

## Opinion of the Court.

WILSON *v.* BLAIR.

## ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

Submitted November 15, 1886. — Decided December 13, 1886.

When the record in the court below is silent as to the value of the matter in dispute, it is good practice for that court to allow affidavits and counter affidavits of value to be filed under directions from the court.

The burden of proof is on plaintiff in error, when the record is silent as to the value of the subject-matter in dispute, to establish that it is of the jurisdictional value.

This was an action for the possession of real estate. Judgment for plaintiff. Defendant sued out this writ of error. The defendant in error moved to dismiss for want of jurisdictional value in the matter in dispute.

*Mr. Lewis A. Groff, Mr. C. S. Montgomery, and Mr. M. H. Sessions* for the motion.

*Mr. C. O. Whedon and Mr. J. C. Crooker* opposing.

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

Our jurisdiction in this case depends on the value of the matter in dispute. Final judgment was entered in the action May 24, 1884. At that time there was nothing in the record to show the value. On the 16th of September, 1884, on motion, leave was given the defendant in the court below to file affidavits of value that day, and the plaintiff to file counter affidavits in twenty days. This was good practice, and, if oftener adopted, would save trouble to parties and to us. Under this leave, and others of a similar character, which were afterwards granted, a considerable number of affidavits were filed by both parties. The affidavits were contradictory, some having a tendency to prove that the value was more than five thousand dollars, and others that it was less. On the 5th of May, 1885, the district judge, without formally deciding the question of value, allowed a writ of error, thus sending the

## Syllabus.

case here on the affidavits, free from any decision whatever by the court below as to their effect. In this respect the case differs from *Gage v. Pumpelly*, 108 U. S. 164, where the appeal was allowed by the court in session after considering the affidavits; and from *Zeigler v. Hopkins*, 117 U. S. 683, where the value was found as one of the facts in the case.

The burden of showing jurisdiction is on the plaintiff in error. He must establish as a fact by a fair preponderance of testimony that the value of the property in dispute exceeds five thousand dollars. This he has not done. Two witnesses swear that the property is worth more than six thousand dollars, and eight that it is worth five thousand dollars, "or more." These are for the plaintiff in error, but there are eight on the other side who say it is worth only from about \$3000 to about \$3500, and the certificate of the county clerk shows that it was valued for taxation in 1884 at only seven hundred dollars. Under these circumstances, we think the decided preponderance of the evidence is against our jurisdiction, and the motion to dismiss is therefore granted.

*Dismissed.*

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JOHNSON *v.* CHICAGO AND PACIFIC ELEVATOR COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Argued November 30, 1886. — Decided December 13, 1886.

The jib-boom of a vessel towed by a steam-tug, in the Chicago River, at Chicago, Illinois, struck a building on land, through the negligence of the tug, and caused damage to it, and the loss of shelled corn stored in it. A statute of Illinois gave a lien on the tug for the damage, to be enforced by a suit *in personam* against her owner, with an attachment against the tug, and a judgment *in personam* against her owner and the surety in a bond for her release. In such a suit, in a court of Illinois, to recover such damage, such a bond having been given, conditioned to pay any judgment in the suit, and the tug having been released, an application afterwards by J., claiming to be part owner of her, to be made a defendant in the suit, was denied, and a judgment for the damage was given against the de-