

Story Vs. Black

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SooperKanoon Citation : sooperkanoon.com/85272

Court : US Supreme Court

Decided On : Nov-15-1886

Appeal No. : 119 U.S. 235

Appellant : Story

Respondent : Black

Judgement :

Story v. Black - 119 U.S. 235 (1886)

U.S. Supreme Court Story v. Black, 119 U.S. 235 (1886)

Story v. Black

Submitted November 11, 1886

Decided November 15, 1886

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ERROR TO THE SUPREME COURT

OF THE TERRITORY OF MONTANA

SYLLABUS

When a jury is waived in a territorial court in the trial of an action at law, the case cannot be brought up for review by writ of error, but must, under the Act of April 7, 1874, c. 80, 18 Stat. 27, come, if at all, by appeal, as provided in that act.

This was an action to try title to real estate. After issue joined, it came on for trial "before the court, a trial by jury having been expressly waived by the parties." In the course of the trial, plaintiff's counsel took several exceptions to evidence offered on defendant's behalf, all of which were duly noted. The judge then, after hearing the evidence, made special findings of fact and found conclusions of law thereon, and plaintiff's counsel thereupon excepted to each finding of fact, except one which was specified, and to each of the conclusions of law, on the ground that the same were defective and did not cover the material issues in the action, and that the court erred in its conclusions of law upon the findings. Plaintiff's counsel also asked for certain specified findings and moved for a new trial for reasons given in the motion, and, the motion being denied, excepted to the order denying it. On this record, the case was taken on appeal to the supreme court of the territory. The judgment below was there affirmed, and this writ of error was sued out to review that action of the supreme court of the territory.

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MR. CHIEF JUSTICE WHITE delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the Territory of Montana to bring up for review the judgment in a suit where there was not a trial by jury. Under the Act of April 7, 1874, c. 80, 2, 18 Stat. 8, p. 27, the case should have

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been brought up by appeal, and the writ of error is therefore dismissed. *Hecht v. Boughton*, [105 U. S. 235](#) ; *United States v. Railroad Co.*, [105 U. S. 263](#) ; *Woolf v. Hamilton*, [108 U. S. 15](#) . The question is no longer open in this Court. The statutory rule is jurisdictional.

