept for that purpose, all protests of bills made by him and the notices given to the drawers or indorsers, a certified copy of which record is made evidence.