

Florida *v.* Anderson.

TREAT *v.* JEMISON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

No. 721. October Term, 1874. — Decided April 5, 1875.

When a judgment of affirmance is entered on motion under the rules, it will not be set aside and a rehearing ordered if the court is satisfied that the judgment below would be affirmed on the rehearing, if one were granted.

THIS was a motion to set aside the judgment reported in 20 Wall. 652. The case is stated in the opinion.

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

Before affirming the judgment presented by this record, we carefully examined the arguments submitted by counsel, although not in conformity with Rule 21, and considered the case upon its merits. Being entirely satisfied that the judgment of the court below ought to be affirmed, and not deeming it necessary to discuss in an opinion the several questions presented for our determination, we availed ourselves of the opportunity to call the attention of the bar specially to the new rule as to the form of briefs, which, if adhered to, will, we think, be of great service to counsel as well as the court.

The reason assigned for setting aside the judgment of affirmance and for leave to file a new brief, are such as would certainly have induced us to grant the motion, if it were necessary for a correct decision of the case. The questions involved were all fairly and ably presented by the arguments submitted on both sides. Since this motion we have again examined the case, and are confirmed in our original opinion.

For the reason, therefore, that the judgment must be affirmed if a further hearing is granted, this motion to set aside the order of affirmance already entered, is

Denied.

Mr. M. Blair for the motion. No one opposing.

FLORIDA *v.* ANDERSON.

ORIGINAL.

No. 3. Original. October Term, 1875. A question in the case made October 7, 1876. — Decided December 11, 1876.

The clerk of this court, when money paid into court is put in his custody, is entitled to a fee of one per cent of the amount.

The court orders the balance of the fund paid to the State of Florida.

Cases Omitted in the Reports.

AFTER the decree in this case, (see *State of Florida v. Anderson*, 91 U. S. 667,) a question arose as to the clerk's fee for the custody of the money paid into the court.

MR. JUSTICE BRADLEY delivered the opinion of the court.

A question arises in this case as to the proper allowance to the clerk for the custody of the money paid into court. It is suggested that, by the General Fee Bill, (Rev. Stat. § 828,) the clerks of the Circuit Courts receive one per cent, and that, by analogy, the same allowance would be proper in this case. The fees of the clerk of this court were prescribed by the Process Act of 1792, § 3, 1 Stat. 276, which allowed the clerk \$10 per diem for attendance on the court; and for other services, double the fees of the Supreme Court of the State in which the court sat. This section was repeated in the act of Feb. 28, 1799, 1 Stat. 625, when the seat of government was about to be removed to this District, and has never been altered. The bill of fees then adopted was based on those allowed by the laws of Maryland, to the clerk of the Court of Appeals of that State. At that time, 1800, the clerk of that court was allowed ten per cent on fees paid into court, (being a certain number of pounds of tobacco,) which had formerly belonged to the chancellor, but were then directed to be paid into the state treasury. 1 Kelty's Laws, 1779, cxxv, § 23. By the present code of Maryland a commission of five per cent is allowed on taxes and license fees paid into court. 1 Maryland Code, 291. We find, however, no commissions specified for moneys paid into court generally, and presume that none are allowed. But by analogy to the fee bill, for the Circuit and District Courts, we think that one per cent should be allowed in this case. This is the first instance known of moneys being paid into this court.

The allowance is made accordingly.

Sundry persons having made application for the balance of this fund, the court, on the 11th December, 1876, after directing payment in full of one of the claims, ordered the rest paid over to the State of Florida to subserve the liens and trusts to which it was subject in the hands of the State.