

No. 14664

Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Johnson

71641  7

STATE OF ILLINOIS,

Vol. 5, 1864

SUPREME COURT,

THIRD GRAND DIVISION.

No. 51

J. W. Middleton & Co., Stationers, 126 Lake St.

Report
J. B. R. R. Co.

Johansen

1864

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

ILLINOIS CENTRAL RAILROAD CO., APPELLANT,

v.

THOMAS JOHNSON, APPELLEE.

APPELLEE'S POINTS.

STATEMENT OF CASE.

This case is brought to this court on an appeal taken from the judgment, by simply filing a bond in double the amount of the judgment. There is *no bill of exceptions whatever*, and the record alone is before the court.

The action is *assumpsit*, and the declaration consist of two counts. The first of which alleges that the defendant was a common carrier, and that the plaintiff, on the 14th of June, A. D. 1856, at the request of the defendant, delivered to the defendant four boxes, one trunk, one box, &c., filled with goods and chattels, of the value of five hundred dollars, marked for Thomas Johnson, Wheeling, Virginia; and defendant, by its certain agreement, in writing, undertook, and promised the plaintiff, to forward said goods and chattels to Wheeling, Virginia, subject to freight and the regulations of the company.

BREACH.—That the goods were not forwarded to the plaintiff at Wheeling, Virginia, but the defendant so carelessly and negligently conducted itself, with respect to the goods, that the same were lost.

The second count is substantially like the first, but sets out the written agreement *in haec verba*.

To this declaration the defendant interposed four pleas:

1st. The general issue.

2d. That the written agreement entered into, &c., for carrying the goods, was subject to a condition, in substance "that the defendant " should only be liable for loss or damage while on their road," and that the plaintiff's goods *were not lost or damaged* by defendants, on their railroad, &c., but were safely delivered to the Terre Haute and Alton Railroad, &c.

3d. That the defendant did safely carry and deliver the goods, &c.

4th. Statute of limitations. That the causes of action did not accrue within five years.

Plaintiff filed a demurrer to the 2d, 3d and 4th pleas, and the same was sustained as to the 2d and 4th pleas, and overruled as to the 3d plea, but the court afterwards decided that the 3d plea amounted to the general issue, and, on motion, struck it from the files.

After this a trial by jury took place, and a verdict rendered for the plaintiff for \$339.70. No motion for a new trial was made; no exceptions taken to anything whatever; but an appeal was prayed and bond given.

The errors which are complained of relate to the court's sustaining the demurrer to the 2d and 4th pleas, and striking the 3d plea from the files, and to the verdict rendered in the case.

The appellee contends that there is no error whatever in this record; because,

I

The case of *Curtiss v. Martin*, 20 Ill., 571, is exactly parallel with this, and in that the court (Justice WALKER) says: "A demurrer was sustained to the 4th and 5th pleas, filed December, 1854, on the ground that these pleas amounted to the general issue. *Whether they they did or not is not material*, if the *facts alleged in* them could have been given in evidence under the *general issue already pleaded in this action*. Unless the bill of exceptions showed that the evidence was *offered on the trial*, and rejected by the court, the *presumption* would be that *it had been admitted under the general issue*. The same may be said of each of the remaining pleas, to which demurrers were sustained. And, as the bill of exceptions *nowhere shows that the evidence, which was admissable as well under them as under the general issue, was rejected by the court*, there was *no error in sustaining the demurrer* to these pleas for which the judgment should be reversed."

In like manner, in the case of *Parmalee v. Fischer*, 22 Ills., 214, the court say:

"There was an issue of not guilty, under which all of the matters set out in the special plea could be given in evidence, and we *will presume the court permitted* the defendant to give it in evidence, the *bill of exceptions not showing* he was denied that privilege."

Also, in the case of *Harner v. Crane*, 20 Ills., 151, the court say:

"Some matters must be pleaded specially, and some others *may be*, but

“ this defence is not embraced in (either) the former of them. We are, therefore, of the opinion that there was no error in sustaining this demurrer. If, however, this was not true, the judgment should be sustained on different grounds. The defence being admissible under the plea of non-assumpsit, the *presumption is, that* the court below *permitted the appellant* to avail himself of this defence on the trial, and in this case the *presumption is not* rebutted *by a bill of exceptions*, showing that he was denied that privilege, and failing in that respect, the *judgment should be affirmed.*”

II

III

The declaration in this case was perfectly good ; but even if the second count was defective in any manner it will not make the slightest difference, because if there is one good count the court will always *presume* that the evidence was admitted under the good count ; moreover, the defendant could not attack the declaration, the rule being that when a plea of the general issue is filed to the entire declaration, a demurrer to a plea *cannot reach the declaration.*

Wilson v. Myrick, 25 Ills., 34.

A demurrer to pleas which purport to answer the whole declaration, will not be carried back and sustained to the declaration, if it contains some good counts.

Porter v. Vineyard, 4 Gil., 40.

(5)

IV

HERVEY, ANTHONY & GALT,

Attorneys for Appellee.

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1/2 Us. Cont. R.R. Co
as
Thomas Johnson

Appellus Point

Filed May 5th 1864
L. L. and W.

1 Pleas continued and held at the Court House in Bloomington
in and for the County of McLean in the State of Illinois before
the Circuit Court of said County in a certain cause therein
pending wherein Thomas Johnson was plaintiff and the
Illinois Central Railroad Company was Defendant.

State of Illinois }
McLean County } ss Be it remembered that heretofore to wit on
the 8th day of October A.D. 1861. came Thomas Johnson by
Swett & Ames his Attorneys. and sued out of the office of the Clerk
of the Circuit Court of said County a writ of Summons against
the Illinois Central Railroad Company. which summons was in
words and figures as follows. to wit.

State of Illinois }
McLean County } The People of the State of Illinois.
To the Sheriff of said County - Greeting

We command you to summon The Illinois Central
Railroad Company. if found in your County personally to appear
before the Circuit Court of said County of McLean on the first day
of the next term thereof. to be holden at the Court house in Bloom-
ington on the first Monday in the month of December next. to answer
unto Thomas Johnson in a plea of assumpsit to his damage One
Thousand Dollars as he says. and have you then and there this
writ. and make return thereon in what manner you execute the same.



Witness. Wm. McCullough Clerk of said Circuit Court and
the seal thereof hereunto affixed at Bloomington this 8th
day of October A.D. 1861.

Wm. McCullough. Clerk
By L. B. Dwyer.

Which said Summons was by the Sheriff of said County returned into said Clerk's office endorsed as follows. to wit

I have on this 25th day of Oct. 1861. executed this writ by delivering a true copy of the same to S. W. Dodd. one of the agents of the within named Illinois Central Railroad Company. The President of said Company not being a resident of my County. Fees. 65.cts

John L. Routh. Sheriff.

And afterwards. to wit. on the 19th day of November A.D. 1861. came the said Plaintiff by his attorneys and filed his Declaration against said Defendant which Declaration was in words and figures as follows to wit.

State of Illinois } Of the December Term. 1861.
McLean County } McLean Circuit Court.

Thomas Johnson plaintiff in this suit by his attorneys. complains of the Illinois Central Railroad Company defendant in a plea of assumpsit. For that whereas the said Defendant before and at the time of the promise and undertaking hereinafter mentioned. was a Common Carrier. to wit. at the County and State aforesaid. And thereupon said Plaintiff heretofore to wit on the 14th day of June 1856. at the County and State aforesaid. at the special instance and request of said Defendant caused to be delivered to the said Defendant. Divers goods and merchandise. to wit. 4 Boxes. and 1 trunk. and 1 Box in "B.O." filled with goods and chattels. then in good order and condition of great value. to wit. of the value of \$500. and in consideration thereof and of certain freight and reward to the said Defendant in that behalf the said Defendant by one S. W. Dodd. its agent. on the day and year

aforesaid. at Bloomington. to wit. at the County and State aforesaid
 by its certain agreement in writing. undertook and promised said plain-
 tiff to forward said goods and chattels to said plaintiff at wher-
 =ling in the State of Virginia. subject to freight and the regulations
 of the Company. - the said Defendant. And it was further stipulated
 in said agreement in writing that Defendant should not be respon-
 =sible for damage to the goods from fire or other unavoidable causes
 while in the buildings of the Defendant awaiting shipment. And although
 said Defendant then and there received said goods and chattels, and
 although a reasonable time for the carrying, conveying & forwarding
 of said goods and merchandize as aforesaid hath long since elapsed
 yet the said Defendant not regarding its duty in that behalf. nor
 the said agreement or undertaking, did not. nor would carry and forward
 said goods and merchandize to said plaintiff as aforesaid (altho
 no fire or other unavoidable cause happened said goods while in the
 buildings of the Defendant to prevent) But on the contrary, said De-
 fendant so carelessly and negligently conducted itself with respect to
 said goods and merchandize, that the same being of great value to wit.
 of the value of \$500. became and were wholly lost to said plaintiff, to
 wit. at the County and State aforesaid:

And for that whereas also the said Defendant. before and at the
 time of the agreement hereinafter named, was a common carrier for hire,
 to wit. at the County and State aforesaid. And thereupon in consideration
 that said plaintiff would deliver to said Defendant certain goods and
 chattels hereinafter named, the said Defendant undertook & promised
 to convey and forward the same to said plaintiff at Whirling Virginia.
 And said plaintiff thereupon, on the 14th day of June, A.D. 1856, at
 the County and State aforesaid, at the special instance and request of

said Defendant. caused to be delivered to said Defendant at its Depot in Bloomington Illinois. the said goods and chattels. to wit. 4 Boxes. and 1 trunk and 1 Box in B.O. filled with divers and miscellaneous. goods. clothing. farming implements. wares and merchandize of great value. to wit. of the value of \$500- and in consideration thereof and of certain freight and reward to be paid to said Defendant. the said Defendant by one S. W. Dodel its agent. on the said 14th day of June A.D. 1856. at the County of McLean aforesaid. executed and delivered to plaintiff its certain receipt or agreement in writing commonly called a Bill of lading. in words and figures as follows. to wit.

"Bloomington June 14. 1856.

"Received (in apparent good order) of John B. Johnson for Thomas Johnson
 "Wheeling Virginia. 4 boxes & 1 trunk "1 Box in B.O" 830th
 "(contents unknown). To be forwarded by the Illinois Central Railroad Com-
 "pany. subject to freight and the regulations of the company - It is
 "especially agreed and understood that the company are not responsible
 "for damage to goods from fire or other unavoidable causes. while in
 "the buildings of the company awaiting shipment.

S. W. Dodel. agent."

and thereby. then and there undertook and promised plaintiff to carry and forward said goods and chattels from Bloomington Illinois to said plaintiff at Wheeling Virginia subject to the conditions and restrictions in said agreement contained. yet said plaintiff says that altho said Defendant received said goods and chattels. and altho a reasonable time has elapsed for the same to have been carried and forwarded from Bloomington Illinois. to Wheeling Virginia. the said defendant not regarding its duty in that behalf. nor its said agreement in writing. did not. nor would forward said goods and chattels to said

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plaintiff at Wheeling aforesaid (altho' no fire or other unavoidable cause prevented) but on the contrary thereof, so carelessly & negligently conducted itself in that behalf, that said goods and chattels, of great value, to wit, of the value of \$500, became and were wholly lost to plaintiff at the bounty and state aforesaid, to the damage of said plaintiff of \$1000, and hence he sues, &c.

by Swett & Orme, his attys.

For copy of Instrument sued on - see 2^d Count.

And thereupon, afterwards, to wit on the 6th day of December A.D. 1861, came the said Defendant by its attorneys, and filed its Demurrer to said plaintiffs Declaration, which Demurrer was in words and figures as follows, to wit

Illinois C. R. R. Co.

acts

Thomas Johnson

McLean County Circuit Court

Dec. term 1861.

And the said Defendant comes and defends the wrong & injury, and says that the said Declaration and each count thereof is insufficient in law for them further to answer the same. And the said Defendants crown oyer of the said writing obligatory, and the same is read to him in substance as follows.

"Bloomington June 14. 1856

Received (in apparent good order) of John B. Johnson for Thomas Johnson Wheeling, Virginia, 4 boxes & 1 trunk - 1 Box in R. C. 820 lbs. contents unknown, to be forwarded by Illinois Central Railroad Company, subject to freight and the regulations of the company. It is expressly agreed

6 and understood that the company are not responsible for damage to goods from fire or other unavoidable cause while in the buildings of the company awaiting shipment. S. W. Dodge, agent.

That the said writing, if any such was made is not set out fully in said Declaration, and all its material conditions negatived or affirmed in said Declaration - wherefore they pray judgment of the said Declaration and each count thereof & that the same be quashed.

Girdley & Moore. p. a.

And afterwards at the December Term of said Circuit Court, to wit. on the 14th day of December A. D. 1861. the following proceedings were had in this cause as appears of record, to wit.

Thomas Johnson

vs

In Assumpsit.

The Ills. Central R. R. Co.

And now at this day come the parties hereto by their attorneys. And this cause now coming on to be heard on the Defendants demand to the Plaintiffs declaration - is argued by counsel. And the Court having heard said demand, and being fully advised in the premises, doth consider that the same be overruled.

And thereupon, afterwards, to wit. on the 27th day of December A. D. 1861. came the said Defendant by its attorneys, and filed herein its plea to the said Plaintiffs Declaration, in words and figures as follows, to wit.

Illinois Central Railroad Co.

ats

Thomas Johnson

McLean County Circuit Court.

Dec. Term 1861

1st And the said Defendants come and defend the wrong and injury, when &c. and say that they did not undertake & promise^{ed} the said plaintiff hath declared against them. and of this they put themselves upon the Country, & pl^{ff} doth the like.

Girdley & Williams.

Come

2^d And for a further plea in this behalf by leave &c first had and obtained. Defendants say actio non. because they say that the said writing obligatory in said plaintiffs Declaration mentioned. if any such was made. was and is subject to the condition following in substance - that the said goods in the said declaration mentioned were received by the said Defendants subject to freight & the regulations of said Defendants and the Defendants here avow. that one of their regulations referred to in said writing & known to said plaintiff. at the time when &c. in declaration mentioned. was & is. that said Defendant was only liable for loss or damage done to said goods while on Defendants railroad. and that Defendants liability as to pl^{ffs} goods. ceased when the same were delivered to other carriers. And the said Defendants say that said pl^{ffs} goods were not lost or damaged by Defendants. or on their said railroad. that said goods were safely delivered by Defendants to Terre Haute & Alton Railroad. who were common carriers next to Defendants railroad. on the route from Bloomington to Wheeling. and this they are ready to verify. wherefore they pray judgment.

Girdley, Williams & Wickizer

3^d And for a further plea in this behalf. Defendant says actio non. because they say. that they did safely carry & deliver the said goods in said Declaration mentioned. according to the freight & regulations of said Defendants. and this they are ready to verify.

Amendment to plea of Dec. 12th 1862. Amend the 2^d plea by adding after the words - known to said plaintiff - as follows - & And by him was then and there avowed to.

wherefore they pray judgment &c.

Girdley. Williams & Wickizer.

4th. And for a further plea in this behalf by like leave first had and obtained. the said Defendant says actio non. because he says that the said several causes of action in said Declaration mentioned. did not accrue to the said plaintiff within five years next preceeding the commencement of this suit & this they are ready to verify. wherefore they pray judgment &c.

Girdley. Williams & Wickizer.

And afterwards at said December term. to wit. on the 30th day of December A. D. 1861. the following order was made in this cause as appears of record to wit.

Thomas Johnson

vs

The Ill. Central R.R. Co.

In Assumpsit.

This day. on motion of said Defendant by its attorney. leave is granted it by the Court to amend its pleas filed herein. And now by consent of the parties hereto. this cause is continued.

And thereupon. at the regular March Term of said Circuit Court. to wit. on the 11th day of March. A. D. 1862. the following order was in this cause as appears of record. to wit.

Thomas Johnson

vs

The Ill. Central R.R. Co.

In Assumpsit

This day on motion of said Defendant by its attorney leave is granted it by the Court to file an additional plea in this cause

And thereupon afterwards. to wit. on the 24th day of March A.D. 1862. came the said plaintiff by his attorneys and filed herein his demurrer to the 2^d. 3^d. & 4th pleas of said Defendant in this cause. which said Demurrer was in words and figures as follows to wit.

Thomas Johnson

vs

The Illinois Central Railroad Company

McLean Circuit Court of
Illinois. March Term. 1863.

And said plaintiff as to the 2^d. 3^d. and 4th pleas of said Defendant. and as to each of them. says that the 3^d. pleas and each of them. are entirely insufficient in law. and this he is ready to verify - wherefore &c.

Swett & Orms. Attys.

And thereupon this cause was continued by said Court from term to term until the December term 1862. And at said December term of said Court further proceedings were had herein before the Hon. Char. Emerson. Judge of the 17th Judicial Circuit of this State: then presiding over the said McLean Circuit Court: as follows. to wit.

Friday December 13th 1862.

Thomas Johnson

vs

In Assumpsit

The Illinois Central R.R. Co.

And now at this day come the parties hereto by their attorneys. and said plaintiff having filed his demurrer to the 2^d 3^d and 4th pleas filed herein by said Defendant. and said Demurrer now coming on to be heard is argued by counsel. and the Court being fully advised in the premises doth sustain said demurrer as to the 3^d and 4th pleas of said Defendant. and doth overrule said Demurrer as to said Defendants 2^d plea. And now said Defendant enters its exceptions to the deposition of Robert M. Britney. on file in this cause. which exceptions are overruled by the Court. And now on motion of Defendant by its attorney. leave is granted it by the Court to amend its second plea in this cause. which is done. And thereupon said plaintiff by his attorney enters his demurrer to said Defendants 2^d plea as amended. which demurrer being heard by the Court is sustained.

And thereupon afterwards at said December term of said Court. to wit on the 13th day of December A. D. 1862. this cause came on for trial. Present.

Hon. Chas. Emerson. Judge of 11 Judicial Circuit. Presiding

Luman Burr Clerk

Norval Dixon. Sheriff.

and the following proceedings were had herein. as appears of record to wit.

Thomas Johnson

vs

In Assumpsit

The Illinois Central Railroad Company

And now at this day again come the parties hereto by their attorneys. And said plaintiff now moves the Court to strike said Defendants third plea from the files of this cause. which motion being heard by the Court is sustained. and said 3^d plea is ordered to be stricken from the files of this cause. And now said Defendant by its attorneys moves the Court for leave to file an amended plea in this cause. which motion is denied by the Court. And now this cause coming on for trial. thereupon comes a Jury. twelve good and lawful men. to wit. Joseph Houtley. Enoch L. Rounds. James B. Williams. John Luckey. Aaron Fitchell Joseph Ater. Milton Bozarth. Charles Ellsworth. M. G. Boston. Seth A. Adams. Marston Hofner & David D. Thompson. who are duly examined and sworn to well and truly try the issue herein joined and a true verdict render according to the evidence. And having heard the evidence produced and the arguments of counsel. the Jurors aforesaid upon their oaths do say. that they find the issue for the plaintiff and do assess his damages by reason of the premises at Three Hundred and thirty nine Dollars and Seventy cents: It is therefore considered by the Court that said plaintiff recover of and from said Defendant The Illinois Central Railroad Company. the sum of Three Hundred and thirty nine Dollars. and Seventy cents. his damages so assessed as aforesaid. and also his costs by him in this behalf expended. and that he have execution therefor.

12. And afterwards at said December term of said Court, to wit: on the day of December A. D. 1862, further order was made by said Court in this cause as follows, to wit:

Thomas Johnson

vs

In Assumpsit.

The Ills. Central R.R. Co.

And now at this day again comes the said Defendant by its attorney and prays an appeal from the Judgment of this Court in this cause, to the Supreme Court of this State, and the same is allowed. And said Defendant is allowed thirty days in which to file an appeal Bond in the penalty of double the amount of the Judgment in this cause with Asahel Gridley as security.

And thereupon afterwards, on the 17th day of January A. D. 1863 came the said Defendant and filed an appeal bond in this cause which bond was in words and figures as follows, to wit:

Know all men by these presents, that we, The Illinois Central Railroad Company as principal, and Asahel Gridley as security of the County of McLean and State of Illinois, are held and firmly bound unto Thomas Johnson in the penal sum of Seven hundred Dollars, for the payment of which, will and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly, and severally and firmly by these presents. Sealed with our seals and dated at Bloomington this 10th day of January Anno Domini, one thousand eight hundred and sixty three.

The condition of the above obligation is such, that, whereas the above named Thomas Johnson did on the 13th day of December One thousand

eight hundred and sixty two. at a term of the Circuit Court then being holden within and for the County of McLean and State of Illinois obtain a judgment against the above bounden Illinois Central Railroad Company for the sum of Three hundred and thirty nine Dollars and Seventy cents. and costs of suit. from which judgment the said Illinois Central Railroad Company has prayed for. and obtained an appeal to the Supreme Court of said State.

Now if the said Illinois Central Railroad Company. shall duly prosecute said appeal. and shall moreover pay the amount of the judgment. costs. interest and damages rendered and to be rendered against it. the said Illinois Central Railroad Company in case the said judgment shall be affirmed in the said Supreme Court. then the above obligation to be null and void. otherwise to remain in full force and virtue.

The Illinois Central Railroad Company

Taken and entered into before me by J. M. Douglas. atty. in fact -
and approved this 17 day of
January A. D. 1863

A. Gidley

Luman Burr Clerk

State of Illinois

McLean County

I, Luman Burr. Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing is a true and complete transcript of the records and files of my office pertaining to a certain cause wherein Thomas Johnson was plaintiff and The Illinois Central Railroad Company was Defendant

Given under my hand and seal of office at Bloomington
this 10th day of February A. D. 1863.

Luman Burr. Clerk.



And now comes the appellant and says
that in the record proceedings aforesaid
and in the rendition of the Judgment
aforesaid there is manifest error in
this Court.

The Court erred in sustaining plaintiff's
demurrer to depts 3rd plea

2 The Court erred in sustaining plaintiff's
demurrer to depts 4th plea

3 The Court erred in striking depts 3rd plea
from the files after demurrer to it had
been overruled

4 The Court erred in rendering the
Judgment aforesaid in manner & form
aforesaid

Glover Cook & Company
for appellant

copy to Mr. Evans
April 29. 1883
L. Leland
Clerk

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Ills. Central R. R. Co. applmt.

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*Thomas Johnson - appellee**Record**Filed Apr. 15. 1863.
L. Keland
Clk.**Fees for this Record \$5.00*

Illinois Central
Rail Road Company }
vs
Thomas Johnson }

Now comes the said
Appellant and opposes the
allowing of the motion herein
entered to dismiss the Appeal
herein & says the Causes as-
signed are not sufficient

The Record shows that after
the rendering of the Judgment
an Appeal was prayed and
allowed. It is true the re-
cord does not show Affirma-
tively that this was done at
the precise moment that the
Judgment was entered.

Nor does it show the
contrary. And the Court be-
low having Allowed the
Appeal to be taken, this Court
will presume that it was
prayed in accordance
with the Act when nothing
appears to the contrary.

522 Case of Libbs vs Allen

27 Dec 124 + 125 on
this question of presumptions

11. Dec 620

13 Dec 693.

4. Scam 557

14 Dec 45.

11 Dec 30.

The second reason urged
why Appeal should be dis-
missed is because the Appl
Bond is not executed un-
der the Seal of the Corpora-
tion & reference is made to
page 13 of Record as show-
ing the fact -

The Record sets out a copy
of the Bond which appears
to be executed under Seal
by both Principals & Surety

The Copy substitutes a
scrawl for each of the seals
as the only method in which
the Clerk could imitate
whatever seals may have
been attached to the origi-
nal which was undoubtedly
by the Corporate Seal

The Record shows that the atty

Not by
any means
H.M.G.

in fact if Appellants affixed
the name of his Principal and
also a Seal now if that
Seal were in fact a sim-
ple scrawl it will be held
to be the seal of the Corpora-
tion The Authority Cited
by Appella-

Angell & Ames on Corporations 185
shows conclusively that it
is sufficient if the Instru-
ment be sealed with a
seal which is a seal of the
Corporation either originally
or by Adoption

Once we say the Corporation
Adopts this Seal (if it be held
not to be their own originally)
the very moment it was af-
fixed in connection with the
Corporate name by their Atty
in fact

§ 22 Angell & Ames on Corporations
p 186 Sec 2 -

"We see no reason (see Illinois) why
the Legislature allowed for a pri-
vate Seal (a flourish with the pen)
should not also be allowed
for the Seal of a Corporation"

Further the Bond (p 13) recites that it is sealed with the Seal of the Corporation And certainly this Court will not presume that this was not the fact simply because the Clerk has not in the copy incorporated in the record made a fac simile of the Seal Actually attached.

This Bond will certainly be presumed to be regular

Sullivan v Dillins 11 Dec 16-

Sheldon v Reple 1 Dec 520-

The Third Cause Assigned is that the Appeal Bond was approved by the Clerk without authority or a fac to act of 1859 -

I do not conceive that this case comes within the Act at all but rather under the 47th Section of the Practice Act, Stats Stat 264 - which provides that Appellant give bond approved by the Court -

Which was done in this Case

The Record page 12 shows
that the Appeal was allowed
by the Court & Defendant
allowed to file within
30 days An Appeal Bond
in Double the amount of the
Judgt with Ashabel Bradley
as Security

This order was an Appro-
val of such a Bond by the
Court sufficient

Geo L. Campbell
for Appellant

Illinois An =
tral R.R. Co
vs

Johnson

Suggestions
against Motion
to Dismiss Appl

Filed Apr. 21. 1864

J. G. Caldwell

Illinois Central Rail Road
Company Appellant.
vs
Thomas Johnson
Appellee

And now comes the
said appellee by his attorney
Hervey, Anthony, & Galt and
moves the court to dismiss
this said appeal, for the following
reasons.

First - ~~The~~ record
does not show that an
appeal was prayed from
^{at the time of the rendering of the same}
the judgment by the defendant
as expressly provided by sec
47, of the Practice Act see Revised
Statutes of 1845 p 420.

Second - The bond which is
filed in this case is not
executed by the Illinois
Central Rail Road Company the
defendant in the court below

at all - as appears on page
12 & 18 of the Record -
But was executed by a ~~some~~
~~any~~ person who signs himself
"attorney in fact" under his
own private seal.

It is a fundamental
principle relating to corporations
that they act & speak only by
their corporate seal - and while
this rule has been sometimes
relaxed in regard to contracts
of their servants & agents yet
we submit that no case can
be found - where an appeal bond
has ever been executed in
the way & manner that the
appeal bond in this case was.

Blackstone says
Vol 2. p 306 of his commentaries.
that "a corporation, being an invis-
ible body, cannot manifest its
intentions by any personal act or
oral discourse - it therefore acts
& speaks only by its common
seal. For though the particular

members may express their private consents to any act, by words or signing their names yet this does not bind the corporation it is the fixing of the seal, and that only, which unites the several assents of the individuals who compose the community & makes one joint assent of the whole"

Angell & Ames on Corporations page 185 - says - "It should be observed that to bind a corporation by deed the instrument must be sealed with a seal which is their's either originally or by adoption; and hence that an instrument under the private seals of their authorized agents does not bind the body as a deed although they may be liable in implied assumpsit for benefits conferred under it."

2 Kent Commentaries 224-
1 Kyd on Corporations 265.

The authorities in support of this proposition are very numerous but this court in 1839 in the case of Kenzel v. Chicago 2^d Scammon p 188 - say that "the mode of

"assenting to and authenticating
"acts of a corporate body, which
"uses a seal, is to affix the seal
"with a declaration, that it is the
"seal of the corporation & to verify
"the act by the signature of the
"president & secretary of the
"corporation".

In the case of *Stinchfield*.
vs Little & Greenleaf (name) 284
the court say - "It seems to have
been settled or recognized as law
in courts of justice by judges
distinguished for their wisdom and
learning, in successive generations
& under different governments, that
in order to bind the principal or
constituent & make the instrument his
deed, the agent or attorney must set
to it the name and seal of the
principal or constituent & not merely
his own."

In this case at bar there
is no pretense that the Seal of
the Corporation of the Ill Cent R R Co
is attached to the bond - as required
by the order of the court - as well be seen by
examining the record on page 13 -

These authorities would
seem to be perfectly conclusive
of the point made.

of the point made

Third - The appeal bond was approved
by the clerk of the court without
any authority at all appearing of
record - Contrary to the express
provisions of the 2^d Section of
the Statute of 1859 - See Statute
of 1859 - p 133 - See 2.

Hervey Anthony &
Sole attys for
Appellee

No 51-

Ill Cent R.R. Co

v

Thomas Johnson

Motion to dismiss
the appeal -

Motion & brief as
same -

Filed April 21. 1869

J. Leonard M.

Henry Anthony Galt
attor appeller