

JAMES *v.* MCCORMACK.

An appeal, dismissed under rule 16, will not be reinstated, unless good cause therefor be shown.

MOTION to reinstate an appeal from the Circuit Court of the United States for the Western District of Virginia.

Mr. John Ambler Smith in support of the motion.

Mr. John W. Johnston and *Mr. John A. Campbell*, *contra*.

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

When the appellant was called and his appeal dismissed, the case had been nearly three years on the docket of this court. He had no brief on file, and was not present, either in person or by counsel. Under these circumstances the appellees were entitled, under Rule 16, to a dismissal. No notice of their intention to enforce the rule was necessary. The appellant has not excused himself for his default, and his case is clearly within that of *Hurley v. Jones* (97 U. S. 318), in which we announced our intention to enforce rigidly this salutary rule, and not to set aside defaults growing out of the neglect of counsel or parties, except for very good cause.

Motion denied.

 KEYSER *v.* FARR.

1. Where, after the allowance of an appeal, the required *supersedeas* bond was duly approved and the cause entered here, the court below had no longer any control over the decree, and its subsequent order vacating that allowance is void.
2. *Goddard v. Ordway* (101 U. S. 745) distinguished.

APPEAL from the Supreme Court of the District of Columbia. Motion on the part of the appellants for a writ of *supersedeas*, and on the part of the appellees to dismiss.

Mr. A. C. Bradley and *Mr. West Steever* for the appellants.

Mr. W. Hallett Phillips and *Mr. William A. Maury* for the appellees.

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

The decree in this case was rendered on the 26th of October, 1881. The record also shows that the court on the same day entered an order allowing an appeal and fixed the amount of the bond. On the 29th and 31st of October bonds for the appeal and *supersedeas* were executed by all the several appellants, and approved by the Chief Justice of the court. On the last day named the case was docketed in this court, and a transcript of the record filed. Afterwards, on the 14th of November, but during the term at which the order allowing the appeal was entered, the appellees moved the court below to require additional security from the appellants, Keyser, Howard, and Smith. On the hearing of this motion the court entered an order purporting to set aside and vacate the former allowance of an appeal, but at the same time made a new allowance to take effect on that day.

Upon this state of facts, the appellants, fearing that execution may issue notwithstanding their appeal docketed here, move for an order restraining the court below from proceeding to enforce the decree, and the appellees move to dismiss: 1, because the allowance of the appeal has been vacated; and, 2, because the value of the matter in dispute is less than \$2,500.

After the acceptance of the bonds for the appeal, and the docketing of the cause in this court, the jurisdiction of the court below was gone. From that time the suit was cognizable only in this court. In *Goddard v. Ordway* (101 U. S. 745), there was nothing more than the formal order of allowance entered, as in this case, with the final decree. Such an order, while in that condition, it was held, was subject to the control which every court retains over its ordinary judgments during the term. In *Draper v. Davis* (102 U. S. 370), however, it was decided that, after a bond had been accepted by one of the judges in accordance with such an order of allowance, the jurisdiction was transferred from the court below. Here a bond was not only accepted, but the case was actually entered in this court. In this way clearly the court below was deprived of power to make its order of November 14. It follows that the motion to dismiss, so far as it is based upon the order of the

court below vacating its allowance of the appeal, must be denied, and that the *supersedeas* which followed in law from the acceptance of the bond by the Chief Justice is in force. Such was our ruling in *Draper v. Davis* (*supra*), on a similar motion at the last term.

The questions presented by the other branch of the motion to dismiss are important, and have not been directly settled, as we think, by any decision yet made by this court. Their further consideration is postponed until the case is heard on its merits.

THE "S. C. TRYON."

1. The findings of fact which, in admiralty cases in the Circuit Court, the act of Feb. 16, 1875, c. 77 (18 Stat., pt. 3, p. 315), requires are in the nature of a special verdict, and constitute a part of the record. The law arising thereon will therefore be determined here, although no exception thereto was taken.
2. A bill of exceptions is required to reserve for review the rulings below upon questions of law during the progress of the trial.
3. The court in this case, while refusing to dismiss the appeal, grants a motion to affirm the decree, it appearing from the record that the appeal was taken for delay.

MOTION to dismiss an appeal from the Circuit Court of the United States for the District of Maryland, with which is united a motion to affirm.

The Merchants' Steamship Company, of Charleston, South Carolina, as owner of the steamship "Falcon," filed its libel in the District Court of the United States for the District of Maryland, in a cause of collision, civil and maritime, against the schooner "S. C. Tryon," and obtained a decree. The claimants thereupon appealed to the Circuit Court, which found the following facts:—

About 4.30 P. M. on Saturday, the 8th of November, 1870, the steamer "Falcon," then owned by the libellant, being properly officered and manned, and in every way fitted for her voyage, left the port of Baltimore on a voyage to Charleston, South Carolina, with a valuable cargo of merchandise on board.