

erroneously decided, or because the court erred in applying the law to the facts, can only be conjectured. *Grape Creek Coal Co. v. Farmers' Loan & Trust Co.*, 12 C. C. A. 350, 63 Fed. 891; *Oswego Tp. v. Travelers' Ins. Co.*, 17 C. C. A. 77, 70 Fed. 225; *Doe v. Mining Co.*, 17 C. C. A. 190, 70 Fed. 455. As was said by the circuit court of appeals for the Seventh circuit in the first of these cases, "an assignment of error cannot be good if it is necessary to look beyond its terms to the brief for a specific statement of the question to be presented." The court, at its option, may notice a plain error not assigned. A careful examination of the brief which has been submitted for the plaintiff in error fails to disclose any such error.

The judgment should be affirmed.

PRENTICE et al. v. UNITED STATES & C. A. S. S. CO. (two cases).

(District Court, S. D. New York. January 16, 1897.)

PRACTICE—GARNISHEE—STOCK SUBSCRIPTION—TRANSFER FROM DEFUNCT COMPANY.

In an action against a defunct company, a debtor to the defendant upon a stock-subscription note, was garnisheed. In reply to interrogatories he stated that a considerable sum was still owing by him on the note, but that the note had been transferred by the defendant company to a new company that took its assets. The garnishee was president of the defunct company. Upon motion that the garnishee be required to pay into court the unpaid amount of the note, or for other relief: *Held*, that the transfer by the defunct company was apparently void as against its creditors, and that the garnishee should pay the balance remaining due on the note, unless he elected to take a reference, on giving security for costs, to take further proofs of the facts, with further process and notice to the new company holding the note to appear thereon.

This was a libel in personam by Thomas Prentice and others, owners of the steamship *Burnley*, against the United States & Central American Steamship Company, respondent, and C. Robinson Griggs and George F. Shaver, as garnishees; also, a libel by the same parties as owners of the steamship *Arecuna* against the same respondents. This hearing was upon a motion to compel the garnishee to pay into court the balance due on a certain note, or for other relief.

Convers & Kirlin and Mr. Green, for libelants.

Francis E. Burrows and E. H. Benn, for garnishee.

BROWN, District Judge. The answers of the garnishee show that he admits owing the money upon a subscription for the defendant company's stock; but he avers that his debt is represented by a stock note given to the defendant company, payable ten days after demand, which the defendant company, about May 6, 1893, indorsed or transferred to the Central American Steamship Company, another corporation, in which the defendant company practically became merged. The garnishee was the president of the defendant company now defunct, all whose assets were transferred to the American Steamship Company.

This transfer of assets, including the garnishee's note, was evidently void as against existing creditors, among whom were the

libelants. They have a right to follow the assets transferred so far as they can be identified. Where such facts clearly appear upon the face of the garnishee's return, the authorities seem to support the right of the court to order payment by the garnishee. As, however, there may be some additional proofs affecting this right, I shall direct that a reference be taken to ascertain and report thereon, provided the garnishee within five days elect to enter an order therefor and file stipulation for costs. Further process of attachment may be issued if desired against the Central American Steamship Company, the alleged holder of the note, and a citation to appear upon such reference. Unless the above order be applied for by the garnishee, and security given within five days, an order may be entered for payment by the garnishee of the sum due upon the note, the same being less than the libelants' claim.

In re GROSS.

(Circuit Court, E. D. Louisiana. January 12, 1897.)

1. SUBPŒNAS IN PENSION CASES—CONSTITUTIONAL LAW.

The act of July 25, 1882 (22 Stat. 174), authorizing judges and clerks of United States courts to issue subpoenas, upon the application of the commissioner of pensions, for the examination of witnesses concerning pension claims, is constitutional, and under it the courts may compel witnesses to appear and testify before the officers mentioned in the act, on the subject of pension claims. *Commerce Commission v. Brimson*, 14 Sup. Ct. 1125, 154 U. S. 447, followed.

2. SAME.

While the investigations under said act need not be confined strictly to the merits of pension claims, yet they must be upon the subject of pension claims: and a subpoena issued under the act should be drawn with such certainty and precision as to show that it is within the act, and to identify the pension claim in which the testimony is required.

Benj. Armbruster, for Josiah Gross.
D. C. Mellen, Asst. U. S. Atty.

PARLANGE, District Judge. The clerk of this court received the following application:

"Department of the Interior. Bureau of Pensions.

"Washington, December 14, 1896.

"To Any Judge or Clerk of Any Court of the United States Having Jurisdiction—Sir: In pursuance of sections 184, 185, and 186 of the Revised Statutes, and the act of July 25, 1882, I have the honor to request that a subpoena may issue, commanding Josiah Gross, of New Orleans, La., to appear at the time and place named therein, and make true answers to such written interrogatories and cross-interrogatories as may be submitted to him by Mr. J. F. Fitzpatrick, a special examiner of this bureau, and be orally examined and cross-examined on the matter of certain charges made against him in connection with his prosecution of claims before the pension bureau.

"Very respectfully,

D. I. Murphy, Commissioner."

The clerk issued a subpoena to Josiah Gross, commanding him to appear before William Wright, United States commissioner for this court, to testify "in the matter of the pension claims of Celestine Washington, No. 641,346, and others." Gross appeared before Com-