

INTERNATIONAL SHOE COMPANY *v.* WAGGONER.

4-3280

Opinion delivered October 30, 1933.

1. MANDAMUS—MOOT QUESTION.—Where, to a petition for mandamus to compel a circuit judge to permit the issuance of an execution, the judge responded that no further stay of execution would be made, the writ will be denied, as the case has become moot.
2. JUDGMENT—STAY OF EXECUTION.—A circuit court has no power, under Crawford & Moses' Dig., § 4258, to stay a judgment for a longer period than ten days after its rendition.

Mandamus to Arkansas Circuit Court, Southern District; *W. J. Waggoner*, Judge; petition denied.

*A. R. Cooper*, for petitioner.

*Wm. C. Gibson and Ingram & Moher*, for respondent.

SMITH, J., Petitioner prays mandamus to compel the judge of the Arkansas County Circuit Court and the clerk thereof to issue an execution upon a judgment of that court rendered January 16, 1933. Stays of execution had been granted by the circuit judge from time to time, the last of which expired October 15, 1933.

The clerk has responded that he acted under the orders of the judge, and the judge has made the oral response that there will be no further stay of execution, and that execution may issue at the request of petitioner, the judgment plaintiff.

The case is now a moot one, as the order of this court is not necessary to have an execution issued, and the application for mandamus will be denied for that reason.

It may be said, however, that the circuit court was without authority to order the execution stayed. It was so expressly held in the case of *Taylor v. O'Kane*, 185 Ark. 782, 49 S. W. (2d) 400.