

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

or rejection of evidence or on exceptions to the pleadings. *City of Key West v. Baer*, 13 C. C. A. 572, 66 Fed. 440, and cases therein cited. The judgment of the circuit court is affirmed.

EVANSVILLE COURIER CO. v. UNITED PRESS.

(Circuit Court, D. Indiana. July 2, 1896.)

No. 9,315.

SERVICES OF PROCESS—CORPORATIONS—AGENTS—INDIANA STATUTE.

A New York corporation, engaged in the collection and distribution of news, and which has no officers or place of business in Indiana, cannot be subjected to the jurisdiction of a court within the latter state by service of process either upon a person who occasionally forwards news to it, at so much a word, having no other connection with the corporation, or upon the general manager in Indiana of a telegraph company, from which the corporation rents wires for the transmission of news; neither of such persons being a general or special agent of the corporation, within the Indiana statute (1 Burns' Rev. St. 1894, § 318; Rev. St. 1881, § 316).

Baker & Daniels and Frank B. Burke, for complainant.
Chambers, Pickens & Moores, for defendant.

BAKER, District Judge. This suit was brought by the Evansvills Courier Company, a corporation organized under the laws of the state of Indiana, and a citizen thereof, against the United Press, a corporation organized under the laws of the state of New York, and a citizen thereof, to enjoin the defendant from withholding performance of a contract entered into for the transmission of daily telegraphic news reports by the defendant to the plaintiff. The subpoena in chancery was returned by the marshal served as follows:

"I received this writ at Indianapolis, in said district, at 5:30 o'clock p. m., February 4, 1896, and served the same as follows: By reading to and in the hearing of, and by delivering a copy to, John F. Wallick, superintendent of the Western Union Telegraph, agent of defendant, February 4, 1896, and to T. G. M. Fisher, agent of the defendant, the United Press, February 5, 1896, both at Indianapolis; no higher officer of the defendant being found in the district."

The defendant entered a special appearance, and filed a plea in abatement, alleging, in substance, that neither of the persons upon whom the process was served was at the time of service, or at any other time, an agent of the defendant, and further alleging that the contract mentioned in the bill of complaint was made and entered into by the defendant in the city and state of New York, at its principal place of business in said city, and not in the state of Indiana, nor with any agent of the defendant in said state, and "that the defendant's principal office is located in the city and state of New York, where it has had long before this suit was brought, among its other officers, a president, secretary, and treasurer, a principal office and place of business and residence." The evidence, which was taken by a master, shows that the defendant was and is a corporation organized under the laws of the state of New York, having its officers and