MORRIS *v.* SHRINER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 133. December Term, 1868. — Decided April 15, 1869.

Where there is only one exception to a general finding by the court in an action at law tried without the intervention of a jury, and that is not well taken, this court will not examine the record further.

EJECTMENT. The case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This is an action of ejectment. The plaintiff in error was the plaintiff in the court below. The parties waived the intervention of a jury and submitted the cause to the court.

According to the statute regulating the practice in such cases, the finding of the court upon the facts may be either general or special, and shall have the same effect as the finding of a jury. When the finding is special, the review by this court may extend to the sufficiency of the facts found, to support the judgment. Act of March 3, 1865, § 4, 13 Stat. 501. In this case the finding was general, that the defendants were not guilty, etc., and judgment was rendered in their favor.

We must, therefore, look to the bill of exceptions as if the finding had been by a jury, for the action of the court, and the grounds upon which it is sought to reverse the judgment.

The bill extends over more than fifty printed pages. It contains the testimony, mostly documentary, given by both parties. We have been able to find in it but one exception, that is to the admission of a small part of the evidence offered by the defendants. The court was clearly right in admitting it. The objection is not insisted upon in the agreement of the learned counsel for the plaintiff in error. We need not, therefore, more particularly advert to it. The bill concludes as follows:

"The court thereupon found for the defendants, and found that defendants were not guilty of unlawfully withholding from plaintiff the possession of the premises in controversy. To preserve all which matters and things of record in this cause, defendant prays the court to sign and seal this bill of exceptions on and during the progress of the trial herein, and as the several steps herein were

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