

## Syllabus.

of New Jersey, on the 11th of July, 1866, and that Ruckman sued out a writ of error from this court, gave bond and had citation signed, but never docketed the case here. Ruckman died on the 5th of November, 1882, and Demarest in the summer of 1883.

Upon these facts it is clear that the writ of error had become inoperative for want of prosecution long before it abated by the death of the parties. *Grigsby v. Purcell*, 99 U. S. 505, and cases there cited. The exact date when the writ was sued out is not stated, but if it had been delayed until five years after the judgment, there was no time within ten years before the death of Ruckman that he would have been allowed to docket the case in this court, since that could only be done during the term to which the writ was returnable. It seems to us proper, therefore, to declare the suit abated by the death of the parties, and leave the representatives of those in interest to proceed accordingly. An order to that effect may be entered.

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BEAN & Another v. PATTERSON & Another.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
WESTERN DISTRICT OF MISSOURI.

Submitted January 28th, 1884.—Decided February 4th, 1884.

*Fees—Practice.*

When a party has printed the transcript of the record at his own expense, the case may be docketed without security for the fee allowed the clerk by Rule 24, § 7: but the printed copies cannot be delivered to the justice or the parties for use on final hearing or on any motion in the progress of the cause unless the fee is paid when demanded by the clerk in time to enable him to make his examinations and perform his other duties in connection with the copies.

Motion for leave to docket an appeal, without security for payment of fees for printing.

*Mr. James S. Botsford* for the motion.

No counsel opposing.

## Opinion of the Court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In this case the appellants have delivered to the clerk the requisite number of copies of the record in print, and they ask to docket the cause without securing the payment of the fee chargeable under the present rules in connection with the printing.

The act of March 3, 1883, c. 143, 22 Stat. 631, making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1884, made an entire change in the emoluments of the clerk of this court. Before that act the clerk collected the fees of his office, paid the expenses, and kept what remained as his own compensation. He was not accountable to the government or to any one else for the income. The act of 1883 established a maximum for his annual compensation, and required him to pay into the Treasury all the fees and emoluments of the office over his salary, necessary clerk hire, and incidental expenses.

The same act made it the duty of the court to prepare a table of fees to be charged by the clerk. This was done, and among the rest is the following :

"For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio." Rule 24, sec. 7.

The clerk is responsible to the court for the correctness and proper indexing of the printed copies of the record, for their presentation to the justices in the form and of the size prescribed by the rules, and for their delivery when required to the parties entitled thereto. As he must now account to the Treasury for the fees and emoluments of his office, he may demand payment in advance. *Steever v. Rickman*, 109 U. S. 74. If the printing is actually done under his supervision he may require the payment of the fee chargeable under the rule before the printing is done. If the parties themselves furnish the printed copies, the fee must be paid, if demanded, in time to enable him to make the necessary examinations and be ready to deliver the copies to the parties or their counsel and to the



## Syllabus.

court when needed for any purpose in the progress of the cause. The fee is for the service specified in this item of the table, and is indivisible. Consequently, if the clerk performs any part of the service he is entitled to collect the whole fee; and if the printed record is used at all, it must be examined by him to see if it conforms to the copy certified below and on file as the transcript of the record. So that if the printed copies are used for any purpose in the progress of the cause the whole fee is chargeable. As the law now stands the fees and emoluments of the office belong to the government, subject only to the payment of the annual salary of the clerk, necessary clerk hire, and incidental expenses, and the clerk is the collecting agent for the government.

As this record has been printed the case may be docketed without security for this fee, but the printed copies cannot be delivered to the justices or the parties for use on the final hearing or on any motion in the progress of the cause unless the fee is paid when demanded by the clerk in time to enable him to make his examinations and perform his other duties in connection with the copies.

Rule 31 relates only to the form and size of the printed records, briefs, and arguments, and has nothing to do with the fee now in question.



## CONRO &amp; Another v. CRANE &amp; Another.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS.

Argued January 24th, 25th, 1884.—Decided March 3d, 1884.

*Bankruptcy—Sale.*

Property was sold to H, by order of a court of bankruptcy. He not paying for it, the court, without notice to him, vacated the order of sale, and made an order selling it to C, who paid for it, and went into possession of it. Afterwards, on review, the sale to C was set aside, and the sale to H reinstated. H, having paid for the property, received possession of it, and afterwards the money paid by C was repaid to him: *Held*, that C was not liable to pay to H the profits derived by him from the use of the property while he had it.