the blockaded coast and having sailed from that coast, was attempting to run the blockade when captured.

But we are not inclined to condemn the vessel on this ground, much less the forty-four bales and the thirty-nine bales, which were taken on board at Matamoras.

But it is an undoubted principle that in a case of libel as prize of war, the burden of proving the neutral ownership of the ship and cargo is upon the claimants. In this case satisfactory proof is made of neutral ownership in the cotton laden at Matamoras. But there is no proof at all of such ownership in the seventy-one bales put on board from lighters; and no satisfactory proof of such ownership in the schooner. On the contrary, the weight of the evidence is that these bales were owned by a rebel enemy; and that the same rebel enemy, either alone or in association with Jenny, who makes no claim, owned the schooner.

It results that the forty-four bales and the thirty-nine bales must be restored to the claimants represented by the master, without contribution to costs or expenses, and that the seventy-one bales and the schooner must be condemned.

The decree below must be reversed and a decree entered

IN CONFORMITY WITH THIS OPINION.

EX PARTE THE MILWAUKEE RAILROAD COMPANY.

1. A case being properly in this court by appeal, the court has a right to issue any writ which may be necessary to render its appellate jurisdiction effectual.
2. Accordingly, it will issue the writ of *supersedeas* if such writ be necessary for that purpose; the circumstances otherwise making it proper.
3. It will issue this writ rather than attain the same end by issuing a *mandamus* to the court below, in a case where the issuing of a *mandamus* would control judicial action in a matter apparently one of discretion; as *ex gr.* the approval or rejection of a bond offered for the court's approval.
4. Hence, where, after an appeal to this court, the judge below refused to approve a bond for a *supersedeas*, because all the sureties were non-residents of the district, this court (though not agreeing with such judge in

the opinion that mere non-residence within the district was a sufficient reason for rejecting a bond, if, in all other respects, it were unobjectionable) declined to issue a *mandamus* to compel the judge to approve the bond and allow a *supersedeas*, considering its right to do this doubtful; but ordered that on filing a bond to be approved by the clerk of this court, a *supersedeas* should issue from this court.

Petition for a writ of *mandamus*.

The Circuit Court for the District of Wisconsin having rendered a decree in favor of J. T. Soutter, survivor, &c., against the La Crosse and Milwaukee Railroad Company and the Milwaukee and Minnesota Railroad Company, on the 5th March, 1867, for $40,000, and ordered a sale of the road mortgaged to secure the debt, the last-mentioned company prayed an appeal to this court, which was allowed. For the purpose of staying proceedings on the decree, they offered a bond, in the penalty of $50,000, within the ten days allowed for that purpose, which the district judge declined to approve, but upon which he made the following indorsement:

"March 16, 1867.

"The counsel of complainant having objected to the allowance of this bond for *supersedeas*, on the ground that all the sureties are *non-residents of the district, for this reason this bond is not approved for a supersedeas.*

"A. G. Miller,
District Judge."

The record of the case having been brought into this court on the appeal taken, the appellants now petitioned the court for a *mandamus* to compel the district judge to approve the bond and allow a *supersedeas*, or for such other relief in the premises as this court could give.

Messrs. Cram and Cushing, in favor of petition; Mr. Cary, contra.

Mr. Justice MILLER delivered the opinion of the court.

Although this court does not concur in the opinion of the district judge, that the fact of the non-residence of the sure-

ties within the district is a sufficient reason for rejecting a bond which is in all other respects unobjectionable, we are not inclined to interfere by *mandamus* with the discretion of that judge in approving or rejecting a bond offered for his approval. If we had the right to do this, which is extremely doubtful, it is unnecessary, as the remedy which is in our own hands is ample. The case being properly in this court by appeal, we have, by the fourteenth section of the Judiciary Act, a right to issue any writ which may be necessary to render our appellate jurisdiction effectual. For this purpose the writ of *supersedeas* is eminently proper in a case where the circumstances justify it, as we think they do in the present instance. *Hardeman* v. *Anderson*,* is an example of the exercise of this power precisely in point.

We shall therefore make an order, that upon the filing of a bond for the sum of $50,000, with the usual conditions, at any time within thirty days from this date, which shall be approved by the clerk of this court, a *supersedeas* will issue from this court to the judge of the Circuit Court of the United States for the District of Wisconsin, and to the marshal of the United States for said district, commanding a stay of proceedings on said decree until the further order of this court,

THE SAME BEING SUPERSEDED.

BARTON *v.* FORSYTH.

1. The appellate jurisdiction of this court on writs of error, under the twenty-second section of the Judiciary Act, is confined by the express words of the section to final judgments, and the writ of error should be addressed to the final judgment accordingly.
2. A judgment on a motion made by the plaintiff to set aside a writ of restitution which had been issued in favor of the defendant, and to grant a writ of restitution to the plaintiff in a case, is not a final judgment within the terms of the said section; in fact is but an order of court.

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* 4 Howard, 640.