

wrong-doer, and it is a good defence against all claims from those who have lost. Individual fault renders the party liable to the innocent loser, and is a complete answer to any claim made by the faulty party, except in a case where there is mutual fault, in which case the rule is that the combined amount of the loss shall be equally apportioned between the offending vessels.

*Decree reversed and cause remanded, with directions to reverse the decree of the District Court, and enter a new decree in favor of the libellants for the entire damages as ascertained by the commissioner.*

MR. JUSTICE BRADLEY did not sit in this case.

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KIMBALL v. EVANS.

Where a petition for the removal of a suit filed under the act of March 2, 1867 (14 Stat. 558), was, in accordance with the practice of the State, reserved for the decision of the Supreme Court, and the latter dismissed the petition, and remanded the cause to the inferior court for further proceedings according to law, — *Held*, that this court has no jurisdiction.

ERROR to the Supreme Court of the State of Ohio.

Pending a suit in the District Court of Stark County, Ohio, a petition was filed, under the act of March 2, 1867 (14 Stat. 558), for its removal to the Circuit Court of the United States for the Northern District in that State. This petition presenting for consideration, in the opinion of the District Court, difficult and important questions, the cause was reserved, in accordance with the practice in Ohio, to the Supreme Court "for its decision on said petition for the removal of the cause to the Circuit Court." The Supreme Court, after hearing, dismissed the petition and remanded the cause to the District Court "for further proceedings according to law."

To reverse this judgment the present writ of error was brought.

Submitted on printed arguments by *Mr. H. E. Paine* for the defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

It is clear we have no jurisdiction in this cause. The judgment of the Supreme Court is not the final judgment in the suit. It disposed finally of one of the questions involved in the suit, but not of the suit itself. The suit is still pending in the District Court, and it is not impossible that the parties now complaining may be satisfied with the judgment which they may in the end be able to secure in the State courts. If not, after a final judgment has in fact been rendered by the highest court of the State in which a decision in the suit can be had, the case may be again brought here for a determination of the questions arising upon the petition for removal. But in the present condition of the record the writ must be

*Dismissed.*

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TALTY v. FREEDMAN'S SAVINGS AND TRUST COMPANY.

Where the pledgee parts with the pledge to a *bona fide* purchaser without notice of any right or claim of the pledgor, the latter cannot recover against such purchaser without first tendering him the amount due on the pledge.

ERROR to the Supreme Court of the District of Columbia.

This was replevin by the plaintiff to recover a collateral security pledged to one Kendig, a broker, and by him sold to the defendant. Under the instructions of the court below, the jury found a verdict for the defendant; judgment was rendered thereon, and the plaintiff sued out this writ of error. The facts are fully set forth in the opinion of the court.

*Mr. Joseph H. Bradley* for the plaintiff in error.

The chattel replevied was a mere *chose in action*, and was not assigned by the owner. His indorsement in blank did not, at law, transfer any title to it.

Kendig had merely the option to purchase the collateral if the note was not paid.

If the plaintiff's testimony was true, no tender or offer of payment to the defendant was necessary. *Wilson v. Little et al.*, 2 Comst. 443.