

Southern *v.* Hagood.

the death of Charles Lambert. This action was brought by the administratrix of Lambert, under a statute of the State, to recover damages for his death, upon the ground that it resulted from the carelessness and negligence of those engaged in navigating the steamboat. In its answer the plaintiff in error denied the negligence complained of, and insisted that the accident happened through the fault of the decedent, but did not set up any claim of right, privilege or immunity under the navigation laws of the United States. The case as tried presented questions of fact alone, and, upon the motion to dismiss the complaint after the testimony was closed, the court was not asked to rule the law upon conceded facts, but to decide upon the effect of conflicting evidence. Certainly there was no such failure of proof on the part of the plaintiff below as to make it error in the court to refuse to take the case from the jury, and in the assignment of error which has been returned with the writ, in accordance with the requirements of sec. 997, Rev. Stat., no complaint is made of the instructions as given to the jury, or of the refusal to give any that were requested. It does not appear, therefore, that any Federal question was necessarily involved in the decision of the court below, or that any was in fact decided.

The motion to dismiss for want of jurisdiction is granted.

Mr. W. W. Goodrich for the motion. *Mr. Julian A. Davies* opposing.

SOUTHERN *v.* HAGOOD.APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF SOUTH CAROLINA.

No. 27. October Term, 1878. — Decided November 4, 1878.

This bill is dismissed because the evidence sent here fails to support the finding on which the bill was dismissed; and as grave constitutional questions were involved, it is remanded to the Circuit Court with power to allow amendments to the pleadings and take further proof.

THE case is stated in the opinion.

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

This record shows clearly that the case was heard and decided below upon testimony which is not before us. The decree of dismissal is based entirely upon a finding, that the complainants were concluded by some judgment in a state court “to which Mr. Wesley

Marsh *v.* Citizens Insurance Co.

was a party." There is nothing here to support such a finding. In fact, no testimony whatever has been sent up.

Neither is the case in a condition to be heard understandingly upon the important constitutional questions which have been argued. It comes upon bill, answer and replication alone. There is nothing to show the form of the "revenue-bond scrip," which is the subject matter of the controversy, and we have not a description of it even. Under these circumstances it is apparent that the case has not been prepared by either party with a view to the presentation of these questions, and we are, therefore, unwilling to enter upon their consideration on this appeal.

The decree of the Circuit Court is reversed with costs, upon the sole ground that the evidence which has been sent here fails to support the finding upon which the bill was dismissed, and the cause is remanded for a further hearing, with power in the Circuit Court to allow such amendments to the pleadings and such further proof as it shall be advised may be necessary for the proper presentation of the questions to be decided.

Mr. Dennis McMahon for appellants. *Mr. Leroy F. Youmans* for appellees.

For further proceedings in this case, see *Hagood v. Southern*, 117 U. S. 52.

MARSH *v.* CITIZENS INSURANCE COMPANY.

ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

No. 70. October Term, 1878.—Decided December 9, 1878.

At the trial in a state court upon a policy of insurance of a steamboat, the question whether if the steamboat was burned while carrying turpentine as freight, the owner must show affirmatively his license to carry the turpentine, or whether the law would presume a license until the contrary was shown, is not a Federal question.

THE case is stated in the opinion.

This case presents no question of Federal jurisdiction. Marsh, the plaintiff in error, claimed below no "title, right, privilege, or immunity" under the Constitution, laws, or treaties of the United States, and no such title, right, privilege, or immunity has been denied him. He sued upon a policy of insurance to recover for the loss of his steamboat by fire, and the defence was that the fire was caused by his gross carelessness in the use of turpentine, on board as freight, to increase steam while racing with another boat.