

CLARK *v.* HANCOCK.

This court, where it manifestly has no jurisdiction over the matter in controversy, will entertain a motion to dismiss the writ of error before the return-day thereof.

MOTION to dismiss a writ of error to the Supreme Court of the State of California.

*Mr. P. Phillips* for the defendant in error, in support of the motion.

*Mr. Thomas J. Durant* and *Mr. C. W. Hornor*, *contra*.

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

The final judgment in this case was rendered Oct. 3, 1876, and the writ of error issued Nov. 16, returnable to the October Term, 1877. The defendants in error, having filed a copy of the record and docketed the cause, now move to dismiss, for want of jurisdiction.

It is not claimed by the plaintiff in error that there is any Federal question disclosed by the record, but it is insisted that a motion to dismiss cannot be entertained until the return-day of the writ. Such was the old practice; but in *Ex parte Russell*, 13 Wall. 671, and *Thomas v. Wooldridge*, 23 id. 288, the rule was changed. It seemed to us then that such a change would "be likely to prevent great delays and expense, and further the ends of justice." Subsequent experience confirms that opinion. In the present crowded state of our docket it becomes us to be especially careful that our jurisdiction is not invoked for delay merely; and, when the record is presented in such a form that we can, without too great inconvenience, inform ourselves of the questions to be decided, we shall be inclined to receive applications of this kind. In the present case, we have a printed record, and it is evident we have no jurisdiction.

*Motion granted.*