reached in the regular call of the docket, and in the order in which they are entered.

We are obliged, therefore, to deny the motions.

Both motions denied.

Mr. B. Stanton and *Mr. D. Lamb* for the motions. *Mr. J. H. B. Latrobe* and *Mr. J. R. Tucker* opposing.

COX *v.* UNITED STATES *ex rel.* McGARRAHAN.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 337. December Term, 1869. — Decided January 19, 1870.

The court deny a motion to rescind an order advancing this cause founded upon the fact that the writ of error to the judgment below was allowed November 30, 1869, less than thirty days before the first day of the present term, which began December 6, 1869.

This was a motion to rescind an order, made December 13, 1869, advancing this case for trial. The case is stated in the opinion.

Mr. Chief Justice Chase delivered the opinion of the court.

We have considered the objection made by *Mr. Phillips* to the hearing, during the present term, of the case of *The Secretary of the Interior* v. *McGarrahan*. It is founded upon the fact that the writ of error to the judgment of the Supreme Court of the District of Columbia, directing the issue of a peremptory *mandamus* to the Secretary was allowed on the 30th November, 1869, less than thirty days before the first day of the present term began, on the sixth of the present month.

The citations and the writ of error were both served on the same day. The 22d section of the Judiciary Act, taken in connection with the act of 1803, provides for the re-examination of cases on writ of error, the adverse party having at least thirty days' notice. This provision does not necessarily require that the thirty days' notice shall be given prior to the first day of the term; but in the case of *Welsh* v. *Mandeville*, 5 Cranch, 321, the court held as a matter of discretion, that they would not compel the hearing of the cause at the first term unless such notice had been given, and this decision was made the rule of the court. This decision was made in accordance with a rule of the court adopted February Term, 1803, 1 Wheat. xvi, Rule XVI, that where the writ of error issued within thirty days before the meeting of the court, the defendant is at liberty

to enter his appearance and proceed to trial; otherwise, the cause must be continued. The above decision seems to have been made in 1809. By the rule adopted February Term 1821, 1 Pet. xxiv, Rule XIX, § 1, it was made the duty of the plaintiff to docket the cause or file the record within the first six days of the term, on failure of which the defendant might docket the cause and file the record; and thereupon the cause was to stand for trial as if the record had been filed within the first six days. The defendant had the option, upon a certificate of the clerk of the court where the judgment was rendered, to have the cause continued or dismissed without hearing. *Motion denied.*

Mr. Attorney General and *Mr. J. Hubley Ashton* for plaintiff in error. *Mr. P. Phillips* and *Mr. A. L. Merriman* for defendants in error.

On the denial of this motion the argument of the cause proceeded. The case is reported in 9 Wall. at page 298.

PEYTON *v.* HEINEKIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

No. 127. December Term, 1871. — Decided April 15, 1872.

There is no merit in any of the defences set up here; and, it being apparent that the appeal was taken for the purpose of delay, the judgment below is affirmed with interest and 10 per cent damages.

In a contract between a commission merchant in New York and a person in another State that the latter shall send merchandise to the former to be sold, and that the former shall make advances on it to be repaid with commissions and interest out of the sales, the rate of interest is to be determined by the laws of New York, the place of performance.

A factor who insures goods consigned to him for the benefit of his principal may recover from him the cost of the insurance.

The case is stated in the opinion.

Mr. Justice Strong delivered the opinion of the court.

There is no merit in any of the exceptions which have been taken to this decree. The contract, which was a deed of trust to secure the repayment of future advances, defined with sufficient certainty the property conveyed, and there could have been no difficulty in identifying it even without reference to the deeds of the grantor. These deeds were, however, referred to as parts of the description, and they may, therefore, be called in aid of the description, if it