WILSON *v.* CITY OF PORT LAVACA ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

No. 1238. Decided May 20, 1968.

Where the district judge in whose court the case was originally filed adopts as his own a three-judge court's determination that the claim was not "one which must be heard by a three-judge court" and that the relief sought was not warranted, an appeal lies to the Court of Appeals and not to this Court, and therefore the judgment is vacated and remanded to permit entry of a fresh decree from which a timely appeal may be taken to the Court of Appeals.

285 F. Supp. 85, vacated and remanded.

Willett Wilson, appellant, *pro se.*

PER CURIAM.

A three-judge federal court, convened pursuant to 28 U. S. C. § 2281, determined that plaintiff's claim was not "one which must be heard by a three-judge court." 285 F. Supp. 85, 87. It also ruled that the relief sought by plaintiff was not warranted. The district judge in whose court the case was originally filed adopted the action of the court as his own. The resulting situation is similar, we think, to that which results when a single judge declines to convene a three-judge court and denies relief: an appeal lies to the appropriate United States Court of Appeals, and not to this Court. *Schackman* v. *Arnebergh,* 387 U. S. 427. It does not appear from the record that a protective appeal was lodged in the Court of Appeals, and the time to do so may have expired. Therefore, we vacate the judgment below and remand the case to the District Court so that it may enter a fresh decree from which a timely appeal may be taken to the Court of Appeals. *Utility Comm'n* v. *Pennsylvania R. Co.,* 382 U. S. 281, 282.

It is so ordered.