

Dayton v. United States.

to quiet the title; but as this case was afterwards discontinued, it is not material further to refer to it.

Upon the whole, after the best consideration which we have been able to give the case, we are of opinion that the decree of the court below should be

Reversed and the cause remitted, with directions to enter a decree for the complainant Smith, and that Orton release all claim or interest to lots 7 and 8 in controversy, and be enjoined from setting up any right or title to the same.

Mr. James S. Brown for appellant. *Mr. H. S. Orton* and *Mr. E. Mariner* for appellee.

WASHINGTON COUNTY v. DURANT.

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

No. 105. December Term, 1865. — Decided February 26, 1866.

An appeal allowed or a writ of error served is essential to the exercise of the appellate jurisdiction of this court.

THE case is stated in the opinion.

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

This cause was submitted on a printed argument for the defendant in error. Upon looking into the record, we find that it has been brought into this court by agreement of parties, and without the issuing or service of a writ of error. We think that an appeal allowed or a writ of error served, is essential to the exercise of the appellate jurisdiction of this court.

The appeal in this cause is therefore *Dismissed.*

Mr. Charles Mason for plaintiff in error. *Mr. James Grant* for defendant in error.

DAYTON, CLAIMANT OF THE SCHOONER MONTEREY AND CARGO v. UNITED STATES.

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

No. 144. December Term, 1865. — Decided February 26, 1866.

A decree in admiralty for the condemnation of a vessel is not final if the libel claims the condemnation of the cargo as well, and the cargo has been delivered to the respondents at an appraised value, and the money deposited with the register.

Cases Omitted in the Reports.

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

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

We have looked into this record and find no final decree. The libel claims the condemnation of the schooner Monterey and cargo. The answer denies this liability. The cargo was delivered to the respondents at an appraised value, and the money was deposited with the register. The decree condemns the schooner, but makes no mention of the cargo. The decree, therefore, does not dispose of the cause and cannot be final. The appeal must, therefore, be dismissed, and the cause sent to the Circuit Court for the District of Maryland for further proceedings.

Mr. Attorney General and Mr. Assistant Attorney General Ashton for the motion. *Mr. Andrew S. Ridgely* opposing.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY
v. HOWARD.

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

No. 149. December Term, 1865.—Decided April 3, 1866.

The removal or appointment of a receiver in a suit for the foreclosure of a mortgage on a railroad rests in the sound discretion of the court below, and is not reviewable here.

THE case is stated in the opinion of the court.

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

This is an appeal from an order denying a petition for the dismissal of a receiver.

Sebre Howard filed his bill in the District Court of the United States for the District of Wisconsin, as a judgment creditor of the La Crosse & Milwaukee Railroad Company and Selah Chamberlain, to set aside the contract between the defendants and the confessed judgment, which made the subject of the two suits just decided. The cause was afterwards transferred to the Circuit Court.

Sebre Howard having deceased, Charles Howard was made complainant in his stead; and the La Crosse Company having been obliged to allow their road to be sold under mortgage, the Minnesota Company became the proprietor of an important division of it. Before either of these events, a receiver had been appointed in the suit, and had been for several years in possession and management of the road.