

BRANDIES *v.* COCHRANE.

An appeal may be perfected without an order formally allowing it. It is in legal effect allowed when the circuit judge takes the security and signs the citation.

MOTION to dismiss an appeal from the Circuit Court of the United States for the Northern District of Illinois.

*Mr. Edwin F. Bayley* in support of the motion.

*Mr. John S. Monk, contra.*

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

This is a motion to dismiss because the appeal was not taken within two years after the entry of the decree.

It appears from the record that the decree was entered on the 2d of August, 1879, and on the same day the complainants prayed an appeal, which was allowed upon their giving bond according to law. No bond was ever given under this allowance, and the case was not docketed here at the October Term, 1879. On the first of August, 1881, the circuit judge approved a bond for an appeal from the decree and signed a citation. The bond was on the same day filed with the clerk, and the citation served on the 18th of August. On the 8th of October the Circuit Court entered an order allowing the appeal *nunc pro tunc* as of August 1. The case was regularly docketed in this court on the 13th of October.

The circuit judge, by taking the security and signing the citation, allowed an appeal. No formal order of allowance was necessary. *Sage v. Railroad Company*, 96 U. S. 712; *Draper v. Davis*, 102 id. 370. The appeal was, therefore, taken in time. The order of October 8th was not required to give it effect.

*Motion denied.*