

## HURLEY v. JONES.

1. When a cause, reached in its regular order upon the docket, has, under Rule 16, been dismissed by reason of the appellant's non-appearance, for which no just cause existed, it will not, over the objection of the appellee, be reinstated.
2. In view of the crowded state of the docket, the court announces its determination to enforce rigidly the rule requiring causes to be ready for hearing when they are reached.

MOTION to reinstate a cause dismissed under the sixteenth rule.

*Mr. Fillmore Beall* in support of the motion.

*Mr. W. F. Sapp, contra.*

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

When this cause was reached in its order upon the docket, there being no appearance by the appellant, the appellee had him called and the appeal dismissed under Rule 16. Our rules require that, "upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of counsel for the plaintiff in error or appellant shall be entered." Rule 9, par. 3. This rule was adopted for the purpose of making some attorney of the court responsible for the due prosecution of the suit, and it was intended for something more than mere form. Parties should understand that they are represented here by their counsel, and that notice to counsel is ordinarily equivalent to notice to themselves.

This cause was docketed here nearly two years and a half before it was called. The attorney of record seems to have done all he was expected to do. But the appellant himself was so unmindful of his interests, that he did not know the counsel, upon whom he relied for the presentation of his case, had died before the commencement of the present term, and had been unable to attend to business on account of impaired health for a long time before his death. In the crowded state of our docket, filled with cases from all parts of the United States, it is our duty to take special care that the necessary delays in

disposing of the business are not added to by the neglect of counsel or parties. For this reason, our rules requiring causes to be ready for hearing when reached are, and will continue to be, rigidly enforced.

*Motion denied.*

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#### HERBERT *v.* BUTLER.

1. A paper incorporated in the record, and certified to be a part thereof by the court below, if it has all the requisites of a bill of exceptions, will be considered here as such, although it be otherwise entitled.
2. Where the burden of proof is on the plaintiff, and the evidence submitted to sustain the issue is such that a verdict in his favor would be set aside, the court is not bound to submit the case to the jury, but may direct them to find a verdict for the defendant.

ERROR to the Circuit Court of the United States for the Eastern District of New York.

This was an action brought by Herbert for money had and received for his use by Butler. Plea, general issue. The parties were the only witnesses in the case. Judgment for the defendant. Herbert sued out this writ of error.

The facts are stated in the opinion of the court.

*Mr. Jasper K. Herbert* for the plaintiff in error.

*Mr. Thomas J. Durant, contra.*

MR. JUSTICE BRADLEY delivered the opinion of the court.

There are two questions in this case: *first*, whether there is any bill of exceptions by which we are authorized to look into the proceedings at the trial; and, *secondly*, whether, if there is such a bill, there is any ground for reversing the judgment.

*First*, Is there a bill of exceptions? The document relied on by the plaintiff in error as constituting such a bill, and certified from the court below as part of the record, is appended to the record of the pleadings and judgment, and commences as follows:—

“The following case and exceptions is agreed on by the attorneys for Jasper K. Herbert, plaintiff, and Benjamin F. Butler, defendant.” Then follow the title of the cause, a record