

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.

---

---

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.

THAYER, District Judge. This is a motion to dismiss the writ of error. The motion proceeds upon the ground that the interests of all the parties to the litigation have become merged by a sale which has recently been made by the defendants in error of all their interest in the property which is in controversy. After an examination of the record in the case and the affidavits that were read on the hearing of the motion, we have reached the conclusion that the motion is well founded. As the case stands since the sale of the Nebraska City Distillery to the Distilling & Cattle Feeding Company, or to its representative, we are satisfied that there is no real controversy between any of the parties to the litigation. We have no doubt that a decision in favor of the plaintiff in error would inure to the benefit of the recent purchaser under the defendants in error, and it is obvious that a contrary decision would have the same effect. Under these circumstances it is of no importance that the defendants in error have given their vendee an indemnity against costs. Where the same person has practically become the plaintiff and the defendant, we will not further entertain the proceeding, although some third party is interested in the question of costs. In obedience to the following authorities: *Wood-Paper Co. v. Heft*, 8 Wall. 333, 336; *East Tennessee, V. & G. R. Co. v. Southern Tel. Co.*, 125 U. S. 695, 8 Sup. Ct. Rep. 1391; and *Little v. Bowers*, 134 U. S. 547, 557, 10 Sup. Ct. Rep. 620,—the writ of error should be dismissed, and it is so ordered.

---

LAMB et al. v. EWING.

(Circuit Court of Appeals, Eighth Circuit. January 27, 1893.)

No. 110.

1. FEDERAL COURTS—JURISDICTION—AUXILIARY PROCEEDINGS.

On the expiration of a stay bond the lands of the surety thereon were sold on execution to satisfy the judgment, as allowed by the Nebraska statute, but, in view of a threatened appeal by the surety, the judgment creditor was required as a prerequisite to obtaining the money to give a bond conditioned for repayment thereof "in case the order confirming the sale is reversed by the supreme court of the United States." No appeal, however, was taken, but the purchaser of the land brought ejectment to recover it of the stay bondsman, and the supreme court of the United States held that the Nebraska statute did not apply, and the sale was void. Thereupon the court ordered the judgment creditor to repay the money into court, and assigned the redelivery bond to the purchaser of the land. The order was not complied with, and thereafter the purchaser filed a petition on the bond in the same court. *Held*, that this proceeding was merely auxiliary to the former suit, and the federal court had jurisdiction, irrespective of the citizenship of the parties or the amount in controversy.

2. BONDS—CONDITION—BREACH.

The condition of the bond was broken when the supreme court declared the sale void, although that decision was rendered in an independent suit, and no appeal was taken from the judgment confirming the sale.

3. SAME—LIMITATION OF ACTIONS.

The fact that the sale was absolutely void did not operate as a breach of the condition of the bond as soon as it was given, so as to immediately set the statute of limitations running, but such breach only oc-