WILE et al. v. FARMERS' STATE BANK OF CHARTER OAK.

(Circuit Court of Appeals, Eighth Circuit. October 7, 1895.)

No. 562.

FINDINGS—WHAT QUESTIONS OPEN ON REVIEW.

When the court, to which a case has been submitted without a jury, pursuant to Rev. St. § 649, has found the facts specially, the only question open upon a writ of error is the sufficiency of the facts found to support the judgment, and the appellate court cannot inquire whether the evidence was sufficient to support the findings.

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

This was an action by Mayer Wile, Isaac Wile, and Herman Wile, doing business as Wile Bros. & Co., against the Farmers' State Bank of Charter Oak, Iowa. The circuit court, before which the case was tried without a jury, gave judgment for the defendant 63 Fed. 759. Plaintiffs bring error. Affirmed.

John N. Baldwin and A. W. Askwith filed brief for plaintiffs in error.

L. M. Shaw and Jacob Sims filed brief for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. This case was tried by the court, a jury being waived by written stipulation of the parties, filed with the clerk, as provided by section 649 of the Revised Statutes of the United States. The court found the facts specially. Among other facts so found was the following: "The court, being fully advised in the premises, finds that at the time of the service of the notice of garnishment herein the said Farmers' State Bank did not have in its possession or under its control any property, rights, or credits of the said defendant Cohn." This finding disposes of the case. The plaintiffs in error seek to avoid its effect upon the ground that the evidence in the case does not warrant the finding. But, where the court's findings are special, it is required to state the ultimate facts, and not the evidence; and the facts so found are all the facts that this court can consider. The inquiry in such cases is not whether the evidence supports the special finding of fact, but only whether the facts found are sufficient to support the judgment. Hill v. Woodberry, 49 Fed. 138.

All the errors assigned rest upon the allegation that the testimony in the case did not warrant the special findings of the court. But we cannot look into the evidence with a view to determine its sufficiency to support the special findings. This court must take the special findings as verity, and, when so taken, it is conceded that the judgment of the circuit court is right. The judgment of the circuit court is therefore affirmed.

KIRBY v. McDONALD et al.

(Circuit Court of Appeals, Eighth Circuit. October 1, 1895.)

No. 613.

PARTNERSHIP—FIRM DEBTS.

One G., upon forming a partnership with M., borrowed from K. the amount of his contribution to the firm capital, giving therefor his note, with his wife and a third party as sureties. After such note had been several times renewed in the same form, K. sued the firm for the amount due, and induced G. to give him a note of the firm for such amount, and to secure it by a chattel mortgage on the firm property. *Held*, that such acts of G. could not, without the consent of his partner, change his individual debt to K. into a firm debt, and that M. was entitled to have the mortgage set aside.

Appeal from the Circuit Court of the United States for the District of Kansas.

This was a suit by D. McDonald against M. D. Good and Thomas Kirby for the dissolution of a partnership, and to secure the cancellation of a chattel mortgage. The circuit court rendered a decree for the complainant. Defendant Kirby appeals. Affirmed.

On the 1st day of June, 1892, M. D. Good and D. McDonald formed a copartnership to conduct a retail dry-goods business at Abilene, Kan., under the firm name of M. D. Good & Co. The original capital of the partnership was $4,000, of which each partner contributed one-half, which was invested in the purchase of a stock of goods. On December 31, 1892, $2,000 was added to the capital of the firm, of which each partner contributed $1,000. Each partner paid his share of the capital to the firm in cash. McDonald resided at St. Joseph, Mo., and Good at Abilene, Kan., but he was a commercial traveler, and much of the time away from home. The firm employed one C. G. Hawk to conduct the business. Good, without the knowledge of his partner, borrowed from the appellant, Thomas Kirby, the money to make up his share in the capital of the firm, giving his individual note therefor, signed by his wife, Annie Good, as surety, and indorsed by C. G. Hawk. This note was renewed three or four times. When the capital was increased to $6,000 Good borrowed from the appellant his share of the increase, namely, $1,000; and that sum was added to the $2,000 previously borrowed, and a note given for $3,000, signed as the first note and the several renewals thereof had been. On November 7, 1893, the appellant, Thomas Kirby, brought suit by attachment against M. D. Good, Annie Good, and C. G. Hawk on the last renewal of the $3,000 note. On the 8th of November, 1893, the appellant, Kirby, brought suit by attachment against D. McDonald, the appellee, to recover the $3,000 loaned to Good, alleging that the $3,000 was loaned to M. D. Good & Co., and was a debt of the partnership, and on the 9th of November, 1893, the appellant induced M. D. Good to give him a note for the $3,000 of borrowed money, signed in the firm name of M. D. Good & Co., and on the same day Good, without the knowledge or consent of his partner, executed, in the firm name, a chattel mortgage on the stock of goods belonging to the firm, to secure the note last above mentioned. As soon as the appellee heard of these transactions, he filed this bill, on the 13th of November, 1893, making M. D. Good and the appellant, Kirby, defendants, and praying for a dissolution of the partnership between himself and M. D. Good, and a winding up of the partnership affairs, and that the chattel mortgage executed by Good in the firm name on the partnership stock of goods to secure the note given by him to the appellant, Kirby, on the 9th of November, 1893, be declared void, and that the $3,000, borrowed by Good from the appellant, Kirby, be decreed to be the personal debt of Good, and not a liability of the firm of M. D. Good & Co. Good did not answer the bill. The appellant, Kirby, answered alleging the $3,000 was