court, in a suit upon the same lease brought by one of the stockholders to recover part of the same dividends, to hold the contrary. Such a decision might result in two judgments against the defendant for the same dividends. Under such circumstances, as was well said in *Goodyear Dental Vulcanite Co.* v. *Willis*, 1 Ban. & A. 573: "Every suggestion of propriety and fit public action demands" that the decision made "be followed until modified by the appellate court."

Judgment is ordered for defendant.

ROGERS and others *v.* BOWERMAN.

(*Circuit Court, S. D. New York.* August 22, 1884.)

PRACTICE AND PROCEDURE—REMITTING PART OF VERDICT—WHEN ALLOWED—RIGHT OF APPEAL.

A trial court, in a meritorious case, will not allow a plaintiff to remit a part of the amount for which a verdict has been rendered, when such reduction will deprive the defendant of an opportunity to have the decision reviewed in an appellate court.

At Law.

Wheeler & Souther, for complainants.

WALLACE, J. The plaintiffs ask leave to remit part of the amount for which the verdict in this case, by direction of the court, was rendered in their favor. The result, if such a reduction of the judgment to be entered is permitted, would be to reduce the judgment below the sum of $5,000, and thereby preclude the defendants from a review by writ of error to the supreme court. Undoubtedly, it is competent for the trial court, in the exercise of judicial discretion, to allow such a reduction to be made; but such a discretion should be very carefully and sparingly exercised. Certainly, this is not a case where the court should willingly deprive the defendants of an opportunity to review the decision. As is said in *Thompson* v. *Butler*, 95 U. S. 694, 696, "if the object of the reduction is to deprive an appellate court of jurisdiction in a meritorious case, it is to be presumed the trial court will not allow it to be done." It is far from clear that the plaintiffs were entitled to recover, and a verdict was directed for them with grave doubt as to the correctness of the conclusions reached by the court. It is a peculiarly meritorious case for the consideration of the appellate court.

The motion of the plaintiffs is denied.

UNITED STATES v. BENJAMIN.

(*Circuit Court, D. California.* August 18, 1884.)

PUBLIC LANDS — CUTTING TIMBER ON MINERAL LANDS IN CALIFORNIA — ACT OF JUNE 3, 1878, CHS. 150, 151.

Timber upon mineral lands in the state of California is protected and governed by the provisions of the act of June 3, 1878, *c.* 151, (20 St. at Large, 89,) made specifically applicable to that state, and not by the general provisions of chapter 150 of the act of June 3, 1878, (20 St. at Large, 88,) which can only operate upon "mineral districts," if any there be, not specifically provided for by designating the particular state or territory in which it is situated by name.

Demurrer to special answer, and motion to strike out a portion as immaterial.

S. G. Hilborn, U. S. Atty., for plaintiff.

Geo. G. Blanchard, for defendant.

SAWYER, J. The United States bring this action to recover the value of lumber alleged to have been manufactured from timber trees unlawfully cut on the public lands. The defendant, as a justification, specially answers that the trees from which the lumber in question was manufactured grew and were cut "in a mineral district of the United States," known as such throughout the state, and so recognized by the customs of miners and the decisions of the courts, and designated "The Georgetown Mineral and Mining District," being "in the mineral belt of said state of California and county of El Dorado;" that defendant was and is a citizen of the United States, and a *bona fide* resident of said "Georgetown Mineral District;" that the land on which said trees grew was public land of the United States, mineral in character, and not subject to entry under existing laws of the United States, except as mineral lands; that the lumber "was used in said mineral district and adjoining mineral districts of said county of El Dorado for building, agricultural, mining, and other domestic purposes, but principally for mining purposes; that said timber was felled, removed, and used for the said purposes, * * * in accordance with the rules and regulations prescribed by the secretary of the interior;" and that said timber "was felled and removed, and said acts committed, under a license from the United States, under and by virtue of an act approved June 3, 1878, entitled "An act authorizing the citizens of Colorado, Nevada, and other territories to fell and remove timber on the public domain for mining and domestic purposes."

The act under which defendant attempts to justify, provides—

"That all citizens of the United States, and other persons *bona fide* residents of the state of Colorado, or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, or Montana, and all other mineral districts of the United States, shall be and are hereby authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber, or other trees growing or being on the public lands, said lands being mineral and not subject to entry under existing laws