costs, 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.*

STEPHEN SEWALL, APPELLANT, *v.* HENRY V. CHAMBERLAIN.

Where the prayer of a bill in equity shows that the demand of the complainant is susceptible of definite computation, and that there can be no recovery over the sum of two thousand dollars, the appeal to this court will be dismissed on motion, for want of jurisdiction.[1]

THIS was an appeal from the Circuit Court of the United States for the Southern District of Alabama, sitting as a court of equity.

The facts in the case are sufficiently set forth in the opinion of the court.

Mr. Dargan moved to dismiss the appeal for want of jurisdiction.

Mr. Justice WAYNE delivered the opinion of the court.

This cause having been regularly docketed, the appellee now moves the court to dismiss the appeal, on the ground that the amount in controversy is not large enough to bring the case within the appellate jurisdiction of the Supreme Court.

We have examined the record and find it to be so. By the averments in the complainant's bill, it seems that the subject-matter in controversy between himself and the defendant re-

[1] In a case in the Circuit Court the value of the matter in dispute must appear to be over $500 to justify a removal from a State court to the Circuit Court, but it may appear by the *ad damnum* in the writ, when the declaration discloses no precise sum, or by the declaration in preference to the writ, if a sum certain be there claimed. And if any doubt exists, from the different counts claiming different sums, or the subject being real estate, what is the real amount in dispute, the court below may inquire into it by evidence. *Ladd* v. *Tudor*, 3 Woodb. & M., 325, 329.

Where, by an agreed statement of facts in the nature of a special verdict, the plaintiff's claim was admitted by the defendant, except the sum of $3134.20, it was held that that sum was the amount actually in dispute, and although judgment was rendered below for the entire claim, being more than $5000, the writ of error was dismissed for want of jurisdiction. *Tintsman* v. *National Bank*, 10 Otto, 6. Where, in replevin, judgment was rendered in favor of the plaintiff for a portion of the property delivered under the writ, and in favor of the defendant for a return of the residue, or its value, the same not being $5000, and the plaintiff sued out a writ of error to the Supreme Court, it was held that the writ must be dismissed for want of jurisdiction. *Pierce* v. *Wade*, 10 Otto, 444.

lates to the foreclosure of a mortgage given to the complainant by one Stephen Chandler, upon a lot of land in the city of Mobile, to secure the payment of a promissory note made by Chandler in his favor, bearing date 6th August, 1824, for $485, payable on the 1st of March thereafter, which was not paid at maturity, for the collection of which the complainant made the defendant his attorney and agent; also to the purchase of the premises, under a decree for *its sale, by the defendant, for one hundred and fifty dollars. The [*7 decree of foreclosure, was for the sum of six hundred and twenty dollars ninety-one cents, and the complainant avers that the lot was a valid and sufficient security for the payment of his debt.

After setting out all the circumstances of his case, and specially interrogating the defendant, the complainant's prayer is, that the matter may be "referred to a master, to compute and report the amount found due your orator by the foreclosure decree, with the interest thereon, and also to compute and report the value of the mortgaged lot, and its value at the time it was sold and conveyed by the defendant to one Samuel P. Bullard (who is admitted by the complainant to be a *bonâ fide* purchaser of the lot from the defendant, without any notice of the complainant's equity), and that the defendant may be decreed to pay, either the amount of the said decree of foreclosure, and interest on the value of said lot of land, or the amount received by the defendant from the sale to Bullard, if the same were sold for its fair and full value, with all the profits and increase since made by the use of the money, or legal interest thereon, without any deduction of commissions for agency."

From this prayer, the complainant's demand is susceptible of definite computation, and as his recovery could not be extended to an amount above his first or alternative prayer, if the recovery in either case must be below the sum of two thousand dollars, as it would have to be upon his own showing, this court cannot have appellate jurisdiction of the cause. We shall direct the dismission of the appeal.

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 Alabama, and was argued by counsel. On consideration whereof, and it appearing to the court here that the matter in dispute does not exceed the sum or value of two thousand dollars, exclusive of costs, it is therefore

now here ordered and decreed by this court, that this appeal be and the same is hereby dismissed for the want of jurisdiction.

N. and J. Dick and Company *v.* Hardin D. Runnels.

By the 30th section of the Judiciary Act of 1789 (1 Statutes at Large, 88), depositions may be taken in certain cases, and notice thereof must be served on the adverse party or his attorney, provided either of them is within one hundred miles of the place where such deposition is taken.[1]

A certificate of the person before whom the deposition was taken, that neither the adverse party nor his attorney lived within one hundred miles of such
*8] place, and *that therefore no notice was made out, is sufficient. It is not necessary for him to state that they were not actually within one hundred miles. If they had been temporarily within that distance, and the certifying officer did not know it, the certificate would still have been good.

If either of the two facts, viz. that the party resided within one hundred miles, or that he was temporarily within that distance, and that the magistrate knew it, were established by parol proof, the certificate would then be irregular and void.

This case came up from the Circuit Court of the United States for the District of Mississippi, on a certificate of division in opinion between the judges thereof.

The only question involved was the construction of a part of the 30th section of the Judiciary Act of 1789 (1 Stat. at L. 88), which part is as follows. After providing for taking the testimony of persons "who shall live at a greater dis-

[1] The authority or jurisdiction conferred on the magistrate is special, and confined within certain limits or conditions; and the facts calling for the exercise of it should appear upon the face of the instrument, and not be left to parol proof. Therefore, where the magistrate, in his notice to the opposite party, only said that the witness was about to "depart the State," and in his certificate omitted to state the reason for taking the deposition, it was not competent for the party, at the trial, to supply the defect by proving that the witness was about to go out of the United States. *Harris* v. *Wall*, 7 How., 693.

A deposition must be suppressed when it does not affirmatively appear that the witness resided more than one hundred miles from the place where the cause was to be tried. *Dunkle* v. *Worcester*, 5 Biss., 102; nor is it competent for the court to supply a jurisdictional word, though the omission may appear to be merely clerical. Ib.

After the deposition is taken, and before trial, if the witness moves within one hundred miles, still the deposition may be read, unless the party objecting shall show that fact, and that it was known to the opposite party in time to have had the witness subpœnaed. *Russel* v. *Ashley*, Hempst., 546.

The residence of the witness and the distance from the place are facts proper for the inquiry of the officer taking the deposition; and his certificate of those facts is competent evidence, and sufficient to authorize the deposition to be read. *Merrill* v. *Dawson*, Hempst., 563.