

question should be certified rests within the discretion of the court, but it is not a discretion the exercise of which may be invoked by a party as of right. The certification is for the instruction of the court upon doubtful questions; and while in cases of magnitude and upon intricate and doubtful questions of law the court upon the argument may perhaps properly indulge the suggestion of counsel of the desirability of the advice and instruction of the supreme court, we are compelled to say that this formal motion is not conformable to correct practice. It cannot be tolerated that the argument of a cause may be thus split up into sections. If the suggestion of counsel may be entertained that a question in the cause should for any reason be certified, the suggestion must come at the argument of the case upon its merits, when the court can be fully advised whether the questions involved are so intricate and doubtful and essential to be resolved that the instruction of the supreme court is necessary or desirable. If the present motion were entertained, it would furnish a precedent for a practice that would seriously interfere with the proper dispatch of the business of the court. It may be that upon the argument of the cause upon its merits some question may be raised which, upon consultation, the judges may deem proper to certify. We shall reserve the right and discretion so to do if and when we deem it needful to the proper determination of the cause. We must decline at this time to entertain the motion, or to recognize the right of a party to challenge our judgment upon the propriety of so doing in advance of the argument of the cause upon its merits. The motion to certify certain questions to the supreme court is overruled.

UNITED STATES MUT. ACC. ASS'N v. ROBINSON.
(Circuit Court of Appeals, Eighth Circuit. April 13, 1896.)

No. 696.

1. REVIEW ON ERROR—GENERAL FINDINGS OF FACT.

The question whether a general finding on the facts was supported by the evidence cannot be considered where the bill of exceptions fails to state that it contains all the evidence.

2. SAME—TRIAL TO COURT WITHOUT JURY.

In an action at law tried to the court without a jury, where the finding on the issues of fact is general, and no exceptions are taken to the rulings of the court in the progress of the trial, and the complaint states a cause of action, there is nothing for the appellate court to consider.

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

James C. Jones (William C. Jones was with him on the brief), for plaintiff in error.

George H. Sanders, for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. This action was brought by Minnie Robinson, the defendant in error, against the United States Mutual

Accident Association, the plaintiff in error, on a casualty policy of insurance issued to Emile O. Moore, payable, in case of death from casualties insured against, "to John P., Jr., and Catherine Moore (his son and daughter) or to the survivor of them, or, in the event of their prior death, according to the by-laws." The complaint alleged "that by the terms of said insurance contract, and under the by-laws of the defendant association, the said Emile O. Moore had the right to, and did, change the beneficiary under said policy, by designating in due form, and in accordance with the by-laws of said defendant association, to the plaintiff herein, as a substituted beneficiary under said policy." The answer set up several defenses, which, in the view we take of the case, need not be particularly set out. A jury was waived, and the case was tried before the court, in pursuance of a written stipulation signed by the parties, and filed with the clerk, as required by section 649 of the Revised Statutes of the United States. The court's finding on the facts was general in favor of the plaintiff, and judgment was rendered accordingly. 68 Fed. 825. The bill of exceptions does not disclose that any exceptions were taken to the introduction or exclusion of evidence, or to any other ruling of the court in the progress of the trial. At the close of all the evidence the court was asked to declare "that under the law and the evidence the finding must be for the defendant." If it was competent in any case for this court to look into the evidence with a view of determining whether a general finding of the lower court on the facts was supported by the evidence, we could not do so in this case, because the bill of exceptions fails to state that it contains all the evidence.

Much of the brief filed in behalf of the plaintiff in error is devoted to the discussion of the question whether the defendant in error had an insurable interest in the life of Moore, but there is no assignment of error raising that question.

The court was asked to make several declarations of law based on certain alleged facts, or upon facts which the court was asked to find, all of which were refused by the court upon the distinct ground that the facts were not such as the declarations requested assumed them to be, or as the court was asked to find them. The declarations were therefore irrelevant, and rightly refused.

When the finding of the court on the issues of fact is general, and there are no exceptions taken to rulings of the court in the progress of the trial, and the complaint states a cause of action, there is nothing for this court to consider. The presumption is that the finding was supported by the evidence, the proceedings regular, and the judgment valid. *Rush v. Newman*, 12 U. S. App. 635, 7 C. C. A. 136, and 58 Fed. 158; *City of Plankinton v. Gray*, 27 U. S. App. 321, 11 C. C. A. 268, and 63 Fed. 415. The judgment of the circuit court is affirmed.

TOMBOY GOLD MINES CO. v. BROWN et al.

(Circuit Court of Appeals, Eighth Circuit. March 23, 1896.)

No. 706.

APPEAL—DISMISSAL—SUIT TO ENJOIN TAX SALE.

The payment, whether voluntary or compulsory, of a tax, pending an appeal from a decree dismissing a bill to set aside the tax sale and enjoin the making of a tax deed, removes all grounds for the relief prayed, and requires a dismissal of the appeal.

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

E. T. Wells, M. F. Taylor, and John G. Taylor, for appellant.

H. M. Hogg, for appellees.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. The appellant, the Tomboy Gold Mines Company, filed its bill in equity in the court below against the appellees, I. E. Brown and John B. Frasher, as treasurer of San Miguel county, Colo., seeking the cancellation of certain tax certificates of sale issued by the treasurer of San Miguel county, Colo., for certain real property sold for taxes, belonging to the appellant's grantors, and praying that the assessment of the property upon which the tax sale rested, and the tax sale and certificate thereof, be annulled, and the treasurer of the county perpetually enjoined from issuing tax deeds to the holder of the tax certificates. In the lower court a demurrer to the bill was sustained, and the suit dismissed, and the complainant appealed. In this court a motion has been filed to dismiss the appeal upon the ground that the appellant has, since taking this appeal, paid the taxes, the collection of which the bill seeks to enjoin, and that the tax certificates of the sale of the property for the taxes have been canceled. These facts are fully established by affidavits, and are not disputed. The motion to dismiss must be sustained. It is well settled that the payment, whether voluntary or compulsory, of a tax, to prevent the payment of which a bill in equity has been filed, leaves no issue for the court of equity to pass upon. The equitable ground, whatever it may have been, for the relief prayed, ceased upon the payment of the tax. *Little v. Bowers*, 134 U. S. 547, 10 Sup. Ct. 620; *Manufacturing Co. v. Wright*, 141 U. S. 696, 12 Sup. Ct. 103. The motion to dismiss is sustained.

DREXEL, Sheriff, et al. v. TRUE.

(Circuit Court of Appeals, Eighth Circuit. March 30, 1896.)

No. 680.

1. PRACTICE—CONTINUANCE.

A continuance is not a matter of right, but one resting in the sound judicial discretion of the trial court, whose ruling thereon is not a subject of review in an appellate court.