

in full force and effect until dissolved or modified by the court to which such suit should be removed; and "that the circuit court of the United States shall, in all suits removed under the provisions of this act, proceed therein as if the suit had been originally commenced in said circuit court, and the same proceedings had been taken in such suit in said circuit court as shall have been had therein in said state court prior to its removal." The proceedings in the supreme court of the state, after the petition for removal, had resulted in that judgment, which was reversed by the supreme court of the United States, and the cause was remanded, with directions to accept the bond for removal, and proceed no further with the case. A taxation of the costs in that court at \$108.34 accompanied the mandate. *Steamship Co. v. Tugman*, 106 U. S. 118, 123, 1 Sup. Ct. 58. The state court thereupon, in form, itself reversed the judgment, and rendered this judgment for costs, with an award of execution. By these provisions of the statute of the United States, these proceedings of the state court came with the case into this court to have given them the same effect as if they had taken place in this court. There was but one case. This taxation of or judgment for costs came with it into this court. In it there could be but one final judgment, which would be that in this court; and into that all the previous proceedings in all the courts in which the case had been pending, including all taxations of costs in each court, would be drawn and merged. These costs in the state court would stand like those in the supreme court of the United States, to be taxed, and, if taxable, allowed, or, if not, disallowed. Whether they were taxable or not is not now material, for they cannot now be passed upon here. No relief can be granted here in respect to them unless the taxation became an enforceable judgment of the state court as a separate thing, which it could not be, and also follow the case, as it had to, into this court. No reason is seen why the judgment in the superior court should not be set off against that in this court, nor why the set-off should not be decreed here, but without costs, because, without the other judgment, this court would have no jurisdiction, and in such case costs are not allowed. Rev. St. U. S. § 968.

Decree for plaintiff for set-off of the superior court judgment, without costs.

CAMFIELD et al. v. UNITED STATES.

(Circuit Court of Appeals, Eighth Circuit. March 18, 1895.)

No. 517.

APPEAL—REHEARINGS BY CIRCUIT COURT OF APPEALS.

The fact that a case decided by the circuit court of appeals is one of great importance is not sufficient ground for granting a rehearing, when there is no suggestion that any consideration or authority entitled to weight has been overlooked; and this is especially true in cases arising under the constitution and laws of the United States, as to which the decisions of that court are not made final by section 6 of the judiciary act of March 3, 1891 (26 Stat. 826).

Appeal from the Circuit Court of the United States for the District of Colorado.

This was a proceeding brought by the United States against Daniel A. Camfield and William Drury, under the act of February 25, 1885 (23 Stat. 321), to compel the removal of an inclosure of public lands. In the circuit court an exception to the answer was sustained, and, defendants having failed to plead further, a decree was entered against them. 59 Fed. 562. Defendants thereupon appealed to this court, and upon February 20, 1895, the decree was affirmed. 66 Fed. 101. Defendants have now moved for a rehearing.

James W. McCreery, A. C. Patton, H. E. Churchill, and Charles W. Bates, for appellants.

Henry V. Johnson, U. S. Atty., for the United States.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

PER CURIAM. A motion for a rehearing has been filed in this case, based on two grounds: First, that this court has no jurisdiction of the case on appeal, because the case involved the constitutionality of an act of congress; and, second, because the case is one of great importance. With reference to the first point, it may be said that the record lodged in this court did not disclose any constitutional question. In the circuit court the government excepted to the sufficiency of a certain defense which was pleaded in the answer. The exception was sustained, whereupon, for failure on the part of the defendants to plead further, a decree was entered in favor of the United States. The defendants then prayed an appeal to this court, and assigned for error that the circuit court erred in sustaining the exceptions to the answer. The validity of the act of congress of February 25, 1885 (23 Stat. 321 c. 149), was not challenged by the assignments of error, nor by counsel for the appellants, either in their oral or written argument. With reference to the second point of the motion, it will suffice to say that while the case may be, and doubtless is, one of much importance to the appellants, yet it is not suggested that the court has overlooked any consideration or authority which should have had weight in the decision of the cause. Inasmuch as the case arises under the constitution and laws of the United States, and the decision thereof by this court is not made final by section 6 of the act of March 3, 1891 (26 Stat. 826, c. 517), no reason is perceived why a rehearing should be granted, and the motion in that behalf is therefore denied.

LUCKER v. PHOENIX ASSUR. CO. OF LONDON.

(Circuit Court, D. South Carolina. April 6, 1895.)

PRACTICE IN CIVIL CASES—PRODUCTION OF BOOKS AND PAPERS.

The right given by Rev. St. § 724, to compel the production of books and papers in action at law, is not limited to requiring their production at the trial, but the court may, in its discretion, grant an order for inspection, with permission to copy, prior to the date of the trial.