

Ambler v. Whipple.

UNITED STATES v. SMOOT.

SMOOT v. UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 264, 265. December Term, 1871. — Decided February 19, 1872.

This court will not direct the Court of Claims to send up the evidence on which that court bases its findings.

THE case is stated in the opinion.

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

The court is of opinion that the motion in this case asks in effect to remand this case to the Court of Claims with directions to send the evidence upon which their findings of fact were made to this court for revision. It alleges that the court omitted to find particular facts and asks that it may be required to certify what they shall find to support the omissions in said finding. We have repeatedly decided that this cannot be done under the rules governing appeals from the Court of Claims. The motion must, therefore, be

Denied.

Mr. Benjamin F. Butler for the motion. *Mr. Assistant Attorney General Hill* opposing.

AMBLER v. WHIPPLE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 610. December Term, 1871. — Decided February 19, March 22, 1872.

A cause is docketed and dismissed upon motion of the appellee, and subsequently redocketed on motion of the appellant.

MOTION to docket and dismiss. The case is stated in the opinion.

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

The judgment was rendered and the appeal allowed on the 2d of December, 1871. The ninth rule provides that where an appeal shall be brought to this court in less than thirty days before the commencement of the term, if the appellant shall fail to docket the appeal within the first thirty days after the judgment was rendered, the appellee may have the case docketed and dismissed upon producing a certificate from the clerk of the court wherein the decree was rendered, stating the cause and certifying that the appeal had been duly sued out and allowed; this returnable to the next term after it was allowed, which was December Term, 1871, commencing

Ex Parte Lange.

on the 4th day of December. The motion is therefore within the rule and it must be docketed and dismissed.

On the 1st of March, 1872, *Mr. B. F. Butler* moved to strike out order of 19th February and for leave to docket the appeal. This being argued on the 22d March, it was ordered that decree of February 19 be rescinded and annulled, and leave was granted appellant to docket cause.

Mr. James Hughes for the first motion. No one opposing.

Mr. B. F. Butler for the second motion. *Mr. James Hughes* opposing.

EX PARTE LANGE.

ORIGINAL.

No. 9. Original. October Term, 1873. — Decided January 12, 1874.

A writ of *habeas corpus* is ordered to issue, and also a writ of *certiorari* to bring up a petition by this petitioner to the judge of a Circuit Court of the United States for a writ of *habeas corpus*, and the denial thereof made in chambers; inasmuch as the petition in this court showed that the papers had been filed in the Circuit Court and remained there of record.

PETITION for writs of *habeas corpus* and *certiorari*. The case is stated in the opinion.

MR. JUSTICE CLIFFORD delivered the opinion of the court.

Representation is made by the petitioner that he is, and since the eighth of November last has been a prisoner confined in the Ludlow-Street jail in the city of New York, in the custody of Oliver Fiske, United States marshal for the Southern District of New York, under an illegal sentence pronounced on him on the said eighth of November, and that he is restrained of his liberty in violation of the Constitution of the United States, and of the law in such case made and provided. Wherefore he prays that a writ of *habeas corpus* issue directed to the said Oliver Fiske, as such marshal, commanding him to produce the petitioner before this court here, at such time as this court shall direct, and that he, the marshal, show at the same time the cause of the petitioner's detention, to the end that he, the petitioner, may be discharged from custody.

Superadded is also the further prayer that a writ of *certiorari* may issue to Kenneth G. White, clerk of the Circuit Court of the United States for the same district, commanding him to certify to