

had himself obtained from the supreme court a writ of certiorari directed to the state court to complete the record. The purpose of the writ, whether regularly issued or not, had been accomplished; and, by the aid of a certiorari issued at the instance of the defendant in error, the record had been completed. This, clearly, is not the case of dispensing with the writ by waiver or consent of parties, which the supreme court has so often declared cannot be done.

The true line of distinction running through the cases is between facts which are jurisdictional and those which are not. The issuance of the writ and filing it with the court below within the time prescribed by law are jurisdictional, and cannot be waived. They are the only means known to the law for bringing up for review cases at law; but any mere irregularity in getting up the record may be waived.

In the case at bar no writ of error has ever been issued, and the time for issuing one had expired a month prior to the hearing. The result is, the appeal must be dismissed.

VIDER et al. v. O'BRIEN.

(Circuit Court of Appeals, Seventh Circuit. May 31, 1894.)

No. 124.

1. APPEAL—OBJECTIONS NOT RAISED BELOW—EXCEPTIONS TO CHARGE.

An exception to the judge's "charge in its entirety, and to the following portions thereof," followed by a series of propositions embracing substantially all of the charge, is not good where any part of the charge is correct.

2. SAME—ASSIGNMENTS OF ERROR.

Under a rule of court requiring an assignment of errors to "set out separately and particularly each error asserted and intended to be urged," there should be a separate assignment of error in respect to each part of the charge which is alleged to be erroneous.

3. SAME—BRIEFS.

Under a rule of court requiring appellant's brief to contain a specification of the errors relied on, each specification of the brief should conform substantially to the particular assignment of error on which it is based.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

This was an action of assumpsit by M. W. O'Brien, trustee, against Olof Vider, William Kinsela, Michael J. Labounty, Charles Netterstrom, and Hugh Naughton. At the trial, the jury found for plaintiff. Judgment for plaintiff was entered on the verdict. Defendants brought error.

H. H. Anderson (J. J. Parker, of counsel), for plaintiffs in error.
Kraus, Mayer & Stein, for defendant in error.

Before WOODS and JENKINS, Circuit Judges, and BAKER, District Judge.

WOODS, Circuit Judge. The plaintiffs in error were the defendants below. The bill of exceptions shows that, at the conclusion of the court's charge to the jury, "the defendants then and there duly excepted to said charge in its entirety, and to the following portions thereof;" and there follows a series of 10 or more propositions, embracing substantially all of the charge except the statement of the case. That such an exception is not available, if any one of the portions excepted to is good, is settled by numerous decisions, as well as by rule 10 of this court (1 C. C. A. xiv., 47 Fed. vi.), which requires that the party excepting to the court's charge shall "state distinctly the several matters of law in such charge to which he excepts." A general exception to the giving or refusing of a series of instructions is not good. *Block v. Darling*, 140 U. S. 234, 11 Sup. Ct. 832; *Beaver v. Taylor*, 93 U. S. 46; *Worthington v. Mason*, 101 U. S. 149; *Railway Co. v. Zider*, 61 Fed. 908.

The assignments of error are also defective. Neither the original assignment, nor an additional assignment which the record shows to have been filed some days later than the first, conforms to the requirement of rule 11, that an assignment "shall set out separately and particularly each error asserted and intended to be urged," and, "when the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be instructions given or refused." This means, clearly, that there must be a separate assignment of error in respect to each part of the charge which is alleged to be erroneous, or, to say the least, if it is sought by a single specification of error to bring into question more than one proposition, it must be distinctly alleged that there was error in giving, or in refusing, each severally of the propositions which it is intended to challenge. The language of the assignment here is: "The court erred in charging the jury as follows;" and there follows the same series of propositions to which the general exception is shown to have been taken.

There has been a failure, it is to be further noted, to comply with the requirement of rule 24, that the brief of the plaintiffs in error, after giving a concise statement of the case, shall contain a specification of the errors relied upon. A comparison of the language of this rule with that of rule 11 shows the intention to be that each specification of the brief shall conform substantially, if not literally, to the particular assignment of error on which it is predicated. And for convenience there ought to be, with each specification in the brief, a reference to the corresponding assignment of error, as well as to the place in the bill of exceptions or other part of the record where the alleged error is shown. It is possible that a painstaking search and comparison would show some of the numerous specifications of the briefs in this case to be substantially the same as some of the numerous assignments of error, but such search and comparison ought not to be imposed upon the court. The relation of each specification to its corresponding assignment should be in some way distinctly indicated.

Of the various objections made to the introduction and exclusion

of evidence it would serve no good purpose to make particular statements. The record shows no ruling of which the plaintiffs in error may justly complain.

The judgment below is affirmed.

CLARKE et al. v. RICHMOND & W. P. TERMINAL RAILWAY & WAREHOUSE CO. et al.

(Circuit Court of Appeals, Fifth Circuit. June 12, 1894.)

No. 203.

1. CORPORATIONS—STOCK CONTROLLED BY COMPETING CORPORATION—RIGHT TO VOTE.

Stock in a railroad corporation of the state of Georgia was registered in the name of a corporation of another state, and its voting power was held by another foreign corporation, neither of which was a carrier; but the voting power was controlled by a carrier corporation of another state, which was in competition with the railroad company as to interstate traffic, though not as to matters domestic to the state of Georgia. No contract affecting such stock was shown to have been made by the parties in Georgia, or with any Georgia corporation. *Held*, that the right to vote on such stock was not affected by the provision of the constitution of Georgia declaring illegal and void all contracts or agreements with corporations which may lessen competition in their respective businesses, or encourage monopoly.

2. APPEAL—DISCRETION OF COURT BELOW—COSTS.

An award of costs, within the discretion of the court below, will not be reviewed on appeal, except in case of grave and manifest abuse.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

This was a suit by Rowena M. Clarke against the Central Railroad & Banking Company of Georgia and others, in which Francis S. Hesseltine and others intervened and became co-complainants. The circuit court dismissed the bill. Complainants appealed.

For reports of previous decisions in the circuit court, see 50 Fed. 338; 54 Fed. 556.

A. O. Bacon, for appellants.

Henry Crawford and A. H. Joline, for appellees.

Before McCORMICK, Circuit Judge, and LOCKE and PARLANGE, District Judges.

McCORMICK, Circuit Judge. The Central Railroad & Banking Company of Georgia (hereinafter referred to as the Central Company) is a corporation created by and existing under the laws of the state of Georgia, having its origin in an act entitled "An act to incorporate the Central Railroad and Canal Company of Georgia," approved December 20, 1833, by which, and the various acts amendatory thereof and supplemental thereto, and by reason of its consolidation with the Macon & Western Railroad Company, a corporation created by and existing under the laws of the state of Georgia, and with other corporations, it was authorized to issue, and did, prior to the 1st day of January, 1887, issue, its capital