out of the allegations of the parties, in which no part of the evidence, which might have been offered in support of them, could appear; although, as to such evidence, and in their direction to the jury, the Court might have fallen into many and great errors. Hence it was, that the parties were, by statute, allowed to have any such matter inserted in the record, in the form of a bill of exceptions, so as to have the decision, in relation to it, revised and corrected, if erroneous, in a Court of error. *Tidd Pra.* 787; 1 *Hal. Const. H. Eng.* 9, *note.* But, whether the errors complained of were in fact, or in law; or whether they arose in an interlocutory proceeding, or in the last act of the Court, the party was not allowed to intercept the case in its progress, or to exercise his right of appeal, until the Court of original jurisdiction had pronounced its final judgment; as in partition or account there could be no writ * of error allowed, but upon the final judgment; 2 *Bac. Abr.* 454; *Samuel* v. *Juden*, 6 *East*, 333; nor could **9** 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, *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. *Zachariah*, 6 *Peters*, 648; as for its refusal to continue a case; *Wood* v. *Young*, 4 *Cran.* 237; or to grant a new trial; *Henderson* v. *Moore*, 5 *Cran.* 11; *Marine In. Co.* v. *Young*, 5 *Cran.* 187; or to reinstate a case after a non-suit or dismissal; *United States* v. *Evans*, 5 *Cran.* 280; *Welch* v. *Mandeville*, 7 *Cran.* 152; or to allow a plea to be amended, or a new one to be filed; *Marine In. Co.* v. *Hodgson*, 6 *Cran.* 206, or the allowance of a commission between the discretionary limits of five and ten per cent. as prescribed by the Acts of Assembly. 1798, *ch.* 101, sub-ch. 10, sec. 2; *Nicholls* v. *Hodges*, 1 *Peters*, 562; 1826, ch. 27, s. 5. 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; *Hawkins* v. *Jackson*, 6 *H. & J.* 151, *note;* nor where the proceeding or judgment was had by consent, or it had been agreed, that no writ of error should be brought. *Dormer's Case*, 5 *Co.* 40; *Clare* v. *Lynch*, *T. Raym.* 372; *Wright* v. *Nutt*, 1 *T. R.* 388; *Camden* v. *Edie*, 1 *H. Blac.* 21. 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