

question before us as to the evidence upon which the conviction of the petitioner was had; nor does it appear whether the envelope in which the prohibited circular was deposited in the mail was sealed or left open for examination. The only question for our determination relates to the constitutionality of the act; and of that we have no doubt.

The commitment of the petitioner to the county jail, until his fine was paid, was within the discretion of the court under the statute.

As there is an exemplified copy of the record of the petitioner's indictment and conviction accompanying the petition, the merits of his case have been considered at his request upon this application; and, as we are of opinion that his imprisonment is legal, no object would be subserved by issuing the writs; they are therefore

*Denied.*

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NATIONAL BANK v. OMAHA.

1. Even though an appeal is asked for in open court, if the security is not taken until after the term, a citation must be issued to bring in the parties, unless they voluntarily appear.
2. The ruling in *O'Reilly v. Edrington* (*supra*, p. 724), that a judge or justice cannot delegate to the clerk the power to approve the security upon writs of error and appeals, approved, and applied to this case.

APPEAL from the Circuit Court of the United States for the District of Nebraska.

*Mr. J. M. Woolworth* for the appellant.

No counsel appeared for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The decree in this case was rendered Nov. 13, 1874; and at the end appears the following entry:—

“Whereupon said complainant, by its solicitor, prays an appeal to the Supreme Court of the United States, which is allowed; and bond to be given on said appeal is fixed at \$500.”

A bond was filed Sept. 30, 1875, which appears to have been

approved by the clerk, and not by the judge. No citation has been issued or served, and there is no appearance in this court by the appellees.

We have decided at the present term, in *Sage v. Railroad Company* (*supra*, p. 712), that, even though an appeal is asked for in open court, if the security is not taken until after the term, "a citation should be issued to bring in the parties, unless they voluntarily appear, for, until the security has been accepted, the allowance of the appeal cannot be said to have been perfected;" and, in *O'Reilly v. Edrington* (*supra*, p. 724), that "the security upon writs of error and appeals must be taken by the judge or justice. He cannot delegate this power to the clerk."

*Appeal dismissed.*