

## Statement of the case.

R. Dermott, are indispensable parties. No relief can be given in the case before us which will not seriously and permanently affect their rights and interests. According to the settled rules of equity jurisprudence the case cannot proceed without their presence before the court. The objection was not taken by the defendant, but the court should, *sua sponte*, have caused the bill to be properly amended, or have dismissed it, if the amendment were not made. Instead of this being done the cause was heard and decided upon its merits. This was a manifest error. The decree must, therefore, be reversed, and the cause remanded to the court below. In that court both parties can take leave to amend and can modify their pleadings so as to exhibit the case as they may desire respectively to present it. If testimony be necessary that also can be taken. We do not consider the supplement to the record filed in this court as before us. It was not in the case in the court below. To recognize it here would involve the exercise of original instead of appellate jurisdiction. Whether it was competent for the receiver to buy at the sale made by the trustees is a point upon which we express no opinion. We have not reached it, and have not, therefore, had occasion to consider the subject.

It is ordered that the decree of the court below be REVERSED, and that the cause be remanded, with directions to that court to proceed

IN CONFORMITY TO THIS OPINION.

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THE NONESUCH.

The court has no jurisdiction of a cause transferred here from the Circuit Court by consent of parties. *The Alicia* (7 Wallace, 572) affirmed.

THIS was an appeal from the District Court of the United States for the Northern District of Florida to the Circuit Court for the same district. There had been no decree rendered in that court, but consent of parties was given to the transfer of the cause into this court. The record was accordingly filed, and the case docketed. Upon the case

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being called, it was submitted by *Mr. Field, Assistant Attorney-General for the United States*, no opposite counsel appearing.

The CHIEF JUSTICE delivered the opinion of the court.

This court cannot acquire jurisdiction of a cause pending in a Circuit Court by transfer. This was determined at the last term in the case of *The Alicia*.\* In that case the record had not been filed, and a motion was made to docket and dismiss. That motion was denied, on the ground that the court could not take jurisdiction. In this case the record has been filed, and the cause has been docketed here. The order, therefore, must be that the cause be

DISMISSED FOR WANT OF JURISDICTION.

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### THE GRAY EAGLE.

1. A neglect by one vessel, on approaching another in the night, to show proper signal lights, or her showing a wrong one, does not absolve such other vessel, under the act of Congress of April 29th, 1864, prescribing the lights which sailing vessels shall carry, from obligation to observe the usual laws of navigation, or such reasonable and practicable precautions generally as the circumstances allow.
2. A loss equally divided between two vessels, on facts, set forth in the case, showing fault in both.

APPEAL from the Circuit Court for the District of Wisconsin.

The owners of the schooner Perseverance filed a libel in the District Court of Wisconsin against the schooner Gray Eagle, for a collision in which their vessel had been sunk. The collision occurred in the Straits of Mackinaw, soon after midnight of the 23d of November, 1864, the night not having been a dark one; not so dark at least as that the sails of vessels could not be seen for near a quarter of a mile. The Perseverance had lost her lights in a storm, and was sailing

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\* 7 Wallace, 572.