tions after the plaintiff had left the Territory. It was all wholly immaterial.

Nor was there error in any of the rulings of the court admitting evidence to show the market value of the property taken and converted.

The judgment is, therefore affirmed, and the record is ordered to be remitted to the Supreme Court of the State of Colorado.

Mr. W. Willoughby and *Mr. J. W. Denver* for plaintiff in error. *Mr. John Q. Charles* for defendant in error.

ELIZABETH *v.* AMERICAN NICHOLSON PAVEMENT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

No. 203. October Term, 1877. Original motion in the cause made at October Term, 1878. — Decided November 25, 1878.

This court has power at any time to amend a decree which has by inadvertence or mistake been entered in a different form from that in which the court intended it.

When a joint decree is made in the court below against two or more parties, and the decree is found to be correct as to some of the parties, and incorrect as to the others, the ordinary and proper practice is to reverse it as an entirety, and remand the cause for a new decree; but when such a decree does not affect the rights of the different parties in a different manner, as, for instance, when it is found right in all respects, except as to the amount, the court sometimes reverses it in part and affirms it in part, this being always within the discretion of the court.

This was, in substance, a motion to amend the decree of the court, as not being in conformity with its opinion. *Elizabeth* v. *Pavement Co.*, 97 U. S. 126. The case is stated in the opinion.

Mr. Justice Bradley delivered the opinion of the court.

A motion is made in this case to amend the mandate so as to conform to the opinion delivered by the court at the last day of October Term, 1877. The motion cannot be entertained in the form in which it is made, because no mandate has in fact ever been issued in the case. The appellee, however, desires to convert the notice into one for amending the decree on the ground that it does not conform to the opinion. We have examined the decree and find that it does conform precisely to the opinion. The last sentence of the opinion is in these words: "The decree of the Circuit Court,

therefore, must be reversed with costs, and the cause remanded to said court with instructions to enter a decree in conformity with this opinion." The decree of this court exactly follows this announcement; it reverses the decree of the Circuit Court and remands the cause, with instructions to enter a decree in conformity with the opinion. We do not see any mistake at all in the form of entering the decree. We have no doubt of our power at any time to amend a decree which has by inadvertence or mistake been entered in a different form from that in which we intended it. As said by *Mr. Justice Strong*, delivering the opinion of the court in the case of *Insurance Co.* v. *Boon*, 95 U. S. 117, 125: "It is familiar doctrine that courts always have jurisdiction over their records to make them conform to what was actually done at the time." But we see no occasion for exerting any such power in this case.

The learned counsel for the appellee supposes that, in view of the conclusion to which the court came, as expressed in its opinion, it ought to have entered a different decree from that which it saw fit to enter. If it were necessary for the court at this time to enter upon a defence of its action, we should have no difficulty in showing that it was the proper course to take. The conclusion referred to was, that the decree of the Circuit Court, which was a joint decree against three parties, would have been correct if it had been made against one of them and not against the others. The counsel of the appellee contends that, having come to that conclusion, we ought to have affirmed the decree as to the one party against whom such a decree might have been made, and reversed it as to the others. But we do not think so. The decree of the Circuit Court was wrong. All the defendants joined in an appeal for its reversal; and it was the ordinary course to reverse the decree as an entirety and to remand the cause for a new decree. We have in some cases, it is true, affirmed a decree in part, and reversed it in part where such a course did not affect the interest of different parties in a different manner, as might have been the case here had we come to the conclusion that the decree was right in all respects except as to the amount. But even then it would have been in the discretion of the court to have reversed the decree and remanded the cause for correction. This, as before said, is the ordinary course; and if in any case we depart from it, it is in the exercise of that discretion which the court, in view of all the circumstances of the case, has a right to exercise in reference to the particular form of its decree.

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.

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