reasonable diligence would have enabled Dickinson and his legal representatives to have ascertained who the heirs of Rogers were. His father and heir resided in the same state with Dickinson, for many years; and the acting executor under the will of the father did not remove into Kentucky until several years after the probate of the *will. There is, therefore, [*434
no ground, upon which the gross *laches* or indifference of the parties can be reasonably excused. And such a long silence does, as we have already intimated, justly lead to the conclusion of a consciousness, that the right, if any, was exceedingly doubtful. In the meantime, the property has materially risen in value, from the general improvement and settlement of the country, and this furnishes an additional reason for not disturbing the existing rights of property. This view of the case renders it unnecessary to consider the other point, as to the non-joinder of proper parties.

The bill contains no alternative prayer for a return of the 45*l.*, if specific performance should not be decreed; and, under the circumstances, we are of opinion, that it ought not to be decreed, under this bill, upon the prayer for general relief, it not being a case specially made by the bill. The decree of the court below will, therefore, be affirmed. As the general dismissal of the bill will not, in our judgment, under the circumstances, operate as a bar to future proceedings at law, to recover the 45*l.*, if an action be otherwise maintainable, we do not think it necessary to dismiss the bill, without prejudice, thereby throwing the burden of the costs of the reversal upon the defendant. The plaintiff may, therefore, well be left to his legal remedy, such as it is, for any indemnification under the contract. Decree affirmed.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.

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*Eliza Brown, Appellant, *v.* Frances Swann and others. [*435

Practice.

An appeal was taken at the December term 1832 of the circuit court for the district of Columbia, to the January term 1833 of this court; but the appeal was not entered to that term, but was entered to January term 1834. The case being called for argument, the defendant asked for a continuance, which was granted.

In this case, the appeal was taken at the December term 1832 of the circuit court of the district of Columbia to the supreme court. The appeal was not entered to the next term of the court, but was entered at January term 1834. The cause being called on for argument, the defendant asked for a continuance, which was resisted by the appellant.

Marshall, Ch. J., said:—Though the case is not within any rule of this court, yet the court are of opinion, that as the appellant did not enter the appeal at the proper term, the other side ought not to be compelled peremptorily to go on with the cause at this term.