
Hecker vs. Fowler.

HECKER vs. FOWLER.

The court will not dismiss a writ of error to the Circuit Court on the ground that there is no error apparent on the face of the record.

This was *covenant* brought in the Circuit Court for the southern district of New York. While the cause was pending there, it was referred by consent. The referee found for the plaintiff. The court entered judgment on the award, and the defendant below took this writ of error. The defendant in error (plaintiff below) moved to dismiss the writ of error, and affirm the judgment.

Mr. Andrews, of New York, in support of the motion. The facts are not found in a general or special verdict, nor agreed on in a case stated, and there is no bill of exceptions. This court must, therefore, affirm the judgment, unless there is error apparent on the face of the record. *Graham vs. Bayne*, (18 How., 60;) *Guild vs. Frontin*, (18 How., 135;) *Suydam vs. Williamson*, (20 How., 427;) *Kelsey vs. Forsyth*, (21 How., 85;) *Campbell vs. Boyreace*, (21 How., 223.) There is no error on the face of this record.

Mr. Monroe, of New York, resisted the motion.

Mr. Chief Justice TANEY. We are asked to dismiss this writ because no error appears on the face of the record. It is not necessary, by the practice of this court, for the party who brings a cause here to specify upon the record the errors he complains of, and they are not even informally brought to our notice until the argument is heard. Want of jurisdiction and irregularity of the writ are the only grounds for dismissal. Where a judgment appears to have been rendered which the party is entitled to have revised in this court, and it is also seen that it comes here for such revision upon proper process, duly issued, all other questions must await the final hearing. To say that there is no error in this judgment, and affirm it

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for that reason, would be to decide the whole legal merits of the case, and this we cannot do on a motion to dismiss or quash the writ.

Motion denied.

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1. In replevin, the plea of property is a good plea in bar of the action.
2. Where the plea, without averring property in the defendant or a stranger, traverses the plaintiff's allegation of property in himself, it might be held defective on demurrer, but it is good in substance.
3. The addition of a *similiter* to the plea of property is but matter of form, and its omission does not affect its validity.
4. Where the plea of property is put in by the defendant, but is not tried by the jury, it is a mistrial and an error, for which the judgment will be reversed.
5. An omission to join issue upon an avowry for rent in arrear, or otherwise to notice it on the record, is a mere irregularity, cured by the verdict.

Charles S. Wallach brought replevin in the Circuit Court for the District of Columbia against Ann R. Dermott. In his declaration the plaintiff averred that certain articles of household furniture were taken by the defendant and detained against sureties and pledges. The defendant pleaded that "the goods and chattels in the declaration mentioned are not the property of the said plaintiff, and of this she puts herself on the country." The defendant also avowed the taking of the goods for rent in arrear, setting out the lease, and the amount due thereon. To the avowry the plaintiff replied *riens en arriere*, but did not formally join issue on the plea of property by putting in a *similiter*. The defendant prayed the court to instruct the jury on several points, all of them having relation to the one question whether the rent had become due and payable to the plaintiff, as alleged by her. The court refused to give the instructions prayed for, and the jury found that the rent claimed by the defendant "at the time when, &c.,