taken, which upon and during said trial was done accordingly, and this bill of exceptions filed on and during said trial."

There being but the single exception in the bill, we can examine the case no further.

Finding that exception not well taken, we are constrained to affirm the judgment, and it is affirmed accordingly. *Affirmed.*

Mr. J. M. Carlisle for plaintiff in error. *Mr. Jackson Grimshaw* for defendant in error.

AMERICAN WOOD PAPER COMPANY *v.* HEFT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 154. December Term, 1868. — Decided March 1, 1869.

In this case the court permits a third party to intervene and file affidavits to show that the suit has been settled between the parties, and that its further prosecution is collusive and fictitious and for the purpose of aiding further proceedings against persons not parties to the record; and, counter affidavits being filed by the appellant, a rule is issued against the appellant to show cause why the suit should not be dismissed.

The case is stated in the opinion of the court. For further proceedings in it, see 8 Wall. 333.

Mr. Chief Justice Chase delivered the opinion of the court.

This is a motion for leave to intervene and to move to dismiss the appeal upon two grounds, namely:

(1) That the suit of the appellant is merely fictitious, there having been a settlement of the matter in litigation between the parties.

(2) That the suit is now prosecuted, not to determine any real controversy between the parties to the record, but to obtain a decree on which to found an application for an injunction against persons really interested, adversely to the appellants, but not parties to the record, and among them against the person in whose behalf the motion is made.

The affidavits in support of the motion do not show that there was no real controversy in the Circuit Court, but are introduced for the purpose of satisfying us that since the decree in that court the matters there litigated have been settled in such a manner that the appellees have no further interest in the cause.

An affidavit against the motion has been filed by the appellants, in which affiant describes himself as yet of the company, and denies

that the matters in litigation upon the appeal have been settled; but avers, on the contrary, that the appeal is prosecuted in good faith and for the determination of a real controversy.

Taking all the affidavits together, in connection with the circumstance that no appearance has been entered in this court for the appellees, we are of the opinion that enough is shown to warrant a rule against the appellant, to show cause why the appeal should not be dismissed.

In the case of *Lord* v. *Veazie*, 8 How. 251, 254, in this court, an appeal was dismissed upon motion, the court being satisfied, by the affidavit produced, that the suit was fictitious and collusive; and the same course was pursued upon similar showings in *Cleveland* v. *Chamberlain*, 1 Black, 419, 425. *Fletcher* v. *Peck*, 6 Cranch, 87, 147, *per* Johnson, J., dissenting.

In these cases no doubt was left in the judgment of the court, that the suits were in fact what the affidavits in support of the motion to dismiss alleged them to be.

In this case, we do not think it proper to go at present to the extent of dismissal.

We think, indeed, that it would be the better practice in cases similar to this, to move in the first instance upon affidavits for a rule to show cause why the suit should not be dismissed.

That rule will now be awarded returnable the 9th day of April next, and leave is given to both parties to take depositions on sufficient notice before any Commissioner of the United States, in support of the rule and against it. *Rule granted.*

Mr. B. F. Butler for intervenor. *Mr. T. A. Jenckes* for appellant. *Mr. Leonard Myers* for appellees.

CHICAGO *v.* BIGELOW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 183. December Term, 1868. — Decided April 12, 1869.

The record showing no allowance of appeal below, and it appearing by affidavits that an appeal was actually allowed of which the clerk omitted to make entry, this court refused a *certiorari* to bring up the record; and the case was passed to enable appellant's counsel to move in the Circuit Court for an entry *nunc pro tunc* of the prayer and allowance.

THE case is stated in the opinion.