CRABTREE v. McCURTAIN.

(Circuit Court of Appeals, Eighth Circuit. May 7, 1894.)

No. 365.

APPEAL—ASSIGNMENT OF ERRORS—TIME OF FILING.

In pursuance of rule 11 of the circuit court of appeals for the eighth circuit (47 Fed. vi.), requiring an assignment of errors to be filed with the petition for the writ of error or appeal, and declaring that errors not assigned according to this rule will be disregarded, the court will not review a judgment when the assignment of errors was not filed until after the writ of error was allowed, nor until after expiration of the six months allowed for suing out the writ of error. U. S. v. Goodrich, 4 C. C. A. 160, 54 Fed. 21, followed.

In Error to the United States Court in the Indian Territory.

This was an action by Jane McCurtain, administratrix of Jackson F. McCurtain, deceased, against William F. Crabtree, on a promissory note made by defendant, payable to said Jackson F. McCurtain. A demurrer to defendant's answer was sustained, and judgment for plaintiff was entered thereon. Defendant brought error.

Geo. E. Nelson filed a brief for plaintiff in error.

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

SANBORN, Circuit Judge. By the act of March 3, 1891 (26 Stat. pp. 826, 829), no writ of error, by which a judgment can be reviewed in this court, can be sued out after six months from its entry. Rule 11 of this court provides that the plaintiff in error shall file with his petition for the writ of error an assignment of errors, that no writ of error shall be allowed until such assignment of errors has been filed, and that errors not assigned according to this rule will be disregarded. The judgment the plaintiff in error seeks to review here was entered March 14, 1893. The writ of error and citation are tested August 10, 1893. No assignment of errors was filed until September 18, 1893. The assignment of errors was not filed until after the time to sue out a writ of error to review this judgment had expired, nor until more than a month after the writ returned here was issued. Under our rule, which we have repeatedly declared would be enforced, the supposed errors assigned will be disregarded, and the judgment below affirmed, with costs. U. S. v. Goodrich, 4 C. C. A. 160, 54 Fed. 21; Union Pac. Ry. Co. v. Colorado Eastern Ry. Co., 4 C. C. A. 161, 54 Fed. 22; Flahrity v. Union Pac. Ry. Co., 6 C. C. A. 167, 56 Fed. 908.

It is so ordered.

NATIONAL BANK OF COMMERCE OF KANSAS CITY, MO., v. FIRST NAT. BANK OF KANSAS CITY, KAN., et al.

(Circuit Court of Appeals, Eighth Circuit. May 21, 1894.)

No. 315.

1. APPEAL—OBJECTIONS NOT RAISED BELOW—TRIAL BY COURT.
   Exceptions to findings and rulings in an opinion delivered by the court on a trial, without a jury, of an action at law, and to a general finding contained in the judgment, avail nothing on appeal, where no request was made at the trial for any ruling on any proposition of law, or on the sufficiency of the evidence to sustain such a finding or judgment.
2. SAME—ASSIGNMENTS OF ERROR.
   Assignments of errors "in excluding legal and proper evidence offered by" plaintiff, and "in admitting illegal and improper evidence offered by" defendant, are insufficient under rule 11 of the circuit court of appeals for the eighth circuit (47 Fed. vi.), requiring an assignment of errors to "set out separately and particularly" each error, and, when error is alleged in admission or rejection of evidence, to "quote the full substance of the evidence admitted or rejected."
3. SAME—ERROR NOT PREJUDICIAL.
   Refusing to permit counsel to inspect, for purposes of cross-examination, a memorandum used by a witness to refresh his memory during his direct examination, is not ground for reversal, where, on the finding of the court on the question involved, it is clear that no cross-examination could have affected the result.
4. EVIDENCE—COMPETENCY—REBUTTAL.
   In an action by one bank against another as indorsee on notes, plaintiff's president testified that he conversed with defendant's president, who became such after the indorsement, and that the liability of defendant was not questioned. *Held*, that testimony by defendant's president that he did not know of the indebtedness, and that in such conversation plaintiff's president had concealed it from him, was competent in rebuttal.

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

Elijah Robinson, for plaintiff in error.

Samuel R. Peters (Joseph W. Ady and John C. Nicholson, on the brief), for defendants in error.

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

SANBORN, Circuit Judge. The National Bank of Commerce of Kansas City, Mo., the plaintiff in error, brought an action in the court below against the First National Bank of Kansas City, Kan., and W. T. Atkinson, its receiver, the defendants in error, upon four causes of action. The court below denied a recovery on the first and second causes set forth in the petition (55 Fed. 465), and this writ of error was sued out to reverse this decision.

The first cause of action was based on a promissory note for $38,959, dated October 22, 1890, made by the English & American Mortgage Company, Limited, a corporation, indorsed by the First National Bank of Kansas City, Kan., by D. R. Emmons, its president, and payable to the order of the plaintiff in error. The second cause of action rested upon a promissory note for $7,500, dated October 20