

no statute requiring such approval. If, however, there were such a law, then the allegation of the complaint that the "defendants, and each of them, * * * did make, execute, and deliver to plaintiff their joint and several bond," necessarily implies approval of the bond. There could be no delivery by defendants without an acceptance by the plaintiff, and acceptance is approval.

4. Defendant further contends that the complaint is bad, because it fails to allege a demand upon the defendants before the suit was brought. If any demand was necessary, which I doubt, it is sufficiently alleged in the complaint, as follows: "That the said defendants, though often demanded, have severally neglected and refused * * * to pay said sum."

The objections to the complaint are not well taken, and the demurrer is overruled.

SCHENCK et al. v. DIAMOND MATCH CO.

(Circuit Court of Appeals, Third Circuit. March 14, 1896.)

APPEAL—DISMISSAL—DELAY IN FILING BOND.

A delay of about a month in filing bond for costs, after allowance of an appeal from a decree granting a perpetual injunction, held not so unreasonable as to require dismissal of the appeal, especially when it did not appear that appellee was prejudiced thereby.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

Motion to dismiss the appeal. The following certificate of the clerk of the court below was produced before this court:

Circuit Court of the United States, Eastern District of Pennsylvania.

I, Samuel Bell, clerk of the circuit court of the United States in and for the Eastern district of Pennsylvania in the Third circuit, do hereby certify that in a cause lately pending in said court wherein the Diamond Match Company was complainant and Joseph H. Schenck and John M. Moore, co-partners doing business as Dr. J. H. Schenck and Son, and Binghamton Match Company, respondents, a decree for perpetual injunction was entered by said circuit court on the seventh day of January, A. D. 1896, in favor of complainant and against respondents, and that on the fourth day of February, A. D. 1896, the respondents prayed the allowance of an appeal to the United States circuit court of appeals for the third circuit, which was allowed by the court, and that on the third day of March, A. D. 1896, a bond in the sum of \$500 to secure costs on appeal was approved, and a citation duly issued. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Philadelphia, this sixth day of March, A. D. 1896, and of the independence of these United States the 120th.

[Seal.]

Samuel Bell,
Clerk Circuit Court of U. S., East. Dist. of Penna.

Charles A. Brodek, for appellants.

Joshua Pusey, for appellee.

Before ACHESON, Circuit Judge, and WALES and GREEN, District Judges.

ACHESON, Circuit Judge. The certificate before us shows that within 30 days after the entry of the decree granting an injunction,

namely, on February 4, 1896, the appeal was applied for in the court below, and was allowed; and that on March 3, 1896, the bond for costs was approved by the court. It has been held by the supreme court that the omission to give a bond for costs at the time the appeal is taken does not necessarily avoid the appeal, and that the appellant may be allowed to file the bond afterwards, within a reasonable time. *Anson v. Railroad Co.*, 23 How. 1; *Davidson v. Lanier*, 4 Wall. 447, 454; *Seymour v. Freed*, 5 Wall. 822. These decisions, we think, justify us in overruling the motion to dismiss the appeal here. We are the more inclined to deny the motion because it is not apparent to us that the appellee has been prejudiced in any respect by the delay in filing the bond. Motion denied.

RANDOLPH v. ALLEN et al.

(Circuit Court of Appeals, Fifth Circuit. February 24, 1896.)

No. 205.

1. APPEAL—ASSIGNMENTS OF ERROR.

Assignments of error are necessary in appeals, as well as on writs of error; but they should be directed to the rulings of the court, and, where the decree appealed from is one confirming a master's report, the assignments should not be in the form of elaborate arguments in support of the contention that the court erred in sustaining the master's findings.

2. SAME—AMENDMENT OF TRANSCRIPT—CERTIORARI.

Presumptively the transcript filed in the appellate court is correct, and that court has no power, by certiorari, upon ex parte affidavits, to cause the record to be amended by inserting a paper which appellant claims was introduced before the master, but of which neither the master nor counsel for appellee has any recollection.

3. SAME—REVIEW—MASTER'S FINDINGS.

Where all the issues have been referred to a master to hear and decide, and his report is confirmed, after the overruling of exceptions thereto, an appellate court is required to treat his findings as so far correct as not to be disturbed, unless clearly in conflict with the weight of the evidence. *Kimberly v. Arms*, 9 Sup. Ct. 355, 129 U. S. 512, followed.

4. FRAUD—REPRESENTATIONS AS TO FINANCIAL STANDING.

A person about to enter into a contract with a stranger in a distant state, which required large advances of money, inquired of a member of a banking firm, doing business in the region of the stranger's residence, as to the latter's business character and responsibility. The banker made certain favorable statements, and also solicited and obtained for his firm the banking business connected with the transfer of the funds. *Held*, that the firm was under no obligation to make a voluntary disclosure of the fact of a considerable indebtedness to them by the stranger arising from his ordinary business transactions, when they had no reason to question his integrity or financial ability.

5. INSOLVENCY—PREFERENCES.

The giving of a mortgage by a failing debtor to secure one of his creditors, on condition that the latter shall pay a note held by another creditor, which condition is complied with, is not a diversion of funds, nor an unlawful delay or hindrance of other creditors, but the mortgage merely operates as a double preference, and is not forbidden by the laws of Texas. *Sonnen-thell v. Trust Co.* (Tex. Civ. App.) 30 S. W. 945, followed.

6. MORTGAGES—SALE UNDER TRUST DEED—EMPLOYE AS TRUSTEE.

In Texas a mortgagee may act as trustee to sell under a mortgage to himself, and therefore an employé of a mortgagee may also be authorized in