the case again before this court, it must be done by another writ of error. The former writ is not returnable to the present term, and cannot therefore, according to the principles which govern this common-law writ, bring the record before us.

The case of the Palmyra (12 Wheat., 1) has been referred to, where a motion similar to the present was granted by the court. And if that had been a case at common law, we might have felt ourselves bound to follow it, as establishing the law of this court. But it was a case in admiralty, where the power and jurisdiction of an appellate court is much wider upon appeal, than in a case at common law. For, in an admiralty case, you may in this court amend the pleadings, and take new evidence, so as in effect to make it a different case from that decided by the court below. And the court might well, therefore, deal with the judgment and appeal of the inferior tribunal in the same spirit. But the powers which an appellate court may lawfully exercise in an admiralty proceeding, are altogether inadmissible in a common-law suit.

The case in 3 Pet., 431, relates to cases and questions of a different character from the one before us. In that case the judgment of the court at the preceding term was amended. But the amendment was made to correct a clerical error in this court, and make the judgment conform to that which the court intended to pronounce. But this is not a motion to amend, but to reverse and annul the judgment of the last term, which was passed upon full consideration, with the case regularly and legally before us, as brought up by the writ of error.

We refer to these two cases because they have been relied on in support of the motion. But, in the judgment of the court, they stand on very different principles; and the motion, for the reasons above stated, must be overruled.

JAMES KELSEY AND THOMAS P. HOTCHKISS, PLAINTIFFS IN ERROR, *v.* ROBERT FORSYTH.

The agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own

courts, authorize a District or Circuit Court sitting in the State to depart from the modes of proceeding and rules prescribed by the acts of Congress.

Therefore, where the parties to an ejectment suit agreed to waive a trial by jury, and that both matters of law and of fact should be submitted to the decision of the court, and then a bill of exceptions was brought up to this court to all the rulings and decisions of the court below, this court cannot look into errors of fact or errors of law alleged to have been committed in such an irregular proceeding, and the judgment of the court below will be affirmed.

THIS case was brought up by writ of error from the Circuit Court of the United States for the northern district of Illinois.

It was an action of ejectment brought by Robert Forsyth, a citizen of Missouri, against Kelsey and Hotchkiss, to recover certain lots in the county of Peoria.

After some proceedings which it is not necessary to mention in this report, the cause came on for trial at December term, 1854, of the Circuit Court, when the parties filed the following agreement:

"And be it further remembered, that afterwards, to wit, upon the calling of this cause for trial, by the mutual agreement of the parties, and in accordance with the laws and practice of this State, a jury was waived, and both matters of law and fact were submitted to the court, upon the distinct understanding that the right of either party should be full and perfect to object to the admission of incompetent evidence, and the refusal to admit that which was competent; and with the same privilege of excepting to the rulings of the court in either case, as though the cause were tried by a jury; and with the right to either party to avail himself, in the Supreme Court, of any erroneous ruling in this court, precisely as though the cause had been submitted to a jury, and with liberty to either party, if it should be necessary to the hearing of this cause in the Supreme Court, to treat the evidence introduced in this cause in the nature of a special verdict."

The parties then proceeded to offer their evidence, consisting of deeds, records, &c., when the court found the issue in favor of the plaintiff, and gave judgment accordingly.

The bill of exceptions taken by the defendants recited all the evidence, and concluded thus:

"And thereupon defendants move the court to set aside said judgment, and grant them a new trial, for the reason that said decision was against the evidence in the case, which motion the court overruled. To all of which findings, rulings, decisions, and opinions, defendants then and there excepted, and prayed that this their bill of exceptions might be sealed, signed, and made of record; which is done, &c.

"Exceptions allowed, January 24, 1855.

"THOMAS DRUMMOND. [SEAL.]"

The cause was argued in this court by *Mr. Ballance*, who assigned various errors, in the judgment of the court below, relative to the merits of the case, and others in the form of proceeding. Amongst the latter, it was alleged that it was error to try the cause without a jury; and, upon the authority of Graham *v.* Bayne, 18 Howard, 60, he contended that the cause must be remanded for a *venire de novo*.

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

This is a writ of error to the Circuit Court of the United States for the northern district of Illinois.

An action of ejectment was brought by the defendants in error against the plaintiff, for a certain parcel of land described in the declaration, and upon the trial the verdict and judgment were for the plaintiff; a motion was afterwards made to set aside the judgment and for a new trial, and the judgment was accordingly set aside, and a new trial granted upon the terms mentioned in the transcript. In the proceedings upon this new trial, the parties agreed to waive a trial by jury, and that both matters of law and of fact should be submitted to the decision of the court. The case was proceeded in according to this agreement, and the court, as the record states, found the issue in favor of the plaintiff, (Forsyth,) and entered judgment accordingly; and to this decision, and to all the rulings and decisions of the court in the previous stages of the cause, the defendants (Kelsey and Hotchkiss) excepted, and sued out a writ of error to bring the case before this court.

It will be seen from this statement that in a common-law

action of ejectment the case was submitted to the court upon the evidence, without the intervention of a jury, leaving it to the court to decide the fact, as well as the law, upon the evidence and admissions before it. The case, therefore, is the same in principle with that of Guild and others *v.* Frontin, 18 How., 135. And the doctrine in that case was reaffirmed in Suydam *v.* Williamson, 20 How., 428, and the grounds upon which it rests fully set forth. It is unnecessary to repeat here what was stated in these two decisions. It is sufficient to say that the agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own courts, authorize a district or Circuit Court sitting in the State to depart from the modes of proceeding and rules prescribed by the acts of Congress.

The judgment of the Circuit Court must therefore be affirmed.

ROSS WINANS, PLAINTIFF IN ERROR, *v.* THE NEW YORK AND ERIE RAILROAD COMPANY.

Where objection was made, during the trial of a cause, to the reception of the deposition of a witness, which had been taken under a commission, it was properly overruled, because the rules of practice in the Circuit Court of New York give time and opportunity to move for a suppression of the deposition or a re-examination of the witness.

The paper which the witness referred to, but did not annex to his deposition, was not in his power.

In the trial of a suit for the violation of a patent right, the court cannot be compelled to receive the evidence of experts as to how a patent ought to be construed. The judge may obtain information from them, if he desire it.

Winans's patent for "a new and useful improvement in the construction of cars or carriages intended to travel upon railroads," was for the manner of arranging and connecting the eight wheels of a railroad carriage for the purpose of enabling burden and passenger cars to pursue a more smooth, even, and safe course over the curves and irregularities of a railroad. And it was proper to instruct the jury, that if they found, from the evidence, that before the time when Winans claimed to have made the discovery, carriages with eight wheels, arranged and connected substantially in the same manner and upon the same mechanical principles with those described in the patent, were known, and publicly used, Winans was not entitled to recover.