

## Cases Omitted in the Reports.

The motion, in fact, as now modified, is equivalent to a motion for a rehearing, and cannot be entertained. The decree is in exact conformity to our intention, and must stand as it has been entered.

*The motion is denied.*

*Mr. P. Phillips* for the motion. *Mr. W. A. Beach* opposing.

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JONES v. GROVER AND BAKER SEWING MACHINE COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

No. 231. October Term, 1877.—Decided February 18, 1878.

A bill of exceptions, signed after the term at which the judgment was rendered, without the consent of the parties or an express order of court to that effect made during the term, will not be considered part of the record, except under very extraordinary circumstances.

The court cannot pass upon an exception to the admission of a paper in evidence at the trial, if the record contains no copy of it.

THE case is stated in the opinion.

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

In *Müller v. Ehlers*, 91 U. S. 249, after reviewing the earlier cases, we decided that, save under very extraordinary circumstances, a bill of exceptions signed after the term at which the judgment was rendered, without the consent of parties, or an express order of the court to that effect made during the term, could not be considered part of the record in a cause. This rule excludes from this record the bill of exceptions signed October 9, 1875. The judgment was rendered at the June Term of that year, the writ of error sued out July 16, and the citation served the same day. The authentication of the transcript of the record annexed to and returned with the writ, as required by § 997 Rev. Stat., bears date October 7, and the bill of exceptions, signed as it was after that time, is simply appended to what was thus authenticated. There is nothing to show that it was ever even filed in the office of the clerk of the court. Certainly such a paper cannot be considered here.

The note of exception which does appear in the record, and upon which the only error insisted upon in the argument is assigned, contains neither a copy of the rejected agreement nor any statement of its contents. We can only reverse a judgment for error actually

## APPENDIX.

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*Sawyer v. Weaver.*

appearing. Every presumption is in favor of the correctness of the ruling below, and until we know from the record what the paper offered in evidence was we cannot say that the court improperly excluded it.

*Judgment affirmed.*

*Mr. Isaac I. Post* and *Mr. J. Hubley Ashton* for plaintiffs in error.  
*Mr. Enoch Totten* for defendant in error.

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### SAWYER v. WEAVER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 239. October Term, 1877. — Decided March 25, 1878.

A deed of trust from the vendee of real estate to the vendor, to secure the payment of part of the purchase-money, recited that there was an indebtedness on the property of eight promissory notes, each for \$1000 with interest, as appeared by a deed referred to, which were to be assumed by the vendee as part consideration of the sale, and the vendor saved harmless therefrom. By reference to the deed it appeared that these notes were payable in one, two, three, etc., years respectively, with interest; *Held*, that the interest on each of these notes was payable on its maturity, and, no fraud or mistake being shown, that the obligation of the vendee to protect the vendor extended to the payment of the overdue interest on the specified notes, as well as the principal.

IN EQUITY. The case is stated in the opinion.

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

The undertaking on the part of Frederick P. Sawyer, the defendant, in respect to the payment of the indebtedness to North is thus expressed in the deed of trust executed by him, on receipt of the conveyance from Weaver, to secure the payment of the balance of his purchase-money:

“ And whereas there is now an indebtedness on said property of eight promissory notes of S. D. Castleman and said Weaver, each for \$1000 with interest, as will appear by deed recorded in liber No. 640, folio 474, and part of the consideration of this sale is that the said Sawyer should assume said indebtedness and pay the same, and hold the said Weaver harmless therefrom.”

The deed referred to is dated March 24, 1871, and states the indebtedness to be “ in the sum of ten thousand dollars, for which amount he (North) holds the ten joint and several promissory notes of the said Castleman and Weaver, bearing date on the 17th day of March, A.D. 1871, each for the sum of one thousand dollars, pay-