

Ives, which conformed in every respect to the release pleaded in the defendant's answer, and was, on its face at least, a good and sufficient discharge of the cause of action stated in the petition. The court rejected the offer of the release, declined to allow it to be read to the jury, and the defendant's attorney thereupon duly excepted. This was a clear error, in consequence of which the judgment against the defendant company must be reversed. By the ruling in question the defendant was obviously deprived of the right to prove one of the defenses pleaded in its answer, which it was entitled to make good if it could do so, and the reading of the release to the jury was a necessary step in that direction. The suggestion of the trial judge that the issue as to the validity of the release be submitted to an appellate court, if found necessary, on the testimony in relation thereto adduced at the first trial, was doubtless a very reasonable suggestion, and made for the purpose of saving time and expense; but the difficulty is that it rested with the defendant to assent or dissent to the proposal, and it appears to have dissented. The court had no power to enforce the suggestion in question in opposition to the wishes of the parties to the suit or either of them. The judgment is therefore reversed, and the cause remanded, with directions to grant a new trial.

AHLHAUSER v. BUTLER et al.

(Circuit Court of Appeals, Seventh Circuit. October 1, 1894.)

No. 154.

REVIEW ON APPEAL—ATTORNEY AND CLIENT—NEGLIGENCE.

Whether an attorney is guilty of negligence in his management of a suit is a question of fact, not reviewable on appeal.

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

Action by William Ahlhauser against William Allen Butler, Thomas E. Stillman, Thomas H. Hubbard, John Notman, Adrian H. Joline, Wilhelmus Mynderse, and William Allen Butler, Jr. Defendants obtained judgment. 57 Fed. 121. Plaintiff brings error.

F. W. Von Cotzhausen, for plaintiff in error.

Frank M. Hoyt and Quarles, Spence & Quarles, for defendants in error.

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

BUNN, District Judge. The court is satisfied to affirm the judgment of the circuit court in this case, upon the opinion of the judge before whom the case was tried, reported in 57 Fed. 121, with this observation: That the case does not present itself here, as in the court below, upon the facts and the law together. The court below has found the facts, and that finding has the effect of the verdict of a jury. Appellees' liability turned upon the ques-

tion of negligence in their practice as attorneys in the cases. That question is one essentially of fact, which has been found by the court in favor of the appellees (defendants below), and cannot be reviewed here. That court found that the defendants were not guilty of any negligence or unskillfulness, either in the commencement or subsequent management of the cases. This court cannot go behind that finding to review the evidence. That is the settled law of this court and of the United States supreme court. We have no power to review the finding of a trial court upon questions of fact. We can only inquire whether the facts found are sufficient to support the judgment. We are satisfied that the findings of fact are supported by the evidence, and that the court has properly applied the law. *St. Louis v. Rutz*, 138 U. S. 226, 11 Sup. Ct. 337; *Runkle v. Burnham*, 153 U. S. 216, 14 Sup. Ct. 837; *Reed v. Stapp*, 9 U. S. App. 34, 3 C. C. A. 244, and 52 Fed. 641, and cases cited; *Skinner v. Franklin Co.*, 6 C. C. A. 118, 56 Fed. 783, and cases cited. The judgment of the circuit court is affirmed.

ATCHISON, T. & S. F. R. CO. v. MYERS.

(Circuit Court of Appeals, Seventh Circuit. October 25, 1894.)

No. 120.

1. REVIEW ON APPEAL—MOTION FOR PEREMPTORY INSTRUCTION—WAIVER.
A defendant who introduces evidence in defense thereby waives his motion to instruct the jury at the close of plaintiff's case to find for the defendant.
2. SAME—BILL OF EXCEPTIONS—PRESUMPTION AS TO COMPLETENESS.
In the absence of a statement to that effect a bill of exceptions is presumed not to contain all the evidence.
3. EXPERT EVIDENCE—COUPLING CARS.
Expert evidence is not competent to prove that a particular mode of coupling cars is specially dangerous.
4. MASTER AND SERVANT—RAILROAD COMPANY—INSPECTION OF FOREIGN CARS.
A railroad company is not responsible to its switchman for injuries caused by defects in a foreign car, if it has inspected the car, and warned him of its defects.
5. SAME—RISKS OF EMPLOYMENT—INSTRUCTIONS.
Where a switchman sues for injuries caused by a defective foreign car, the jury should be instructed as to his assumption of the usual hazards of the service.

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

This was an action on the case by William Myers against the Atchison, Topeka & Santa Fé Railroad Company. Plaintiff obtained judgment. Defendant brings error.

This action was begun by William Myers in the circuit court of Hancock county, Ill. and was removed by the plaintiff in error into the circuit court of the United States for the southern district of Illinois on account of the diverse citizenship of the parties. It was brought to recover damages for the loss of his arm, which was crushed between the deadwoods of two foreign cars which Myers was attempting to couple in the railroad yards at Streator, where he was employed as a switchman. The declaration contained three