

coup not merely what he lost on goods bought of the plaintiff, but for the destruction of his market and the loss of his business by reason of the failure of the plaintiff to make good his guaranty to the defendant of an exclusive market in Chicago for the article sold by the plaintiff to the defendant, but there is no reference to any specification of error, and we find none, under which the question arises.

Under the third and fourth heads of the brief are quoted, but without references to the pages of the record where the rulings are shown, specifications of error upon the exclusion of testimony, and upon the giving and refusing of instructions to the jury, but as none of them is supported by argument or citation, or even by a suggestion to enable the court to apprehend the exact question intended to be presented, they must be regarded as waived. There may have been suggestions in support of some of these specifications at the hearing, but it cannot be permitted to the appellant, as a matter of right, to bring forward in the oral argument questions not presented in the brief, and which by reason of the failure to argue them in the brief the other party was entitled to consider waived. But, while not required to go into such questions, we have examined the record sufficiently to be convinced that no essential wrong, to the prejudice of the plaintiff in error, was committed.

The main question argued is whether, by that part of the court's charge set out in the fifteenth specification of error, the jury in estimating the damages was restricted to the consideration of articles which remained on hand unsold, and forbidden to include injury suffered in respect to articles which by reason of competition the plaintiff was forced to sell at reduced prices. In this particular the charge, as it appears in the record, is obscure and not quite intelligible; but, if erroneous, the exception and the specification of error are not available, because the portion of the charge set out contains a number of separate propositions, one of which is distinctly favorable to the plaintiff in error. There should have been included in the exception and in the specification of error only the part of the charge—the particular proposition—to which it was intended to object. In the respect complained of it may be observed that the instruction is perhaps good so far as it goes, and the rule therefore applicable that if further instruction was desired it should have been asked. The judgment is affirmed.

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WEST CHICAGO ST. R. CO. v. ELLSWORTH.

(Circuit Court of Appeals, Seventh Circuit. January 4, 1897.)

No. 358.

**APPEAL—DOCKETING CASES—DISMISSAL.**

Rule 16 of the circuit court of appeals (11 C. C. A. civ.; 47 Fed. viii.), in respect to dismissing cases for failure to docket in time, will not be applied where, before the motion is made, the cause has been actually placed on the docket.

In Error to the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

Motion to dismiss the writ of error.

John A. Rose, for street-railroad company.

Elmer E. Beach, for defendant.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. The citation in this case was issued September 15, and made returnable October 14, 1896. On the ensuing 19th the judge who signed the citation made a nunc pro tunc order, as of the 14th, extending the time for filing the record to October 24, 1896. Two days before the expiration of that time, the plaintiff in error caused the case to be docketed in this court, and on the next day a motion to dismiss the writ of error, because the case was not docketed in time, was filed. The case of *West v. Irwin*, 9 U. S. App. 547, 4 C. C. A. 401, and 54 Fed. 419, is cited in support of the motion. That case was explained and distinguished in the opinion upon the motion of Daenell, intervenor, in *Farmers' Loan & Trust Co. v. Chicago & N. P. R. Co.*, 34 U. S. App. 626, 19 C. C. A. 477, and 73 Fed. 314. Rule 16 of this court (11 C. C. A. cvi.; 47 Fed. viii.), in respect to the dismissing of cases for failure to docket in time, is essentially the same as rule 9 of the supreme court (12 Sup. Ct. ix.), in respect to which in *Owings v. Tiernan*, 10 Pet. 24, that court said:

"The rule of the court for docketing and dismissing causes has never been applied to any case where, before the motion was made, the cause had been actually placed on the docket."

See, also, *Gwin v. Breedlove*, 15 Pet. 284; *Bingham v. Morris*, 7 Cranch, 99; and *Sparrow v. Strong*, 3 Wall, 103.

This court ruled the same way in the case of *Chicago Dollar Directory Co. v. Chicago Directory Co.*, 24 U. S. App. 525, 13 C. C. A. 8, 11, and 65 Fed. 463, and in an earlier unreported case. In the First circuit a like ruling was made in *Andrews v. Thum*, 21 U. S. App. 459, 12 C. C. A. 77, and 64 Fed. 149; and in other circuits the decisions favor a liberal practice. *Freeman v. Clay*, 2 U. S. App. 151, 1 C. C. A. 115, and 48 Fed. 849; *McClellan v. Pyeatt*, 4 U. S. App. 98, 1 C. C. A. 241, and 49 Fed. 259; *The Chatham*, 8 U. S. App. 104, 3 C. C. A. 161, and 52 Fed. 396; *State of Florida v. Charlotte Harbor Phosphate Co.*, 30 U. S. App. 536, 17 C. C. A. 472, and 70 Fed. 883; *Jones v. Mann*, 18 C. C. A. 442, 72 Fed. 85.

The motion is overruled.

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WONDERLY V. LAFAYETTE COUNTY.

(Circuit Court, W. D. Missouri, W. D. December 7, 1896.)

**1. FEDERAL JURISDICTION—REVIVOR OF JUDGMENT—SCIRE FACIAS.**

Scire facias to revive a judgment in a federal court being an ancillary proceeding, the court has jurisdiction, even though the parties are citizens of the same state.