

Statement of the Case.

volved upon the company to show why the ship did not steer away from the wreckage or slacken speed while passing through it; and this was not attempted. In our opinion the steamship company failed to show that the accident was one which could not have been prevented by human effort, sagacity and care, and we perceive no reasonable ground for disagreeing with the judgment of the District Court upon the facts.

The order of the Circuit Court of Appeals is reversed, and the decree of the District Court affirmed, with costs.

ST. LOUIS v. WESTERN UNION TELEGRAPH
COMPANY.

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

No. 219. Argued March 18, 19, 1897. — Decided April 5, 1897.

Grayson v. Lynch, 163 U. S. 468, followed to the point that the special finding of facts referred to in the acts allowing parties to submit issues of fact in civil cases to be tried and determined by the court, is not a mere report of the evidence, but a finding of those ultimate facts, upon which the law must determine the rights of the parties; and, if the finding of facts be general, only such rulings of the court in the progress of the trial can be reviewed as are presented by a bill of exceptions, and in such case the bill of exceptions cannot be used to bring up the whole testimony for review any more than in a trial by jury.

AN action was brought in the Circuit Court of the United States for the Eastern District of Missouri by the city of St. Louis, seeking to recover from the Western Union Telegraph Company the sum of five dollars per annum per pole for 1509 telegraph poles which the defendant maintained on the streets of that city between July 1, 1884 and July 1, 1887. The case was tried without a jury, and resulted, on June 17, 1889, in a judgment in favor of the defendant, the court holding that the burden imposed was a privilege or license tax, which the city had no authority to impose. A writ of error was sued out

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of this court, where it was held that the municipal charge in question was not in the nature of a privilege or license tax, but was a rental charge for the permanent and exclusive appropriation of those spaces in the streets which are occupied by the telegraph poles. To the defence asserted by the telegraph company that by ordinance the city had contracted with defendant to permit the erection of these poles in consideration of the right of the city to occupy and use the top cross-arm of any pole for its own telegraph purposes, free of charge, it was replied by this court that there was nothing in the record to show that any of the poles were erected under or by virtue of the ordinance mentioned, and that, therefore, so far as the facts appeared there was simply a temporary matter of street regulation, and one subject to change at the pleasure of the city. But this court did not find it necessary to consider the matter of this ground of defence at length, as, on the new trial awarded, the facts in respect thereto could be more fully developed. It was further claimed by the telegraph company that the ordinance charging five dollars a pole per annum was unreasonable. But this court thought this question also should be passed for further investigation on the new trial. 148 U. S. 92.

Thereafter, in January, 1894, the second trial was proceeded with, a jury being waived, and resulted in a judgment in favor of the defendant. The present writ of error was then sued out from this court.

Mr. W. C. Marshall for plaintiff in error.

Mr. John F. Dillon and *Mr. Eleneious Smith* for defendant in error. *Mr. George H. Fearons* and *Mr. Joseph Dickson* were on their brief.

MR. JUSTICE SHIRAS, after stating the case, delivered the opinion of the court.

We are urged in the argument for the plaintiff in error to convict the Circuit Court of error in holding that a contract existed between the city and telegraph company, which con-

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tract would be impaired by the ordinance imposing a charge upon the company for maintaining its poles upon the streets, and in holding that said ordinance was void because unreasonable and oppressive.

But, in the view that we take of this record, those questions are not presented for our determination. The case was tried by the court without a jury, and the record shows simply a general finding and a rendition of judgment in favor of the defendant. There is no special finding of facts, and therefore inquiry in this court must be limited to the sufficiency of the complaint, and the rulings, if any be preserved, on questions of law arising during the trial. In such cases a bill of exceptions cannot be used to bring up the whole testimony for review any more than in a trial by jury. *Norris v. Jackson*, 9 Wall. 125, 128; *Lehnen v. Dickson*, 148 U. S. 71.

When all the evidence had been adduced in the case the plaintiff asked the court to declare the law to be as follows:

"The court declares the law to be that, under the pleadings and evidence herein, ordinance No. 11,604" (which was the ordinance which granted the company the right to maintain its poles, upon condition that the city should occupy the top cross-bar free of charge), "is not a contract between the plaintiff and defendant, but is simply a municipal regulation, which the city has a right to change at any time it sees fit, and that ordinance No. 12,783" (which was the ordinance imposing the charge of five dollars per pole annually) "is a valid ordinance regulation, and that the defendant is bound thereby."

"The court declares the law to be that upon the pleadings and evidence in this case ordinance, No. 12,733 is a valid ordinance and is not void as being unreasonable, oppressive or unjust."

"The court declares the law to be that upon the pleadings and evidence in this case the plaintiff is entitled to recover from the defendant the sum of \$22,635, with interest thereon at the rate of six per cent from the 7th day of April, 1888."

The refusal of the court so to hold was excepted to and is assigned for error. But these were rulings which involved a determination of facts, and as those facts are not found for

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us by a special finding by the court, and as the evidence which developed the facts is not brought to our notice by exception to its competency or relevancy, no questions of law are presented for our review.

It is true that an agreed statement of facts was stipulated into the record of the case from the former trial; but additional evidence was introduced at this trial, and the prayers were based on the entire evidence.

It was said in *Grayson v. Lynch*, 163 U. S. 468, 472, that "this court has held in a series of cases that the special findings of facts, referred to in the acts allowing parties to submit issues of fact in civil cases to be tried and determined by the court, is not a mere report of the evidence, but a finding of those ultimate facts upon which the law must determine the rights of the parties; and, if the findings of facts be general, only such rulings of the court in the progress of the trial can be reviewed as are presented by a bill of exceptions, and that in such case a bill of exceptions cannot be used to bring up the whole testimony for review any more than in a trial by jury." *Norris v. Jackson*, 9 Wall. 125; *Dirst v. Morris*, 14 Wall. 484; *Boogher v. Insurance Co.*, 103 U. S. 90; *Lehnen v. Dickson*, 148 U. S. 72.

The judgment of the Circuit Court is accordingly

Affirmed.

IASIGI v. VAN DE CARR.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 746. Argued March 22, 1897. — Decided April 5, 1897.

Iasigi, Consul General of Turkey in Boston, was arrested in New York, February 14, 1897, on a warrant issued by a magistrate of the latter city, to await the warrant of the governor of New York on the requisition of the governor of Massachusetts for his surrender as a fugitive from justice in that State, where he was charged with having committed the crime of embezzlement. On the 18th of February he applied to the District Court of the United States for a writ of *habeas corpus*, on the