

Syllabus.

possession thereof until 1888. The statute of limitations, therefore, does not constitute any bar to the complainant's right to maintain the bill. But aside from this, the appellant stands in the same position now that he did in the former suit, when it was decreed that he had no right, title, or interest in the property. If, since that decree, he has enclosed a part of the land, cut wood from it, or cultivated it, he would be treated and considered as holding it in subordination to the title of Morton and his privy in estate, until he gave notice that his holding was adverse, and in the assertion of actual ownership in himself. In his position he could not have asserted adverse possession after the decree against him, without bringing express notice to Morton or his vendees that he was claiming adversely. Without such notice the length of time intervening between the decree and the institution of the present suit would give him no better right than he previously possessed, and his holding possession would, under the authorities, be treated as in subordination to the title of the real owner. This is a well established rule. *Jackson v. Bowen*, 1 Wend. 341; *Burhans v. Van Zandt*, 7 Barb. 91; *Ronan v. Meyer*, 84 Indiana, 390; *Jeffery v. Hursh*, 45 Michigan, 59; *Jackson v. Sternbergh*, 1 Johns. Cas. 153; *Doyle v. Mellen*, 15 R. I. 523; *Zeller's Lessee v. Eckert*, 4 How. 289.

We are of opinion that the decree below was clearly correct, and should be

Affirmed.

JACOBS v. GEORGE.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

No. 87. Submitted November 20, 1893. --- Decided November 27, 1893.

When an appeal is allowed in open court, and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary.

When an appeal is allowed at the term of the decree or judgment, but is not perfected until after the term, a citation is necessary to bring in the parties; but if the appeal be docketed here at the next ensuing term, or

Opinion of the Court.

the record reaches the clerk's hands seasonably for that term, and legal excuse exists for lack of docketing, a citation may be issued, by leave of this court, although the time for taking the appeal has elapsed.

When an appeal is allowed at a term subsequent to that of the decree or judgment appealed from, a citation is necessary; but it may be issued, properly returnable even after the expiration of the time for taking the appeal, if the allowance of the appeal were made before.

A citation is one of the necessary elements of an appeal taken after the term, and if it be not issued and served before the end of the next ensuing term of this court, and be not waived, the appeal becomes inoperative.

THE case is stated in the opinion.

Mr. W. H. Barnes for appellant.

No appearance for appellee.

THE CHIEF JUSTICE: Judgment in this case was rendered by the Supreme Court of the Territory of Arizona, January 19, 1889, that the judgment of the court below under review by that court be reversed and the complaint dismissed with costs.

January 13, 1890, being one of the days of the next regular term of the court, an appeal was prayed to this court, the appeal was allowed January 14, 1890, conditioned on giving bond, and certain findings of the Supreme Court were filed that day. January 24, 1890, the required bond was approved and filed, and the record was filed here, March 14, 1890, at October term, 1889. No citation was issued and served, nor has any appearance for appellee been entered, nor is any waiver of citation shown.

It must be regarded as settled that: (1) Where an appeal is allowed in open court, and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary; (2) Where the appeal is allowed at the term of the decree or judgment, but not perfected until after the term, a citation is necessary to bring in the parties; but if the appeal be docketed here at our next ensuing term, or the record reaches the clerk's hands seasonably for that term, and legal excuse exists for lack of docketing, a citation may be issued by leave of this court, although the time for taking the

Statement of the Case.

appeal has elapsed ; (3) Where the appeal is allowed at a term subsequent to that of the decree or judgment, a citation is necessary, but may be issued properly returnable, even after the expiration of the time for taking the appeal, if the allowance of the appeal were before ; (4) But a citation is one of the necessary elements of an appeal taken after the term, and if it is not issued and served before the end of the next ensuing term of this court, and not waived, the appeal becomes inoperative. *Hewitt v. Filbert*, 116 U. S. 142 ; *Richardson v. Green*, 130 U. S. 104 ; *Evans v. State Bank*, 134 U. S. 330 ; *Green v. Elbert*, 137 U. S. 615. *Appeal dismissed.*

SALTONSTALL v. BIRTWELL.

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

No. 116. Argued November 24, 1893. — Decided December 4, 1893.

Findings of fact in an action brought to recover duties on importations paid under protest, which do not show what the collector charged the plaintiff, nor sufficiently describe the articles imported, and a record which fails to show under what provisions of the tariff act the parties claimed respectively, leave this court unable to direct judgment for either party.

In such case the opinion of the court below cannot be resorted to to help the findings out.

THIS was an action to recover duties paid under protest on importations made in 1888. The first count of the plaintiff's declaration was on an account annexed as follows :

" BOSTON, *July 3, 1888.*

" Leverett Saltonstall, collector, etc., to Joseph Birtwell, Dr.

" Feb. 29, 1888. To excess of duty paid on 432 pieces of manufactures of iron entered ex-steamship Jan Breydel, Feb. 27, 1888..... \$1800

" Mch. 14, 1888. To excess of duty paid on 4 pieces of manufactures of iron entered ex-steamship Petre de Connick, Mch. 14, 1888.... 75 "