

United States *v.* Armejo.

The Minnesota Company, on acquiring title, intervened in the suit by petition, and asked the court to discharge the receiver and put the petitioner in possession of the division of the road purchased by them.

The court being divided in opinion, the petition was denied, and the petitioner appealed.

We think the appeal was premature. The decision upon the petition was not a final decree in the cause. The removal or appointment of a receiver, as we have heretofore said, rests in the sound discretion of the court, and is not reviewable here.

The appeal must, therefore, be dismissed.

Mr. Matthew H. Carpenter for appellant. *Mr. John W. Cary* for appellee.

UNITED STATES *v.* ARMEJO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 164. December Term, 1865. — Decided April 3, 1866.

After the lapse of a term a general appearance cannot be changed to a special appearance, so as to affect the rights of parties, without leave of court first obtained.

THE case is stated in the opinion.

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

The motion to dismiss the appeal in this case must be denied.

It appears from the record that an appeal was allowed to the appellants from a final decree of the District Court for the Northern District of California, on the 21st December, 1863.

The record was brought here and filed at the next term, but no citation was issued to the appellee.

A general appearance was, however, entered in his behalf, and remained on the docket during the return term, which was the last term of this court.

At this term, the entry was limited to a special appearance by the addition of the necessary words. This addition was made by the clerk without direction from the court, in order, as he states, to make it conform to the original direction given him, which he understood to be not for the entry of a general but of a special appearance, and which direction, through his inadvertence, was not properly performed.

We think it was too late after the lapse of a term to alter a gen-

Cases Omitted in the Reports.

eral to a special appearance, so as to affect the rights of parties; and no such alteration or any withdrawal of appearance can be allowed in any case, without proper notice, and leave of the court first obtained. We must hold, therefore, that the general appearance supplied the defect of citation, and that the appeal is now regularly before us. *Motion denied.*

Mr. Attorney-General and *Mr. John A. Wills* for plaintiff in error.
Mr. W. W. Cope and *Mr. J. M. Carlisle* for defendant in error.

CRANDALL *v.* NEVADA.

ERROR TO THE SUPREME COURT OF THE STATE OF NEVADA.

No. 85. December Term, 1867.—Decided December 23, 1867.

The order remanding the petitioner became, by the certificate of the clerk, a part of the record in this case.

MOTION TO DISMISS. The case is stated in the opinion. See *Crandall v. Nevada*, 6 Wall. 35, for further proceedings in this case.

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

This is a motion to dismiss a writ of error to the Supreme Court of the State of Nevada.

The suit in the state court was by writ of *habeas corpus*, issued out of the Supreme Court, upon return of which the petitioner appears to have been discharged; but on the same day this order seems to have been reconsidered, and the petitioner remanded to custody.

The only question before us is, whether the certificate of the clerk appended to the order remanding the petitioner, made that order a part of the record.

The usual certificate, that the transcript contains all the orders and proceedings in the cause, precedes the certificate just referred to in the record. Then follows the certification of the order to remand.

We think that the order thus certified must be taken as a part of the record, precisely as it would be if it had been certified in obedience to a writ of *certiorari* issued upon a suggestion of diminution.

The motion to dismiss must, therefore, be *Denied.*

Mr. P. Phillips and *Mr. T. J. D. Fuller* for the motion.

No one opposing.