

SOWLES *v.* UNITED STATES.*Circuit Court, D. Vermont.*

August 6, 1884

IMPERFECT RECORD.

Case will not be heard upon an incomplete transcript of record

At Law.

H. S. Royce, for plaintiff in error.

Kittredge Haskins, U. S. Atty., and *W. D. Wilson*, for defendant.

WALLACE, J. The transcript of the record brought up on this writ of error consists of a declaration filed by the plaintiff, a consent by the respective attorneys for the plaintiff and defendant to waive a trial by jury, and that the action be tried by the court, and the opinion of the judge of the district court who tried the cause, which concludes with a direction for a judgment for the plaintiff. There seems to have been no plea or answer on the part of the defendant, there is no bill of exceptions, and no formal judgment seems to have been entered.

If it were proper to assume that a judgment had been entered, it would be competent for the plaintiff in error to insist upon any error apparent upon the record, if any exists, and it would then be the duty of the court to inspect the declaration, to ascertain whether the court below had jurisdiction, and whether the declaration sets forth a cause of action, and upon this record only those questions could be considered. *Garland v. Davis*, 4 How. 131; *Bennett v. Butterworth*, 11 How. 669; *Suydam v. Williamson*, 20 How. 427. As the record now is, no such inquiry can be made, and it is ordered that unless within 30 days the plaintiff in error applies for a *certiorari* to bring up a perfect record, or for leave to dismiss the writ of error

and proceed anew, (*Elmore v. Grymes*, 1 Pet. 469.) the writ of error shall stand dismissed.

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