in all those cases in which the facts proved at the retrial, and presented on the subsequent appeal, are materially different from those proved at the first trial and presented on the first appeal and on which the decision was founded: *e.g.*, where on the retrial after remand the issues were changed and much of the evidence admitted on the first trial was excluded on the retrial, in which case the decision of the appellate court on the first appeal is not the law of the case on the second appeal.

The rule of the law of the case does not apply in all its force to inferior appellate courts, and hence a decision of a district court of appeal, or other intermediate appellate court, is not the law of the case on appeal to the superme court or other higher court of appeal; it is binding on the trial court and other inferior courts, only.

In a California case, where the cause had been appealed to the district court of appeal, was remanded for a retrial, again appealed to the district court of appeal, and taken from there to the supreme court, the latter court held that the decision of the district court of appeal on the first appeal was not the law of the case on a subsequent appeal to the supreme court. Among other interesting things the California Supreme Court say: "Appellate's contention is that upon the former appeal the evidence then and there before the appellate court was reviewed and declared to be sufficient to sustain certain findings; that upon the same evidence the trial court again made the same findings, when in point of law it should have been controlled in its determination upon these matters by the utterances of the appellate court in discussing the evidence upon the former appeal. In this, the appellant mistakenly seeks unwarrantably to extend the doctrine of the law in the case. The doctrine of the law of the case presupposes error in the enunciation of a principle of law applicable to the facts of a case under review by an appellate tribunal. It presupposes error because, if the governing principle of law had been correctly declared, there would be no occasion for the intervention of the doctrine. The sole reason for the existence of the doctrine is that the court, having announced a rule of law applicable to a retrial of facts, both parties upon that retrial are assumed to have con-