

Case No. 15,335.

UNITED STATES V. HAYNES ET AL.

{2 McLean, 155.}<sup>1</sup>

Circuit Court, D. Ohio.

July Term, 1840.

APPEALS FROM DISTRICT TO CIRCUIT COURTS.

1. An appeal from the district, to the circuit court, must be prayed for and allowed, to the next circuit court held within the district.

{Cited in *The Oriental*, Case No. 10,570.}

{Cited in *The Zephyr v. Brown* (Wash.) 3 Pac 187.}

2. Appeals from the district, to the circuit court, are limited to cases of admiralty and maritime jurisdiction. All other cases from the district, to the circuit court, are removed by writ of error.

{Cited in *Ruddick v. Billings*, Case No. 12,110; *Wheaton v. U. S.*, Id. 17,487; *U. S. v. Thirty-Seven Barrels of Rum*, Id. 16,467.}

{Appeal from the district court of the United States for the district of Ohio.

{This was an action by the United States against E. S. Haynes and others brought in the district court (case unreported), on an official bond. The case is now before the court on appeal.}

The District Attorney, for the United States.

Mr. Swayne, for defendant

OPINION OF THE COURT. This is an appeal from the judgment of the district court. A motion, to dismiss the appeal, is made by the defendants' counsel, on two grounds: First, because it does not appear that any appeal was prayed or allowed by the district court; second, because an appeal does not lie in such a case.

By the twenty-first section of the judiciary act of 1789 [1 Stat. 83], in case of an appeal from the district, to the circuit court, it must be entered and allowed to the next circuit court held within the district. *Montgomery v. The Betsey* [Case No. 9,734]; *Norton v. Rich* [Id. 10,352]. This is an action brought on an official bond, and, in such a case, no appeal lies from the district, to the circuit court.

In the case of *U. S. v. Nourse*, 6 Pet. [31 U. S.] 495, the supreme court say, the jurisdiction of the district court is limited to cases at law, and of admiralty and maritime jurisdiction. From all decrees over a certain amount, in the latter, appeals may be taken to the circuit court; but judgments of law must be removed by writ of error. The act of 1803 [2 Stat. 244], which provides that, "from all final judgments or decrees in any of the district courts, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed in the circuit court," the supreme court, in the above case, say, made no alterations in the law of 1789, as it respects appeals to the circuit court, except in reducing the sum or matter in controversy from three hundred, to

fifty dollars, on which such appeals shall be allowed. [U. S. v. Cox] 11 Pet. [36 U. S.] 166.

The appeal must be dismissed on both grounds taken in the motion.

<sup>1</sup> [Reported by Hon. John McLean. Circuit Justice.]