

Opinion of the Court.

FISHBURN *v.* CHICAGO, MILWAUKEE AND ST.
PAUL RAILWAY COMPANY.ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF WISCONSIN.

No. 42. Argued October 31, 1890. — Decided November 3, 1890.

In regard to motions for new trial and bills of exceptions courts of the United States are independent of any statute or practice prevailing in the courts of the state in which the trial was had.

The overruling of a motion for a new trial is not a subject of exception, according to the practice of the courts of the United States.

THIS was an action to recover damages for an alleged wrongful ejection from a railway train. The record contained a bill of exceptions in which were set forth at length (1) the pleadings; (2) the evidence at the trial with the objections to its admissibility or competency taken at the time; (3) the charge of the court, to which no exception was taken before verdict; (4) the verdict of the jury for the defendant; (5) a motion for a new trial for alleged errors in the charge set forth specifically; (6) the overruling of the motion and entry of judgment; (7) the exception to such overruling.

The court interrupted the counsel for the plaintiff in error in his opening, calling attention to the fact that the only exceptions in the record were those taken to the overruling of the motion for a new trial, and that the record raised no other question. The counsel stated that the proceedings were had in accordance with the practice prevailing in the State in which the trial was had; but the court declined to hear further argument.

FULLER, C. J. This is an action for damages brought by plaintiff in error against defendant in error for wrongfully ejecting her from one of its passenger trains, and resulted in a verdict and judgment in favor of defendant in error.

In regard to motions for new trial and bills of exceptions, courts of the United States are independent of any statute or

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practice prevailing in the courts of the State in which the trial is had. *Missouri Pacific Railway Co. v. Chicago & Alton Railroad Co.*, 132 U. S. 191.

The only exception in respect to which plaintiff assigns error here was to the overruling of her motion for a new trial, which is not the subject of exception, according to the practice of the courts of the United States.

Various objections to the charge of the court were set out as grounds for the motion for new trial, but it nowhere appears that exceptions were taken to any of these matters, save as involved in the overruling of that motion, nor does the record show that the action of the Circuit Court was invoked upon the ground that there was no evidence to sustain the verdict.

Our right of review is limited to questions of law appearing on the face of the record, and we find none such presented here.

The judgment must therefore be

Affirmed.

Mr. B. F. Dunwiddie (with whom were *Mr. I. C. Sloane* and *Mr. B. Dunwiddie* on the brief) for plaintiff in error.

Mr. John W. Cary and *Mr. Burton Hanson* for defendant in error.

LA CONFIANCE COMPAGNIE ANONYME D'AS-
SURANCE v. HALL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF MISSOURI.

No. 11. Argued and submitted October 21, 1890. — Decided November 3, 1890.

In a petition for the removal of a cause from a State court on the ground of diverse citizenship, the failure to state the existence of such citizenship at the commencement of the suit as well as when the removal was asked is a fatal defect.

THE case is stated in the opinion.