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The Alicia

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Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 571

Appellant : The Alicia

Judgement :

The Alicia - 74 U.S. 571 (1868)
U.S. Supreme Court The Alicia, 74 U.S. 7 Wall. 571 571 (1868)

The Alicia

74 U.S. (7 Wall.) 571

MOTION TO DOCKET

AND DISMISS

SYLLABUS

1. This Court cannot acquire jurisdiction of a cause through an order of a circuit court directing its transfer to this Court, though such transfer be authorized by the express provision of an act of Congress. Such provision must be regarded as an attempt, inadvertently made, to give to this Court a jurisdiction withheld by the Constitution.

2. In such a case, a notice to docket and dismiss must be denied, and this Court will certify its opinion to the circuit court for information, in order that it may proceed with the trial of the cause.

This was a motion by Mr. Ashton, Assistant Attorney General, to docket and dismiss.

It appeared from the certificate of the clerk of the Circuit Court of the United States for the Southern District of Florida, that on the 9th of January, 1863, a decree of condemnation was entered in the district court for the condemnation of the *Alicia* and her cargo, for violation of the blockade. From this decree an appeal was allowed, and taken to the circuit court; and on the 18th of May, 1867, an order was made in that court, on the application of the parties in interest -- there being at this time, in the circuit court, no order, judgment, or decree in the case -- for the transfer of the cause to this Court.

The application and order for transfer were made under the thirteenth section of the Act of June 30, 1864, * which enacts that prize causes, depending in the circuit courts, may be transferred, upon the application of all parties in interest, to this Court.

The appellant had not docketed the cause and filed the record within the time allowed by the rules in cases of appeals, and Mr. Ashton's motion to dismiss was made for that reason.

THE CHIEF JUSTICE delivered the opinion of the Court.

As the appellant has not docketed the cause and filed the record within the time allowed by the rules in cases of appeals, the motion would be allowed as of course, if the appeal could be regarded as taken to this Court from the decree of the district court. But the decree of condemnation in that court was rendered in January, 1863, and the appeal to the circuit court was allowed, and bond given, in the same month. By these proceedings, and the transmission of the record to the

circuit court, the cause was duly removed to

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that court under the laws regulating appeals at that time. Subsequently, by the thirteenth section of the Act of June 30, 1864, provision was made for appeals in prize cases directly from the district court to this Court, and it was directed that appeals from the circuit courts, in cases remaining therein, should be allowed to this Court in the same manner as appeals from the district court under the act. But it was also provided in the same section that prize causes, depending in the circuit courts, might be transferred, upon the application of all parties in interest, to this Court, and it was under this provision that the application and order for transfer were made.

Can this Court acquire jurisdiction of the cause through this order of transfer?

It cannot be doubted that the cause was removed to the circuit court by the appeal from the decree of the district court in 1863. That decree was vacated by the appeal, and the circuit court acquired full jurisdiction of the cause. It might, in its discretion, make orders for further proof, and was fully authorized to proceed to final hearing and decree, in all respects, as if the cause had been originally instituted in that court. Nor can it be doubted that under the Constitution, this Court can exercise, in prize causes, appellate jurisdiction only. An appellate jurisdiction necessarily implies some judicial determination, some judgment, decree, or order of an inferior tribunal, from which an appeal has been taken. But in this case there had been no such order, judgment, or decree in the circuit court, and there was no subsisting decree in the district court from which an appeal could be taken. We are obliged to conclude that in the provision for transfer, an attempt was inadvertently made to give to this Court a jurisdiction withheld by the Constitution, and consequently that the order of transfer was without effect. The cause is still depending in the circuit court. We must decline, therefore, to make an order to docket and dismiss the appeal, but this opinion may be

Certified to that court for information.

* 13 Stat. at Large 311.

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