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Statement of the case.

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pearing in the record sent to us upon the appeal, the judgment was erroneous. In everything else the Court of Claims was left free to proceed with the cause in its own way and according to its own judicial discretion. That discretion we cannot control in this form of proceeding.

PETITION DISMISSED.

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## RAILROAD COMPANY v. WISWALL.

The order of a Circuit Court remanding, for want of jurisdiction to hear it, a case removed from a State court into it, is not a "final judgment" in that sense which authorizes a writ of error. The remedy of the party against whose will the suit has been remanded, is by mandamus to compel action, and not by a writ of error to review what has been done.

ON motion to dismiss a writ of error to the Circuit Court for the Southern District of Illinois. The case was this:

Wiswall, a citizen of Illinois, sued, in one of the inferior State courts of the State just named, the Chicago and Alton Railroad Company. The company conceiving that the case was properly cognizable in the Circuit Court of the United States for that district—the Southern District of Illinois—got an order from that court, the court below, commanding the State court to send the record to it. This the State court did. However, upon looking further into the matter, the Circuit Court was satisfied that it had no jurisdiction, and on motion of the plaintiff remanded the case to the State court. To that remand the railroad company took a writ of error from this court, and this writ it was which Wiswall now moved to dismiss; the ground of the motion being that the remand was not a "final" judgment or decree, and that the proper proceeding of the company was a motion for mandamus on the court below\* to act, and not by writ of error to review what was done.

*Mr. E. C. Brearly, in support of the motion; Mr. P. Phillips, contra.*

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\* Insurance Company v. Comstock, 16 Wallace, 258.

## Statement of the case.

The CHIEF JUSTICE delivered the opinion of the court.

The writ of error is dismissed upon the authority of *Insurance Company v. Comstock*.\* The order of the Circuit Court remanding the cause to the State court is not a "final judgment" in the action, but a refusal to hear and decide. The remedy in such a case is by mandamus to compel action, and not by writ of error to review what has been done.†

## UNITED STATES v. SHREWSBURY.

Where, under a contract entered into between the government and a transporter of military stores, in the wilds of the West, it was provided that a board of survey, composed of military officers, should on the arrival of the stores at their place of delivery, examine the quantity and condition of the stores transported, and "in case of loss, deficiency, or damage, investigate the facts and report the apparent causes, assess the amount of loss and injury, and state whether it was attributable to neglect or want of care on the part of the contractor or to causes beyond his control," a copy of which, said the contract, "shall be furnished to the contractor, shall be attached to the bill of lading, and shall conclude the payments to be made"—*Held*, that a report which did not report investigation of facts and the apparent causes, nor state whether the loss was attributable to neglect or the want of care on the part of the contractor or to causes beyond his control, but which merely on its face found the deficiency and charged it accordingly would be supported; the contractor not having at the time objected either as to the form or the substance of the report, when it was made; and objecting only when he came and got his money; when witnesses were scattered and gone, and most of them difficult if not impossible to be found; and then notifying to the quartermaster nothing more definite than that he, the contractor, would claim a readjustment and full damages.

## APPEAL from the Court of Claims.

The case as found by the Court of Claims was thus:

On the 27th of March, 1865, W. S. Shrewsbury entered into a contract with the United States to transport army

\* 16 Wallace, 270.

† *King v. The Justices of Gloucestershire*, 1 Barnewall & Adolphus, 1; 1 Chitty's General Practice, 736; *Ex parte Bradstreet*, 7 Peters, 647; *Ex parte Newman*, 14 Wallace, 165.