

## Counsel for Parties.

The cases at bar afford a good illustration of the rule of law, and of its application, as stated by Blackstone: "Indeed every continuance of a nuisance is held to be a fresh one; and therefore a fresh action will lie, and very exemplary damages will probably be given, if, after one verdict against him, the defendant has the hardiness to continue it." 3 Bl. Com. 220.

If the damages assessed by the jury in either of these two actions were thought excessive, the defendant's only remedy was by motion for a new trial in the court below, and that has already been resorted to without success. 5 Mackey, 269.

*Judgments affirmed.*

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LLOYD v. McWILLIAMS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF RHODE ISLAND.

No. 109. Argued and submitted December 10, 1890. — Decided December 15, 1890.

When a trial by jury in a Circuit Court is waived by agreement, and the case is tried by the court, no questions are open for revision here, unless the record shows a finding of facts in accordance with the provisions of Rev. Stat. §§ 649, 700; and in such case, when brought here, the judgment of the Circuit Court will be presumed to be right and will be affirmed, if it appears that that court had jurisdiction of the subject matter and of the parties.

THIS was an action to recover duties alleged to have been illegally exacted. When the cause was reached on the docket, argument was begun on the part of the plaintiff in error; but the court interrupted the counsel and declined to hear further argument. The case is stated in the opinion.

*Mr. J. P. Tucker* for plaintiff in error. *Mr. Charles Levi Woodbury* was with him.

*Mr. Assistant Attorney General Maury* for defendant in error.

## Argument for the Motion.

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

In this cause, trial by jury was waived by agreement of the parties in writing, duly filed, and the case was tried by the court. But the record discloses no finding upon the facts, either general or special, in accordance with the statute, (Rev. Stat. §§ 649, 700,) and no questions are therefore open to our revision as an appellate tribunal.

As the Circuit Court had jurisdiction of the subject matter and the parties, its judgment must be presumed to be right, and on that ground

*Affirmed.*

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SMITH v. GALE.APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF  
DAKOTA.

No. 580. Submitted December 22, 1890. — Decided January 5, 1891.

The day of the entry of judgment or decree must be excluded in computing the time for taking an appeal or bringing a writ of error to review it.

THIS was a motion to dismiss an appeal, on the ground that it "was not taken within the time prescribed by law." It appeared that the final decree was entered of record by the Supreme Court of the Territory of Dakota, on the 25th of May, 1886. The appeal from this decision was allowed, the supersedeas bond was offered and the citation was signed on the 25th day of May, 1888, by the chief justice of that court, and these papers were all filed on that day in the clerk's office of that court.

*Mr. A. G. Safford* and *Mr. Park Davis* (with whom was *Mr. Melvin Grigsby*) for the motion.

Final judgment was entered in this action on the 25th day of May, 1886, and the appeal to this court was allowed on the 25th day of May, 1888. This motion is made upon the ground that the appeal was not taken within the prescribed time.