

## Opinion of the Court.

*The result is that the appeal must be dismissed, and it is so ordered.*

MR. CHIEF JUSTICE FULLER, having been of counsel in this case, did not sit in it or take any part in its decision.

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SMALL *v.* NORTHERN PACIFIC RAILROAD  
COMPANY.

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

No. 226. Submitted March 21, 1890. — Decided March 31, 1890.

When the record is not filed in this court at the term succeeding the allowance of an appeal, the appeal ceases to have any operation or effect, and the case stands as if it had never been allowed.

THE case is stated in the opinion.

*Mr. John G. Woolley* for appellant.

*Mr. W. P. Clough, Mr. A. H. Garland* and *Mr. H. J. May* for appellee.

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

This appeal must be dismissed for want of jurisdiction. Small filed his bill in the District Court of the Fourth Judicial District of the State of Minnesota, whence the cause was subsequently removed into the Circuit Court of the United States for the District of Minnesota, and, upon hearing, resulted on the 24th day of June, 1884, in a decree dismissing the complainant's bill, and rendering judgment in favor of the defendant for its costs to be taxed. On the 25th day of June, 1884, the complainant prayed an appeal to this court, which was granted. On the 21st day of May, 1886, complainant filed an

## Syllabus.

appeal bond and a citation was issued, returnable at the October term, 1886, dated April 30, 1886. The record herein was filed October 19, 1886. The only appeal which from the record before us appears to have been prayed and allowed was that of the 25th day of June, 1884.

But, as we have said many times before, inasmuch as the record was not filed at the term succeeding the allowance of the appeal, that appeal ceased to have any operation or effect, and the case stood as if it had never been allowed. There was no allowance of an appeal after that, and when the record was filed on the 19th day of October, 1886, this was not done in pursuance of an appeal still in force, nor could an appeal then have been allowed, as two years had expired from the date of the final decree. This appeal was not "taken" as provided, and we are, therefore, compelled to dismiss it. *Credit Company v. Arkansas Central Railway*, 128 U. S. 258; *Richardson v. Green*, 130 U. S. 104; *Evans v. State National Bank*, ante, 330.

*Appeal dismissed for want of jurisdiction.*

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HILL v. MERCHANTS' MUTUAL INSURANCE COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 215. Submitted March 19, 1890. — Decided March 31, 1890.

A state statute which confers upon a judgment creditor of a corporation, when execution on a judgment against the corporation is returned unsatisfied, the power to summon in a stockholder who has not fully paid the subscription to his stock, and obtain judgment and execution against him for the amount so unpaid, in no way increases the liability of the stockholder to pay that amount; and, inasmuch as he was before then liable to an action at law by the corporation to recover from him such unpaid amount at law, as well as to a suit in equity, in common with other similar stockholders, to compel contribution for the benefit of creditors, no substantial right of the stockholder is violated.