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.

Milwaukee Railroad Co. *v.* Soutter.

Mr. Justice Nelson delivered the opinion of the court.

These cases are appeals from decretal orders of the Circuit Court for the District of Wisconsin. The first was rendered on the 18th July, 1865, directing the Milwaukee and St. Paul Company to pay to the receiver in the case of *Soutter* v. *The La Crosse and Milwaukee Railroad Company*, $237,338.78, for the use of the rolling stock on the Western Division of the road, from the 12th June, 1863, to 28th February, 1865.

The second is an appeal from a like decree by the same court, ordering the payment of $81,106.08, for the use of the same rolling stock from the 28th February, 1865, to the 9th January, 1866. The third is an appeal from a decree of July 18, 1865, directing the Milwaukee and St. Paul Company to deliver possession of this stock to the Milwaukee and Minnesota Company. These orders were made upon the idea, that the decree in the case of *The Milwaukee and Minnesota Railroad Company* v. *The Milwaukee and St. Paul Railroad Company*, on the demurrer to the supplemental bill, was a final decree, and settled the title to the rolling stock, the subject of controversy, in favor of the claim of the Eastern Division, and hence, that that division was afterwards entitled to compensation for the use of the stock; whereas, leave was given to the defendants to answer, and an answer put in, and proofs taken preparatory to a final hearing on pleadings and proofs, so that the questions involved were left open and undetermined. It was wholly irregular, therefore, in this state of the cause, to institute proceedings and endeavor to recover compensation for the use of the property in controversy, until the right to the same had been finally determined. The proceeding was not only destitute of any legal foundation, but involved an idle and useless litigation, upon an unwarranted assumption, as to the effect of the preliminary decision on the demurrer.

The irregularity, as well as the awkwardness of the result from this inadvertent proceeding, is exemplified by the circumstance that the case has been heard on the pleadings and proofs at the present term, and the court have determined, upon a full consideration, that the right to the use of the stock on the Western Division belonged to the Milwaukee and St. Paul Company, and hence it was not liable to the Eastern Division for the use of the same.

It follows that the decrees in both cases are erroneous, and should be reversed, and the cause remanded to the court below, with directions to enter decrees for the Milwaukee and St. Paul Company.

The third is a decree from the same court, directing the Milwaukee and St. Paul Company to deliver this rolling stock into the possession of the Milwaukee and Minnesota Company, upon the idea, already explained, that the decision on the demurrer to the supplemental bill had determined that the right belonged to the Eastern Division. For the reasons above stated this decree is erroneous, and should be reversed.

Decree reversed. Cause remanded, and decree to be entered for Milwaukee and St. Paul Company.

Decree reversed in each case.

Mr. Justice Miller dissented.

Mr. J. W. Cary for appellant in each case. *Mr. H. A. Cram*, *Mr. Caleb Cushing* and *Mr. M. H. Carpenter* for appellee in Nos. 43 and 62, and *Mr. H. A. Cram* and *Mr. Caleb Cushing* for appellee in No. 161.

PATTERSON *v.* HOA'S EXECUTRIX.

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

No. 326. December Term, 1867. — Decided March 27, 1868.

It appearing, on inspection of the record, that the appeal bond was filed too late to make the writ of error operate as a *supersedeas*, the court vacates an order heretofore made allowing a writ of *supersedeas*.

Motion to vacate a *supersedeas*. The case is stated in the opinion.

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

This is a motion to vacate a *supersedeas*, allowed provisionally in this cause at a former day of this term.

It is made on the coming in of the answer of the District Judge holding the Circuit Court for the District of Louisiana, to a rule to show cause why an absolute *supersedeas* should not issue.

On inspection of the record we find that the judgment of the Circuit Court was rendered on the 13th of May, 1863, and that the bond for prosecution of the writ of error sued out upon it was not filed until the 25th. In order to make a writ of error a *supersedeas*, the law requires that the bond be filed within ten days. In this case, consequently, the bond was filed too late.

It is unnecessary, therefore, to consider the matters stated in the answer of the judge of the court below.

The order heretofore made, allowing a writ of *supersedeas*, will