

Per Curiam.

MENGELKOCH *ET AL.* *v.* INDUSTRIAL WELFARE  
COMMISSION *ET AL.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA.

No. 375. Decided October 28, 1968.

A three-judge federal court dissolved itself for want of jurisdiction. A single district judge then dismissed the case on the ground of abstention and incorporated the three-judge court's dissolution order in his opinion by reference. In this appeal from both judgments *held* that the Court of Appeals, and not this Court, has jurisdiction over the appeal from the dissolution order and from the abstention decision.

284 F. Supp. 950, vacated and remanded; 284 F. Supp. 956, dismissed.

*Marguerite Rawalt* for appellants.

*Thomas C. Lynch*, Attorney General of California, and  
*Edward M. Belasco*, *Jay L. Linderman*, and *William L. Zessar*, Deputy Attorneys General, for appellees.

PER CURIAM.

A three-judge federal court, convened pursuant to 28 U. S. C. § 2281, determined that "there is no jurisdiction for a three-judge court" and entered an order dissolving itself. 284 F. Supp. 950, 956. The single district judge in whose court the case was originally filed considered further and dismissed the case without prejudice under the doctrine of abstention, stating in his memorandum opinion that "[t]he order dissolving the three-judge court is incorporated in this memorandum by reference." 284 F. Supp. 956, 957. Appellants appeal from both judgments. In these circumstances, we have no jurisdiction to entertain a direct appeal from the decision of the single judge; such jurisdiction is possessed only by the appropriate United States Court of Appeals. 28 U. S. C. § 1291. Moreover, we have held that when, as here, a

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three-judge court dissolves itself for want of jurisdiction, an appeal lies to the appropriate Court of Appeals and not to this Court. *Wilson v. Port Lavaca*, 391 U. S. 352.\*

Although the appellants have lodged in the Court of Appeals for the Ninth Circuit a protective appeal from the decision of the single judge, it does not appear from the record that such an appeal has been filed with respect to the three-judge order. Therefore, we vacate the order of the three-judge court and remand the case to the District Court so that a timely appeal may be taken to the Court of Appeals. See *Wilson v. Port Lavaca*, *supra*; *Utility Comm'n v. Pennsylvania R. Co.*, 382 U. S. 281, 282. The appeal from the decision of the single judge is dismissed for want of jurisdiction.

*It is so ordered.*

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\*We think it makes no difference in principle that in *Wilson v. Port Lavaca* the single judge actually adopted the opinion of the three-judge court as his own.