

a part of the lode on which its location rested, even though the apex of such lode in the course of its strike to the southwest had eventually crossed into the Aliunde territory, and had been there discovered and located upon by the proprietor of the latter claim. We intended to overrule that contention, and we think we did do so with sufficient certainty in our previous decision. It is true that we made some reference to the vein having "forked as it entered the disputed territory," but in using that expression we merely referred to a theory which was stated in the original brief filed by counsel for the plaintiff in error. In so far as the application of the rule of law which we announced is concerned, it is obviously immaterial whether the lode became divided as it entered the disputed territory or did not so divide. In either event, we think it follows that, as the Colorado Central claim had been laid rather obliquely to the general course of the outcrop, the owners of that claim lost the vein when they lost the outcrop. This view was distinctly enunciated in our previous decision, the authorities were cited on which we predicated our opinion, and we find nothing in the petition for a rehearing which is calculated to change our views. In conclusion, it may not be out of place to remark that the question whether a locator on the dip of a vein may be ousted by a subsequent locator on the apex, assuming both claims to be laid side by side and "along the vein or lode," does not seem to be presented by the record now before us, and we have expressed no opinion on that point. It follows from what has been said that no sufficient cause has been shown for further argument, and the petition for a rehearing is accordingly denied.

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PRESS v. DAVIS et al.

(Circuit Court of Appeals, Seventh Circuit. February 18, 1893.)

No. 75.

APPEAL—REVIEW—WAIVER OF OBJECTION.

Rev. St. § 700, which declares that, when there is a special finding in a case in which a jury has been waived, the review of the judgment "may extend to the determination of the sufficiency of the facts found to support the judgment," does not authorize a reversal of a judgment for alleged errors in the findings, where no objection was taken or exception reserved in the trial court.

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

Assumpsit by Isaac Davis and others against Whiting G. Press. Plaintiffs obtained judgment. Defendant brings error. Affirmed.

Lewis H. Bisbee, for plaintiff in error.

John C. Black, for defendants in error.

Before WOODS, Circuit Judge, and BUNN and JENKINS, District Judges.

PER CURIAM. In this case the right of trial by jury was waived, and upon a special finding of facts the court gave judg-

ment for the plaintiffs in the sum of \$2,890.25. The motion for a new trial, which seems to have been made and overruled, is not in the record. The errors assigned are directed to the question whether the judgment is supported by the facts found. The particular objection made is that the judgment is for too large an amount; that it should have been for a sum less than \$2,000, and that for that reason the court lost jurisdiction, and should have dismissed the case. While we are satisfied of the sufficiency of the facts found to support the judgment, the record does not require a decision of the question. No objection was made nor exception taken when the judgment was entered, nor, so far as the record shows, was any suggestion offered that the judgment was not in all respects in conformity with the finding of facts. While it is true, under section 700 of the Revised Statutes, that "when the finding is special, the review may extend to the determination of the sufficiency of the facts found to support the judgment," yet, in order to entitle a party to that review, he must have made the proper objection to the judgment as entered, or moved to modify it, and reserved an objection to the action of the court. That was the practice followed in the case of *Smith v. Sac County*, 11 Wall. 139, cited in appellant's behalf, and its propriety is manifest, as it gives the court an opportunity to supply any omission or correct an error in its findings.

The judgment is therefore affirmed, with costs.

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ARNOLD v. WOOLSEY et al.

(Circuit Court of Appeals, Eighth Circuit. February 8, 1893.)

No. 144.

WRIT OF ERROR—DISMISSAL—NO REAL CONTROVERSY.

Where, pending proceedings in error, the same person, by means of purchase, has succeeded to the interests of both plaintiff and defendant, the writ of error should be dismissed, although some third person is interested in the question of costs. *Wood-Paper Co. v. Heft*, 8 Wall. 333, 336; *East Tennessee, V. & G. R. Co. v. Southern Tel. Co.*, 8 Sup. Ct. Rep. 1391, 125 U. S. 695; and *Little v. Bowers*, 10 Sup. Ct. Rep. 620, 134 U. S. 547, 557,—followed.

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

Action of ejectment brought by Weston Arnold against George L. Woolsey and others to recover blocks 1, 84, 182, and lots 1, 2, and 3, in block G, in Kearney. A jury was waived, and the case submitted to the court on an agreed statement of facts. Judgment was rendered for defendants, and plaintiff brings error. On motion to dismiss the writ of error. Granted.

John C. Watson and Edwin F. Warren, for the motion.

J. M. Woolworth, opposed.

Before SANBORN, Circuit Judge, and THAYER, District Judge.