APPENDIX.

It is mentioned in the report of *Edmondson* v. *Bloomshire*, *supra*, p. 383, that several interesting points were raised and argued, on which, however, no opinion was given, the case having been determined in the same way to which those points were directed, though determined largely on a question of fact. It has been suggested to the reporter that some note of the points raised and authorities on them might be valuable for future reference, and on this account the present note is made. To understand them, it is necessary to state the case more fully than it is stated in the body of the book. The points arose chiefly on a motion to dismiss the appeal.

The material facts were these:

In 1854 John Edmondson, with one Littleton Waddell and wife, filed their bill in chancery, in the Circuit Court for Ohio, against Bloomshire et al., praying for a decree requiring the respondents to release their respective titles to certain lands. The complainants, Edmondson and Mrs. Waddell, asserted a full equitable title as tenants in common, while the defendants held the legal title and were in adverse possession.

In July, 1859, the bill was dismissed. On the 26th May, 1860, the Circuit Court allowed an appeal, and ordered a bond in $1000. No bond was ever given. In July, 1865, the heirs of Mrs. Waddell transferred all their interest in the controversy by deed to Edmund Edmondson, a co-plaintiff. On the 14th November, 1865, a petition was filed in the Circuit Court, alleging that in June, 1862, John Edmondson (the original complainant of that name), died intestate, leaving four persons named, his only heirs at law. These were under no disability. That in June, 1864, Mrs. Waddell died intestate, leaving her only heirs at law, four persons named, one a married woman. This petition, filed by these two sets of heirs and the original petitioner, Littleton Waddell, averred that no appeal bond was given under the order of 26th May, 1860, allowing an appeal, and prayed that they might become parties to the appeal, and to perfect the same by now entering into a bond for the appeal. No process was asked or issued. On the same 14th November, 1865, the Circuit Court admitted these heirs as parties complainant in place of their ancestors, and ordered that they have leave to perfect the appeal allowed 26th May, 1860, by giving bond in $1000, as therein provided. On 22d November, 1865, bond was given. In February, 1869, this appeal was dismissed by this court for want of jurisdiction. On the 13th April following the counsel of the complainants produced, in the Circuit Court, a mandate from this court showing the dismissal and filed another petition, similar to the preceding one, on behalf

of the two sets of heirs for allowance of an appeal; setting out the heirship and alleging that the Supreme Court dismissed the appeal so taken "for want of jurisdiction, on the ground that the said order so made on the said 14th November, 1865, did not amount to an allowance of an appeal." The petition also averred that said Elizabeth Waddell was a *feme covert* at the date of the original decree, and to her death. It was also shown that Littleton Waddell died intestate, in March, 1869, and that John Edmondson died in June, 1862, "leaving to survive him four *children*," who were the petitioners.

On the same 13th April, 1869, the defendants filed a motion in the Circuit Court to dismiss this petition, because—

1. Five years had elapsed prior to filing petition.

2. The court having allowed one appeal exhausted the power to allow an appeal.

3. The heirs of Elizabeth Waddell had no interest in the subject-matter, they having transferred all interest to Edmund Edmondson, a co-plaintiff.

On the 14th of April, 1869, the Circuit Court found "that the matter in controversy exceeded in value $2000," and "allowed" an appeal and "directed that an appeal bond in $1000 be given, to be approved by the clerk of this court."

The citation, 14th April, 1869, recited that "Elizabeth Edmondson, James Waddell, and others," obtained allowance of an appeal from decree which "Adam Bloomshire and *others*" recovered against "John Edmondson and Littleton Waddell and wife, the ancestors of the now plaintiffs and petitioners."

The bond was given June 16th, 1869, approved by the clerk of the Circuit Court, *not* by the judge. The record was filed in this court June 21st, 1869.

The defendants now moved to dismiss the appeal.

Mr. William Lawrence, of Ohio, in support of the motion, propounded the following propositions for the appellees:

1. After final decree in chancery against the complainants in the Circuit Court, the heirs of a deceased complainant can only be made parties by bill of revivor, and without being so made parties cannot obtain the allowance of an appeal to the Supreme Court. (Judiciary Act, §§ 17, 22, 31; act of March 3d, 1803, § 2; Rules of Practice, 15, 57, 58; Curtis *v.* Hawn, 14 Ohio, 186; 3 Daniels's Ch. Pr. 1604; Giffard *v.* Hort, 1 Schoales and Lefroy, 411; Story Eq. Pl., §§ 364, 366, 369; Mitford's Eq. Pl., by Jeremy, 69; Tidd's Practice, 1120; 2 Saunders, 101, n.)

2. The citation on appeal of a chancery case must describe all the appellants. (Owings et al. *v.* Kincannon, 7 Peters, 399; Deneale et al. *v.* Archer, 8 Id. 526; Smyth *v.* Strader, 12 Howard, 327; Heirs of Wilson *v.* Life and Fire Ins. Co., 12 Peters, 140; Bayard *v.* Lombard, 9 Howard, 530.)

3. Under the twenty-second section of the Judiciary Act of 1789, the disability of coverture saving a right of appeal from the Circuit to the Supreme Court is a personal privilege which does not descend to heirs. (Angell on Limitations, § 23; the English and American Statutes of Limitation.)

4. Under the twenty-second section of the Judiciary Act, a disability

saving a right of appeal to one party plaintiff does not save a right of appeal to a co-plaintiff under no disability. (Angell on Limitations, § 484; Lessee of Bronson *v.* Adams, 10 Ohio, 137; Moore *v.* Armstrong, Ib. 11; Marsteller *v.* McClean, 7 Cranch, 158.)

5. In such case in a joint proceeding if one party is barred of a right of appeal, the party under disability is also barred. (Marsteller *v.* McClean, 7 Cranch, 158; Owings et al. *v.* Kincannon, 7 Peters, 399.)

6. Where one of two complainants in chancery whose bill is dismissed on hearing, after final decree, sells his interest in the subject-matter of the suit, he is not a proper party as petitioner for an appeal. The purchaser must make himself a party by supplemental bill and then appeal himself. (Reid *v.* Vanderheyden, 5 Cowen, 719; Mills *v.* Hoag, 7 Paige, 18; Hone *v.* Vanschaick, Ib. 221; Idley *v.* Bowen, 11 Wendell, 238; Steele *v.* White, 2 Paige, 478; Cuyler *v.* Moreland, 6 Paige, 273; 3 Daniels's Ch. Pr. 1604.)

7. After final decree in chancery against a party, his right of appeal is a personal privilege, and on grounds of public policy is not assignable.

8. Under the Judiciary Act an appeal bond in chancery must be approved by a judge. The Supreme Court will not remand an appeal for the amendment of the bond to save an appeal, where appellants have without excuse long delayed an appeal, especially on a stale equity. (Boyce *v.* Grundy, 6 Peters, 777; Catlett *v.* Brodie, 9 Wheaton, 553; Villabolos *v.* The United States, 6 Howard, 90.)

9. Whether on appeal in chancery to the Supreme Court the record below should not be filed in the Supreme Court within five years from decree, or disability removed—*Quære.* (Brooks *v.* Norris, 11 Howard, 204.)

10. On appeals in chancery to the Supreme Court it must appear by the record or evidence *dehors* that the amount "in dispute exceeds the sum or value of $2000, exclusive of costs."