

## Statement of the case.

Wade Hampton alone prosecuted the writ of error, and there appeared to have been no summons and severance or other equivalent proceeding.\*

*Mr. P. Phillips, in support of the motion; Mr. W. W. Boyce, contra.*

## The CHIEF JUSTICE:

It has often been held that in a writ of error to a joint judgment against several, all must join; and that the omission of one or more, without such proceeding, is an irregularity for which the writ will be dismissed.† The motion in the present case must, therefore, be

GRANTED.

## WELLS v. MCGREGOR.

1. A decree of the highest court of a State affirming an order of an inferior court, by which a motion to set aside a sheriff's return to an execution was allowed and an *alias* execution awarded, is not a "final judgment" within the meaning of the 22d section of the Judiciary Act, nor within the meaning of the 9th section of the organic act of the Territory of Montana, giving appeals from the Supreme Court of the Territory to this court.
2. Writs of error from this court must bear the teste of the Chief Justice.

MOTION, by *Mr. Robert Leech*, to dismiss a writ of error to the Supreme Court of Montana; the case being thus:

The 22d section of the Judiciary Act of 1789,‡ gives writs of error to Circuit Courts of the United States from this court in cases of "final judgment," in certain cases specified.

The 1st section of the act of September 29th, 1789, entitled "An act to regulate process in the courts of the United States,"§ provides that "all writs and processes issuing from

\* See *Masterson v. Herndon*, 10 Wallace, 416.

† *Williams v. Bank of the United States*, 11 Wheaton, 414; *Owings v. Kincannon*, 7 Peters, 399; *The Protector*, 11 Wallace, 82.

‡ 1 Stat. at Large, 84.

§ Ib. 93.

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Opinion of the court.

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a Supreme or Circuit Court shall bear the teste of the Chief Justice of the Supreme Court."

The 9th section of the act of Congress organizing the Territory of Montana, approved May 26th, 1864,\* provides that "writs of error and appeals from the final decisions of the Supreme Court of said Territory, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the Circuit Courts of the United States."

The present writ of error, as the record showed, was brought to revise the decision of the Supreme Court of the Territory of Montana affirming an order of the District Court of the Third Judicial District of the Territory, by which a motion to set aside a sheriff's return to an execution was allowed, and an *alias* execution awarded. The writ bore the teste of the clerk of the Supreme Court of the Territory of Montana.

Mr. Leech in support of his motion contended, that only "final judgments" could come here, and that what was brought here was not one; and that the teste should have been by the Chief Justice of this court.

*Mr. F. A. Dick, contra.*

The CHIEF JUSTICE:

We have often held that such orders as that which the Supreme Court of the Territory of Montana affirmed, are within the discretion of the inferior court. They are not final judgments, within the meaning of the Judiciary Act of 1789.† Of course they are not within the meaning of the 9th section of the organic act of the Territory.‡ It appears also that the writ of error bears the teste of the clerk of the Supreme Court of the Territory of Montana, and not the teste of the Chief Justice of this court. But the statute

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\* 13 Stat. at Large, 88, 89.

† Cook v. Burnley, 11 Wallace, 676 Phillips's Practice, 66.

‡ 13 Stat. at Large, 89.



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Syllabus.

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makes teste of the Chief Justice indispensable,\* and we have no power to change its requirements.

On both grounds, therefore, the writ of error must be

DISMISSED.

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PENNSYLVANIA COLLEGE CASES.

The legislature of Pennsylvania chartered a college "at Canonsburg," by the name of the Jefferson College, "*in* Canonsburg," giving to it a constitution and declaring that the same should "be and remain the inviolable constitution of the said college forever," and should not be "altered or alterable by any ordinance or law of the said trustees or in any other manner than by an act of the legislature" of Pennsylvania. The college becoming in need of funds put into operation a plan of endowment whereby in virtue of different specific sums named, different sorts of scholarships were created; one, *ex. gr.*, by which on paying \$400 a subscriber became entitled to a perpetual scholarship, capable of being sold or bequeathed; and another by which, on payment of \$1200, he became entitled to a perpetual scholarship entitling a student to tuition, room-rent, and boarding; this sort of scholarship being capable, by the terms of the subscription, of being disposed of as other property. But nothing was specified in this plan as to where this education, under the scholarships, was to be. On payment of the different subscriptions, certificates were issued by the college, certifying that A. B. had paid \$—, which entitled him "to a scholarship as specified in the plan of endowment adopted by the trustees of Jefferson College, Canonsburg," &c. An act of legislature, in 1865, by consent of the trustees of the college at Canonsburg and of the trustees of another college at Washington, Pennsylvania, seven miles from Canonsburg, created a new corporation, consolidating the two corporations, vesting the funds of each in the new one, and in their separate form making them to cease, but providing that all the several liabilities of each, including the scholarships, should be assumed and discharged without diminution or abatement by the new corporation. Notwithstanding the act of Assembly, the collegiate buildings, &c., of Jefferson College were left at Canonsburg, and certain parts of the collegiate course were still pursued there; the residue being pursued at Washington College, Washington. Subsequently, in 1869—the then existing Constitution of Pennsylvania (one adopted in 1857, allowing the legislature of the State "to alter, revoke, or annul any charter of incorporation thereafter granted, whenever in their opinion it may be injurious to the citizens, . . . in such

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\* 1 Stat. at Large, 93.