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*Steamer Virginia v. West et al.*

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Having carefully examined the foregoing opinion of Mr. Justice CAMPBELL, after it was in print, I am satisfied with its correctness, and concur therein. J. CATRON.

*Order.*

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 now here ordered, adjudged, and decreed, by this court, that the decree of the said Circuit Court in this cause be and the same is hereby reversed, without costs, and that this cause be and the same is hereby remanded to the said Circuit Court, with directions to ascertain the amount of the lien of the libellants on the Ann Elizabeth, for the share to be contributed by the vessel towards the loss sustained by the libellants, and to enter a decree accordingly.

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THE CLAIMANTS AND OWNERS OF THE STEAMER VIRGINIA, APPELLANTS, *v.* MICHAEL W. WEST, WILLIAM T. BELL, ALBERT R. HEATH, AND JAMES J. EDWARDS, PARTNERS, UNDER THE FIRM OF HEATH & EDWARDS; THOMAS C. BUNTING AND — LECATO, PARTNERS, UNDER THE FIRM OF BUNTING & LECATO, AND JOHN M. HENDERSON.

Where an appeal is taken to this court, the transcript of the record must be filed and the case docketed at the term next succeeding the appeal. Although the case must be dismissed if the transcript is not filed in time, yet the appellant can prosecute another appeal at any time within five years from the date of the decree, provided the transcript is filed here and the case docketed at the term next succeeding the date of such second appeal.

THIS was an appeal from the Circuit Court of the United States for the district of Maryland.

*Mr. Johnson* moved to dismiss the appeal, upon the ground that the record was not filed in time.

Mr. Chief Justice TANEY delivered the opinion of the court.

This is an appeal from the Circuit Court for the district of Maryland.

The decree from which the appeal has been taken was passed by the Circuit Court on the 17th day of November, 1855, and the appeal was prayed on the same day in open court. But it was not prosecuted to the next succeeding term of this court,

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*Brown v. Duchesne.*

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and no transcript of the record was filed here during that term. But a transcript has been filed at the present term of this court, and the case docketed. And a motion is made to dismiss it, upon the ground that the appeal is not legally before this court, according to the act of Congress regulating appeals.

The construction of this act of Congress, and the practice of this court under it, has been settled by the cases of *Villalobos v. The United States*, (6 Howard, 81,) and *The United States v. Curry*, (6 Howard, 106.) The transcript must be filed in this court and the case docketed at the term next succeeding the appeal, in order to give this court jurisdiction. This case must therefore be dismissed.

But the dismissal does not bar the appellant from taking and prosecuting another appeal at any time within five years from the date of the decree, provided the transcript is filed here and the case docketed at the term next succeeding the date of such second appeal.

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JOHN BROWN, PLAINTIFF IN ERROR, *v.* ——— DUCHESNE.

The rights of property and exclusive use granted to a patentee do not extend to a foreign vessel lawfully entering one of our ports; and the use of such improvement in the construction, fitting out, or equipment, of such vessel, while she is coming into or going out of a port of the United States, is not an infringement of the rights of an American patentee, provided it was placed upon her in a foreign port, and authorized by the laws of the country to which she belongs.

THIS case came up, by writ of error, from the Circuit Court of the United States for the district of Massachusetts.

The facts in the case and state of the pleadings in the Circuit Court are set forth so particularly, in the opinion of the court, that they need not be repeated.

It was submitted on a printed argument by *Mr. Dana* for the plaintiff in error, and argued by *Mr. Austin* for the defendant.

As the points raised in the case are entirely new, it is thought expedient to present them to the reader as they were brought before the court by the respective counsel.

*Mr. Dana*, for the plaintiff in error, after stating the circumstances of the case, said that the question for the court to decide was:

Whether, under these circumstances, there is an exemption