

Ex Parte Loring

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Court : US Supreme Court

Decided On : 1876

Appeal No. : 94 U.S. 418

Appellant : Ex Parte Loring

Judgement :

Ex Parte Loring - 94 U.S. 418 (1876)

U.S. Supreme Court Ex Parte Loring, 94 U.S. 418 (1876)

Ex Parte Loring

94 U.S. 418

PETITION FOR A MANDAMUS TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

This court will not by mandamus compel an inferior court to grant a motion to vacate an order setting aside a judgment of nonsuit.

This petition shows that at the June Term, 1874, of the Circuit Court of the United States for the Eastern District of Michigan, William B. True, the plaintiff in an action

then pending in that court against Elisha T. Loring, the petitioner, after a jury had been empaneled and the testimony on his part concluded, elected to become nonsuit, and that a judgment to that effect was entered. On the 17th October, 1876, at a subsequent term of the court, after notice to the attorney of Loring, True moved to set aside this judgment and restore the cause to the docket for trial. This motion was granted Oct. 31, and, later in the term, Loring appeared by his counsel and

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moved to vacate the order then made. This last motion was refused, Jan. 15, 1877, and Jan. 29 this petition was filed by Loring for a writ of mandamus to the judges of the circuit court requiring them "to vacate the order setting aside said nonsuit."

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

It seems clear to us that the object in this case is to use the writ of mandamus as a writ of error. This cannot be done. We may require the circuit court to decide in a proper case if it refuses to act, but cannot control its decision. Here the court has acted and given its decision upon a motion made. We are asked now to require it to reverse that decision. For that, resort must be had to a writ of error after a final judgment has been rendered. The writ of mandamus has no such office to perform.

Petition denied.