RAILROAD COMPANY *v.* HARRIS.

To make a writ of error operate as a supersedeas, it is indispensable that the requirements of the act of Congress be strictly fulfilled. It is not enough that the writ be issued and served, but a copy of the writ must be lodged, for the adverse party, within ten days, Sundays exclusive, after judgment or decree.

THIS was a motion for writs of supersedeas to the Supreme Court of the District of Columbia to stay execution upon two judgments recovered in that court, one by Harris, against the Baltimore and Ohio Railroad Company, and the other by his administratrix, against the same defendant.

The first judgment was for injuries sustained by Harris, when a passenger on the defendant's railroad. The second was a judgment upon *scire facias*, to revive the former judgment, abated by the death of Harris, and to make his administratrix party to that judgment, and to have execution.

To bring the first judgment into this court for review, a writ of error had been sued out by the railroad company, and a sufficient bond for prosecution was filed, within ten days after rendition; but *no copy* of the writ of error appeared to have been lodged in the clerk's office for the use of the defendant in error.

The twenty-third section of the Judiciary Act thus declares:*

"A writ of error shall be a supersedeas, and a stay of execution, in cases only where the writ of error is served by a copy thereof being lodged, for the adverse party, in the clerk's office, where the record remains, within ten days, Sundays exclusive, after rendering the judgment and passing the decree complained of."

Messrs. Bradley and Buchanan, in support of the motion.

Messrs. Davidge and Fuller, contra.

The CHIEF JUSTICE delivered the opinion of the court.

The right of the plaintiff in error to the writs for which

* 1 Stat. at Large, 84.

the motion now before us is made, depends on the question whether, by the proceedings taken in the case, the writ of error upon the first judgment became a supersedeas?

And this question is answered by the express words of the twenty-third section of the Judiciary Act.

The legislature has seen fit to make the lodging of a copy of the writ, within ten days, a prerequisite to the operation of the writ as a supersedeas. The cause was removed from the inferior court to this court, by the issuing of the writ, and the due service of it upon the court to which it is addressed; but its additional effect, as a supersedeas, depends upon compliance with the conditions imposed by the act. We cannot dispense with that compliance in respect to lodging a copy for the adverse party.

The motion for writs of supersedeas in both cases must, therefore, be DENIED; and as the second writ of error brings nothing before us, unless the writ in the first case operated as a supersedeas under the statute, that writ must be

DISMISSED.

RAILROAD COMPANY *v.* BRADLEYS.

1. A decree ordering an injunction, previously granted to restrain a sale under a deed of trust, to be dissolved, *and directing a sale according to the deed of trust, and the bringing of the proceeds into court*, held to be a final decree.
2. An actual allowance of an appeal may be inferred where the record shows that an appeal was prayed for in open court, and an appeal bond filed and approved by one of the judges.
3. A supersedeas granted, the record showing that a decree dissolving an injunction was made on the 6th of February, a petition for the suspension of the order filed by one party on the same day, by another on the 15th, a petition to open the decree on the 13th; a motion to rescind, made on the 6th March, during the term at which the decree was rendered, which motion was heard and denied on the 13th, with an appeal prayed in open court on the 20th, and an appeal bond filed on the 23d.

MOTIONS to dismiss and for supersedeas, on an appeal from the Supreme Court of the District of Columbia. The case was thus: