

Weatherby v. Bowie.

and settlement that had been made by the parties in respect to the matters in dispute. The court, after a hearing, denied the motion and directed that "the cause proceed." From this order De Liano took this appeal.

It needs only a statement of the facts to show that we have no jurisdiction. The decree appealed from is not a final decree.

The appeal is dismissed.

Mr. H. B. Kelly, Mr. G. L. Bright and Mr. H. L. Lazarus for appellant. *Mr. Samuel Shellabarger, Mr. J. M. Wilson, and Mr. C. E. Fenner,* for appellee.

WEATHERBY v. BOWIE.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 790. October Term, 1879.—Decided January 5, 1880.

A statement in the opinion of the highest court of a State that the only Federal question in the case was probably abandoned as "it is manifest that the Circuit Court could not have taken jurisdiction" is not such a decision of the question as to give this court jurisdiction.

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

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

We may look into the opinions of the Supreme Court of Louisiana for the purpose of determining whether a Federal question was raised and decided in a case coming up from that court. *Armstrong v. Treas. Athens Co.*, 16 Pet. 281; *Cousin v. Blanc*, 19 How. 202. To give us jurisdiction in a writ of error to a state court a Federal question must not only exist in the record, but it must have been decided against the party who sues out the writ. *Murdock v. Memphis*, 20 Wall. 590. "Only such questions as either have been or ought to have been passed upon by that court in the regular course of its proceedings can be considered by us upon error." *Fashnacht v. Frank*, 23 Wall. 416.

On looking into the opinion in this case we find that the only Federal question there is in the record was not presented to the Supreme Court "either in brief or oral argument." The court also say they presume the question was abandoned, and as one of their reasons for that presumption they say "it is manifest that the Circuit Court could not have taken jurisdiction." We think this is not such a decision of the question as will give us jurisdiction.

Dismissed.

Mr. John H. Kennard for the motion. *Mr. A. J. Semmes* opposing.