

Syllabus.

But a similar state of facts existed in the case of *Shaw v. Quincy Mining Co.*, inasmuch as Shaw, the plaintiff, was a citizen of Massachusetts, and the mining company was a corporation of the State of Michigan, and the suit was brought in the Circuit Court for the Southern District of New York. Nor do we see any reason for a different conclusion, as to the subject of waiver, when the question arises where neither of the parties are residents of the district, from that reached where the defendant only is not such resident.

It is scarcely necessary to say that, as the defendant company had submitted itself to the jurisdiction of the court, such voluntary action could not be overruled at the instance of stockholders and creditors, not parties to the suit as brought, but who were permitted to become such by an intervening petition.

In view, then, of the authorities cited, and upon principle, we conclude that the court below erred in vacating the order appointing receivers and in dismissing the bill of complaint, and we reverse its decree to that effect and remand the cause with directions for further proceedings not inconsistent with this opinion.

Reversed.

VOORHEES v. JOHN T. NOYE MANUFACTURING COMPANY.

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

No. 734. Submitted December 19, 1893. — Decided January 3, 1894.

A final decree was entered January 7, 1891, and appeal allowed the same day. A motion for rehearing was made January 10, 1891, which was argued February 3, 1892, and denied February 17, 1892. An appeal bond was given April 15, 1892, conditioned for the prosecution of the appeal taken January 7, 1891, and the record was filed here April 19, 1892. *Held*, that, under the provisions of the act of March 3, 1891, 26 Stat. 826 c. 517, the Circuit Court of Appeals had jurisdiction of an appeal, and, upon the denial of the petition for a rehearing, a new appeal should have been taken to that court for the Eighth Circuit.

Opinion of the Court.

THE case is stated in the opinion.

Mr. C. S. Montgomery for appellant.

Mr. Alfred Hazlett for appellee.

THE CHIEF JUSTICE: The decree in this cause was entered on January 7, 1891, at the November term, 1890, of the Circuit Court of the United States for the District of Nebraska, and at its foot the court minuted: "Lucas A. Voorhees prays an appeal, which is allowed;" and also, "L. A. Voorhees has leave to file motion for rehearing Saturday." On the tenth of January, which was the Saturday following, the application of L. A. Voorhees for rehearing was filed.

It appears of record that on January 9, 1892, at the November, 1891, term of the court, "this cause coming on to be heard this day on the motion for rehearing filed herein, was argued and submitted to the court by solicitors for the respective parties; whereupon the court takes the same under consideration." On February 3, 1892, at the January term, 1892, the record shows that the motion for rehearing of the cause "on its merits was reargued and submitted to the court by solicitors for the respective parties," and taken under advisement.

February 17, 1892, at the same January term, the motion for rehearing was denied, the court holding that "it is now too late to sustain said motion or to interfere with the decree." March 23, 1892, the refusal of certain defendants to join in an appeal was filed, which refusal was dated January 17, 1891. April 15, 1892, an appeal bond was given by Lucas A. Voorhees, conditioned for the prosecution of the appeal allowed January 7, 1891, approved by the court and filed April 18, 1892. The record was filed in this court, April 19, 1892, certified by the clerk of the Circuit Court, April 5, 1892. The bond is certified to by the clerk of the Circuit Court under date, April 21, 1892.

The jurisdiction of the court below depended solely upon the diverse citizenship of the parties, and by the act of March 3, 1891, 26 Stat. 826, c. 517, the jurisdiction of this court in

Syllabus.

such cases was taken away, although preserved by the joint resolution of March 3, 1891, 26 Stat. 1115, as to pending cases and cases wherein the appeal should be taken before July 1, 1891. The appeal was allowed January 7, 1891, but the decree did not take final effect as of that date for the purposes of an appeal, nor until February 17, 1892, because the application for rehearing was entertained by the court, filed within the time granted for that purpose, and not disposed of until then. *Aspen Mining &c. Co. v. Billings*, 150 U. S. 31.

The appeal bond was not given until April 15, 1892, but the record was filed in this court April 19, 1892, which was one of the days of the October term, 1891, of this court. Notwithstanding this, however, and without considering the question as to whether this appeal was properly prosecuted, in respect of parties, within *Hardee v. Wilson*, 146 U. S. 179, we are of opinion that as the Circuit Court had jurisdiction, and this court had not, long after July 1, 1891, the taking of a new appeal became necessary upon the denial of the rehearing, and this could only be to the Circuit Court of Appeals for the Eighth Circuit. *Cincinnati Safe & Lock Co. v. Grand Rapids Deposit Co.*, 146 U. S. 54.

Appeal dismissed.

BALTIMORE TRACTION COMPANY v. BALTIMORE BELT RAILROAD COMPANY.

ERROR TO THE BALTIMORE CITY COURT.

No. 994. Submitted December 11, 1893. — Decided January 8, 1894.

A public act of the State of Maryland providing for the condemnation of land for the use of a railroad company was held by the Court of Appeals of that State to require notice to the owner of the land proposed to be condemned, when properly construed. *Held*, that this court had no jurisdiction over a writ of error to a court of that State, when the only error alleged was the want of such notice, which, it was charged, invalidated the proceedings as repugnant to the Constitution of the United States.