CHATFIELD *v.* IOWA & ARKANSAS LAND COMPANY.

Opinion delivered September 21, 1908.

APPEAL AND ERROR—AMENDMENT OF RECORD.—Before a transcript can be cured by stipulation of the parties, it must appear affirmatively that the omitted or amended matter as agreed upon was in the record in the lower court, and that the omission is merely from the transcript, and not from the record.

Appeal from Cross Chancery Court; *Edward D. Robertson,* Chancellor; motion to amend record denied.

R. W. Balch & T. E. Hare, for appellant.

John B. Jones, for appellee.

PER CURIAM. This is a stipulation purporting to be an amendment of the record under Rule XXV. The stipulation does not show affirmatively that all matters omitted from the transcript were in fact in the record. Before the transcript can be cured by amendment under this rule, it must affirmatively appear that the omitted matter, or amended matter, was in the record in the lower court as thus agreed upon, and that the omission is merely from the transcript, and not from the record. To hold otherwise would be to permit parties to make up a case which was not the case tried in the lower court, which is never tolerable. This rule is intended, and it plainly shows its in-

tention in its language, to enable parties to amend transcripts of the record so as to make them speak the truth, in order to save them the trouble, delay and expense of having transcripts returned to the clerks of the trial courts and the omitted or erroneous matter there corrected.

It maybe that the matters sought to be corrected by this stipulation are within the rule, but the stipulation fails to make that clear, and for that reason the record is not now amended. The stipulation is returned to the parties with the privilege of renewing it when in conformity to Rule XXV.