

Statement of the case.

MERRIAM v. HAAS.

A motion to dismiss an appeal in a decree of foreclosure, in chancery, refused, though the complainant below, appellant here, had, after his appeal made, issued execution and got the amount for which the decree he appealed from, was given.

MERRIAM filed his *bill in equity* in the Federal court for Minnesota, for the foreclosure of a mortgage executed by Haas and wife for \$6000, with interest at 15 per cent.

The defendants answered, admitting the execution of the mortgage, and that \$4000 and interest (parcel of the amount so secured) was due; and they submitted to a decree for that sum. But as to the residue (\$2000 and interest) they insisted that they never owed it, because, they alleged, they had only received from Merriam the sum of \$4000, and not the sum of \$6000 as was agreed, and on the faith of which agreement the mortgage had been executed.

In June, 1861, the court gave a decree for \$4000, with interest and costs; the whole amounting to \$5271, but refused to give a decree including the \$2000 disputed. In April, 1862, the complainant appealed. On the 15th November, of the same year, that is to say, *after the appeal*, there was a sale and report of the master in execution of the decree; and on the following November, that, to wit, of 1863 (the sale not being yet confirmed), the defendant paid into court the amount for which the decree was given, with interest; which whole sum the complainant received and gave his receipt for. The case being now here, *Mr. Carlisle moved to dismiss the appeal*, "for that after the same was prayed by these appellants and allowed by the court, the decree below having been in their favor for \$5271, interest and costs, but having denied them an additional sum which they had claimed in their bill, the said appellants by their voluntary act as appears by the record, enforced and took advantage of the said decree, and accepted and received the sum thereby awarded

Statement of the case.

to them; whereby they waived their appeal, and are estopped to question the said decree in this court.

“On consideration,” &c.

“MOTION OVERRULED.”

NOTE.

This motion was decided in February, 1864, about a month before the present reporter was appointed, and is reported now by him from the records only. The decision, to which MILLER, J., referred counsel, from the bench, was much relied on by the attorney-general, in argument, in the next case; on which account specially the reporter presents the matter; though, of necessity, in an imperfect way. It may be added, that the case coming on finally to be heard on its merits, the decree below was reversed: and the case remanded, with directions to enter a decree which should give the complainant the whole \$6000 claimed by him.

UNITED STATES v. DASHIEL.

1. Where a writ of error is taken to this court by a plaintiff below, who previously to taking the writ issues execution below and gets a partial but not a complete satisfaction on his judgment, the writ will not, in consequence of such execution merely, be dismissed.
2. Levy of an execution, even if made on personal property sufficient to satisfy the execution, is not satisfaction of the judgment, and, accordingly, therefore, does not extinguish it if the levy have been abandoned at the request of the debtor and for his advantage; as *ex. gr.* the better to enable him to find purchasers for his property.

THE United States brought suit at *common law*—“debt on bond”—for \$20,085.74 against Major Dashiell, a paymaster in the army of the United States, and his sureties. Dashiell denied every part of the demand, but claimed specially a deduction of \$13,000 from the sum sued for, on the ground that while travelling in remote regions of Florida, where he was going with the whole sum in gold coin to pay the army, he had, without the least want of care on his part, been robbed of about \$16,000; as was proved among other ways by the fact that a portion of the money, \$3000, easily iden-