

13806

No. _____

Supreme Court of Illinois

Miller

vs.

Whiteman

71641  7

State of Illinois }
County of Morgan } Appeal to the Supreme Court
Ottawa April Term 1860

John Miller Appellant }
vs }
Jacob A. Whiteman Appellee }

Charles H. Wood

The attorney of the appellant in the above entitled cause being duly sworn on his oath says that an authenticated copy of the record of the judgment in the above entitled cause was mailed on the 26th day of March last, and directed to the clerk of the Supreme Court of this grand division; that said authenticated copy of the record was received shortly after it was mailed by said clerk as he has informed this affiant; and that said copy of the record has remained lodged in the office of said clerk from that time ever since; that said record has now been filed and errors assigned by this affiant for the appellant thereon -

This affiant further states that he believes and so advised his

Client, the appellant, that lodging an authenticated copy of the record of the judgment with the clerk of the supreme court, before the term was a compliance with section 48 of Chapter 83 of the Revised Statutes and would entitle the appellant as well as the appellee to a hearing of the cause at the first term. Affiant further says that if there has not been a technical compliance with the rules of this court, that it has been through a misapprehension of the meaning of the statute and that he believes that the appellant took this appeal in good faith and not for the purpose of delay.

Subsd. & sworn to before
me Apr. 25. 1860

Charles H. Wood

L. Island Ck.

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John Miller Appellant

vs

J. A. Whitman Appellee

Affidavit

Filed Apr. 25. 1860

d. Deland

Clk.

State of Illinois

Supreme Court Third Division

No 348.

April Term A.D. 1860

Miller, appellant }
vs } Appeal from Trojouis
Whitman, appellee } Lodge LeLand being
duly sworn maketh oath

and say, that my present recollections are, that the record in the above entitled cause was sent to the clerk of the Supreme Court some time in the month of March last by mail, & that no letter, or directions or money, was sent with said Records, & that on the receipt of said Records, I wrote to the clerk of the Cir. Co. of Trojouis County, acknowledging the receipt of the Records, and stated to him, that I should require a prepayment of five dollars before filing the records, or docketing the cause, and requested the clerk to call the attention of the appellant, or his Attorney to the matter; and that no person appeared, and offered to pay said five dollars clerk fees, or to file said Records until the 24th day of April A.D. 1860.

Subscribed & sworn to }
before me this 26th day }
of April A.D. 1860 }
J. H. Hollister }
Judge

L. LeLand

No. 348

Millis appellat

is

Whiteman, Appeller

Affidavit of
Island.

13806

John Miller Appellant } Appeal from Croguois
vs } Supreme Court Ottawa
Jacob A. Whiteman Appellee } April Term 1860

Objections to motion to dismiss appeal -

In cases of appeals the statutes provide that "the appellant shall lodge in the office of the clerk of the supreme court, an authenticated copy of the record of the judgment or decree appealed from, by or before the third day of the next succeeding term of said Supreme court, provided, that if there be not thirty days between the time of making the appeal and the sitting of the Supreme court, then the record shall be lodged as aforesaid, at or before the third day of the next succeeding term of said supreme court; otherwise the said appeal shall be dismissed, unless further time to file the same shall have been granted by the Supreme court on good cause shown" - Revised Statutes Chap. 83 Sec. 48, Cooks Statutes page 269

An authenticated copy of the record in this case has been lodged with the clerk ever since the latter part of March - see affidavit on file -
now "lodged" does not mean "filed".

The two words have a different derivation and a totally different signification - To "lodge" means, "to set, lay or deposit for keeping or preservation for a longer or shorter time - To place, to plant, to fix" - While on the other hand to "file" means "to string; to fasten, as papers on a line or wire for preservation - To arrange or insert in a bundle, as papers, indorsing the title on each paper."

Websters Dictionary -

Now why did the legislature use the word "lodge" instead of "file"? For the obvious reason that they did not intend that the appellant should be bound to see that the clerk actually put the filing on to the papers, but on the contrary that it should be sufficient if he deposited them with the clerk, which is all the word lodge can be fairly construed to mean

The record having been lodged with the clerk some three weeks before the term this was a substantial compliance with the statute -

But if in order to perfect the appeal it is necessary to have

the record filed on or before the third day of the term, still the appellant has complied with the law. This court has decided in the case of Cook vs Hall 1st Gilman 579 that when a deed is taken to the office and left with the recorder in contemplation of law it is filed for record. If it be a filing by the party, to leave a deed for record within the statute relating to recording, then leaving a record with the clerk of the supreme court is a filing within sec. 48 of the statute relative to appeals, and with much more reason, for the latter only requires a record to be lodged with the clerk.

Charles H. Wood
for Appellant

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John Miller

v

Jacob T. Whitman

Suggestions why
the appeal should
not be dismissed

Filed April April 26, 1860
L. Leland
Clerk