

PROPERTY OF
UNITED STATES SENATE
LIBRARY.

DECISIONS
IN THE
SUPREME COURT OF THE UNITED STATES
DECEMBER TERM, 1866.

STEARNS v. THE UNITED STATES.

A *certiorari* for diminution of the record allowed under special circumstances, and where the cause had been continued till the next term, although the motion for it was made after more than one term had passed since the entry of the case, and contrary to a rule of the court.

THE fourteenth rule of this court declares that no *certiorari* for diminution of the record shall be awarded unless the motion be made at the first term of the entry of the cause, and "unless upon special cause shown to the court accounting satisfactorily for the delay."

The present case having been continued to the next term, *Mr. Cushing* asked leave, although more than one term had passed since the entry of the cause, to file a suggestion of diminution of the record. He stated that the counsel in the case in California had been unaware of the rule requiring such a suggestion and motion to be made at the *first* term; for which reason they had not sent on the papers at an earlier day; and he submitted the fact as a sufficient reason for granting the motion now, inasmuch as the cause having been already continued till the next term, the granting of it would not cause any delay in the hearing.

In support of this view, he cited *Clark v. Hackett** and *Morgan v. Curtin*†.

THE court granted leave, and ordered the *certiorari*.

* 1 Black, 77.

† 19 Howard, 8.