

THE CANARY NO. 2.<sup>1</sup>*Circuit Court, S. D. Alabama.*

June, 1884.

## 1. ADMIRALTY PRACTICE—TERMS OF COURT.

From the commencement to the end of a term there is, in contemplation of law, but one sitting, although there may be adjournments or recesses.

## 2. SAME—APPEAL—TIME FOR PERFECTING.

In the absence of any general rule or special order fixing the time within which the bond must be given, the appellant has, under admiralty rule 45, thirty days from the rendition of the decree within which to perfect his appeal.

## 3. SAME—WHEN RETURNABLE.

No order of the district court fixing the return is necessary. The law makes the appeal returnable to the next term of the circuit court.

## 4. SAME—APPEAL BOND.

The form of appeal bond given by BENEDICT for Southern district of New York is good.

## 5. SAME—BY WHOM TAKEN.

Appeal bonds may be taken before a United States commissioner, in absence of a rule of court providing otherwise.

On Motion to Dismiss Appeal.

*Hannis Taylor*, for libellant.

*J. L. & G. L. Smith*, for claimants.

PARDEE, J. The decree appealed from was rendered in the district court, February 1, 1884, and at the same time an appeal was allowed and amount of bond fixed. February 9th a bond taken and approved by McKinstry, United States commissioner, was filed. The term of the district court ended, as appears by the certificate of the clerk, March 19, 1884.

1. The bond was filed during the term at which the decree was rendered. The court sits in terms twice a year, fixed by law. From the commencement of a term until the end, (although there may be adjournments or

recesses, whether from day to day or with intervals of several days,) there is, in contemplation of law, but one sitting during a term.

2. In this case no time was fixed, either by the general rules of the court or by special order, within which the bond was to be given, and therefore, as I understand rule 45, (Adm. Rules,) the appellant had 30 days from the rendition of the decree, within which delay he did perfect his appeal.

3. It is not necessary that the district court, in allowing an appeal, should specify that it should be to the next term of the circuit court. The law sends the appeal to the next term of the circuit court. There is no dispute that this is the proper term of the circuit court to consider the appeal.

4. The bond is in the form given by BENEDICT for the Southern district of New York, and is in accordance with the practice in this 537 district as I have observed it. I think it is sufficient to protect the appellees.

5. In the absence of a rule of court providing otherwise, appeal bonds in admiralty may be taken before a United States commissioner. Rev. St. § 945.

The motion to dismiss must be overruled.

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar

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