

v. South Carolina, 117 U. S. 430, 6 Sup. Ct. 799, is therefore not in point. The jurisdiction of the state court was ousted by the filing of the petition. The transcript, which was filed in time, shows that the petition was filed on the date above stated. There is filed a paper, prepared as an affidavit to be made and signed by the clerk of the state court, which sets forth that the petition for removal was handed to him on the 27th of January, 1894, by the local attorney for the defendant, who directed that it be filed; that the clerk thereupon marked the petition with the filing stamp of the office, and, having no other instruction as to the disposition to be made of it, entered a minute of the filing on the appearance docket of the court of common pleas of Fayette county, but not among the entries in the case sought to be removed, which was numbered 11,011. He indorsed the petition as No. 11,030, and treated it as a separate proceeding, making the entry on the appearance docket under that number. This paper was not signed or sworn to. It is now claimed that this was not a filing in the action. This claim is altogether untenable, even if the court were to recognize the facts set forth in the unsigned affidavit. A party seeking to remove a cause is not answerable for the blunders of the clerk of the state court. When the petition was received by him, and stamped "Filed," in proper form, showing upon its face a case for removal, the jurisdiction of the state court ceased eo instanti. It is not material what disposition the clerk afterwards makes of the petition. The motion to remand is overruled.

CABOT v. McMASTER.

(Circuit Court of Appeals, Seventh Circuit. January 18, 1895.)

No. 207.

CIRCUIT COURTS OF APPEALS—REVIEW OF QUESTIONS OF JURISDICTION.

When, upon writ of error, the only question presented by the record goes to the jurisdiction of the court below, a review of the determination of that question can only be had in the supreme court.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

This was an action by Samuel Cabot against William I. McMaster upon a bond executed by defendant to secure the performance of a certain contract on the part of one Edwin A. Mason. At the trial the action was dismissed for want of jurisdiction. 61 Fed. 129. Plaintiff sued out a writ of error.

Thomas Dent and Russell Whitman, for plaintiff in error.

J. P. Hand, Thomas E. Milchrist, and Ben. M. Smith, for defendant in error.

Before WOODS and JENKINS, Circuit Judges, and BAKER, District Judge.

JENKINS, Circuit Judge. The plaintiff brought suit in the court below in debt upon a bond in the penalty of \$6,000, averring breaches to his damage \$6,000, etc. The defendant pleaded (1) nil debet; (2)

a traverse of the breaches assigned; (3) performance and payment. Issue was joined by similitur to the first plea, and by replications concluding to the country as to the other pleas. At the trial before the court without a jury, the plaintiff put in evidence the bond and the agreement therein referred to, and gave evidence tending to prove an indebtedness thereunder of \$1,496. The defendant gave evidence tending to prove an extension of time of credit to the person for whom the plaintiff was bound, and the plaintiff, in rebuttal, gave evidence tending to prove that such extension was with the knowledge and concurrence of the defendant. The court thereupon, without passing upon the merits of the controversy, dismissed the cause for want of jurisdiction, upon the ground that the amount in controversy was less than the minimum amount necessary to give jurisdiction to the court. *Cabot v. McMaster*, 61 Fed. 129.

We are without jurisdiction to entertain this writ of error. The dismissal of the suit proceeded solely upon the ground of want of jurisdiction, and there was no adjudication upon the merits. We have held in *Manufacturing Co. v. Barber*, 18 U. S. App. —, 9 C. C. A. 79, and 60 Fed. 465, that, when the only question presented by the record goes to the jurisdiction of the court below, a review of the determination of that question can only be had in the supreme court. See, also, *Railroad Co. v. Meyers*, 18 U. S. App. —, 10 C. C. A. 485, and 62 Fed. 367. The writ of error is dismissed for want of jurisdiction.

INDIANAPOLIS WATER CO. v. AMERICAN STRAW-BOARD CO.

(Circuit Court, D. Indiana. February 6, 1895.)

1. ATTORNEYS—FEES—DEPOSITIONS.

A deposition is taken in a cause, and admitted in evidence therein, within Rev. St. § 824, allowing attorneys a fee of \$2.50 "for each deposition taken and admitted in evidence in a cause," where it was taken for use on motion for preliminary injunction, and though not used thereon, by reason of the withdrawal of the motion, was used on final hearing, under stipulation that it be treated as taken after issue joined.

2. SAME.

Though there are objections to an instrument introduced in evidence as a deposition which could have been raised to its introduction, these having been waived by allowing it to be used, it is a deposition, within Rev. St. § 824.

3. SPECIAL EXAMINER—COMPENSATION.

Where testimony is taken in a case in a federal court by a stenographer of a state court, appointed by the federal court, at the instance of the parties, as a special examiner in chancery, and selected because he was a stenographer, there being no statutory rule of compensation, and there having been no contract for fees, he will be allowed the established rate of stenographers' charges in the courts of the state.

Suit by the Indianapolis Water Company against the American Strawboard Company. Heard on motion to retax costs and disbursements.

Baker & Daniels, for complainant.
John W. Kern, for defendant.