fer of the original plaintiff's cause of action to the substituted plaintiff was essential to a recovery by the plaintiff, Trimble, as administrator. No authority is cited in support of this position, and we do not think it well taken. Section 955 of the Revised Statutes provides:

"When either of the parties, whether plaintiff or petitioner or defendant, in any suit in any court of the United States, dies before final judgment, the executor or administrator of such deceased party may, in case the cause of action survives by law, prosecute or defend any such suit to final judgment. The defendant will answer accordingly; and the court shall hear and determine the cause, and render judgment for or against the executor or administrator, as the case may require. * * * The executor or administrator who becomes a party as aforesaid shall, upon motion to the court, be entitled to a continuance of the suit until the next term of said court."

In Wilson v. Codman's Ex'r, 3 Cranch, 205, 207, Chief Justice Marshall, in delivering the opinion of the court, said:

"The first question which presents itself in this case is, was the defendant entitled to oyer of the letters testamentary at the term succeeding that at which the executor was admitted a plaintiff in the cause? It is contended on the part of the defendant that, on the suggestion of the death of either plaintiff or defendant, a scire facias ought to issue, in order to bring in his representative; or, if a scire facias should not be required, yet that the opposite party should have the same time to plead and make a proper defense as if such process had been actually sued. The words of the act of congress do not seem to countenance this opinion. They contemplate the coming in of the executor as a voluntary act, and give the scire facias to bring him in, if it shall be necessary, and to enable the court 'to render such judgment against the estate of the deceased party' 'as if the executor or administrator had voluntarily made himself a party to the suit.' From the language of the act, this may be done instanter. The opinion that it is to be done on motion, and that the party may immediately proceed to trial, derives strength from the provision that the executor or administrator, so becoming a party, may have one continuance. This provision shows that the legislature supposed the circumstance of making the executor a party to the suit to be no cause of delay. But, as the executor might require time to inform himself of the proper defense, one continuance was allowed him for that purpose. The same reason not extending to the other party, the same indulgence is not extended to him. There is, then, nothing in the act, nor is there anything in the nature of the provision, which should induce an opinion that any delay is to be occasioned where the executor makes himself a party, and is ready to go to trial. Unquestionably, he must show himself to be executor, unless the fact be admitted by the parties; and the defendant may insist on the production of his letters testamentary before he shall be permitted to prosecute; but if the order for his admission, as a party, be made, it is too late to contest the fact of his being an executor. If the court has unguardedly permitted a person to prosecute who has not given satisfactory evidence of his right to do so, it possesses the means of preventing any mischief from the inadvertence, and will undoubtedly employ those means."

The fourth and last point made on behalf of the plaintiff in error is that the judgment appealed from was rendered for a larger sum than that specified in the verdict. The verdict was returned and entered on the 16th of January, 1897, for $8,318. A motion for a new trial having been interposed by the defendant to the suit, the judgment was not entered until January 29th. The amount for which judgment was entered was $8,333, which included interest. In this there was no error. Gibson v. Cincinnati Enquirer, 10 Fed. Cas. 309; Griffith v. Railroad Co., 44 Fed. 574. The judgment is affirmed.

HARDMAN v. MONTANA UNION RY. CO.

(Circuit Court of Appeals, Ninth Circuit. October 4, 1897.)

No. 358.

1. REVIEW ON ERROR—FINDINGS OF FACT.
Where, under a stipulation, a case is tried by the court without a jury, the facts found by the court are not open to review in the circuit court of appeals.

2. BAILMENT—GOODS IN RAILROAD DEPOT.
While a railroad company which has carried property for hire is keeping it for a reasonable time in its own warehouse, at the point of destination, until it shall be called for, it is a bailee for hire, and not a naked depository.

3. CARRIERS—NEGLIGENCE—GOODS IN WAREHOUSE—DESTRUCTION BY FIRE.
A railroad company holding property in its warehouse as a bailee for hire allowed a car marked "Powder," which was in fact empty, but locked, to be placed in close proximity thereto. The warehouse caught fire, and the property was destroyed solely because the firemen were prevented, through reasonable fear of the powder car, from extinguishing the fire. *Held*, that the company was liable for the loss.

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

John W. Cotter, for plaintiff in error.
Geo. Haldorn, for defendant in error.

Before ROSS and MORROW, Circuit Judges, and HAWLEY, District Judge.

ROSS, Circuit Judge. This was an action to recover the value of certain goods shipped by the plaintiff from the city of Anaconda to the city of Butte, in the state of Montana, which the defendant railway company, a common carrier between the points named, undertook to and did carry for a consideration paid, and which goods were thereafter damaged by fire while in the warehouse of the defendant company in the city of Butte. The case was tried before the court below without a jury, pursuant to a stipulation of the parties. The facts found by the court are not, therefore, open to review here. Farwell v. Sturges, 6 C. C. A. 118, 56 Fed. 782; Skinner v. Franklin Co., 6 C. C. A. 120, 56 Fed. 783; Wile v. Bank, 17 C. C. A. 25, 70 Fed. 138. From the findings of the court, these among other facts appear: On or about June 21, 1895, the plaintiff delivered to the defendant at the city of Anaconda, to be transported by the defendant, and delivered to the plaintiff at the city of Butte, Mont., the goods in question, paying the defendant for such transportation the sum of $11.09, in consideration of which payment the defendant agreed to deliver the goods to the plaintiff in the city of Butte. The defendant transported the goods to the city of Butte in accordance with its undertaking, and there unloaded the same from its cars, and stored the goods in its warehouse in that city, in which they remained from June 21 until the night of July 2, 1895, at which time the warehouse caught fire, inflicting the damage which gave rise to the action. The findings further show that the defendant did not itself have sufficient fire appliances to extinguish or control the fire, but that its warehouse was