DECISIONS

IN THE

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1871.

BETHELL *v.* MATHEWS.

1. A plaintiff in error cannot take advantage of exceptions in his own favor even if erroneous; a matter often decided before.
2. Under the act of March 3d, 1865, authorizing the trial of facts by Circuit Courts, the court must itself find the facts in order to authorize a writ of error to its judgment. A statement of facts signed by counsel and filed after the judgment is insufficient.
3. Where in a case tried under the above-mentioned act the record, owing to the manner in which things have been done below, presents a case as of a judgment rendered on a general verdict in favor of the defendant in error, and does not present any question arising on the pleadings, nor any ruling against the plaintiff in error, the judgment will be affirmed.

ERROR to the Circuit Court for the District of Louisiana, the case being this:

The act of Congress of March 3d, 1865,* authorizing the Circuit Courts of the United States, on written stipulation of the parties or their attorneys filed, to try issues of fact in civil cases without the intervention of a jury, enacts that—

"§ 4. The findings of *the court* upon the facts . . . shall have the same effect as the verdict of a jury."

With this statute in force, Bethell sued Mathews in the court below on certain promissory notes. A written stipu-

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* 13 Stat. at Large, 501.

lation signed by the parties was filed, waiving a jury and submitting the cause for trial by the court. It was so tried, accordingly. Six bills of exception, all by the defendant, were taken to testimony offered by the plaintiff, and all overruled. On the 2d of May, 1870, for reasons orally assigned, the court, *not having made any findings of fact*, ordered "that judgment be entered in favor of the defendant," and it was so signed accordingly four days afterwards. On the 10th of June, thirty-nine days after the judgment was rendered, the counsel filed a "statement of facts proved in the case," which statement was signed by *them*. The present writ of error was taken to review the judgment given in the case; the record disclosing the proceedings as above mentioned.

Messrs. Miles Taylor and C. N. Morse, for the plaintiff in error, submitted the case on merits.

Mr. T. J. Durant, contra:

The facts or case should have been found by the court. The statute is imperative. A case agreed on by counsel after the judgment cannot possibly be intended as found by the court. At any rate the finding should precede the judgment.

There is, then, only a general finding in favor of the defendant, which must have the same effect as a similar finding of a jury. The case is thus presented to this court, as if on a writ of error to a judgment of the court rendered on a general verdict in favor of the defendant in error, and where there is no question arising on the pleadings, and where there was no ruling on the trial of the cause against the plaintiff in error. In such a case the judgment of the lower court must be affirmed as of course.

The CHIEF JUSTICE:

It has been often decided that a plaintiff in error cannot take advantage of rulings upon exceptions in his own favor, even if erroneous. Nor can a statement of facts signed by

counsel be noticed upon error.* In this case, then, not only was the statement so signed, but it does not appear to have been made and filed until after the judgment.

There is, therefore, no error in the record, or none of which we can take notice. The judgment of the Circuit Court for the District of Louisiana must be

AFFIRMED.

NORWICH TRANSPORTATION COMPANY *v.* FLINT.

In a suit by a passenger against a steamboat company for injuries done to him on the deck of a steamboat by the discharge of a gun by some disorderly soldiers, whom the transportation company had taken on board and who had overpowered their sentinels, evidence was held to have been properly received as part of the *res gestæ* that during the disturbance a person, who appeared to be a sergeant, came into the cabin to a person who appeared to be his superior officer, and told him, first in a less excited manner, that there was a disturbance on deck which he could not suppress, and in which he feared that some one would be hurt; and on being told to "go back and mind his orders" retired, and came again, after some time, hurriedly, and very soon after the discharge of a gun had been heard, exclaiming to the officer, "For God sake, come up; a man has been shot!" The statements of the sergeant being not offered for the purpose of proving the facts stated by him, but the whole incident (including those statements) being adduced for the purpose of showing the manner in which the officers attended to their duty whilst the disturbance was going on; the fact that notice of its progress was communicated, the time that it continued, and the degree of alarm it was calculated to excite in such a person as the sergeant appeared to be.

ERROR to the Circuit Court for the District of Connecticut.

Flint brought an action on the case in the court below against the Norwich and New York Transportation Company, to recover damages for an injury received by him in June, 1864, while a passenger on their steamboat, running from New London to New York. The plaintiff, with other

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* Generes *v.* Bonnemer, 7 Wallace, 564; Avendano *v.* Gay 8 Id. 376; Kearney *v.* Case, 12 Id. 276.