

heirs of the said Charles Willey are entitled to recover the same."

The pleadings nowhere show that the rights of the parties depend on the construction or effect of the act of 1861, and no part of the evidence is set out in the bill of exceptions. Copies of deeds and a stipulation in respect to evidence are found in the transcript, but they are nowhere referred to in the bill of exceptions, and it is not even stated in the record that they were used at the trial. As long ago as *Dunlop v. Munroe* (7 Cranch, 242, 270), it was said by this court that "each bill of exceptions must be considered as presenting a distinct and substantive case; and it is on the evidence stated in itself alone that the court is to decide." Of course, evidence may be included in a bill of exceptions by appropriate reference to other parts of the record, and if that had been done here it might have been enough. But with no issue made directly by the pleadings, and no evidence set forth or referred to in the bill of exceptions showing the materiality of the charge complained of, the case presents to us only an abstract proposition of law which may or may not have been stated by the court in a way to be injurious to the plaintiffs in error. Such a proposition we are not required to consider. *Reed v. Gardner*, 17 Wall. 409.

Judgment affirmed.

MICAS v. WILLIAMS.

Where the record is such as to furnish a sufficient color of right to the dismissal of the writ of error to justify the court in entertaining with a motion to dismiss a motion to affirm under Rule 6, — *Held*, that although the grounds for dismissal be removed by a further showing, the motion to affirm will be granted, when it is manifest that the writ was sued out for delay only.

MOTION to dismiss a writ of error to the Circuit Court of the United States for the Eastern District of Louisiana, with which is united a motion to affirm under Rule 6, par. 5.

Mr. Joseph P. Hornor in support of the motion.

Mr. Thomas J. Durant, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The affidavits which have been filed by the plaintiff in error, in opposition to these motions, are probably sufficient to establish the fact that the value of the matter in dispute exceeds \$5,000. The motion to dismiss is, therefore, denied; but on looking into the record we are entirely satisfied the writ was taken for delay only. No assignment of errors has been annexed to or returned with the writ, as required by sect. 997 of the Revised Statutes; and every question presented by the bill of exceptions or suggested upon the argument appears to us so frivolous as to make it improper to keep the case here for any further consideration. There was on the record, as it stood when these motions were made, at least sufficient color of right to a dismissal to justify us in entertaining with it a motion to affirm in accordance with the provisions of Rule 6, par. 5.

Motion to affirm granted.

MERRELL *v.* TICE.

1. In an action for the infringement of his copyright of a book, the plaintiff cannot recover without proving that, within ten days from the publication thereof, he delivered two copies of such copyright book at the office of the Librarian of Congress, or deposited them in the mail properly addressed to that officer.
2. *Quære*, Is the certificate of the Librarian, under his official seal, that two copies were so deposited, competent evidence of the fact.
3. Where to his certificate (*infra*, p. 558), setting forth other facts, there is added a statement, not signed or sealed, that two copies of the publication were deposited,—*Held*, that the statement is admissible in evidence only against the party making it.

ERROR to the Circuit Court of the United States for the Eastern District of Missouri.

The facts are stated in the opinion of the court.

Mr. Melvin L. Gray for the plaintiff in error.

Mr. C. P. Culver, *contra*.