Under such circumstances, it was of no consequence what the secret understanding of the partners may have been as to the powers of each. The contract being within the scope of the partnership business, each partner is presumed to be the authorized agent of all.

As to the fourth question. A simple statement of the facts is all that is necessary to dispose of this question. The plaintiff was the president of the corporation, maker of the note guaranteed. On the books he was charged with moneys paid to him from time to time and credited with a salary and interest on his investment in stock. After he went out of office his successor settled with him and paid the balance found to be his due. The books were thereupon balanced. The plaintiffs in error sought to set off against their liability as guarantors of the note, the items which appeared on the debit side of the account, without any regard to the credits. As to this, the court instructed the jury that they "must be satisfied that the company itself could use the same set-off against the note before the defendants could avail themselves of it, and that if they were satisfied from the evidence that the plaintiff's account stood balanced on the books of the company as kept, then the defendants could not set up the account as a set-off to the note without showing fraud or mistake in striking such balance." There can be no doubt as to the correctness of this ruling.

This covers substantially all there is in the case. The other errors assigned are unimportant and need not be considered specially.

The judgment is affirmed.

Mr. George Herbert for plaintiffs in error. *Mr. Charles Hitchcock* for defendant in error.

GIBBS *v.* DIEKMA.

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

No. 88. October Term, 1880. — Decided December 13, 1880.

An objection on the ground of the non-joinder of parties who are proper but not indispensable parties cannot be made for the first time in this court.

This court has power to adjudge damages for delay on appeals as well as writs of error, and this power is not confined to money judgments.

The case is stated in the opinion.

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

The contract with Risdon embraced the lands specifically described

and no more. The last clause in the contract was evidently added by way of limitation, so as to exclude from the sale any of the parcels specifically described which should be found to have been previously contracted to other parties. The order on the Commissioner of the Land Office in favor of Gibbs was for patents for the lands sold Risdon, as described in his contract. No other reasonable interpretation can be put on the language of that instrument. It follows that Gibbs took the title to all lands patented to him, and not included in the Risdon contract, in trust for the complainants.

If either Risdon or the other vendees of the complainants were proper parties to the suit, they certainly were not indispensable parties. The objection that they have not been joined in the suit comes, therefore, too late in this court. The claim that the complainants are not entitled to a decree because in some cases title was left in the State to avoid the payment of taxes, is frivolous.

The decree is affirmed, and it is so apparent the appeal was vexatious and for delay only, that we adjudge to the appellees five hundred dollars as just damages for their delay. While § 1010 of the Revised Statutes includes, in express terms, writs of error only, § 1012 provides that appeals from the Circuit and District Courts shall be subject to the same rules, regulations and restrictions as are or may be prescribed in law in cases of writs of error. This gives us authority to adjudge damages for delay on appeals as well as writs of error, and our power is not confined to money judgments only. *Affirmed.*

Mr. Alfred Russell and *Mr. Nathaniel Wilson* for appellant. *Mr. J. W. Stone* for appellees.

KAISER *v.* STICKNEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 90. October Term, 1880. — Decided December 13, 1880.

In the District of Columbia a valid note of the husband may be secured by a deed of trust of the general property of the wife, executed by husband and wife in the manner required by law.

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

It is very clear that the property in question was not, under the provisions of § 727 of the Revised Statutes of the District of Columbia, the sole and separate property of Mrs. Kaiser. She could