

Opinion of the Court.

on the facts as found. But here the only exceptions to the findings below were that they were contrary to the evidence, and a judgment has been rendered by the supreme court in every way inconsistent with those findings. The necessary inference, therefore, is that the findings sent up to that court were set aside and the case disposed of on the evidence. This, it was also said in *Stringfellow v. Cain*, might be done in this class of cases.

As the only exceptions taken in the rulings of the district court were by Howe, in whose favor judgment has finally been rendered in the supreme court, they need not be considered here.

It follows that the judgment of the Supreme Court of the Territory must be affirmed.

So ordered.

FEIBELMAN *v.* PACKARD and Others.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Decided November 13th, 1882.

Error—Practice.

A writ of error sued out by one of two or more joint defendants without a summons and severance or equivalent proceeding, must be dismissed.

Mr. J. Ray, and Mr. R. G. Colb for plaintiff.

Mr. Beckwith for defendant.

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

Moses Feibelman and George Voelker, as partners, sued the defendants in error to recover damages for the seizure of their partnership goods by Packard, marshal of the United States for the District of Louisiana. A judgment was rendered against them. Their interests in the suit were joint, and the judgment affects them jointly and not separately. Feibelman alone has brought this writ of error, and there has been no summons and

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severance or other equivalent proceeding. It follows that the writ must be dismissed, on the authority of *Williams v. Bank of the United States*, 11 Wheat. 414; *Masterson v. Herndon*, 10 Wall. 416; *Simpson v. Greeley*, 20 Wall. 152; and it is

So ordered.

WOOLF *v.* HAMILTON et al.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

Decided November 10th, 1882.

Error—Practice—Statutes.

A case not tried in a territorial court by a jury cannot be brought for review by a writ of error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. This writ of error is dismissed on the authority of *Hecht v. Boughton*, 105 U. S. 235. The case was not tried in the court below by a jury. This, under the act of April 7th, 1874, c. 80, 18 Stat. 27, made it necessary to bring the judgment here for review by appeal and not by writ of error.

Dismissed.

CITY OF NEW ORLEANS *v.* NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Argued November 14th and 15th, 1882.—Decided November 20th, 1882.

The board of liquidation of the city debt of New Orleans, a corporate body created by the legislature of Louisiana, created pending the appeal of this suit, appeared and claimed authority over the subject-matter of the controversy. The court refused to enter judgment according to the terms of stipulation made with the attorney of the city of New Orleans by authority of the city council, without first giving the board opportunity to be heard.