was a party." There is nothing here to support such a finding. In fact, no testimony whatever has been sent up.

Neither is the case in a condition to be heard understandingly upon the important constitutional questions which have been argued. It comes upon bill, answer and replication alone. There is nothing to show the form of the "revenue-bond scrip," which is the subject matter of the controversy, and we have not a description of it even. Under these circumstances it is apparent that the case has not been prepared by either party with a view to the presentation of these questions, and we are, therefore, unwilling to enter upon their consideration on this appeal.

The decree of the Circuit Court is reversed with costs, upon the sole ground that the evidence which has been sent here fails to support the finding upon which the bill was dismissed, and the cause is remanded for a further hearing, with power in the Circuit Court to allow such amendments to the pleadings and such further proof as it shall be advised may be necessary for the proper presentation of the questions to be decided.

Mr. Dennis McMahon for appellants. *Mr. Leroy F. Youmans* for appellees.

For further proceedings in this case, see *Hagood* v. *Southern*, 117 U. S. 52.

MARSH *v.* CITIZENS INSURANCE COMPANY.

ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

No. 70. October Term, 1878. — Decided December 9, 1878.

At the trial in a state court upon a policy of insurance of a steamboat, the question whether if the steamboat was burned while carrying turpentine as freight, the owner must show affirmatively his license to carry the turpentine, or whether the law would presume a license until the contrary was shown, is not a Federal question.

THE case is stated in the opinion.

This case presents no question of Federal jurisdiction. Marsh, the plaintiff in error, claimed below no "title, right, privilege, or immunity" under the Constitution, laws, or treaties of the United States, and no such title, right, privilege, or immunity has been denied him. He sued upon a policy of insurance to recover for the loss of his steamboat by fire, and the defence was that the fire was caused by his gross carelessness in the use of turpentine, on board as freight, to increase steam while racing with another boat.

De Liano *v.* Gaines.

An act of Congress (Stat. 63, c. 106, § 7) prohibits the transportation of turpentine, as freight, on steamboats carrying passengers, "except in cases of special license for that purpose." No complaint was made of the carriage of the turpentine, but of its use while being carried. The court in effect told the jury that, under the existing laws, there could be no recovery if the loss was occasioned by the misconduct of the insured in taking a barrel of turpentine from the hold of the boat, placing it in front of the furnace, knocking out the head, and pouring two thirds of a bucket full of turpentine on the coal and wood near by, so that when the furnace-door was opened and the fire stirred up, during a race with another boat, the burning coals fell on the fuel thus saturated and set fire to the boat. No complaint is made here, by the assignment of errors, of the charge as given. The errors assigned relate only to the refusal of the requests to charge made by Marsh, and these presented only questions as to the effect of evidence and the burden of proof; that is to say, whether if a steamboat was burned while carrying turpentine as freight, the owner, in an action on a policy of insurance, must show affirmatively his license to carry the turpentine, or whether the law would presume a license until the contrary was shown. The determination of such questions by the court below, even if necessary to the decision of the case, is final and cannot be re-examined here.

The suit is consequently dismissed for want of jurisdiction.

Mr. Edward Lander, *Mr. J. W. Moore*, and *Mr. E. A. Newman* for plaintiff in error. *Mr. Andrew McCallum* for defendant in error.

DE LIANO *v.* GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 192. October Term, 1879. — Decided March 15, 1880.

The overruling of a motion that the cause proceed no farther by reason of an alleged compromise of the suit is not a final judgment or decree.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

A decree having been entered referring this cause to a master to state an account of rents and profits, De Liano, the appellant, appeared in court and moved that the master be directed to proceed no further with his accounting, by reason of an alleged compromise