

Expenses to the amount of \$627.20, including counsel fees, were allowed to the complainant beyond the taxable costs, which, together with the entire interest allowed, must be deducted from the decree. From which it follows that the decree in favor of the complainant, instead of being \$11,184.42, should be \$9,992.09, without interest, but with costs of suit, as allowed in the decree of the Circuit Court; and the decree is modified so as to conform to that computation, but without any injunction, as the term of the patent has expired.

The decree, as modified, will be affirmed, without interest or costs, the costs of this court to be paid by the appellee; and it is

So ordered.

BROOKS v. RAILROAD COMPANY.

A petition for a rehearing cannot be filed after the term at which the judgment was rendered.

MOTION for leave to file a petition for rehearing.

This case was, on appeal from the Circuit Court of the United States for the District of Iowa, determined at the last term. It is reported in 101 U. S. 443.

Mr. Joseph E. McDonald and *Mr. John M. Butler* in support of the motion.

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

A petition for rehearing after judgment, under the rule promulgated in *Public Schools v. Walker* (9 Wall. 603), cannot be filed except at the term in which the judgment was rendered. In *Hudson & Smith v. Guestier* (7 Cranch, 1), a motion was made at the February Term, 1812, for a rehearing in a case decided two years before; but the court said "the case could not be reheard after the term in which it was decided." At the end of the term, the parties are discharged from further attendance on all causes decided, and we have no power to bring them back. After that, we can do no more than correct

any clerical errors that may be found in the record of what we have done.

In *Brown v. Aspden* (14 How. 25), where the practice in respect to orders for rearguments was first formally announced, the rule in this particular was not extended, for Mr. Chief Justice Taney was careful to say that the order for reargument might be made after judgment, *provided* it was entered at the same term; and the same limitation is maintained in *United States v. Knight's Administrator*, 1 Black, 488. Down to that time such an order could be made only on the application of some member of the court who concurred in the judgment, and this continued until *Public Schools v. Walker* (*supra*), when leave was given counsel to submit a petition to the same effect. In all other respects the rule is now substantially the same as it was before this relaxation.

Motion denied.

GIDDINGS v. INSURANCE COMPANY.

The charter of A., a mutual life insurance company, provides that "every person who shall become a member of the corporation, by effecting insurance therein, shall, the first time he effects insurance and before he receives his policy, pay the rates that shall be fixed upon and determined by the trustees." In August, 1872, C., A.'s agent, received from B. an application for a policy upon his life for \$6,000, duly made out upon a printed form furnished previously by C. A policy was issued by A., August 24, and forwarded to C. It contains a proviso that it shall "not take effect and become binding on the company until the premium be actually paid, during the lifetime of the person whose life is assured, to the company or to some person authorized to receive it, who shall countersign the policy on receipt of the premium." The premium to be paid by B. amounted to \$302.52. The policy not having been called for, C. returned it, October 2, to A., and it was thereupon cancelled. Nothing beyond the delivery of the application to C. was done by B., or by any one in his behalf. He died September 4. His administrator tendered the first premium to C., who declined to act in the matter. Thereupon he transmitted the proofs of B.'s death to A., and on the refusal of the latter to accept the premium and deliver the policy brought this suit against A. *Held*, that the suit cannot be maintained, the payment of the premium in the lifetime of B. being a condition precedent to A.'s liability.

APPEAL from the Circuit Court of the United States for the Northern District of Illinois.