

Case No. 713.

BACKUS v. THE MARENGO.

{6 McLean, 409.}¹

Circuit Court, D. Michigan.

June Term, 1855.

APPEAL—DELAY IN PERFECTING—CONTINUANCE.

1. If the appellant delay to perfect his appeal, so that the record is filed a very short time before the term of this court, the appellee may notice the cause for hearing or continue it, at his option.
2. No one should take advantage of his own remissness, to the prejudice of the other party.

{In admiralty. Libel by Frederick W. Backus against the schooner Marengo on a contract of affreightment. Decree for libelant, (unreported.) Respondents appealed, and now move for a continuance. Denied. Appeal subsequently heard on merits, and affirmed hi Backus v. The Marengo, Case No. 712}

Mr. Holbrook, for appellant

Mr. Howard, for respondent.

BACKUS v. The MARENGO.

OPINION OF THE COURT. On the 6th of June last, the notice of appeal in this case was entered in the district court. The record was filed a day or two since, and a motion is now made by the appellant to continue the cause.

The rule on this subject declares, "that eight days' notice of hearing on appeal shall in all cases be given, by the service thereof on the adverse party, or on his proctor. When an appeal from a decree in the district court is interposed less than twenty days before the next stated session of this court, the appellee may, at his option, notice the cause for hearing at such session, on the first or either day thereof, or have the same continued to the next stated session. When an appeal from the decree of the district court is interposed, twenty days before the next stated session of this court, it may be noticed for hearing at such session by either party."

As this case was appealed within less than twenty days before this term, the appellee has a right to notice the cause for hearing on the first day of court, or to continue it as he may prefer. This avoids delay and is just. If the appellant do not file the record in time, the other party may continue the cause. The motion for a continuance is overruled.

BACKUS, (MILLER'S FALLS CO. v.) See Case No. 9,598.

BACKUS. (UNITED STATES v.) See Case No. 14,491.

¹ [Reported by Hon. John McLean, Circuit-Justice.]