

United States *v.* Driscoll.

UNITED STATES *v.* DRISCOLL.

APPEAL FROM THE COURT OF CLAIMS. ORIGINAL MOTION IN
THE CASE.

No. 1053. October Term, 1877. — Decided April 8, 1878.

A request for an order upon the Court of Claims for an additional finding is refused, because that court had not been requested to make the findings, in accordance with rules 4 and 5 regulating appeals therefrom.

THE case is stated in the opinion.

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

This motion is denied. At the same term with the order for additional findings in *United States v. Adams*, 9 Wall. 661, and to avoid the difficulty experienced in that case, rules 4 and 5, regulating appeals from the Court of Claims, were promulgated. 9 Wall. 7. The fourth requires that court to file its findings of facts at or before the time of entering the judgment, and the fifth permits either party to call for a finding upon a special question deemed material to the judgment in the case, and, if refused, to ask this court to pass upon the materiality of the fact alleged, and, should it be considered material, to send down for the finding. Such is the construction given the rules in *Mahan v. United States*, 14 Wall. 109, 112. The object is to present the question here as upon an exception to the ruling of the court below in respect to the materiality of the fact. For that purpose it must have been submitted to the court in a written request, as provided in the rule. Nothing of the kind appears here. While other requests were made, this was not, and the record upon its face does not show that the court has omitted to pass upon any fact necessary to the decision of the cause. No foundation has, therefore, been laid for this application.

Motion denied.

Mr. Thomas J. Durant for the motion. No one opposing.

See *United States v. Driscoll*, 96 U. S. 421.