

Kenosha v. Campbell.

LATHAM v. UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 6. December Term, 1869. — Decided December 13, 1869.

An order for allowing an appeal relates back to the date of the prayer for allowance, and is considered as made on that day.

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

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

This is a motion to dismiss the appeal from the judgment of the Court of Claims, on the ground that it was not allowed within the ninety days fixed by the statute.

And it appears that the order of allowance was not made within the statutory time. But it also appears, on examination, that the prayer for allowance was within the time, and we have heretofore held that the order allowing the appeal must have relation back to the date of the prayer for allowance, and be considered as made on that day.

The motion must therefore be

*Denied.*

*Mr. Attorney General, Mr. Assistant Attorney General Talbot, Mr. E. P. Norton and Mr. J. J. Weed* for the motion. *Mr. J. M. Carlisle, Mr. J. D. McPherson and Mr. L. S. Chatfield* opposing.

This appeal was subsequently dismissed by the "unanimous judgment of the court." See 9 Wall. 145.

KENOSHA v. CAMPBELL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No. 144. December Term, 1869. — Decided April 4, 1870.

*Campbell v. Kenosha*, 5 Wall. 194, affirmed. The court is satisfied that this writ of error was not sued out for delay, and refuses to allow 10 per cent damages.

THE case is stated in the opinion.

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

The record in this case was before us at the December Term, 1866. The judgment of the court below had been in favor of the city of Kenosha, and the writ of error was prosecuted by the now defendant in error. The judgment was reversed; and on a new