Statement of the case.

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:

Statement of the case.

The Washington, Georgetown, and Alexandria Railroad Company had filed, in 1863, a bill to enjoin the City of Washington and J. and A. Bradley, trustees, from making sale of certain property conveyed by the company in mortgage to the said Bradleys as trustees, and under which the Bradleys were about to sell the property to pay the mortgage debt. An injunction was accordingly granted. But after various proceedings on both sides, a decree was entered, on the 6th of February, 1869, which ordered that the injunction be dissolved, and *directed a sale by the Bradleys, the trustees of the property in controversy, according to the deed of trust, and the bringing of the proceeds into court to abide further orders.*

From this decree an appeal was prayed in open court by the railroad company, and subsequently an appeal bond was filed in the court, and approved by one of the judges. But it did not appear *directly* that an appeal was allowed.

As already stated, the decree dissolving the injunction and directing a sale, was entered on the 6th of February, 1869. A petition for the suspension of this order of dissolution was filed, by the secretary of the railroad company, on the same day; a motion to the same effect was made in behalf of the Department of War, on the 15th of February, and a petition to open the decree was filed on the 13th of February, by one of the stockholders of the company.

On the 6th of March, and during the term at which the decree was rendered, a motion to rescind was made in behalf of the railroad company, and on the 13th of that month was heard and denied.

On the 20th the appeal was prayed by the railroad company, and on the 23d the bond of appeal was approved and filed.

Upon this state of facts two motions were now made in this court,—one, in behalf of the appellees, to dismiss the cause for want of jurisdiction; the other, in behalf of the appellants, for a supersedeas.

In support of the motion to dismiss, it was urged,

First, that the decree appealed from was not final; and,

Secondly, that there was no allowance of appeal.

Opinion of the court.

In support of the motion for supersedeas, that the appeal bond was approved, and filed within ten days after the decree.

Messrs. Riddle and Brent, for the appellants.

Mr. J. H. Bradley, contra.

The CHIEF JUSTICE delivered the opinion of the court.

We think that the decree entered on the 6th of February, 1869, was a final decree within the principles of the case of *Thomson* v. *Dean*,* decided at this term, though it might have been otherwise had the decree been limited to the dissolution of the injunction, thereby merely permitting the trustees to sell under their trust.

The first ground of the motion to dismiss, therefore, cannot be sustained.

Nor is the second ground more tenable. It is true that it does not appear upon the record directly that there was an allowance of the appeal; but an appeal was prayed, and subsequently the appeal bond was filed in the court, and approved by one of the judges; and, we think, it may be properly inferred, from these facts, that an appeal was actually allowed. The motion to dismiss, therefore, must be denied.

In support of the motion for supersedeas, it was argued that the appeal bond was approved, and filed within ten days after the decree.

The decree was entered on the 6th of February, 1869. A petition for the suspension of the order of dissolution was filed, by the secretary of the complainants, on the same day; a motion to the same effect was made in behalf of the Department of War, on the 15th of February; and a petition to open the decree was filed on the 13th of February, by one of the stockholders of the company.

We do not think it necessary to consider the effect of either of these proceedings; for, on the 6th of March, and, as we understand, during the term at which the decree was

* *Supra*, p. 342.

rendered, a motion to rescind was made in behalf of the complainants, and was heard and decided.

There is no doubt that, during the term, the decree was, at all times, subject to be rescinded or modified, upon motion, and could not, therefore, be regarded as absolutely final, until the end of the term. It became final, in this case, when the motion to rescind had been heard and denied. This took place on the 13th of March, and, on the 20th, the appeal was prayed in open court, and on the 23d the bond of appeal was approved and filed.

We think this was in time, and the motion for supersedeas must, therefore, be allowed.*

ORDERS ACCORDINGLY.

MORRIS AND JOHNSON *v.* UNITED STATES.

1. An information under the acts of August 6th, 1861, and July 17th, 1862, which presents only a case of the unlawful conversion of property to the use of the persons proceeded against, cannot be sustained.
2. Neither the act of 1861, nor the act of 1862, contemplates any proceeding, as in admiralty, where there existed no specific property or proceeds capable of seizure and capture.

APPEAL from the District Court for the Middle District of Alabama.

By an act of Congress of August 6th, 1861, property used in aid of the rebellion was made the lawful subject of *prize and capture* wherever found; and it was made the duty of the President of the United States to cause the same to be *seized*, confiscated, and condemned. And a subsequent act, that of 17th July, 1862, authorized the *seizure* and confiscation of the property of certain persons engaged in the rebellion.

These statutes being in force, an information was exhibited in this case in the court below, alleging, in substance, that certain bales of cotton had become the property of the

* Brockett *v.* Brockett, 2 Howard, 240.