

Macomb v. Armstead.

the bond did not release the goods from the lien of the attachment.¹ A contrary decision had been given by the court, in a case similar; but on further examination and more mature reflection, two of the three judges made the above decision. This adjudication being made on the construction of a *406] statutory *proceeding, and by the supreme court of the state, forms a rule for the decision of this court.

We think, that part of the charge to the jury by the district court, which respected the pendency of the suit in the state court, and which was excepted to, was substantially correct: and we are of opinion, that on principle and authority, and also under the construction given to the statute, by the supreme court of the state, the judgment of the district court must be affirmed.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the southern district of Alabama, and was argued by counsel: On consideration whereof, it is adjudged and ordered by this court, that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs.

*407] *DAVID B. MACOMB, HENRY W. BACKENRIDGE and WILLIAM B. NUTTALL v. MARCUS A. ARMSTEAD, Administrator of JOHN G. ARMSTEAD.

Practice.

The plaintiff in error had lodged with the clerk of the court, a transcript of the record of the cause; but had failed to have the transcript filed, or the cause docketed, in pursuance of the rules of the court. The court refused to docket or dismiss the case, on the motion of the counsel of the defendant in error, who asked the court to dispense with the certificate required by the 19th rule of the court, and to substitute the transcript lodged with the clerk of the court by the plaintiff in error, as and for the said certificate.

The defendant in error, to entitle himself to the benefit of the rule, must produce the certificate of the clerk, as required by the rule.

ERROR to the Court of Appeals for the Territory of Florida.

Mason, of counsel for the defendant in error, having stated to the court, that the plaintiffs in error, in this cause, had lodged with the clerk of this court a transcript of the record in the cause, but had failed to have said transcript filed, or the cause docketed, in pursuance of the rules of this court; moved the court to docket and dismiss this writ of error, under the 19th rule of this court, of February term 1806, and to dispense with the certificate required by said rule, but to substitute the transcript for and as a certificate.

ON consideration, the Court was of opinion, that the defendant in error, to entitle himself to the benefit of the rule, must produce the certificate of the clerk, as required by the rule. Whereupon, it was ordered by the court, that the said motion be and the same was overruled.

Motion overruled.

¹ See *Doremus v. Walker*, 8 Ala. 194.