

Ruckman v. Bergholz.

miss a writ of error to a state court a motion to affirm, on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument." So far as we can discover from the record, the only Federal question involved in this case was decided at the present term in *Windsor v. McVeigh*, [93 U. S. 274,] and if there had been united with the motion to dismiss a motion to affirm, we should, as at present advised, have been inclined to enter a judgment of affirmance. The only motion made, however, is one to dismiss, and that is the only motion of which the plaintiff in error has had notice. He has never been called upon to meet a motion to affirm.

If a party desires to obtain an affirmance under the operation of this rule, his motion must be to affirm as well as to dismiss. Of this the plaintiff in error must have the requisite notice, so that he may resist if he chooses.

The further hearing of the motion as it now stands is, therefore, postponed, with leave to the defendant in error to amend by adding a motion to affirm because the question involved has been already decided and no further argument is necessary.

So ordered.

Mr. P. Phillips for the motion. *Mr. S. F. Beach* and *Mr. B. F. Butler* opposing.

RUCKMAN v. BERGHOLZ.

ERROR TO THE COURT OF ERROR AND APPEALS OF THE STATE OF NEW JERSEY.

No. 704. October Term, 1876. — Decided March 13, 1877.

In an action in a state court by a real estate broker to recover commissions on sales of land, the exclusion of evidence that he had not paid the tax or received the license required by the statutes of the United States, when properly excepted to, raises a Federal question; but in this case the question was frivolous, and manifestly taken for delay.

MOTION to dismiss or affirm.

Assumpsit in the Supreme Court of New Jersey by a real estate broker to recover of the defendant commissions on the sales of real estate. Plea *non assumpsit*. Verdict for the plaintiff for \$13,903.65, and judgment on the verdict, which was affirmed on appeal. At the trial, the defendant's counsel offered to prove that the plaintiff

Cases Omitted in the Reports.

had not paid the tax or received the license for carrying on his business which was then required by the statutes of the United States. The court excluded this evidence, and exceptions were duly taken to this ruling. This constituted the only Federal question in the case. The defendant moved to dismiss the writ of error for want of jurisdiction; or to affirm the judgment below on the ground that the writ had been sued out merely for delay.

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

A Federal question is presented by this record, but it is so frivolous as to make it manifest that the writ was taken for delay merely. The motion to dismiss for want of jurisdiction is therefore overruled, but the motion to affirm under Rule 6, as amended May 8, 1876, is granted. *Affirmed.*

Mr. Courtlandt Parker for the motions. *Mr. Jacob Vanatta* and *Mr. Francis Kernan* opposing.

GERMANICA NATIONAL BANK v. CASE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 784. October Term, 1876. — Decided January 15, 1877.

This court has jurisdiction of an appeal from a decree of a Circuit Court, requiring stockholders in an insolvent national bank to pay a given percentage on their stock which the comptroller of the currency had ordered collected, and such further sums as may be necessary to pay the debts of the bank.

MOTION TO DISMISS. The case is stated in the opinion.

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

If the decree asked and obtained in this cause had been confined to an order for the payment of the seventy per cent upon the amount of the stock held by the appellants respectively, which the comptroller of the currency has already instructed the receiver to collect, the objection taken by the appellee to our jurisdiction might have been good; but the decree as given goes further, and, after providing for the seventy per cent, adjudges that each of the appellants shall be liable to further contribution as stockholders until a sufficient sum is realized to pay the debts of the bank, and that the bill be retained until it shall be certain that no further contribution will be required. This fixes the liability of each of these appellants to contribute in this suit to the extent of the nominal amount of his stock if neces-