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

trial, there was a judgment against the city. And the city is now plaintiff in error, and seeks the reversal of the last judgment.

Counsel have labored with much zeal and ability to satisfy the court that, upon the former hearing, "One important and controlling fact was misapprehended, or did not sufficiently appear in the case at that time." But we are not convinced that there was any such misapprehension, or that any important fact escaped the observation of the court.

The judgment of the Circuit Court, therefore, must be *Affirmed.*

Under the circumstances of the case, however, we cannot say that it was prosecuted merely for delay.

The motion for affirmance with ten per cent damages must, therefore, be denied.

Mr. John W. Cary for plaintiff in error. *Mr. Wm. P. Lynde* for defendant in error.

DOWNING *v.* McCARTNEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 163. December Term, 1869. — Decided April 11, 1870.

An appeal by one of three complainants from a joint decree, without notice to the others and without their refusing to join in it, is dismissed.

The case is stated in the opinion.

Mr. Chief Justice Chase delivered the opinion of the court.

The decree below was joint against the three complainants. One only has appealed; and there is nothing in the record showing that the other complainants had notice of this appeal, or that they refused to join in it.

The appeal, therefore, must be *Dismissed.*

Mr. W. C. Goudy for appellant. *Mr. James Hughes*, *Mr. J. W. Denver*, *Mr. Charles F. Peck* and *Mr. L. Janin* for appellees.

WOOD *v.* RICHARDS.

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

No. 215. December Term, 1869. — Decided April 30, 1870.

The hearing on a motion for additional security on a writ of error, supported by affidavits but without notice to the opposite party, is postponed in order that notice may be given.