De Liano *v.* Gaines.

An act of Congress (Stat. 63, c. 106, § 7) prohibits the transportation of turpentine, as freight, on steamboats carrying passengers, "except in cases of special license for that purpose." No complaint was made of the carriage of the turpentine, but of its use while being carried. The court in effect told the jury that, under the existing laws, there could be no recovery if the loss was occasioned by the misconduct of the insured in taking a barrel of turpentine from the hold of the boat, placing it in front of the furnace, knocking out the head, and pouring two thirds of a bucket full of turpentine on the coal and wood near by, so that when the furnace-door was opened and the fire stirred up, during a race with another boat, the burning coals fell on the fuel thus saturated and set fire to the boat. No complaint is made here, by the assignment of errors, of the charge as given. The errors assigned relate only to the refusal of the requests to charge made by Marsh, and these presented only questions as to the effect of evidence and the burden of proof; that is to say, whether if a steamboat was burned while carrying turpentine as freight, the owner, in an action on a policy of insurance, must show affirmatively his license to carry the turpentine, or whether the law would presume a license until the contrary was shown. The determination of such questions by the court below, even if necessary to the decision of the case, is final and cannot be re-examined here.

The suit is consequently dismissed for want of jurisdiction.

Mr. Edward Lander, *Mr. J. W. Moore*, and *Mr. E. A. Newman* for plaintiff in error. *Mr. Andrew McCallum* for defendant in error.

DE LIANO *v.* GAINES.

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

No. 192. October Term, 1879. — Decided March 15, 1880.

The overruling of a motion that the cause proceed no farther by reason of an alleged compromise of the suit is not a final judgment or decree.

The case is stated in the opinion.

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

A decree having been entered referring this cause to a master to state an account of rents and profits, De Liano, the appellant, appeared in court and moved that the master be directed to proceed no further with his accounting, by reason of an alleged compromise

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.