The duties demanded were paid under protest, and this suit was brought to recover back the amount alleged to be overpaid. At the trial, the jury, under the instruction of the court, found a verdict in favor of the defendants in error for the sum of $193.88, upon which a judgment was entered against the collector; and this writ of error is brought on that judgment.

The act of Congress which is supposed to give jurisdiction in cases of this description is the act of May 31st, 1844, (5 Stat., 658.) This act authorizes a writ of error, at the instance of either party, upon a final judgment in a Circuit Court in any civil action brought by the United States for the enforcement of the revenue laws, or for the collection of duties due or alleged to be due, without regard to the sum or value in controversy. And it is true, that the same reasons which induced the Legislature to give the writ of error in the cases mentioned in the law, apply with equal force to suits against a collector to recover back duties which he alleged to be due, and had already collected. The questions are of the same character, and the interests of the United States the same in either case. And it is most probable that suits against the collecter were omitted in the act of Congress by some oversight or accident.

But, however that may be, the writ of error is authorized in those cases only in which the United States are plaintiffs in the suit. The language of the law is too plain to admit of doubt, and the words cannot by any reasonable or fair construction be extended to suits brought by the importer against the collector; and as the sum or value in controversy does not exceed $2,000, and the case is not provided for by the act of Congress referred to, the writ must be dismissed for want of jurisdiction in this court.

DEAN RICHMOND, APPELLANT, *v.* THE CITY OF MILWAUKIE AND FERDINAND KUEHN.

After a case has been heard and dismissed for want of jurisdiction, because it did not appear that the value of the property in controversy exceeded two thousand dollars, affidavits of its value come too late.

The cases upon this point examined.

Moreover, the value of the property is stated in the proceedings of the court below, and affidavits have never been received here to vary it or enhance it in order to give jurisdiction.

THIS case was before this court at a preceding day of the term. (See page 80 of the present volume.)

Mr. Gillet, of counsel for appellant, moved to reinstate the case, and filed an affidavit of Alexander Mitchell, stating the property to be worth twenty-five hundred dollars, and also an admission by Mr. Woodward (city attorney) that it was worth that amount.

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

This case was dismissed at a former day of the present term, because it did not appear that the value of the property in controversy exceeded $2,000. An affidavit has now been filed on the part of the appellant, stating that the property was worth $2,500; and a motion thereupon made to reinstate the case, to which the counsel for the appellees assent.

There are cases—such, for example, as an ejectment, or a suit for dower—in which the value does not, according to the usual forms of proceeding, appear in the pleadings or evidence in the record. In such cases, affidavits of value have been received here, in order to show that the value is large enough to give jurisdiction to this court. That was the case in Course *v.* Steadman and others, referred to in the 13th rule of this court. The case is reported in 4 Dall., 22. It was a proceeding to charge a tract of land with a lien created by a judgment; and, as the decree was against the respondent, it was necessary for her to show that the land was worth more than $2,000, in order to support the appeal. The case of Williamson *v.* Kincaid, referred to in the above-mentioned case, (4 Dall., 19,) was an action for dower. But in both of these cases the affidavits were filed before the argument on the merits; and in Bush *v.* Parker, (5 Cr., 257,) Mr. Justice Livingston expressed his opinion strongly against giving time to file affidavits of value, and the court refused to continue the case for

that purpose. And in the class of cases above mentioned, in which affidavits are received, there is no instance in which a case has been postponed or reinstated, in order to give the party time to produce affidavits of value. Indeed, such a practice would be irregular and inconvenient, and might sometimes produce conflicting affidavits, and bring on a controversy about value, occupying as much of the time of the court as the merits of the case.

And if this case were one of those in which affidavits could be received, they come too late after the case has been heard and dismissed for want of jurisdiction. But it is not a case of that description. The value of the lots about to be sold for corporation taxes was involved directly in the dispute. Their value is stated in the bill, and the amount of taxes imposed upon them, in order to show that the overcharge made by the corporation was unreasonable and oppressive; and their value is stated by the complainant to be "*over* $500"—the sum mentioned being only one-fourth of the amount required to give jurisdiction to this court; and where the value is stated in the pleadings or proceedings of the court below, affidavits here have never been received to vary it or enhance it, in order to give jurisdiction. And the affidavit now offered could not have been received, even if filed before the argument of the case.

The motion to reinstate is therefore overruled.

JAMES D. PORTER ET AL., PLAINTIFFS IN ERROR, *v.* BUSHROD W. FOLEY.

This court has already decided at the present term (see page 195 of this volume) that a writ of error made returnable on the third Monday in January, and the defendant in error cited to appear on that day, is irregular, and must be dismissed.

A motion to remand the case to the court below, with leave to amend the writ of error and citation, cannot be granted. But if the plaintiff in error desires it, he may, in order to save expense, withdraw the transcript, and use it in connection with the proper and legal process to bring the case here.

THIS case was brought up from the Court of Appeals of