these facts, and the petition of the defendant for a writ of error, together with an allowance of it by the circuit court, in December 1838. The case was submitted to the court, without argument.

WAYNE, Justice, delivered the opinion of the court.—This case has been brought to this court on an agreed statement of facts, without any of the proceedings of the court below being in the record. It cannot appear, therefore, that this court has jurisdiction of the case; which is essential, before it can give its judgment in any cause.

We refer also to the 11th and 31st rules of this court. The 11th is as follows: "It is ordered by this court, that the clerk of the court to which any writ of error shall be directed, may make return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court." The 31st rule is: "No cause will hereafter be heard, until a complete record, containing in itself, without references *aliunde*, all the papers, exhibits, depositions and other proceedings, which are necessary to the hearing, shall be filed. The court orders this case to be dismissed.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the eastern district of Louisiana; and it appearing upon an inspection of the papers filed in the case, that it has been brought here upon an agreed statement of facts, without any of the proceedings in the court below being in the record. Whereupon, it is adjudged and ordered by this court, that this cause be and the same is hereby dismissed, with costs.

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*460] *NATHAN CARR and others, Appellants, *v.* JOSEPH HOXIE, Appellee.

Second appeal.—Supersedeas.

An original decree was made in the circuit court of Rhode Island, at June term 1834, and an appeal was taken to January term 1835, of the supreme court; this appeal was dismissed at January term 1837, on the motion of the counsel for the appellees, without an examination or decision on the merits of the cause; at the November term of the circuit court, the defendants prayed and were allowed a second appeal to the supreme court; which appeal had not been yet entered on the docket of the supreme court; the circuit court afterwards proceeded to order execution of the decree of 1834, and the defendant appealed to the supreme court from this decree: *Held*, that this appeal from the decree of the circuit court, ordering the execution of the original decree, was not a *supersedeas* to further proceedings in the circuit court to execute the original decree; and that the circuit court was at liberty to use its discretion to proceed to execute the original decree: *Held*, also, that the decree of execution was not a final decree, in the contemplation of the act of congress, from which an appeal lies.

APPEAL from the Circuit Court of Rhode Island. In the circuit court for the district of Rhode Island, at June term 1834, in the case of Joseph Hoxie against Nathan Carr and others, a decree was rendered for the complainant on a bill of equity filed in that court. From this decree, the defendants appealed to the supreme court of the United States, to January term 1835. At January term 1837, on motion of Mr. Green, of counsel for the appellees, the appeal was dismissed; and a certificate thereof having been sent to the circuit court that court, proceeded, at November term 1837, to order and decree the execution and decree made at the June term 1836. The court de-

creed a sale of the property, according to its decree of 1836; and that the proceeds thereof should be brought into the registry, to be paid and applied as ordered in and by the original decree. From this decree, the defendants prayed for an appeal to the supreme court, which was allowed. The record brought up on this appeal contained no part of the proceedings on the original bill in which there was a decree in 1834. It presented nothing but the proceedings of the circuit court of Rhode Island, in November 1837, and the decree of the supreme court of the United States dismissing the appeal, and the decree of the circuit court in the original suit, at June term 1834, with the decree of the court on the 5th day of November 1837, ordering the execution of the same. The proceedings in the original bill were not again brought up to the supreme court, by a second appeal in that case.

The case was argued by *Tillinghast*, for the appellants; and by *Coxe*, for the appellee.

Tillinghast stated, that the only question now before the court was whether this appeal could be sustained. The appeal in the original case was dismissed, on *the motion of the counsel for the appellee, at the January term 1837. This was done, in the absence of the counsel for the appellants, and there was no decision of this court on the merits of the cause. It was a dismissal for want of the prosecution of the appeal. Five years have not yet elapsed since the decision of the circuit court in the original bill; and the act of congress (1 U. S. Stat. 85) gives five years for an appeal. *[461

It is claimed, that if an appeal is dismissed for any other cause than a decision on the merits, it is not a final dismissal, another appeal may be prosecuted. The case stands as if no appeal had been taken. The right to appeal is not lost by the action of the circuit court in allowing the first appeal. Has it been lost by the action of this court, in dismissing the first appeal. Unquestionably, according to the rules of this court; but with no decision on the merits of the controversy in the cause. The parties have a right to the judgment of this court on the merits; and the act of congress gives them five years, in which they may claim that judgment on an appeal. If, on the first appeal, from accident, or from any other cause, no such decision was obtained, they have sustained the penalty which is imposed for the failure to prosecute their appeal, by the payment of the costs. This is the whole penalty; and to go beyond it, is to defeat the purpose and object of the provision of the law relative to appeals.

Coxe, for the appellees, contended:—1. That it is not a case in which the party can appeal. 2. That in this last decree there is no error. 3. That the former proceedings are not, and cannot be now reviewed.

There are no authorities on the question whether a second appeal can be taken, after a dismissal in the first appeal, unless it be the case of the *Lessee of Wright* v. *De Klyne*, Pet. C. C. 199. In that case, it was decided, that the dismissal of a bill in chancery is not conclusive against the complainant in a court of law. In *Duval* v. *Stump's Executors*, in this court, the appeal was dismissed, the appeal not having been taken by all the parties. The proceedings were afterwards amended, and the case was brought up and decided.

In the case before the court, the appeal from the circuit court was regularly taken, and a judgment of dismissal was entered. This was a final determination of the case. To allow a second appeal, would be to allow a party to profit by his own negligence. To the appellees, this is doing great injustice; and keeps undecided questions which ought to have been settled on the first appeal. A fair construction of the act of congress is to allow a party five years in which he may prosecute an appeal; and having used that privilege, the permission given by the law has been fully used, and is at an end. There is no provision for a second appeal.

*462] *In the case before the court, the appeal has been entered on the order of the circuit court for proceedings on the original decree. It is alleged, that a second appeal has been taken in the original case, but this has not been prosecuted; the proceedings in that case have not been brought up. There are then two appeals in this same controversy; this cannot be allowed.

Story, Justice, delivered the opinion of the court.—This is an appeal from a decree in equity of the circuit court for the district of Rhode Island, made in a case where the appellant was the original defendant. The facts, so far as they are now before us upon the present record and appeal, are briefly these: The original decree was made at the June term of the circuit court 1834; and at the same term, an appeal was taken therefrom to the supreme court. The appeal was entered at January term 1835, of the supreme court, and was dismissed for want of due prosecution, at January term 1837. At the November term of the circuit court 1837, a petition was filed by the original appellant, praying for a new and second appeal from the original decree; which was granted by the court, upon bonds being given according to law. At the same term, the original plaintiff prayed for further proceedings to enforce the original decree, whereupon, a supplemental decree was passed by the court for a sale of the premises in controversy, pursuant to the original decree: and from this last decree, the original appellant also claimed an appeal, which was granted by the court, upon his giving bonds; and the case now comes before us solely upon this last appeal, the record and proceedings in the original suit not having as yet been brought up and filed in the court, in pursuance of the second appeal from the original decree already referred to. The question, therefore, whether this second appeal lies to this court, after the dismissal of the former appeal, is not now before us; and can only arise, when the original proceedings shall come before us, upon a due prosecution and entry of the second appeal. The only question now before us is, whether this second appeal is, under the circumstances, a *supersedeas* to all further proceedings in the circuit court to execute the original decree. If it is, then the appeal from the supplemental decree of sale is maintainable; otherwise, it ought to be dismissed. Upon full consideration, we are of opinion, that it is no *supersedeas;* that the circuit court is at full liberty, in its discretion, to proceed to execute the original decree, if it shall deem it advisable: and that the supplemental decree of sale is but a decree in execution of the original decree; and not a final decree, in the contemplation of the acts of congress, from which an appeal like that now before us lies. It must, therefore, be dismissed with costs. But, in order to guard against any mis-

apprehension, it is proper to add, that this dismissal is in no sense to be construed to prevent the original proceedings and decree from being brought before this court upon the second appeal taken thereto in the circuit court, for full consideration, whether it lies or not.

*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 Rhode Island, and was argued by counsel: On consideration whereof, it is the opinion of this court, that the supplemental decree of sale, in execution of the original decree in this case is, but an execution of the original decree, and not a final decree from which an appeal lies to this court. Whereupon, it is ordered, adjudged and decreed by this court, that this appeal be and the same is hereby dismissed, with costs; and that this cause be and the same is hereby remanded to the said circuit court, with directions that the said court may, in its discretion, proceed to execute the original decree, if it shall deem it advisable. [*463

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*Thomas O. Burton, Appellant, *v.* William L. Smith and others, Appellees. [*464

Lien of judgment in Virginia.

Under the laws of Virginia, in relation to lands of which the debtor has an actual seisin, although there is no statute of that state which expressly makes a judgment a lien on the lands of the debtor, yet during the existence of the right of the plaintiff to take out an *elegit*, the lien of the judgment is universally acknowledged.

All the authorities, ancient and modern, agree in this proposition, that a reversion after an estate for life is assets, or, as some of the books express it, *quasi* assets, in the hands of the heir, in regard to the bond of the ancestor, binding heirs; and that in such case, the plaintiff may take judgment of it, *quando acciderit*. Upon principle, it would seem to be clear, that whatever estate descended to the heir, which was liable as assets to the bond debt of the ancestor, must be bound by a judgment obtained against the ancestor in his lifetime.

There is a current of authorities going to prove, that a reversion after an estate for life is bound by a judgment obtained against the ancestor, from whom it immediately descended.

So far from its being proper for a court to hesitate about decreeing a sale of an interest, because it is reversionary, the character of the interest affords a stronger reason for such a decree; for although, in regard to property in present actual possession, the *elegit*, although tardy in its operation, yet is in some degree an effective remedy, inasmuch as the creditor will by that means annually receive something towards his debt; whereas, in case of a dry reversion, if the outstanding life-estate should continue during half a century, the creditor might look on in hopeless despondency, without the possibility of receiving a cent from that source, except through the interposition of the court of equity in decreeing a sale.

It is the very nature and essence of a lien, that no matter into whose hands the property goes, it passes *cum onere;* if this were not the case, it would cease to be a lien.

Appeal from the Circuit Court for the Eastern District of Virginia. The case, as stated in the opinion of the court, was as follows:

In the month of June 1829, Smith & Kennedy obtained a judgment in the circuit court, against Reuben Burton, for $1348.75, with interest from the 14th of October 1823, and costs. On this judgment, an *elegit* was issued, on the 31st of December 1827. On the 12th of August, in the same year, Reuben Burton, by deed, conveyed his real estate to certain trustees, in trust to sell the same for the benefit of his creditors; amongst many other debts enumerated in the deed, the judgment already mentioned, recovered