

formed to the rule and to have offered their evidence under it. Under these circumstances it would be a manifest injustice to either party to change the rule upon the second appeal. But, since the rule owes its very existence to error, it is not one whose extension is looked upon with favor. The ruling is adhered to in the single case in which it arises, is not carried into other cases as a precedent, and the doctrine is rarely, and in a very limited class of cases applied to matters of evidence, as distinguished from rulings at law. The narrow class of cases in which the doctrine will be held to apply to evidence and the rigid limitation upon the application of the doctrine, will be found well expressed in *Wallace v. Sisson*. It is there said: 'But when the fact which is to be decided depends upon the credit to be given to the witnesses whose testimony is received, on the weight to which their testimony is entitled or the inferences of fact that are to be drawn from the evidence, the sufficiency of the evidence to justify the decision must be determined by the tribunal before which it is presented, and is not controlled by an opinion of the appellate court that similar evidence at a former trial of the cause was insufficient to justify a similar decision. . . . And if, in the opinion which it renders, it assumes that the evidence sustains any fact, it is only the opinion of the court, and not the finding of that fact.'"—*Central Law Journal*.