

STEVENS v. ROLFE.

{ Aug. 13,
1875.*Referee—Act of 1874—Discretion.*

It is not a proper exercise of discretion, under the act of 1874, to send to a referee a cause that has once been tried by the jury, and is brought forward to be reviewed.

FROM COÖS CIRCUIT COURT.

ASSUMPSIT. The plaintiff moved to refer. There was no reason why the case should not be referred, except that it had been once tried by a jury, and had been brought forward for review. The court, in the exercise of its discretion, decided that it was not inexpedient to refer the case for that reason; and the question, whether or not that was a proper exercise of discretion under the reference law of 1874, was transferred to this court by RAND, J.

Ray & Drew, for the plaintiff.

Aldrich & Shurtleff, Bingham, and Dudley, for the defendants.

SMITH, J. A principal object in sending an action to a referee is to enable the parties to obtain a more speedy trial at less expense to themselves and the county, while it would not be unreasonable to entertain the hope that, in most cases, the result the referee might reach would be accepted by the parties; but the fact, that a case has once been tried by a jury and judgment rendered on the verdict, and that the defeated party has brought it forward for review, makes it apparent that he will hardly rest satisfied with any adverse result that is not final. If, therefore, the case should be sent to a referee, and the report not be satisfactory to him, he would hardly be content without trying the remaining chance which the law would give him of another trial by jury. To send the case, then, to a referee, would most likely result in nothing but compelling the parties to be at the delay and expense of another and a fruitless trial.

The question, however, is deprived of any importance by the change made by the act of 1875, since this question was sent up, whereby cases pending on review are excepted from the operation of the act. I think the order to refer should be rescinded.

CUSHING, C. J. I agree that it would not be a proper exercise of discretion to encourage parties to commence actions of review for the sake of changing the mode of trial.

* STANLEY, J., C. C. I am of the same opinion.

Case discharged.

* LADD, J., having presided at the trial, did not sit.