

Cases Omitted in the Reports.

LE MORE *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 107. December Term, 1867. Motion made in the case at December Term, 1868. — Decided March 22, 1869.

This court will not recall a mandate at the term following the one when it was sent to the inferior court.

THIS was a motion for the recall of a mandate sent down at the last term of court. The case made by the motion is stated in the opinion.

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

This is a petition that the court will cause to be brought before it, the record and proceedings in a cause which was argued and disposed of by decree at the last term, in order to correct an error in the printed transcript of the record.

To make the allowance of the prayer of the petitioners available to them through the correction of the alleged error, it would be necessary to recall the mandate sent to the inferior court, to set aside the decree rendered at the last term, to rehear the cause and make a new decree.

This cannot be done without reversing the settled and uniform practice of the court, and the petition must, of course, be *Denied*.

Mr. Caleb Cushing for the petitioner. No one opposing.

CLARK *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 113. December Term, 1867. — Decided March 30, 1868.

The question of law in this case ought not to have been made, either below or here, and the judgment below is affirmed.

THE case is stated in the opinion.

MR. JUSTICE GRIER delivered the opinion of the court.

The plaintiff's claim in this case is on a contract made with Major Du Barry, an Assistant Commissary of Subsistence, acting in behalf of the United States. The only question of law raised upon the record was, whether the written agreement between the parties

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should be received as the correct exponent of the contract, or the correspondence between them which preceded it.

The question of fraud or mistake was one of fact, and was negatived by the finding of the court, which is conclusive here. The question of law ought not to have been made, either in that court or here. Let the judgment of the Court of Claims be *Affirmed.*

Mr. John Jolliffe for appellants. *Mr. Eli P. Norton* and *Mr. John J. Weed* for appellee.

CLARKE *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 116. December Term, 1867.—Decided March 16, 1868.

A motion for a *certiorari* to the Court of Claims is denied.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a motion for a *certiorari* in the case of an appeal from a decree in the Court of Claims on a suggestion of diminution of the record. The diminution as alleged is, that the record does not set out the joinder of issue nor the trial of the same nor the evidence, findings, or judgment of the court; also many orders made in the case.

We have looked into the record and are of opinion that the suggestions are not well founded, in point of fact, with the exception of the one relating to the evidence, which, of itself, is answered by the rules of this court on the subject. *Motion denied.*

Mr. James Hughes and *Mr. John M. McCalla* for appellant. *Mr. John J. Weed* and *Mr. Eli P. Norton* for appellees.

MILWAUKEE AND ST. PAUL RAILROAD COMPANY *v.* SOUTTER. SAME *v.* SAME. SAME *v.* SAME.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

Nos. 161, 43, 62. December Term, 1867.—Decided March 16, 1868.

The decrees for the payment of rent by the Milwaukee and St. Paul Railroad Company to the receiver of the La Crosse and Milwaukee Railroad were not final decrees from which appeals could be taken to this court, and this proceeding was irregular, and involved useless litigation.

THE case is stated in the opinion of the court.