

that it exposes a defendant to be harassed with many suits. An answer to the latter objection is, that granting the writ is discretionary with the court, and it may well be assumed that it will not be unnecessarily granted.

There is also, perhaps, a reasonable implication that Congress, when they authorized writs of *mandamus* to compel the Union Pacific Railroad Company to operate their road according to law, did not contemplate the intervention of the Attorney-General in all cases. The act of 1873 does not prescribe who shall move for the writ, while the Attorney-General is expressly directed to institute the necessary proceedings to secure the performance of other duties of the company. For these reasons, we think the Circuit Court did not err in holding that Hall and Morse were competent to apply for the writ in this case.

The decree of the Circuit Court is affirmed.

MR. JUSTICE BRADLEY dissenting.

I am obliged to dissent from the judgment of the court in this case. The Missouri River is, by common acceptation, the western boundary of Iowa; and the fair construction of the charter of the Union Pacific Railroad Company, which adopts that boundary as its eastern terminus, is, that the road was to extend from the Missouri River westwardly. The subsequent express authority given to construct a bridge across the river, in my judgment, confirms this view of the subject; and as a *mandamus* is a severe remedy, requiring a clear right and clear duty to support it, I think it ought not to be granted in this case, especially as it requires the company to use the bridge as a part of their continuous line with all their trains, which may impose much inconvenience on them, without corresponding benefit to the public.

AMORY *v.* AMORY ET AL.

1. A cause will not, on the ground that it has no merits, be advanced for argument; nor will it be dismissed on motion simply because the court may be of opinion that it has been brought here for delay only.
2. The court will not hesitate to exercise its power to adjudge damages where it finds that its jurisdiction has been invoked merely to gain time.

ERROR to the Supreme Court of the State of New York.

Mr. M. H. Carpenter in support of a motion to advance and dismiss the cause.

Mr. George F. Edmunds, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We cannot dismiss a case on motion simply because we may be of the opinion that it has been brought here for delay only. Both parties have the right to be heard on the merits; and one party cannot require the other to come to such a hearing upon a mere motion to dismiss. To dismiss under such circumstances would be to decide that the case had no merits. Neither can we advance a cause for argument for the reason that we may think it has no merits. Further argument may show the contrary.

We can adjudge damages, under sect. 1010 Rev. Stat. and rule 23, in all cases where it appears that a writ of error has been sued out merely for delay. This gives us the only power we have to prevent frivolous appeals, and writs of error; and we deem it not improper to say that this power will be exercised without hesitation in all cases where we find that our jurisdiction has been invoked merely to gain time.

Motion denied.



MORSELL ET AL. *v.* FIRST NATIONAL BANK.

A judgment at law is not a lien upon real estate in the District of Columbia, which, before the judgment was rendered, had been conveyed to trustees with a power of sale to secure the payment of the debts of the grantor described in the deed of trust.

APPEAL from the Supreme Court of the District of Columbia.

The facts are stated in the opinion of the court.

Mr. J. J. Johnson and *Mr. R. K. Elliot* for the appellants.

Mr. Enoch Totten, contra.