

and so far interested in it and privy to it that he had a right to be heard on the taxation of costs. We are not required to go to this extent, but the case illustrates in a marked manner the difference between a stranger attempting to impeach a judgment when sought to be enforced by a subsequent original suit, and an indorser or a surety on a bail bond, who has specifically bound himself to perform the precise liability of the original defendant as ascertained by the original suit, and impliedly submitted himself to proceedings therefor by scire facias or other ancillary writ issuing from the court which rendered the original judgment.

On all points submitted to us, our views are with the plaintiff. There will be a judgment for the plaintiff for the amount claimed, with interest thereon from the date of the writ.

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SMITH v. FERST et al.

(Circuit Court of Appeals, Fifth Circuit. January 9, 1895.)

No. 236.

PRACTICE ON APPEAL.—FAILURE TO ISSUE WRIT OF ERROR.—JURISDICTION.

Where, after the rendition of judgment in a cause, a writ of error is duly allowed to the defeated party, and a bond is afterwards given and a citation issued, but the citation is not served, and no writ of error is actually issued, the appellate court is without jurisdiction, and the case should be dismissed.

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

J. N. Stripling, for plaintiff in error.

E. P. Axtell, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

PARDEE, Circuit Judge. This was an action at law in the circuit court for the Northern district of Florida, in which final judgment was entered on December 22, 1893, in favor of M. Ferst, Sons & Co., plaintiffs, and against E. P. Smith, administrator, etc., claimant. On January 27, 1894, at the same term the judgment was rendered, the presiding judge, in open court, on the motion of claimant's attorney, allowed a writ of error from said judgment to this court, and granted a supersedeas, on claimant giving bond in the sum of \$1,000, conditioned according to law. Thereafter, on the 22d of March, a citation was issued signed by the judge, but it does not appear to have been addressed to any particular party, or to have been served upon any one. On the same day a bond was filed by E. P. Smith, as administrator of the estate of E. P. Jones, deceased, in favor of M. Ferst, Sons & Co. in the sum of \$1,000, conditioned to answer all costs and damages if the said E. P. Smith, as administrator, etc., should fail to prosecute his writ of error to effect. This bond appears to have been approved by the judge. The record, however, does not show that

any writ of error was actually issued in the case. On this state of facts, the motion made to dismiss the case for want of jurisdiction must be granted. *Mussina v. Cavazos*, 6 Wall. 355-358; *Ex parte Ralston*, 119 U. S. 613, 7 Sup. Ct. 317. So ordered.

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SECURITY SAVINGS & LOAN ASS'N v. BUCHANAN et al.

(Circuit Court of Appeals, Sixth Circuit. February 5, 1895.)

No. 226.

1. EQUITY—PLEADING—MULTIFARIOUSNESS.

A bill brought by the S. Savings & Loan Association against several defendants alleged that five of the defendants, constituting the plaintiff's local board, at a place distant from its home office, charged with the duty of examining and reporting upon applications for loans, had made a grossly false and deceptive report upon an application; that two of the defendants, also members of such board, had given a note and mortgage to secure the loan so procured; that two other defendants, who were insolvent, had become sureties for the construction by the borrowers of a building on the mortgaged land, which had never been begun; and that the application for the loan and accompanying paper, the note, mortgage, and bond, had all been lost. Thereupon the bill prayed for recovery against the borrowers upon the note; foreclosure of the mortgage; establishment of the lost instruments; recovery against the sureties on the bond; and damages against the other members of the local board for their fraudulent representations. *Held*, that the bill was multifarious.

2. SAME—ADEQUATE REMEDY AT LAW.

*Held*, further, that, as to the members of the local board other than the borrowers, the complainant had a complete and adequate remedy at law.

3. SAME—ESTABLISHMENT OF LOST INSTRUMENTS.

Equity will not entertain a suit to establish a lost instrument merely as a piece of written evidence to assist in sustaining an action for a tort.

Appeal from the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

This was a suit by the Security Savings & Loan Association against J. S. Buchanan, A. A. Crabbs, Anna Crabbs, A. P. Petty, W. H. Hutsell, E. C. Swabey, O. B. Jenkins, and W. H. Thomas for the foreclosure of a mortgage and other relief. The circuit court dismissed the bill. Complainant appeals.

As shown by the bill, the complainant in this case is a corporation organized under the laws of Minnesota, having its home office there, and is engaged in the business of a building, savings, and loan association. It was doing business in Tennessee; and for the purpose of receiving applications for loans, and transmitting such applications to the home office with such necessary information as would be required to determine the value of the security offered for the proposed loans, it had appointed a local board at Dayton, in that state. This local board consisted of five members, all of whom were shareholders in the corporation, and are defendants in this suit. Thomas was president; Buchanan, treasurer; Crabbs, secretary; and Petty and Hutsell, ordinary members. On December 17, 1892, the defendants Buchanan and Crabbs made an application to the complainant, through the local board, for a loan of \$4,000, and proposed to secure it by a mortgage on a lot in Dayton, on which, as they stated, they were building a two-story brick building 50 feet wide and 100 feet long, with stone foundations. They stated that the lot without the building was worth \$1,500; that at the last assessment it was valued at \$1,000; that the value of the building they were then erecting was