of error allowed, but upon the final judgment;(*n*) nor could any writ of error be brought to reverse even what might be called a final judgment upon any matter which rested in the mere discretion of the Court,(*o*) as for its refusal to continue a case;(*p*) or to grant a new trial;(*r*) or to reinstate a case after a nonsuit or dismissal;(*s*) or to allow a plea to be amended, or a new one to be filed;(*t*) or the allowance of a commission between the discretionary limits of five and ten per cent. as prescribed by the acts of assembly.(*u*) And as a party cannot, with reason, complain of the error of a judgment which he had, by his negligence, suffered to go against himself, or which he had expressly consented should be passed, he is not allowed to have a writ of error upon a judgment by default against him;(*w*) nor where the proceeding or judgment was had by consent, or it had been agreed, that no writ of error should be brought.(*x*) These general limitations as to the range of the right of appeal, it is evident, are all of them well calculated to keep its exercise in order, and so far to prevent it from being abused.

But it having been found, that this absolute right of appeal, even in cases in which it was clearly allowable, had been often abused, by being perverted to the mere purposes of delay, and by being made the means of putting the plaintiff's claim again at hazard, after it had been at great trouble and expense sufficiently authenticated in a court of original jurisdiction, it appears, that a long series of efforts have been made to prevent or correct the evil without materially impairing the benefit of the right of appeal itself.

So far back as the year 1485, the Court of King's Bench, laid it down as a rule of that court, that no writ of error in parliament should be allowed until some error was shown to it in the record, lest it should be brought on purpose to delay execution.(*y*) And in the next year, it was provided by the statute, that the party should recover his costs, and damages for his delay, and wrongful vexation in the same by the discretion of the court before whom

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(*n*) 2 Bac. Abr. 454; Samuel *v.* Juden, 6 East, 333.—(*o*) Davis *v.* The State, 3 H. & J. 154; Gover *v.* Cooley, 1 H. & G. 7; Liter *v.* Green, 2 Wheat. 306; Parsons *v.* Bedford, 3 Peters, 445; Boyle *v.* Zacharia, 6 Peters, 648.—(*p*) Wood *v.* Young, 4 Cran. 237.—(*r*) Henderson *v.* Moore, 5 Cran. 11; Marine In. Co. *v.* Young, 5 Cran. 187.—(*s*) United States *v.* Evans, 5 Cran. 280; Welch *v.* Mandeville, 7 Cran. 152.—(*t*) Marine In. Co. *v.* Hodgson, 6 Cran. 206.—(*u*) 1798, ch. 101, subch. 10, s. 2; Nicholls *v.* Hodges, 1 Peters, 562; 1828, ch. 26, s. 5.—(*w*) Hawkins *v.* Jackson, 6 H. & J. 151, note.—(*x*) Dormer's Case, 5 Co. 40; Clare *v.* Linch, T. Raym. 378; Wright *v.* Nutt, 1 T. R. 388; Camden *v.* Edie, 1 H. Blac. 21.—(*y*) Tidd, Pra. 1074.