

Keene v. Whittaker.

argued by counsel : On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs.

NOTE.

No. 192. Office of the recorder of land-titles. St. Louis, March 9, 1820.

I certify, that in pursuance of the act of congress, passed the 17th day of February 1815, a location certificate, No. 448, issued from this office, in favor of John Robertson, Jr., or his legal representatives, for 600 acres of land ; that a location has been made, as appears by the plat of survey herewith, and that the said John Robertson, Jr., or his legal representatives, is entitled to a patent for the said tract, containing, according to said location, 640 acres of land, being section No. 32, in township No. 50 north of base line, range No. 15 west of 5th principal meridian. No. of survey, 2810.

FREDERICK BATES.

Township No. 50, north of the base line, range No. 15, west fifth principal meridian.

79

50

No. 448. John Robertson, Jr. Section 32. 640.
--

Surveyors' Office, St. Louis. January 15, 1820.

I certify, that section No. 32, in township No. 50 north of the base line, range No. 15 west of the 5th principal meridian, was located, on the 8th day of October 1818, for John Robertson, Jr., or his legal representatives, by virtue of No. 448, dated September 1818, issued by the recorder of land-titles for the Missouri territory, to said John Robertson, Jr., or his legal representatives, for 640 acres of land, in conformity with the provisions of the act of congress of the 17th February 1815, for the relief of sufferers by earthquakes in the late county of New Madrid.

W. M. RECTOR.

To Frederick Bates, Esq., Recorder of land titles for the Missouri Territory.

*RICHARD RAYNALL KEENE v. WARREN WHITTAKER and others. [*459

Error upon case stated.

A case cannot be brought by writ of error from a circuit court of the United States, upon an agreed statement of facts.

The rules of the supreme court require, that the clerk of the circuit court to which any writ of error shall be directed, may make return of the same, by annexing a true copy of the record and of all the proceedings in the cause, under his hand and the seal of the court; the court will not, according to the 31st rule, hear any cause, without a complete copy of the record having been brought up.

This case came up from the Circuit Court of the United States for the eastern district of Louisiana. In that court, a statement of the case had been made by the plaintiff, and the counsel for the defendants, upon which the court gave a judgment for the defendants. The plaintiff petitioned the circuit court for a writ of error to the supreme court, and the same was allowed. The record, as sent up from the circuit court, contained nothing but the agreed statement of facts, the judgment of the circuit court on

Carr v. Hoxie.

these facts, and the petition of the defendant for a writ of error, together with an allowance of it by the circuit court, in December 1838. The case was submitted to the court, without argument.

WAYNE, Justice, delivered the opinion of the court.—This case has been brought to this court on an agreed statement of facts, without any of the proceedings of the court below being in the record. It cannot appear, therefore, that this court has jurisdiction of the case; which is essential, before it can give its judgment in any cause.

We refer also to the 11th and 31st rules of this court. The 11th is as follows: "It is ordered by this court, that the clerk of the court to which any writ of error shall be directed, may make return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court." The 31st rule is: "No cause will hereafter be heard, until a complete record, containing in itself, without references *alivunde*, all the papers, exhibits, depositions and other proceedings, which are necessary to the hearing, shall be filed. The court orders this case to be dismissed.

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 it appearing upon an inspection of the papers filed in the case, that it has been brought here upon an agreed statement of facts, without any of the proceedings in the court below being in the record. Whereupon, it is adjudged and ordered by this court, that this cause be and the same is hereby dismissed, with costs.

*460] *NATHAN CARR and others, Appellants, v. JOSEPH HOXIE, Appellee.

Second appeal.—Supersedeas.

An original decree was made in the circuit court of Rhode Island, at June term 1834, and an appeal was taken to January term 1835, of the supreme court; this appeal was dismissed at January term 1837, on the motion of the counsel for the appellees, without an examination or decision on the merits of the cause; at the November term of the circuit court, the defendants prayed and were allowed a second appeal to the supreme court; which appeal had not been yet entered on the docket of the supreme court; the circuit court afterwards proceeded to order execution of the decree of 1834, and the defendant appealed to the supreme court from this decree: *Held*, that this appeal from the decree of the circuit court, ordering the execution of the original decree, was not a *supersedeas* to further proceedings in the circuit court to execute the original decree; and that the circuit court was at liberty to use its discretion to proceed to execute the original decree: *Held*, also, that the decree of execution was not a final decree, in the contemplation of the act of congress, from which an appeal lies.

APPEAL from the Circuit Court of Rhode Island. In the circuit court for the district of Rhode Island, at June term 1834, in the case of Joseph Hoxie against Nathan Carr and others, a decree was rendered for the complainant on a bill of equity filed in that court. From this decree, the defendants appealed to the supreme court of the United States, to January term 1835. At January term 1837, on motion of Mr. Green, of counsel for the appellees, the appeal was dismissed; and a certificate thereof having been sent to the circuit court that court, proceeded, at November term 1837, to order and decree the execution and decree made at the June term 1836. The court de-