Appeals to this court from the Circuit Courts of the United States, and from District Courts exercising the jurisdiction of Circuit Courts, are regulated by the act of 1803, ch. 40, where not otherwise specially provided for by act of Congress. There is no special provision in the act establishing the District Court in Wisconsin which regulates appeals to this court, and consequently they are governed by the general law above referred to; and by that law no appeal will lie, unless the sum or value in controversy exceeds $2,000, and that fact must be shown to the court in order to give jurisdiction in the appeal.

Now, the matter in dispute in this case is the title to the lots which have been sold by the municipal authorities for the non-payment of the taxes. The taxes assessed were charged upon the respective lots, and created no personal responsibility upon the owner, the lots alone being liable for the payment. And the only evidence or averment of their value is the statement of the complainant in his bill that they were worth more than five hundred dollars, and his complaint that more than two hundred per cent. upon their value as mentioned in the books of the corporation was charged upon them by the assessment, and the proceedings of the city authorities under it. There is nothing in the allegations of the parties or in the evidence to show that the value of the lots in question exceeded two thousand dollars, nor anything from which it can be inferred.

The appeal must therefore be dismissed for want of jurisdiction in this court.

EDMUND RICE, PLAINTIFF IN ERROR, *v.* THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

Where a common-law case was dismissed at the last term for want of jurisdiction, (the record showing that no final judgment was given in the court below,) an affidavit setting forth that the final judgment was accidentally omitted from the record, and the production of a correct record, are not sufficient to sustain a motion to annul the order of dismissal, and reinstate the case upon the docket.

After the judgment of this court was passed upon the case, and the term was closed, the function of the writ of error was over, and it cannot now be revived.

The distinction pointed out between a common-law case and a case in admiralty.

THIS was a case which was brought before this court from the Territory of Minnesota.

It was before the court at the preceding term, under the circumstances stated in the opinion of the court.

Mr. Reverdy Johnson now moved to revoke the mandate and annul the judgment of dismissal which was entered at the last term.

The motion was as follows:

"This cause was on the calendar of the last term, No. 109. It was then, after argument, dismissed for want of jurisdiction, upon the ground that the judgment below was not a final one, within the meaning of the act of Congress. A mandate was issued to that effect by the clerk of this court, in due course, but has not as yet been filed in the court below. Since the decision of this court, the clerk of the court below has transmitted to one of the counsel of the defendants in error an amended transcript, by which it appears, as the fact was, that the judgment below was a final one, and that the failure to have had it appear in the first transcript was the error of the clerk or his deputy, by whom that transcript was made up. Under these circumstances, the undersigned, as counsel for the defendants in error, moves the court to revoke the mandate and annul the judgment of dismissal of the last term, and order the case to stand on the calendar, as it would stand, at the present term, if such judgment had not been rendered, but the case had been continued. He makes this motion, because it is important to the interests of the defendants in error that the case be decided at the earliest moment upon its merits, and will, at the hearing of the motion, submit decisions of this court in maintenance of this motion.

"REVERDY JOHNSON,
"*Counsel for Defendants in Error.*"

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

This case was brought up, by a writ of error, directed to the judges of the Supreme Court of the Territory of Minnesota, the writ being returnable to the last term of this court. The

case was docketed and called for trial according to the rules of the court; but, upon inspection of the transcript, it appeared that there was no final judgment in the court below, and the case was therefore dismissed for want of jurisdiction.

At a subsequent day in that term, a motion was made by the plaintiff in error for a *certiorari*, upon affidavits filed, suggesting that there had been a final judgment in the Territorial court, although it had not been correctly entered on the record. But the court were of opinion that the affidavits were not sufficient to support the motion, and refused the *certiorari*.

A motion has been made at the present term to annul the order of dismissal made at the last term, and to place the suit on the calendar in the same order in which it would have stood if it had not been dismissed, but continued over to the present term. And in support of this motion, a transcript from the Territorial court has again been presented; and this transcript contains a final judgment of the Supreme Court of the Territory. It is certified by the clerk of the District Court of the United States, to whose custody the record and proceedings in this case have been transferred, pursuant to an act of Congress; and this transcript, among other things, certifies that an amended order of the Supreme Court of the Territory, reversing the judgment of the inferior Territorial court, and ordering a judgment for defendants, and an amended judgment of the said court to the same effect was on file in his office, transferred with the other proceedings in the case from the Supreme Territorial Court.

But we think the motion to annul the judgment of the last term, and reinstate the case, cannot be granted. The suit is a common-law action for a trespass on real property, and the judgment of the court below can be brought here for revision by writ of error only. That writ was issued by the plaintiff in error, returnable to the last term of this court; and it brought the transcript before us at that term. It was judicially acted on, and decided by this court. And when the term closed, that decision was final so far as concerned the authority and jurisdiction of this court under that writ. The writ was *functus officio*; and if the parties desire to bring the record of

the case again before this court, it must be done by another writ of error. The former writ is not returnable to the present term, and cannot therefore, according to the principles which govern this common-law writ, bring the record before us.

The case of the Palmyra (12 Wheat., 1) has been referred to, where a motion similar to the present was granted by the court. And if that had been a case at common law, we might have felt ourselves bound to follow it, as establishing the law of this court. But it was a case in admiralty, where the power and jurisdiction of an appellate court is much wider upon appeal, than in a case at common law. For, in an admiralty case, you may in this court amend the pleadings, and take new evidence, so as in effect to make it a different case from that decided by the court below. And the court might well, therefore, deal with the judgment and appeal of the inferior tribunal in the same spirit. But the powers which an appellate court may lawfully exercise in an admiralty proceeding, are altogether inadmissible in a common-law suit.

The case in 3 Pet., 431, relates to cases and questions of a different character from the one before us. In that case the judgment of the court at the preceding term was amended. But the amendment was made to correct a clerical error in this court, and make the judgment conform to that which the court intended to pronounce. But this is not a motion to amend, but to reverse and annul the judgment of the last term, which was passed upon full consideration, with the case regularly and legally before us, as brought up by the writ of error.

We refer to these two cases because they have been relied on in support of the motion. But, in the judgment of the court, they stand on very different principles; and the motion, for the reasons above stated, must be overruled.

JAMES KELSEY AND THOMAS P. HOTCHKISS, PLAINTIFFS IN ERROR, *v.* ROBERT FORSYTH.

The agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own