derived from the fact that she was seised of the land back of the water front, and bounded by the river, when she conveyed by the same metes and bounds the land in partition acquired, she conveyed, unless the deed made some reservation, all the rights, privileges, and appurtenances which title to the land gave her. By the law of Virginia, the rights of riparian owners extend to low-water mark. *French* v. *Bankhead*, 11 Grat. 136. But whether or not the description of the land made in the deed from Mary E. O. Tarrant and her husband, Dashiel, to Elliot, Martin, Bennett, and McCurdy, corresponded exactly with the metes and bounds given in the report of the commissioners, the description in that deed is sufficient to convey to the grantees all the riparian rights which the ownership of the land could give, incident and appurtenant to adjacent land. One of the boundaries in this deed is in the following words: "Thence south, 32 degrees west, 12.15 chains," to a stake at high-water mark on the Elizabeth river; thence north, 57 degrees 15 seconds west, 17.90 chains, to the corner of J. W. Brinton's land. The only corner which Brinton's land there makes is with the Elizabeth river. The supreme court in *County of St. Clair* v. *Lovingston*, 23 Wall. 46, and *Railroad Co.* v. *Schurmeir*, 7 Wall. 272, has settled this question for us. "It may be considered," say the court, "a canon in American jurisprudence that where the calls in a conveyance of land are for two corners at, in, or on a stream, or its bank, and there is an intermediate line extending from one such corner to the other, the stream is the boundary, unless there is something which excludes the operation of this rule by showing the intention of the parties was otherwise." There is nothing here, either in the deeds themselves or in the conduct of the parties, who waited 15 years before finding out that they had any claim to riparian rights, to show any reason to exclude the operation of this canon of American jurisprudence, or that the grantors in the deed to Elliot, Martin *et al.* did not intend to come under it. We have not answered *seriatim* the errors assigned, but what we have said answers them all. We think the decree of the court below was the proper one to make, and it is affirmed, with costs.

COLUMBUS CONSTRUCTION CO. v. CRANE CO.

(Circuit Court of Appeals, Seventh Circuit. October 1, 1892.)

No. 23.

1. CONTRACTS—SALE—AGENCY.
Plaintiff and defendant entered into a written agreement, in which the defendant agreed to purchase in its own name and upon its own credit, as the agent irrevocable of the plaintiff, certain goods, and to deliver the same at a specified time. *Held*, that defendant was liable to plaintiff, as a vendor, for failure to deliver the goods according to the agreement.

2. SAME—CONSTRUCTION.
The fact that there was attached to such agreement an exhibit showing a form of contract with a manufacturer for the manufacture and sale of such goods does not bind the defendant to procure the goods under such contract.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

Action by the Columbus Construction Company against the Crane Company. A demurrer was sustained to the third and fourth counts of the declaration. Plaintiff brings error. Reversed.

Statement by WOODS, Circuit Judge:

The nature and ground of the ruling upon which error is assigned are well stated in the following brief opinion of the judge who presided in the circuit court:

"BLODGETT, District Judge. This is a demurrer to the third and fourth counts of plaintiff's declaration, which charge the defendant with a breach of the contract, attached to the declaration, and made a part of these counts, while acting as agent of the plaintiff. I have no doubt that this contract is a contract for the employment of the defendant by the plaintiff as a broker or agent of the plaintiff for the purchase of the wrought-iron pipe mentioned in the contract. It is not a contract for the sale of the pipe by the defendant to the plaintiff, nor does it contain any guaranty, expressed or implied, of the quality of the pipe on the part of the defendant, if defendant was only acting as agent or broker for the plaintiff. The contract makes the defendant merely the broker or agent of the plaintiff to purchase this pipe for the plaintiff. Both the letters attached to the contract, and made a part thereof, and the terms of the contract itself, exclude any other construction than that this is a contract for brokerage. And, as there is no allegation in either of these counts charging the defendant with any breach of duty as a broker or agent of the plaintiff in the purchase of this pipe, such as that the defendant failed to purchase pipe of the required quality for delivery to the plaintiff, I do not see that there is any cause of action made by these two counts. The demurrer is therefore sustained to the third and fourth counts."

The following is the agreement in question, with the exhibits attached, excepting parts omitted, which are not relevant to any question discussed by counsel:

"This agreement, made this twenty-eighth day of June, A. D. 1890, between the Columbus Construction Company, a corporation existing under and by virtue of the laws of the state of New Jersey, party of the first part, and the Crane Company, a corporation existing under and by virtue of the laws of the state of Illinois, party of the second part, witnesseth, that for and in consideration of the facilities and representations of the party of the second part, more fully shown by 'Exhibit A,' hereto attached, and made a part hereof, to effect for the party of the first part, upon desirable terms, the purchase of the standard wrought-iron line pipe hereinafter specified, and the sum of one dollar in hand paid by each of the parties hereto, the one to the other, the receipt whereof is hereby mutually acknowledged, it is agreed between the parties hereto as follows, to wit: The party of the second part will purchase in its own name and upon its own credit, as the agent irrevocable of the party of the first part, and secure the delivery to the party of the first part during the months of July, August, and September, as hereinafter specified, at such places as may be designated hereafter by the party of the first part, at the earliest practicable dates, but not later than October 1, 1890, barring strikes and causes beyond control, for the lowest obtainable price, (which price shall include freights to the points of delivery, same not to exceed the current rate of freight from point of shipment to Chicago,) and the party of the first part will take all wrought-iron standard line pipe hereinafter specified in conformity with the specifications, and subject to the conditions

and tests, more fully set forth and specified in the contract and specifications for standard eight-inch line pipe, hereunto attached, (subject, however, to change as to size and weight as hereinafter stated,) marked 'Exhibit B,' hereunto attached, and made a part hereof, at a price, including commissions to be paid party of the second part of two and one-half (2½) per cent., not exceeding ninety-one cents (91) per lineal foot for eight (8) inch standard line pipe, and price on the following sizes to be in proportion to price given on eight-inch as above and as hereinafter specified: * * * The party of the second part will, barring strikes and causes beyond their control, deliver all the eight-inch pipe before mentioned in amount not less than thirty-seven miles in July, not less than 123 miles in August, and all remaining undelivered in September, 1890, prior to the 15th of September, if possible. The party of the first part agrees to pay the party of the second part, upon delivery of each and every invoice of pipe at such delivery points as the party of the first part shall designate, spot cash therefor, including commission of two and one-half (2½) per cent. over and above the amount of each original invoice rendered party of the second part by the manufacturer, but in no case agreeing to pay any sum or sums in excess of (including pipe, freight, and commission or other charge) the prices hereinbefore fixed for each size of pipe. In witness whereof, the parties hereto have caused this instrument to be executed in duplicate by their respective presidents and attested by their respective secretaries, under their respective corporate seals, this 30th day of June, 1890. COLUMBUS CONSTRUCTION COMPANY.

"By C. E. HEQUEMBOURG, President.

"Attest: C. K. WOOSTER, Secretary Crane Company.
"R. T. CRANE, President.

"EXHIBIT A.

"CHICAGO, June 20, 1890.

"*C. E. Hequembourg, Esq.*—DEAR SIR: As members of the Pipe Association, with a representative on the board of managers, we feel confident of our ability, in fact know that we can purchase the pipe in question at least 5 per cent. less than any outsider. Especially is this true in the face of the legislation enacted by the board of managers at a meeting held in Pittsburg on Wednesday, the 18th inst., at which meeting it was agreed that cash forfeits of large amounts be put up, the same to be forfeited in the event of the agreed price being cut. It will be necessary for the board of managers to take special legislation, in effect, to throw the market open in the interest of our company, to enable us to secure the material wanted at a price satisfactory to you, and, acting merely as your agent, the price made us would naturally be yours. Our position in the association is such that we feel confident of bringing this about. Should you have sufficient confidence in our company to appoint us your agents in this matter, the actual placing of the order—in itself quite a task, to our minds—would only be the beginning of a large line of work that we would be necessarily called upon to do for you in the handling of a dozen mills, more or less, that would have to participate in the completion of such an order. In consequence of which, we think, in tendering our services to you, as we do, that 2½ per cent. brokerage would only be a reasonable charge. Should you decide to accept our offer, your wishes will be our instructions. Very respectfully, yours,

[Signed] "CRANE COMPANY.

"GEORGE L. FORMAN, Secretary.

"EXHIBIT B.

"This agreement, made and entered into the ——— of ——— by and between ———, part— of the first part, and the ——— part— of the second part, witnesseth, that the said party of the first part, for and in consideration

of one dollar to it in hand well and truly paid by the party of the second part, at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, and of the payments hereinafter mentioned to be made by the said party of the second part, has covenanted and agreed, and by these presents does covenant and agree: *First*, to furnish and deliver to the said party of the second part —— miles of eight-inch standard nominal weight line pipe, made from soft iron, free from blisters and other imperfections, and guarantied to stand a working line pressure of one thousand pounds to the square inch when proved and tested in lines as hereinafter provided; * * * *seventh*, that it will pay to the party of the second part all damages and expenses of every kind which second party shall sustain by reason of any defect or defects in the pipe delivered, up to and including the time when said pipe is tested by the second party under working pressure not in excess of one thousand (1,000) pounds to the square inch, and proved tight in the line, and which working test shall be made with reasonable promptness; and, *eighth*, that it will pay to the party of the second part, as liquidation damages, the sum of fifty ($50) dollars per day, for each and every day after said * * * and until the amount of pipe agreed to be furnished, as above provided, has been furnished; and second party may deduct the amount of such damages from any money in its hands due first party for pipe furnished under this contract. In consideration of the premises the said party of the second part covenants and agrees to pay to the party of the first part the sum of * * * per foot for each and every foot of pipe received by it under this contract, said payments to be made on each car load of pipe within fifteen days after the receipt of the same, unless counterbalanced by damages due to second party. It is expressly understood and agreed by and between the parties hereto that the representative of the second party at first party's mill is there only for the purpose of seeing that the said pipe comes up to the guarantied weight, and that the threads and sockets are not manifestly defective, and said pipe shall not be construed to be accepted by second party by reason of any payments made therefor, so as to relieve first party from liability on account of its defective character until the same has been laid and tested in the line and proved. In witness whereof, the parties to this agreement have hereunto set their hands and seals, the day and year first above written."

In each paragraph of the declaration it is alleged that under this contract the defendant company furnished to the plaintiff a statement showing the prices at which it would deliver to the plaintiff the pipe so agreed to be bought and delivered, and naming the companies by which specified quantities thereof, of sizes and at prices stated, would be manufactured; and that thereafter, at times and places stated, the defendant did deliver and cause pipe to be delivered, "as in compliance with the contract," but that the defendant had failed of full performance of the contract, in this: "that all of said pipe was not delivered within the times limited by the contract for the delivery thereof," of which failure a specific statement is made, "and that said pipe was not made from soft iron, free from blisters and other imperfections, and sufficiently strong and of a quality such as to stand a working line pressure of one thousand pounds to the square inch when proved and tested in lines, but on the contrary, was of a weak, imperfect, poor, and defective quality, and wholly unable to stand a pressure not in excess of one thousand pounds to the square inch, and was not such pipe, nor was any of it, as when subjected to such pressure would prove tight." The difference between the two counts is that one is drawn upon the theory of a rescission

of the contract, and seeks a recovery of the moneys paid thereon, while the other is for damages on account of the breaches alleged. The additional averments of each are framed according to the theory on which it proceeds. The other counts were withdrawn, and judgment rendered against the plaintiff.

William W. Booth, *James S. Harlan*, and *S. S. Gregory*, for plaintiff in error.

Before HARLAN, Circuit Justice, and GRESHAM and WOODS, Circuit Judges.

WOODS, Circuit Judge, (*after stating the facts.*) The decision of the circuit court rests upon the proposition that the defendant was merely the agent of the plaintiff; and, if that be conceded, the ruling is, of course, right. It seems to us, however, that, while the contract created an agency, it did more. It constituted the defendant an agent with special obligations beyond the duties which, in the absence of express stipulation, are attributed by law to that relation. It was, of course, competent for the parties to so frame their contract, and, in our opinion, they so framed this one, by whatever name it should be called, that the defendant became an agent in respect to the proposed purchases; but in respect to the subsequent transfer and delivery of the goods to the plaintiff it became obligated substantially as a vendor. An apt illustration is found in the case of *Ireland* v. *Livingston*, L. R. 5 H. L. 395, 406, wherein, in respect to an action by a commission merchant against his principal to recover on a contract for the purchase of sugar, which the defendant had refused to accept because the quantity was less than the amount ordered, Lord BLACKBURN said:

"My opinion is, for the reasons I have indicated, that when the order was accepted by the plaintiffs there was a contract of agency by which the plaintiffs undertook to use reasonable skill and diligence to procure the goods ordered at or below the limit given, to be followed up by a transfer of the property at the actual cost, with the addition of the commission; but that this superadded sale is not in any way inconsistent with the contract of agency existing between the parties, by virtue of which the plaintiffs were under the obligation to make reasonable exertions to procure the goods ordered as much below the limit as they could."

And so, under the contract before us, the defendant, though required to purchase in its own name and upon its own credit, became bound to use reasonable diligence to procure the pipe to be purchased at the lowest obtainable price not in excess of the maximum limit; this to be followed by a transfer of the property to the plaintiff at actual cost and commission, which the plaintiff was to pay in "spot cash" to the defendant. And the fact that the agency is declared irrevocable involves no inconsistency. On the contrary, the two phases of the contract are in distinct harmony, and by reason of their connection were doubtless, for all the purposes of the agreement, incapable of revocation or termination by one party without the consent of the other, even though nothing had been expressed to that effect. The stipulation, which in effect binds the defendant as a vendor, is unequivocal and occurs twice in the con-

tract: *first*, that "it will secure the delivery;" and, *second*, that "it will deliver" the pipe "specified in conformity with the specifications, and subject to the conditions and tests more fully set forth" in the exhibit attached to the agreement. This does not mean, and cannot reasonably be construed to mean, that, in respect to the transfer and delivery of the pipe to the plaintiff, the defendant was an agent merely, and bound to do no more than exercise reasonable diligence to procure of manufacturers comprising the pipe association (of which defendant was itself a member) contracts for the delivery of such pipe as was required. That the parties understood this when settling the terms of their agreement is indicated by the saving clause, twice used, against "strikes and causes beyond control,"—a clause which, when employed in respect to an agency, is superfluous and meaningless, because in no event could a mere agent be responsible for the consequences of a strike, or other cause beyond control.

It is an unwarranted assumption, often repeated or implied in the argument made in support of the ruling below, that by force of the contract the defendant was required to obtain of the manufacturers contracts in the form of the exhibit, and that for the matters complained of the plaintiff's remedy should, and, as nothing to the contrary is averred, presumably could be sought of the manufacturers upon those contracts, and not of the defendant upon the contract in suit. There is no support for this proposition, except in the fact that an exhibit showing a form of contract with a manufacturer is attached to and made a part of the contract between these parties. But manifestly that was done only for the purpose of defining the specifications, conditions, and tests under which the defendant undertook to make delivery of pipe to the plaintiff. That is the purpose stated, and no other is fairly inferable. In respect to its own purchases, therefore, the defendant was at liberty to buy on credit or for cash, and with or without warranty, express or implied, as it chose. It could buy or bargain for the quantities of pipe necessary to supply the plaintiff, or it could purchase in larger quantities, and for the supply of other customers, being bound to the plaintiff, whatever the contract made with the manufacturer, to produce no evidence of the transaction except the manufacturer's original invoice, showing the purchase price. And of such contracts it is difficult to see how the plaintiff could take advantage, even if they happened to contain provisions which, if available, would afford relief. Counsel have discussed with exhaustive research and learning the question whether or not, in the contracts of purchase made by the defendant for the purpose of complying with this contract, there was privity of contract between an original vendor and the plaintiff, by reason of which either of them might have an action against the other for any breach to its injury. We do not deem it necessary to consider that question. If the affirmative of the proposition were conceded, there could be no right of action except for an infraction of the contract actually made by the agent; and that, as we have seen, might or might not extend to the subject of complaint. The contract of these parties, as we view it, instead of leaving the plaintiff to a circuitous and

uncertain quest for relief, affords for the breaches alleged, and upon the theory of either paragraph, a right of action directly against the defendant. The judgment of the circuit court is therefore reversed, and the cause remanded, with instructions to overrule the demurrer to the third and fourth paragraphs of the declaration respectively, and for further proceedings.

REED v. STAPP.

(Circuit Court of Appeals, Seventh Circuit. October 1, 1892.)

1. REVIEW ON APPEAL—JURISDICTION OF CIRCUIT COURT OF APPEALS.
Under Rev. St. § 700, which provides that, where there is a special finding of facts, the review on appeal may extend to the sufficiency of the facts found to support the judgment, the circuit court of appeals cannot examine the evidence to ascertain whether it justifies the finding.
2. SAME—HARMLESS ERROR.
Where there is a special finding of facts sufficient to support the judgment, the admission of immaterial evidence, not affecting such finding, is harmless error.
3. NEGOTIABLE INSTRUMENTS—TRANSFER AFTER DISHONOR.
Where one pays the note of another to a bank, and has the bank cancel the note, and deliver to him a dishonored certificate of deposit held by it as collateral security, which certificate he takes as collateral security for a new note given to him by the debtor, he takes such certificate subject to equities existing against the original payee, even though the bank was an innocent holder for value before dishonor.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

Assumpsit by Willet B. Jenks against Guy Stapp, receiver of the First National Bank of Monmouth, Ill. Plaintiff died pending suit, and his administrator, Frank F. Reed, was substituted as party plaintiff. Defendant obtained judgment. Plaintiff brings error. Affirmed.

F. F. Reed, for plaintiff in error.

Kirkpatrick & Alexander, for defendant in error.

Before HARLAN, Circuit Justice, WOODS, Circuit Judge, and JENKINS, District Judge.

JENKINS, District Judge. This suit was brought at law by Willet B. Jenks, since deceased, to recover the amount of a certificate of deposit, of which a copy follows:

"No. 26,161. THE FIRST NATIONAL BANK OF MONMOUTH, ILL.
"$10,000. Nov. 5th, 1881.
"Wm. M. Gregg has deposited in this bank ten thousand dollars, payable to the order of himself six months after date, on return of this certificate.
"B. T. D. HUBBARD, Cashier."
Endorsed: "Pay to bearer. W. M. GREGG."

The case, as disclosed by the record, was this: The First National Bank of Monmouth was organized under the national banking law in the year 1863. The period of legal existence granted by law was about to expire, and could not be extended. Thereupon, in June, 1882, the bank went into voluntary liquidation, and adopted the necessary legal

steps to wind up its affairs. A new bank with the same name was formed by substantially the same persons who owned the stock of the former bank, and with the same persons as officers who held similar positions in the old bank. The stockholders of the old bank distributed among themselves the accumulated profits of this business, amounting to 66 per cent. of its capital. On the 5th day of July, 1882, the old bank transferred to the new bank its bank building, and all the fixtures, books, and appurtenances of the bank, its redemption fund with the United States treasurer, its bills receivable as shown by its books, and, in consideration thereof, the new bank agreed in writing to pay off and discharge all the debts and liabilities of the old bank to its depositors of all kinds upon book account and certificates of deposit "to the extent and amount as shown by the books," whenever and as they should be demanded. The new bank continued business until April 8, 1884, when it closed its doors, being compelled thereto by the acts of its cashier, who proved a defaulter to the amount of upwards of $100,000.

The certificate of deposit upon which suit is brought was issued by the cashier of the old bank, without consideration, without deposit of the amount therein stated by Gregg or by any other person, and solely by way of margins to speculative transactions between Hubbard, the cashier, and the payee, William M. Gregg, or his firm of Gregg, Son & Co., of Chicago. The certificate was not entered upon the books of the old bank. The bank number borne by the certificate was in fact the number of a certificate issued on the 23d day of February, 1881, to one Langdon, for the sum of $100, and which was duly entered upon the books, and paid by the bank shortly after its issue, and before the date of the Gregg certificate. The certificate here in question was first pledged by Gregg, Son & Co., on September 6, 1883, to the Continental National Bank of Chicago, as collateral to a loan of $10,000. That loan was paid in October, 1883. It was then used on December 27, 1883, as collateral with the same bank for a loan which was paid January 26, 1884. It was again pledged by Gregg, Son & Co. to the Continental National Bank as collateral to two notes of that firm, each for $5,000, payable on demand; one dated March 7, 1884, and the other dated March 24, 1884. After the loan of December 27, 1883, and before its payment, the cashier of the Continental National Bank, becoming suspicious of the certificate by reason of its age, had an interview concerning it with Hubbard, the cashier. He asked Hubbard "if the certificate was good; if it was genuine; and he said it was a genuine certificate;" that it was a private matter with Gregg, and was connected with his (Gregg's) family affairs. Payment of the certificate was demanded of the new bank on the 8th day of April, 1884,—the date of its failure,—and the certificate protested for nonpayment on the following day. On the 11th day of April, 1884, a transaction was had by which Willet B. Jenks, the intestate of the plaintiff in error, paid to the Continental National Bank the amount of the indebtedness of Gregg, Son & Co., and received from the bank the certificate of deposit in question.

The right to recover upon the certificate is claimed upon the ground that the Continental National Bank was a *bona fide* holder for value of the certificate, and that the defendant bank is estopped to assert either the invalidity of the certificate, or its nonliability therefor by reason of the declarations of its cashier to the cashier of the Continental National Bank upon the faith of which the loans of March 7th and March 27th were made; and that Jenks, by purchase from the bank, although after dishonor of the certificate, stands in the shoes of the bank, and takes its title to the certificate, unaffected by equities as between the maker and Gregg.

The contention on the part of the defendant is that the certificate was issued by the former First National Bank of Monmouth, and not by the defendant bank; that the latter never assumed its payment, the certificate not appearing upon the books of the old bank; that the certificate was fraudulent in its inception, and of no effect in the hands of Gregg, the payee; that the Continental National Bank took it after its maturity, and charged with the equities attaching to it in the hands of Gregg; that the old bank could not be estopped by the declarations of Hubbard, made after the bank had ceased to exist; that the defendant bank is not estopped, because, among other reasons, the declarations only went to the genuineness of the certificate as the paper of the former bank, and not to the liability of the defendant bank thereon; and that the transaction between the Continental National Bank and Willet B. Jenks was a payment by Jenks of the debt of Gregg, Son & Co. at their request, and not a purchase of that debt and its collateral. The cause was tried by the court without the intervention of a jury, and the issues found in favor of the defendant.

The record declares that at the close of the evidence the plaintiff submitted to the court certain propositions of law, and requested the court to hold them as the law of the case, but the court disregarded and overruled "certain of the same," and found the law and the facts in the case as follows. Then follows the opinion of the presiding judge, reciting certain facts stated to be conceded, and holding that the certificate was fraudulently issued; that the defendant bank was liable for the valid debts of the old bank; that the certificate was a valid security in the hands of the Continental National Bank by reason of the estoppel stated above; and that the transaction between Willet B. Jenks and the Continental National Bank was a payment by the former of the debt of Gregg, Son & Co. at their request, a payment, cancellation, and surrender by that bank of that firm's notes held by it, and that Jenks took a new note from the firm for the money paid by him, and that he did not succeed to the right of the Continental National Bank, but held the certificate as collateral to the new note of Gregg, Son & Co., taken by him after payment by him of their debt, after maturity of the certificate, and after its dishonor; and so, in his hands, the certificate stood charged with all the equities attaching to it in the hands of Gregg.

The findings of a trial court, whether general or special, have the effect of a verdict of a jury. Rev. St. § 649. When the finding is spe-

cial, the review on appeal may extend to the sufficiency of the facts found to support the judgment. Id. § 700. It may well be doubted whether the opinion of the judge which here is said to constitute the special findings of fact can be so considered. *Dickinson* v. *Bank*, 16 Wall. 250. The opinion states certain concessions of facts. It also advances by way of argument certain other facts said to be proven by the evidence, and also certain evidence as grounds for the conclusion of the court. The practice adopted by counsel in this case of seeking to have the opinion of the court fulfill the office of a finding is not to be commended. The special finding of the statute is a specific statement of the ultimate facts proven by the evidence, determining the issues, and essential to sustain the judgment. It corresponds to the special verdict of a jury, and should be equally specific and comprehensive. It should declare all the ultimate facts established by the evidence, so that if they do not in law warrant the judgment, an appellate tribunal may direct such judgment thereon as the law adjudges upon the facts determined, and without the need of a new trial, as was done in *Ft. Scott* v. *Hickman*, 112 U. S. 150, 5 Sup. Ct. Rep. 56. Treating the opinion, however, as a special finding of facts, the court below found as conceded facts that, after dishonor of the certificate in question, the Continental National Bank demanded of Gregg, Son & Co. payment of the loan, for which it held the certificate as collateral; that Jenks, at the request of Gregg, paid the debt; that the notes of Gregg, Son & Co. were canceled and surrendered; that the certificate was delivered to Jenks, who took notes from Gregg, Son & Co. for the amount of the principal of the loan paid by him, and held the certificate as collateral to such notes. The court also found as proven by the evidence that Jenks was a brother-in-law of Gregg, and acted for him, and to protect his credit; that Jenks "did not even keep alive the bank paper for which the certificate stood as security in the hands of the Continental National Bank, but allowed that to be canceled, and merely took Gregg, Son & Co.'s paper as a new transaction between himself and Gregg, Son & Co., the transaction being in effect a loan by Jenks to Gregg, Son & Co. of $10,000, with this certificate of deposit as security." This finding is challenged as not sustained by the evidence, and we are urged to so declare. We have no authority to do that. Treating the opinion as a special finding, we are only at liberty to consider whether the facts found in law support the judgment. The findings of the trial court upon questions of fact are conclusive. We are not permitted to examine the evidence to ascertain whether the finding of fact be thereby justified. *Copelin* v. *Insurance Co.*, 9 Wall. 461, 467; *The Abbotsford*, 98 U. S. 440, 443; *Zeckendorf* v. *Johnson*, 123 U. S. 617, 8 Sup. Ct. Rep. 261. The review permitted extends only to the question whether the facts found support the judgment rendered. *Tyng* v. *Grinnell*, 92 U. S. 467.

It cannot be seriously urged that, the facts being as found, the judgment is unwarranted. The question of the liability of the defendant bank hinged upon the further question whether Jenks stood in the light

of an innocent purchaser for value. The court held that the Continental National Bank was a *bona fide* holder for value, taking the certificate upon representations of the cashier of the defendant bank, which worked an estoppel. Conceding that a *bona fide* holder for value of commercial paper can, by endorsement and delivery after maturity of the paper, confer his title upon a third person having knowledge of its inherent imperfections, it is found as a fact that this was not done. It is conclusively determined that Jenks paid Gregg's debt; that the notes were canceled and surrendered, not endorsed or transferred by the Continental National Bank. For the amount paid, Jenks took notes of Gregg, Son & Co. running to himself, with the certificate as collateral. At the time of the payment by him the defendant bank had failed; the certificate had been protested for nonpayment. He took it, therefore, with notice of dishonor, and cannot be held an innocent purchaser. In view of the finding that this certificate was fraudulently issued, and was without consideration to the knowledge of Gregg, who was found by the court to have been "a knowing and willing party to the fraud" sought to be perpetrated by the issuance of this certificate, one taking the certificate from him after dishonor cannot be accounted an innocent holder. The judgment was therefore justified by the finding.

In this view it seems unnecessary to consider the other errors assigned. If the exceptions were sustained, the substantial facts would remain unquestioned and unquestionable that this certificate was fraudulently issued, and without any consideration, to Gregg's knowledge, and that Jenks took it as collateral to Gregg's debt after its dishonor. These facts are sufficient to bar a recovery. The admission of immaterial evidence not affecting that finding could not, therefore, injure the plaintiff, and constitutes no ground for reversal, (*Mining Co.* v. *Taylor*, 100 U. S. 37; *Hornbuckle* v. *Stafford*, 111 U. S. 389, 4 Sup. Ct. Rep. 515;) nor would the reception of incompetent evidence going to that finding, when there is competent evidence uncontradicted on the same point, (*Cooper* v. *Coats*, 21 Wall. 105.) The judgment is affirmed.

Mr. Justice HARLAN was not present when this decision was announced, but he participated in the hearing and decision of the case, and concurs in the opinion.

UNITED STATES *v.* NELSON *et al.*

(*District Court, D. Minnesota.* October 10, 1892.)

1. MONOPOLIES—SUFFICIENCY OF INDICTMENT—WORDS OF STATUTE.
An indictment under the act of congress, "to protect trade and commerce against unlawful restraint and monopolies," (26 St. at Large, p. 209,) must contain a certain description of the offense, and a statement of facts constituting same, and it is not sufficient simply to follow the language of the statute.
2. SAME—WHAT CONSTITUTES—AGREEMENT TO RAISE PRICE.
An agreement betwen a number of lumber dealers to raise the price of lumber 50 cents per thousand feet, in advance of the market price, cannot operate as a restraint upon trade, within the meaning of the act of congress "to protect trade and commerce against unlawful restraint and monopolies," (26 St. at Large, p. 209,) unless such agreement involves an absorption of the entire traffic, and is entered into for the purpose of monopolizing trade in that commodity with the object of extortion.

At Law. Indictment under the act of July 2, 1890, (26 St. at Large, p. 209,) "to protect trade and commerce against unlawful restraints and monopolies." Demurrer to all the counts sustained.

The United States District Attorney.

W. E. Hale, for defendants.

NELSON, District Judge. In the case of United States *v.* Benjamin F. Nelson, Sumner T. McKnight, William H. H. Day, *et al.*, a demurrer is interposed to the indictment. Pressure of business in court has prevented an earlier decision, and I can now only give my reasons briefly for sustaining the demurrer. The indictment intends to charge offenses under the act of congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies." This statute declares contracts, combinations in the form of trusts or otherwise, and monopolies to restrain trade or commerce among the several states and foreign nations, illegal, and makes them offenses, and affixes the punishment. The indictment purports to charge the defendants with violating the law by entering into a contract, and unlawfully engaging in a combination in the form of a trust, and confederating together in a conspiracy in restraint of trade among the several states. There are 12 counts in the indictment. The first 6 counts charge the offense in the language of the statute, and the others set forth facts which are claimed to constitute the offense. The federal courts by this act are given jurisdiction to apply remedies in cases where interstate commerce is injuriously affected by combinations and contracts which the state courts had formerly applied to protect local interests. In order to administer the law, the court must determine what is an unreasonable and unlawful restraint of trade or commerce by contracts, trusts, and conspiracies, and whether a contract is injurious to the public. In all cases at common law, it must be made to appear that the acts complained of threatened the interests of the public, and this is true whether the remedy sought to be applied is by civil or criminal proceedings. It is urged by the district attorney that, the offense being statutory, the general rule in such cases, to wit,