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Argument for dismissal.

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## RAILROAD v. JOHNSON.

Where a mortgagee on a bill of foreclosure filed in an inferior State court against his mortgagor and certain trustees holding collateral securities, obtains in that court a decree against the mortgagor personally and against the trustees as trustees, and the mortgagor alone appeals to the Supreme Court of the State, to which, on affirmance of the decree, he alone takes a writ of error here, it is no ground to dismiss the writ that the trustees are not joined with him as plaintiffs in error in this court.

ON motion to dismiss a writ of error to the Supreme Court of Errors of the State of Connecticut.

Johnson held bonds of the Norwich and Worcester Railroad Company, secured by mortgage on the road and by the transfer of certain stock to Huntington and Nichols, as trustees. The bonds were not paid at maturity, and Johnson filed a petition in equity in the Superior Court of New London County, Connecticut, praying that the mortgage be foreclosed, and sale ordered of the stock. In that suit Huntington and Nichols were summoned, and a decree was given against them *as trustees*, as well as against the railroad company as mortgagors. From that decree the company alone appealed to the Supreme Court of the State. The decree below having been affirmed in that court, the railroad company alone brought the case here by writ of error.

Johnson now moved to dismiss the writ on the ground that Huntington and Nichols were not joined with the railroad company as plaintiffs.

*Mr. George Pratt, in support of the motion:*

A writ of error must be brought in the names of all the parties against whom the judgment to be reviewed is given.\* This is a substantial defect in the appeal, and can be taken advantage of at any time before judgment.

*Mr. J. Halsey, contra.*

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\* *Owings v. Kincamson*, 7 Peters, 399; *Deneall v. Stump*, 8 Id. 526; *Wilson v. Life and Fire Insurance Co. of N. Y.*, 12 Id. 140; *Williams v. Bank of United States*, 11 Wheaton, 414.

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Statement of the case.

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## The CHIEF JUSTICE :

Huntington and Nichols had no interest in the controversy, and did not appeal to the Supreme Court. The only party to the decree of that court was the railroad company, and it is the decree of that court which the writ of error seeks to review. It was, therefore, properly brought in the name of the railroad company alone. The motion to dismiss must be

DENIED.

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DEXTER v. HALL.

1. The power of attorney of a lunatic, or of one *non compos mentis*, is void.
2. When evidence has been given tending to show the insanity of a grantor, and other evidence tending to show his sanity, a medical expert cannot be asked his opinion respecting that person's sanity or insanity, forming his opinion from the facts and symptoms detailed in the evidence.
3. Such a witness may be asked his opinion upon a case hypothetically stated, or upon a case where the facts are certain and found ; but he will not be allowed to determine from the evidence what the facts are, and to give his opinion upon them.
4. Under the California statutes of limitations, a plaintiff in ejectment who has established a legal title in himself, is presumed to have had actual possession of the land within five years next prior to the commencement of his suit, unless an actual adverse possession by another is affirmatively proved.

ERROR to the Circuit Court for the District of California, in which court Mary Hall and her four children brought ejectment against Henry Dexter; both parties claiming under John Hall, who died intestate; the plaintiffs as his widow and children; the defendant as his grantee. The case was thus:

On the 30th of December, 1848, T. W. Leavenworth, then alcalde of San Francisco, granted to Hall, a lieutenant of our navy who happened to be in service off San Francisco, a piece of land, part of the pueblo lands situate within the corporate limits of the city as defined in 1851, east of Larkin and north of Johnson Street. The deed was duly recorded before April