

tions to the assessment, as were then and now raised, from having the effect of rendering a tax invalid and preventing its prompt collection. While it is true that the defendant cannot avail itself of these decisions to support a plea of *res judicata*, nevertheless, as these are decisions construing a statute of the state, they are binding upon this court, in so far as they place a construction upon the local statute, and determine the validity of acts done thereunder. Moreover, if they were not thus binding upon the federal courts, we should have little difficulty, we apprehend, in reaching the same result which was reached by the supreme court of the state. Inasmuch, then, as it is settled, by the decisions aforesaid, that the money which the plaintiff seeks to recover was collected under a valid tax warrant, and was thereafter paid over to the county, no ground is disclosed by the record upon which it can be recovered. The Haley Live-Stock Company, to whom Haley attempted to transfer the cattle, according to admissions contained in the present record, did not become a body corporate until some time after the alleged trespass was committed, so that at the time when the cattle were seized they were in fact Haley's property, and subject to be taken for taxes which had been assessed against him. This conclusion was reached by the supreme court of the United States, upon substantially the same state of facts that is disclosed by the present record, in the case of *Wilson v. Haley Live-Stock Co.*, 153 U. S. 39, 45, 14 Sup. Ct. 768. It results from what has been said that no error was committed of which the plaintiff below is entitled to complain, and the judgment of the circuit court is therefore affirmed.

CASE v. HALL.

(Circuit Court of Appeals, Eighth Circuit. April 17, 1890.)

No. 1,134.

1. **APPEAL—DEFECTIVE VERDICT — NECESSITY OF OBJECTION IN TRIAL COURT.**
An objection to the sufficiency of a verdict cannot be urged in an appellate court, where the bill of exceptions does not show that the defect was called to the attention of the trial court, and proper exception taken to its action thereon.
2. **SAME—REVIEW OF INSTRUCTIONS—FAILURE TO BRING INTO RECORD.**
The charge of a trial court is no part of the record, and cannot be noticed on appeal, unless brought into the record by the bill of exceptions, and without such charge before the court the refusal to give instructions requested cannot be reviewed.
3. **SAME—BILL OF EXCEPTIONS—ADDING MATTERS BY STIPULATION.**
Neither testimony nor instructions can be added to a bill of exceptions, after it is signed and filed, by stipulation of counsel in the appellate court.

In Error to the United States Court of Appeals in the Indian Territory.

Ben Hall, the defendant in error, brought an action of unlawful detainer against George W. Case, the plaintiff in error, in the United States court in the Indian Territory, to recover the possession of three tracts of land, the same being portions of a larger tract containing some 600 acres. The complaint al-

leged, in substance, that on March 14, 1894, Hall rented to Case a certain farm and improvements thereon, five miles south of Nowata, in the Indian Territory, containing 600 acres, more or less, and known as the "Ben Hall Place," together with the dwelling houses, outhouses, barns, etc., thereon, for the term of five years; that Case entered into possession of the premises, and complied with the terms of the contract of lease, and paid his rent as therein agreed for the years 1894 and 1895 and until the 1st day of March, 1896; that on the latter day he refused to pay any more rent, and laid claim as owner to three parcels of the 600-acre tract, one of said parcels containing 135 acres of land situated in the northwest corner of the tract, together with the dwelling house, outhouses, etc., another parcel consisting of 45 acres of land situated in the south part of the 600-acre tract, and the third parcel consisting of a two-room log house, with the grounds appurtenant thereto, which was situated on the north side of the tract. In view of the premises, the plaintiff below demanded a judgment for the immediate possession of the three parcels of land last aforesaid, which were alleged to be unlawfully withheld by the defendant. The suit appears to have been instituted on April 20, 1896. For an answer to the complaint, the defendant admitted that he had failed to pay rent as charged in the complaint, and he further admitted that he had laid claim as owner to the three parcels of land forming a part of the 600-acre tract, which were mentioned in the complaint. He alleged that these three parcels of land and the improvements thereon had been sold to him by the plaintiff, and that the plaintiff was not entitled to the possession thereof. The trial at nisi prius resulted in a verdict and judgment for the plaintiff below. The defendant appealed to the United States court of appeals in the Indian Territory, where the judgment at nisi prius was affirmed. Case v. Hall (Ind. T.) 46 S. W. 180. From that court the record was removed to this court by a writ of error.

W. H. Kornegay, for plaintiff in error.

Preston S. Davis, for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge, after stating the case as above, delivered the opinion of the court.

It is urged in this court as one ground for reversal that the verdict which was returned in the trial court was not in the proper form, and does not adequately describe the premises which were found to have been unlawfully detained. The verdict was as follows:

"We, the jury, find the issue for the plaintiff, and assess his damage, in being kept out of possession of the premises, at \$300. And possession of entire farm in ten days from date.
Foreman: W. W. Miller."

The defendant below insists that the jury should have returned a verdict of guilty or not guilty, and should have assessed the plaintiff's damages incident to the unlawful detention, if the finding was in his favor. In support of that contention, sections 3362-3365 and 3367 of Mansfield's Digest of the Statutes of Arkansas are cited. It is unnecessary, however, to consider this contention, since the bill of exceptions which was settled and signed by the trial judge does not show that any objections were made to the verdict when it was returned. The verdict was clearly sufficient, in the light of the pleadings, to show what the jury intended, and to warrant the judgment which was subsequently entered thereon, wherein the property referred to was sufficiently described to identify it. If the verdict was not in the statutory form, the trial court's attention should have been directed to the defect when it was returned, and an exception to the court's action in refusing to have it corrected, if the court did