

CHRIST AND OTHERS V. SCHELL.

Circuit Court, S. D. New York. October Term, 1885.

TRIAL—STRIKING CASE FROM
CALENDAR—ERRONEOUS ENTRIES BY CLERK.

Case struck from trial calendar, because the entries of the clerk show that no issue remains for trial.

At Law.

Almon W. Griswold, for plaintiff.

Thomas Greenwood, Asst. U. S. Atty., for defendant.

WHEELER, J. This suit was commenced in the state court, March 4, 1861, was removed to this court, March 20, 1861, and entered in 139 the clerk's docket of United States Causes, vol. 3, p. 203. A declaration upon the common counts in *assumpsit* and a plea of *non assumpsit* were filed. According to the entries in the cause it was tried, and a verdict was rendered for the plaintiff, February 26, 1862. Judgment was rendered on the report of a referee to ascertain the amount, and the judgment satisfied April 4, 1863. The cause is upon the calendar as a cause pending for trial, and the defendant moves to have it stricken from the calendar because there is no issue remaining in it for trial and it has now been heard upon this motion. The motion is resisted upon the ground that the entries in the clerk's docket do not belong, and were erroneously made, in this case. A suit was commenced by George Christ, Louis Jay, and Julius Hess against the same defendant, October 9, 1864, and was entered in the same docket at page 163. The report of the referee, on which judgment was rendered in this case, appears to have been made in that case. A verdict was entered in that case upon the same day, and a judgment was entered at the same time, and in the same manner, but upon the report of a referee in still another

case in favor of the same plaintiffs against the same defendant. There were several other cases in favor of Christ, Jay, and Hess against the same defendants, in all of which there have been verdicts, judgments, and satisfaction except one. The clerk's minutes show verdicts, by consent, in two cases in favor of Christ and others against Schell, without giving the names of the plaintiffs further, February 26, 1862, and a verdict in one such case, May 27, 1864. It sufficiently appears that the verdict entered in this case, February 26, 1862, does not belong in this case. It also sufficiently appears that the verdict of May 27, 1864, does not belong to any other case than this. Nothing appears to have ever been done upon that verdict. The plaintiff Christ, and his various associates, have had as many verdicts as they have had cases, and as many judgments, with satisfaction, as they have had cases, lacking one. The verdict of May 27, 1864, was general, for duties paid on charges and commissions. This suit is said to have been brought, and probably was, although the records do not show, for the recovery of excessive duties on *mouslin de laine*. But the record shows a verdict in this case, with judgment and satisfaction. This is erroneous, but a correction of the error will disclose another verdict which will belong in this case to take the place of the one removed from this case to another. This latter verdict must be set aside before this case can be left with an issue for trial. Whether these corrections should be made after this long lapse of time is not the question now. The case will not stand for trial again until they are made.

Motion granted, and cause to be stricken from the calendar.

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