

Cases Omitted in the Reports.

trial, there was a judgment against the city. And the city is now plaintiff in error, and seeks the reversal of the last judgment.

Counsel have labored with much zeal and ability to satisfy the court that, upon the former hearing, "One important and controlling fact was misapprehended, or did not sufficiently appear in the case at that time." But we are not convinced that there was any such misapprehension, or that any important fact escaped the observation of the court.

The judgment of the Circuit Court, therefore, must be *Affirmed*.

Under the circumstances of the case, however, we cannot say that it was prosecuted merely for delay.

The motion for affirmance with ten per cent damages must, therefore, be denied.

Mr. John W. Cary for plaintiff in error. *Mr. Wm. P. Lynde* for defendant in error.

DOWNING *v.* McCARTNEY.

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

No. 163. December Term, 1869. — Decided April 11, 1870.

An appeal by one of three complainants from a joint decree, without notice to the others and without their refusing to join in it, is dismissed.

THE case is stated in the opinion.

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

The decree below was joint against the three complainants. One only has appealed; and there is nothing in the record showing that the other complainants had notice of this appeal, or that they refused to join in it.

The appeal, therefore, must be *Dismissed*.

Mr. W. C. Goudy for appellant. *Mr. James Hughes, Mr. J. W. Denver, Mr. Charles F. Peck and Mr. L. Janin* for appellees.

WOOD *v.* RICHARDS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DIS-
TRICT OF ALABAMA.

No. 215. December Term, 1869. — Decided April 30, 1870.

The hearing on a motion for additional security on a writ of error, supported by affidavits but without notice to the opposite party, is postponed in order that notice may be given.

Baltimore Railroad v. Marshall County Supervisors.

MOTION to give security for costs, etc.

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

This is a motion in behalf of defendant in error for an order that plaintiff in error, who was also plaintiff below, give additional security for costs and damages which may be sustained by the defendant by reason of his wrongful complaint. The motion is founded on affidavits of insolvency of the sureties in the original bond, which certainly are, *prima facie*, sufficient.

But no notice of the motion appears to have been given to the plaintiff in error; and he has had no opportunity to put in counter affidavits.

The hearing of the motion will, therefore, be postponed until the first motion day in November next, in order that proper notice may be given.

Mr. L. P. Poland and *Mr. George S. Boutwell* for the motion.
Mr. P. Phillips opposing.

THE BALTIMORE & OHIO RAILROAD v. MARSHALL
COUNTY SUPERVISORS.

CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE
CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST
VIRGINIA.

No. 267. December Term, 1869. — Decided December 13, 1869.

This court has jurisdiction of a case brought up on a certificate of division of opinion on the question whether the Circuit Court has jurisdiction of it.

A motion to advance is denied, because not coming within the 30th rule.

THE case is stated in the opinion.

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

The motion, to dismiss this case for want of jurisdiction, must be denied. It comes here upon a certificate of division of opinion, and the principal point certified is whether the Circuit Court has jurisdiction. It is quite clear that this court has jurisdiction to determine that point.

A motion has also been made to advance the cause upon the docket on the ground that very important interests of the State of West Virginia are involved in the litigation.

The case, however, does not come within any of the exceptions to the 30th rule, which requires that all cases shall be heard when