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the majority want an immediate sale. In this the trustees both agree, as does the railroad company itself. There is no evidence whatever of a want of good faith in any one. The court below, having the practical workings of the receivership under its own eye, did not hesitate to say that "it is now entirely clear that the best interests of all parties concerned will be promoted by a speedy sale," and we see nothing to the contrary.

Of the power of the court to make such an order in a proper case we have no doubt. The property is in the possession of the court and is depreciating in value by the accumulation of receiver's indebtedness, while the litigation between the parties as to their respective interests in it is going on. There cannot be a doubt that the whole ought to be sold together. If in the end it shall be found that the Rawle mortgage covers only a part, it will be as easy to fix the rule for dividing the proceeds equitably between the two securities after a sale as before, and there is nothing in the decree as entered to interfere in any way with such a distribution.

Upon the facts as presented to us we are entirely satisfied that the decree of the court below was right, and it is consequently affirmed.

The motion to dismiss is overruled and the decree affirmed.

CARPER v. FITZGERALD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF VIRGINIA.

Argued March 18, 1887.—Decided March 28, 1887.

No appeal lies to this court from an order of a Circuit Judge of the United States, sitting as a judge and not as a court, discharging a prisoner brought before him on a writ of *habeas corpus*. An order of the Circuit Judge of the Fourth Circuit, made at Baltimore, Maryland, that a prisoner brought before him there from Richmond, Virginia, on a writ of *habeas corpus*, shall be discharged, is a proceeding before him as a judge and not as sitting as a court; and it is not con-

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verted into a proceeding of the latter kind by a further order that the papers in the case be filed in the Circuit Court of the United States at Richmond, and the order of discharge be recorded in that court. Rule 34, 117 U. S. 708, explained.

THIS was an appeal from an order discharging a prisoner on a writ of *habeas corpus*. The case is stated in the opinion of the court.

Mr. R. A. Ayres, Attorney General of Virginia for appellant.

Mr. D. H. Chamberlain and *Mr. Bradley T. Johnston* for appellee. *Mr. William L. Royall* filed a brief for same.

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

This was a proceeding before the Circuit Judge for the Fourth Circuit at his Chambers in Baltimore, Maryland, for the discharge of Richard L. Fitzgerald from the custody of H. A. Carper, jailer of Pulaski County, Virginia, under a writ of *habeas corpus*. The petition was presented to the judge in Baltimore, who directed the clerk of the Circuit Court for the Eastern District of Virginia to issue a writ of *habeas corpus*, and make it returnable before him at the United States court-house in Baltimore. The writ was accordingly issued, under the seal of the court, in the usual form of circuit court writs, and made returnable "before the Honorable Hugh L. Bond, judge of our Circuit Court of the United States for the Eastern District of Virginia, sitting at the United States court-house in Baltimore, Maryland." The record shows that the jailer made his return to the writ, and that the petitioner filed a demurrer thereto, upon consideration of which an order of discharge was entered. At the foot of this order was the following:

"And it is ordered that the papers in this case be filed in the Circuit Court of the United States at Richmond, Virginia, and that this order be recorded in said court.

"HUGH L. BOND, *Circuit Judge.*"

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From this order the jailer was allowed an appeal to this court by the circuit judge, and the case was docketed here as "an appeal from the Circuit Court of the United States for the Eastern District of Virginia." The form of the docket entry here does not change the character of the proceeding from which the appeal was taken, and that was clearly under § 752 of the Revised Statutes, before the judge sitting as a judge, and not as a court. The act of March 3, 1885, c. 353, 23 Stat. 437, gives an appeal to this court in *habeas corpus* cases only from the final decision of a circuit court.

The order of the judge that the papers be filed, and his order recorded in the circuit court, does not make his decision as judge a decision of the court. Neither does our Rule 34, 117 U. S. 708, adopted at the last term, have that effect. The purpose of that rule was to regulate proceedings on appeals under § 763, from the decision of a judge to the circuit court of the district, as well as under § 764, as amended by the act of March 3, 1885, from a circuit court to this court. Power to make such a regulation was given to this court by § 765 of the Revised Statutes.

Appeal dismissed.

UNITED STATES *v.* McDougall's Administrator.

APPEAL FROM THE COURT OF CLAIMS.

Submitted January 7, 1887.—Decided March 28, 1887.

The fact that Congress, by several special acts, has made provision for the payment of several claims, part of a class of claims upon which the respective claimants could not have recovered in an action in the Court of Claims in the exercise of its general jurisdiction, furnishes no reason for holding the United States liable in an action in that court for the recovery of such a claim which Congress has made no provision for. The fact that the Court of Claims has rendered judgment against the United States at various times upon claims of a particular class, from which judgments the Executive Department of the Government took no appeal, furnishes no reason why judgment should be given against the