

pellant's infringement. Our decree, however, was perhaps too broad, and should be modified.

The order of the court is that the motion to vacate the proceedings in this cause, and to dismiss the appeal for want of jurisdiction, be denied; that our former decree, remanding the cause, with directions to dismiss the bill, with costs, be, and the same is, modified so as to direct the cause to be remanded to the circuit court, with instructions to dissolve and dismiss the injunction granted in said court; and that appellee pay the costs, and that the rehearing applied for be denied.

COULLIETTE *et al.* v. THOMASON *et al.*

(Circuit Court of Appeals, Fifth Circuit. June 6, 1892.)

No. 18.

APPEAL TO CIRCUIT COURT OF APPEALS—TIME OF TAKING—DISMISSAL.

An appeal taken to the circuit court of appeals more than six months after entry of the decree must be dismissed, under Judiciary Act 1891, § 11.

Appeal from the Circuit Court of the United States for the Western District of Louisiana.

In Equity. Bill by J. Sidney Coulliette and others against Mrs. Mary H. Thomason and L. B. Thomason to recover certain lands and for an accounting. Decree rejecting complainants' demands, and quieting title in defendant Mary H. Thomason, as against them. Complainants appeal. Appeal dismissed.

Boutner & Lankin, for appellants.

Frank N. Butler, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

PARDEE, Circuit Judge. The appellees filed a motion to dismiss the appeal in this case because no assignment of errors was filed in the court below, or forms part of the transcript of record. The failure to make an assignment of errors, under rule 11 of the rules of this court, is sufficient ground to refuse to hear counsel, but not, perhaps, in all cases sufficient to dismiss the appeal. In this case, however, we find, not only an omission of the assignment of errors, but a failure to file briefs, and that an examination of the record does not show any plain error in the decree appealed from. And we notice in the record that the decree appealed from in the court below was rendered on the 11th day of October, 1890; that the motion and order for appeal to this court were not made nor granted until September 10, 1891, more than six months after the date of the entry of the decree appealed from; that the order allowing the appeal made the same returnable more than 30 days after the date thereof; and that the citation was made returnable more than 30 days thereafter. The fact alone that the appeal was not taken until

more than six months after the entry of the decree appealed from (section 11 of the judiciary act of 1891) requires the appeal to be dismissed, and it is so ordered.

In re PASSAVANT *et al.*

(Circuit Court, S. D. New York. May 18, 1892.)

1. BOARD OF APPRAISERS—VALUATION—REVIEW BY CIRCUIT COURT—PRACTICE.

Where a board of three general appraisers, acting under Act Cong. June 10, 1890, § 13, on reappraisal appraised the value of imported merchandise more than 10 per cent. above the value declared in the importer's entry, and the additional duties provided for in section 7 of the same act thereupon accrued and were exacted by the collector, no appeal from or review of the decision of the collector in assessing such additional duties is provided for under said act.

2. SAME.

Whether or not any relief can be secured by an importer where there has been fundamental error in fixing the value, none is to be found under the act of June 10, 1890, by appeal or review in the circuit court.

3. SAME—QUESTIONS DETERMINED.

An appeal to or review by the circuit court under section 15 of said act is restricted to questions of law and fact involved in the decisions of the appraisers respecting the classification of merchandise and the rate of duty imposed thereon under such classification.

At Law. Motion to dismiss appeal for want of jurisdiction. **Granted.**

On an importation of leather gloves by Passavant & Co. the value thereof was advanced by the appraiser to an amount exceeding by more than 10 per cent. the value of the same as declared by the importers upon entry. Objection was made by the importers, and a reappraisal was made by one of the general appraisers, and on further objection of the importers the matter was sent to the board of three general appraisers, under the provisions of section 13 of the customs administrative act of June 10, 1890, who examined and decided the case thus submitted, and sustained the increased valuation of the merchandise. The collector of the port of New York thereupon levied and assessed duty thereon at 50 per cent. *ad valorem* under paragraph 458 of the tariff act of October 1, 1890, and also, in addition thereto, (by reason of the increased valuation,) a further sum equal to 2 per cent. of the total appraised value for each 1 per cent. that such appraised value exceeded the value declared in the entry, under and by virtue of the provisions of section 7 of the customs administrative act of June 10, 1890. The importers served a protest upon the collector against his assessment of duty for all excess above 50 per cent., and upon any greater value than the entered value, claiming that no legal reappraisal had been made in accordance with the act of June 10, 1890; that the board of appraisers had declined to receive or entertain evidence offered by the importer as to the true market value of the goods; determined the case upon values given by special agents of the treasury; took and acted upon evidence of persons not experts, who had no personal knowledge of the value of gloves in the markets