

In *Reed v. Gardner*, 17 Wall. 409, Mr. Justice Hunt said:

"It has been frequently held by this court that, in passing upon the questions presented in a bill of exceptions, it will not look beyond the bill itself. The pleadings and the statements of the bill, the verdict, and the judgment are the only matters that are properly before the court. Depositions, exhibits, or certificates not contained in the bill cannot be considered by the court."

See the cases of *Norris v. Jackson*, 9 Wall. 125; *Lincoln v. Clafin*, 7 Wall. 136; *Leftwitch v. Le Cann*, 4 Wall. 187; *Russell v. Ely*, 2 Black, 580.

If the evidence pertinent to the instructions given and refused had been properly certified in either of the bills of exceptions, then the court, in passing on the questions raised in one, might be warranted in referring to such evidence so appearing in the other; but, as no such record was made, there is absolutely no evidence that this court can consider. Where the bills of exceptions contain simply the instructions given and refused, the appellate court will not reverse the judgment. *Worthington v. Mason*, 101 U. S. 149; *Jones v. Buckell*, *supra*.

The assignment of error founded on the refusal of the court to set aside the verdict of the jury and grant a new trial is not well taken. The ruling of the court below on a motion for a new trial is not reviewable in the appellate court. *Pomeroy's Lessee v. Bank*, 1 Wall. 592; *Laber v. Cooper*, 7 Wall. 565; *Insurance Co. v. Barton*, 13 Wall. 603; *Kerr v. Clampitt*, 95 U. S. 188; *Fishburn v. Railway Co.*, 137 U. S. 60, 11 Sup. Ct. Rep. 8; *Construction Co. v. Fitzgerald*, 137 U. S. 98, 11 Sup. Ct. Rep. 36; *Ayers v. Watson*, 137 U. S. 584, 11 Sup. Ct. Rep. 201; *Henderson v. Moore*, 5 Cranch, 11; *Railway Co. v. Heck*, 102 U. S. 120.

The judgment of the circuit court is affirmed.

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#### EDGE MOOR BRIDGE WORKS v. FIELDS.

(Circuit Court of Appeals, Fourth Circuit. October 4, 1893.)

#### No. 51.

#### APPEAL—REVIEW—MOTION FOR NEW TRIAL.

Action on a motion for a new trial is not reviewable on writ of error in the circuit courts of appeals.

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

At Law. Action by Lewis N. Fields against the Edge Moor Bridge Works to recover damages for personal injuries. Verdict and judgment for plaintiff. Defendant brings error. On motion to dismiss or affirm. Affirmed.

Statement by FULLER, Circuit Justice:

This was an action to recover damages for injuries inflicted, as alleged, through the carelessness and negligence of defendant below, appellant here, which resulted on trial in a verdict for the plaintiff, and judgment thereon after motion for new trial made and overruled.

No exception appeared to have been taken during the trial to evidence or

instructions, nor was there any demurrer to evidence, or equivalent motion. Some days after judgment was entered, defendant renewed its motion to set the verdict aside and grant a new trial, assigning as grounds that the verdict was contrary to the law and the evidence, and that the court gave certain instructions, which were set forth. The motion was denied, and exception taken, and preserved by bill of exceptions. The case came before this court on motion to dismiss the writ of error, or affirm the judgment.

Edward S. Brown, for the motion.

T. J. Kirkpatrick, opposed.

Before FULLER, Circuit Justice, GOFF, Circuit Judge, and SEYMOUR, District Judge.

FULLER, Circuit Justice, (after stating the facts.) The judgment is affirmed, on the authority of *Railroad Co. v. Horst*, 93 U. S. 291, 301; *Reagan v. Aiken*, 138 U. S. 109, 11 Sup. Ct. Rep. 283; *Express Co. v. Malin*, 132 U. S. 531, 10 Sup. Ct. Rep. 166; *Fishburn v. Railway Co.*, 137 U. S. 60, 11 Sup. Ct. Rep. 8; *Improvement Co. v. Frari*, 58 Fed. Rep. 171; and other cases.

#### DUN et al. v. CITY NAT. BANK OF BIRMINGHAM.

(Circuit Court of Appeals, Second Circuit. October 17, 1893.)

No. 85.

#### 1. PRINCIPAL AND AGENT — FRAUDULENT REPRESENTATIONS OF SUBAGENT — MERCANTILE AGENCIES.

A mercantile agency which contracts with its subscribers to communicate, on request, information as to the financial responsibility of merchants and manufacturers throughout the United States and Canada, expressly stipulating that the information is to be obtained mainly by sub-agents of its subscribers, whose names are not to be disclosed, and that the "actual verity or correctness of the said information is in no manner guaranteed," is not liable for loss occasioned to a subscriber by the willful and fraudulent act of a subagent in furnishing false information. 51 Fed. Rep. 160, reversed.

#### 2. SAME.

Under such circumstances, the rule that, where one of two innocent persons must suffer by the wrongful act of a third person, the principal who has placed the agent in the position of trust should suffer, rather than the stranger, has no application.

Error from the Circuit Court of the United States for the Southern District of New York.

At Law. Action by the City National Bank of Birmingham, Ala., against Robert G. Dun, Erastus Wiman, Arthur J. King, and Robert Dun Douglass. Verdict and judgment for plaintiff, and new trial denied. See 51 Fed. Rep. 160. Defendants bring error. Reversed.

W. W. McFarland and Douglass & Minton, for plaintiffs in error.  
Lorenzo Semple and Roger Foster, for defendant in error.

Before WALLACE and LACOMBE, Circuit Judges, and TOWNSEND, District Judge.