HORNE v. GEORGE H. HAMMOND COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 86. Argued November 20, 21, 1894. — Decided December 17, 1894.

When the transcript of the record does not show that the Circuit Court had jurisdiction of a suit, where jurisdiction depends upon citizenship, and counsel, upon their attention being called to the matter, furnish nothing of record to supply the defect, the judgment must be reversed at the costs of the plaintiff in error, and the cause remanded to the Circuit Court for further proceedings.

THE case is stated in the opinion.

Mr. Eugene P. Carver, (with whom was *Mr. Robert M. Morse* on the brief,) for plaintiff in error.

Mr. George Putnam for defendant in error.

THE CHIEF JUSTICE: The title of this cause describes plaintiff in error as "of Chelsea in said district," and the decedent as "late of Chelsea," and the defendant as "a corporation organized under the laws of the State of Michigan." The writ and the original declaration do not appear in the record. The amended declaration commences thus: "Plaintiff says that she is the widow of the late Granville P. Horne of Chelsea, Suffolk County, Commonwealth of Massachusetts, and that she was duly appointed by the probate court of Suffolk County administratrix of his estate."

As the transcript of the record does not show that the Circuit Court had jurisdiction of the suit, which depended upon the citizenship of the parties, and as counsel, upon having their attention called to the matter, have furnished nothing of record which would supply the defect, the judgment must be reversed at the costs of plaintiff in error, and the cause be remanded to the Circuit Court for further proceedings. *Rob-*

ertson v. *Cease*, 97 U. S. 646, 649; *Anderson* v. *Watt*, 138 U. S. 694, 702; *Timmons* v. *Elyton Land Co.*, 139 U. S. 378; *Denny* v. *Pironi*, 141 U. S. 121.

Reversed and ordered accordingly.

SWAN *v.* HILL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

No. 101. Submitted December 4, 1894.—Decided December 17, 1894.

It was not error in the Supreme Court of the Territory of Arizona to dismiss an appeal when the appeal bond was without obligees, and not conditioned according to law.

THIS was an action brought by John Hill, A. B. Wild, S. B. Curtis and Samuel Summers, in the District Court of Cochise County, against H. C. Herrick and others, including the Boston Mining and Reduction Company, to establish plaintiff's alleged prior right to the use of the waters of the San Pedro River for irrigation purposes, and to restrain defendants in respect thereof. The defendant company having, previously to the commencement of the action, conveyed its property to Swan, trustee, the latter was made a defendant, as were numerous others averred to be interested in the use of the waters of the river. The case was tried by the court, a jury being waived, and resulted in certain findings of fact and a decree adjudging priority of right to the waters of the river; first, to two of the defendants; second, to plaintiffs; third, fourth and fifth, to various named defendants, respectively; and that the defendant company, and those claiming under it, or the trustee, were entitled to none of the waters for purposes of irrigation as against any of the parties until the other rights as established were satisfied. The cause was dismissed as against many defendants without prejudice. Motion for new trial was made and overruled, and Swan, trustee, appealed to the Supreme Court of the Territory, and tendered a paper as and