

United States Bank v. Swan.

could not be exercised finally over them, at any time previous to the final decree of this court; we must, therefore, consider, whether, if they had been specifically before the court, at the date of that decree, they must have been delivered up to the state, or the United States: clearly to the United States. And then this claim of the state cannot be sustained. We would not be understood to intimate, that the United States are entitled to this money; for they had no power to sell; nor do we feel ourselves bound to remove the difficulties which grow out of this state of things.

With regard to the ground of irregularity: if not abandoned by the attorney-general, it was but slightly touched upon, and we know of no other mode, in the existing state of things, in which the rights of the parties could be reached, according to the course of the admiralty, but that here pursued.

On the question, whether the decision in the second cause, in which the subject of this seizure was before us, was not final as to the rights of the United States, we are clearly of opinion, that it was not, as against this party. Although this question might then have been raised by the state, and could as well then have been settled; yet it was not raised, nor was it the interest of any of the parties then before the court, that it should be raised. The decree below must be reversed.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the eastern district of Louisiana, and was argued by counsel: On consideration whereof, it is ordered and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby reversed, and that the said cause be and the same is hereby remanded, for further proceedings to be had therein, according to law and justice, and in conformity to the opinion of the court.

*68] *The BANK OF THE UNITED STATES and SAMUEL W. VENABLE'S Executors v. JOHN T. SWAN.

Practice.

When an appeal has been dismissed, the appellant having omitted to file a transcript of the record within the time required by the rule of court, an official certificate of the dismissal of the appeal may not be given by the clerk, during the term; the appellant may file the transcript with the clerk, during the term, and move to have the appeal reinstated; to allow such a certificate, would be to prejudge such a motion.

ON consideration of the motion made by Mr. *Wirt*, of counsel for the appellee, for leave to take from the office of the clerk of this court, before the adjournment of the present term of this court, an official certificate of the dismissal of this appeal, dismissed last Saturday, being the 30th of January, of the present term of this court:

It is ordered, that the said motion be overruled; and that the leave prayed for be refused; as, under the practice of this court, the appellants would have a right, during the present term, to lodge a transcript of the record of said appeal with the clerk of this court, and move to have the appeal reinstated; whereas, to grant the present prayer or motion, would be to prejudge such a motion. *Per MARSHALL, Chief Justice.*