

basis of the controversy was whether the marshal had properly performed his duty as an officer of the United States, a question depending upon the laws of the United States. In the case now before the court, the plaintiff avers in his petition that the defendant is a receiver appointed under the laws of the United States, and in effect charges that, as receiver, the defendant has not performed the duty imposed upon him by the laws of the United States, in that he has refused to allow plaintiff's claim. It thus appears that the case of the plaintiff, as it is made to appear upon the face of the petition, is one arising under the laws of the United States; and, as the amount involved exceeds \$2,000, it is clear that the matter is one within the jurisdiction of this court.

It is further urged, in support of the demurrer, that the suit ought to be in equity and not at law, on the ground that a court of law cannot grant the relief sought. The rule in federal courts is that the equitable jurisdiction cannot be invoked if an adequate remedy can be had at law, and there is nothing in the questions of fact involved in this case or in the character of the relief prayed for that disables a court of law from taking cognizance of the case. The demurrer is overruled.

In re WOERISHOFFER et al.

(Circuit Court of Appeals, Fifth Circuit. May 23, 1896.)

No. 507.

PRACTICE ON APPEAL—PARTIES—SUPERSEDEAS.

R. and S., alleging themselves to compose the firm of W. & Co., applied to the circuit court of appeals for an order staying the execution of six several decrees rendered in a cause in the circuit court, on the ground that they had taken an appeal and given bond. The record did not disclose that they were parties or privies to the suit, although it showed that certain parties had been allowed an appeal from a part of the decrees, and that later, and after the term, an appeal bond naming W. & Co. as a principal had been approved, reciting that W. & Co., among others, "have prosecuted an appeal to reverse the decree." *Held*, that as the bond did not show the names of the individuals composing the firm, nor that W. & Co. was a party or privy, nor that it was approved during the term, nor any particular decree appealed from, nor any citation, the applicants had not taken any appeal, nor given any such bond as to operate as a supersedeas, and that the order applied for should be denied.

S. W. Jones and E. B. Kruttschnitt, for petitioner.

W. C. Oliver, for respondent.

Before PARDEE and McCORMICK, Circuit Judges, and SPEER, District Judge.

PARDEE, Circuit Judge. F. C. Renner and H. Summerhoff, alleging themselves to be citizens of the state of New York, and composing the firm of Woerishoffer & Co., apply to this court for an order directed to the circuit court for the Eastern district of Texas, prohibiting the execution of certain decrees rendered in that court on November 4, 1894, and on the 25th, 26th, 28th, 29th, and 30th of October, 1895, respectively, and on the 12th of November,

1895, and particularly the distribution of funds thereunder, in the case of *John W. Smith v. The Texas & Western Railway Company et al.*, on the docket of said court, on the ground that said Woerishoffer & Co. had taken an appeal from said decrees, and given proper supersedeas bond within the delays allowed by law and the rules of court. The record presented does not show that either Woerishoffer & Co. or the individual members of that firm were parties or privies to the suit, but does show that they first made application for an appeal on the 23d day of January, 1896, more than 60 days, exclusive of Sundays, after the rendition of the last decree above mentioned; that even then their application was accompanied by no bond for a supersedeas, nor by any assignment of errors; and that the application was referred by the district judge to one of the circuit judges, who, on the 17th day of April, 1896, granted an appeal from the above-mentioned decrees, which order was followed on April 27, 1896, by the filing of a bond and the issuance of citations. It is true the records of this court show that within the 60 days following the 25th of October, 1895, one Elijah Smith and the Texas Western Railway Company, parties to the suit, on motion in open court, were allowed an appeal from the decrees of the 25th, 26th, 28th, 29th, and 30th of October, 1895; and on the 27th day of November an appeal bond was filed, which was approved by the district judge acting in the circuit court, but after the adjournment of the term, which bond names Woerishoffer & Co. as a principal, and recites that Woerishoffer & Co., among others named, "have prosecuted an appeal to reverse the decree rendered in the above-entitled cause," but does not specify any particular decree of the many decrees rendered in the cause. This bond was accompanied with no citations nor by any assignment of errors. The appeal taken by Elijah Smith and the Texas & Western Railway Company was afterwards docketed and dismissed in this court for want of prosecution.

An appeal sued out in the name of a firm, but not giving the names of the individuals who compose the firm, must be dismissed (*The Protector*, 11 Wall. 82), unless it can be amended by the record (*Moore v. Simonds*, 100 U. S. 145). A person not a party or privy cannot appeal. *Bayard v. Lombard*, 9 How. 530; *Ex parte Cockcroft*, 104 U. S. 578; *Ex parte Cutting*, 94 U. S. 14; *Guion v. Insurance Co.*, 109 U. S. 173, 3 Sup. Ct. 108. An appeal may be perfected without a formal order allowing it. It is, in effect, allowed when the circuit judge takes security and signs citation. *Brandies v. Cochrane*, 105 U. S. 262. Where a bond for an appeal from a certain decree is approved in open court at the same term that the decree is rendered, no formal order or citation is necessary to perfect the appeal. *Sage v. Railroad Co.*, 96 U. S. 714.

As the bond of November 27th, in which the firm of Woerishoffer & Co. is named, does not show the names of the individuals composing that firm, nor that Woerishoffer & Co. was in any wise a party or privy to the suit, nor that the bond was approved in open court during the term the decree appealed from was rendered, nor any particular decree as appealed from, nor any citation, we are

of opinion that in this present matter the applicants have not taken an appeal from any decree of the circuit court entered in the case of John W. Smith v. The Texas & Western Railway Company et al. within 60 days, exclusive of Sundays, from the rendition thereof; nor have they given any such bond within the delays allowed by law and the rules of court as to operate a supersedeas as to any decree rendered in said cause. The application is denied, and the temporary order issued dissolved, with costs.

CAMPBELL COMMISSION CO. v. TRAMMELL et al.

(Circuit Court of Appeals, Fifth Circuit. April 28, 1896.)

No. 420.

APPEAL—REVIEW—WAIVER OF JURY AND GENERAL FINDING.

When a jury is waived by written stipulation, and the court makes a mere general finding of facts, and there are no exceptions to the pleadings or to the admission or rejection of evidence, there is nothing which the appellate court can review.

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

D. T. Bomar, for plaintiff in error.

J. W. Brown, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges, and SPEER, District Judge.

McCORMICK, Circuit Judge. The plaintiff in error, the Campbell Commission Company, brought its action against the defendants in error, Thomas Trammell & Co., and others, to recover \$6,000 and interest, charging that the defendants induced the plaintiff to make a loan of that amount to one John Bryan on fictitious security; that Bryan was insolvent, and the defendants liable. When the case came on for trial in the circuit court the parties filed a stipulation in writing waiving a jury, and submitting the issues of fact as well as of law to the court. The court formulated no special findings of fact, but at the end of a brief discussion of the evidence expressed his view of the facts by the general direction, "Let judgment be entered for the defendants." Judgment was so entered, and the plaintiff sued out this writ of error. The errors assigned are, in substance, that the court erred—First, in its view of the facts; and, second, in the judgment rendered. The opinion and judgment of the circuit court are equivalent to a general finding against the plaintiffs. No exception to the admission or rejection of testimony is presented. The nature of the decision is such that the plaintiff could not suggest a want of pleadings to warrant the judgment. There is, therefore, nothing presented by the record which we can review. Where a case is submitted to the court without a jury, under section 649, Rev. St. U. S., and the court chooses to make a general finding, the losing party has no redress, except for errors occurring in the rulings on the admission