

THE DECISIONS
OF THE
SUPREME COURT OF THE UNITED STATES,
AT
DECEMBER TERM, 1859.

ANSON, BANGS, & Co., *v.* THE BLUE RIDGE RAILROAD COMPANY.

Where a motion was made to dismiss an appeal, upon the ground that no appeal bond had been given, time was allowed the appellants within which to file the bond. If they complied with the order, the appeal was to stand; otherwise, to be dismissed.

The appeal bond must be taken and approved by any judge or justice authorized to allow the appeal or writ of error.

THIS was an appeal from the Circuit Court of the United States for the northern district of Georgia.

A motion was made by *Mr. Phillips*, on behalf of the appellees, to dismiss the appeal, upon the ground that no appeal bond was given at the time of granting the appeal, as required by the statute, either as a security for costs or supersedeas of execution.

Mr. Johnson opposed the motion and offered to give a bond for costs, and thus prevent the dismissal, if consistent with the practice of the court.

After argument by these two counsel, Mr. Justice NELSON delivered the opinion of the court.

This is a motion to dismiss the appeal, on the part of the appellee, upon the ground that no appeal bond was given at the

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time of granting the appeal, as required by the statute, either as a security for costs or supersedeas of execution. 1 Stat. at Large, pages 84, 85, secs. 22, 23, p. 404.

It is admitted that no bond was given, but the counsel resisting the motion proposes to give one for the costs, and thus prevent the dismissal, if consistent with the practice of the court. The practice has been allowed in several cases, as will be seen by reference to 10 Wh. R., 311, 16 How., 148, and 9 Wh., 555. In the last case, time was granted within which to give the bond, or the case be dismissed. The bond may be taken and approved before any judge or justice authorized to allow the appeal or writ of error.

Let the appellant have sixty days to give the bond, and file it with the clerk, upon complying with which order the motion be dismissed; otherwise, granted.

**LEWIS TEESE AND LEWIS TEESE, JUN., PLAINTIFFS IN ERROR, v.
C. P. HUNTINGDON AND MARK HOPKINS.**

Counsel fees are not a proper element for the consideration of the jury in the estimation of damages in actions for the infringement of a patent right. This point has been directly ruled by this court, and is no longer an open question. By the fifteenth section of the patent act of the fourth of July, 1836, the defendant is permitted to plead the general issue and give any special matter in evidence, provided notice in writing may have been given to the plaintiff or his attorney thirty days before the trial.

It is not necessary that this should be served and filed by an order of the court; and it is sufficient if it was served and filed subsequently to the time when the depositions were taken and filed in court.

For the purpose of impeaching a witness, a question was asked of another witness, "What is the reputation of the (first) witness for moral character?" This question was objected to, and properly not allowed to be put by the court below.

The elementary writers and cases upon this point examined.

Another witness was asked what was the reputation of the first witness for truth and veracity, who replied that he had no means of knowing, not having had any transactions with him for five years. This question was excluded by the court, which must judge according to its discretion whether or not it applies to a time too remote.