

than if it happened in the middle of the street. The only principle on which the individual can be held responsible is that he caused the injury, and not that he owns a lot in front of which the injury happened. There is, outside of positive law, no natural obligation resting on a lot owner to keep the sidewalk or street in front of his lot in good repair, and no liability for injuries resulting from a failure to do so. If the city permits a lot owner or other person to occupy the sidewalk, or to obstruct a free and safe passage over it, or to endanger its safety by excavations or otherwise, it does not thereby relieve itself from responsibility. It is as to third parties the same as though it had done these things itself. In other words, it cannot transfer to private citizens that responsibility which, for wise purposes of public policy, the law casts upon it in reference to the care and safety of its streets and walks.

From these principles it results that, as to third parties who have sustained injuries from the dangerous and defective condition of its streets and walks, the responsibility of the city is primary, and it cannot shift from itself this primary responsibility. The complaint clearly shows that the responsibility of the defendant Clark is also primary, because he constructed the defective and dangerous step which caused the injury. It is distinctly alleged that Clark and the city jointly concurred in constructing the defective and dangerous step. The temporary wooden walk and the step were constructed by Clark "under the direction and supervision of the defendant the city of Indianapolis"; and it is further alleged that each at all times knew and had notice that the step was dangerous and defective. The act of each, therefore, jointly concurred in the construction of the dangerous and defective step, and there was also a joint concurrence in the knowledge of their wrongful act. It is immaterial whether or not the city has a right of action over against Clark. So far as respects the plaintiff, it is clear that each jointly concurred in the construction of the dangerous and defective step which caused the plaintiff's injury. None of the cases cited and relied on by counsel for the defendant Clark exhibit a state of facts analogous to that presented in this case, and therefore they are not controlling or influential here. The motion to remand is sustained, at the cost of the defendant Clark.

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HONEY v. CHICAGO, B. & Q. R. CO.

CHICAGO, B. & Q. R. CO. v. HONEY.

(Circuit Court of Appeals, Eighth Circuit. September 20, 1897.)

Nos. 831 and 959.

**1. BILL OF EXCEPTIONS—AMENDMENT.**

The allowance of amendments to the bill of exceptions long after the close of the trial term, and after the end of the time for settling the bill as fixed by order of court and stipulation of parties, and after a writ of error has been allowed, and the cause removed to the appellate court, is unauthorized, and the amendments are void.

**2. SAME—APPEALABLE ORDERS.**

An order allowing the amendment of the bill of exceptions after the end of the term, and after the date fixed for settling the same and the removal

of the case to the appellate court, is not a final decision such as can be made the subject of a separate suit in error.

**8. APPEAL AND ERROR—DIRECTION OF VERDICT—EVIDENCE IN RECORD.**

In the absence of any showing that the record contains all the evidence, it is impossible to hold that the trial court erred in directing a verdict.

In Error to the Circuit Court of the United States for the Southern District of Iowa.

This was an action at law by W. O. B. Honey against the Chicago, Burlington & Quincy Railroad Company to recover damages for personal injuries. The circuit court directed a verdict for defendant, and entered judgment accordingly. The plaintiff brought the case to this court on error.

James McCabe (C. M. Harl and J. M. Junkin were with him on the brief), for W. O. B. Honey.

H. H. Trimble (J. W. Blythe and Smith McPherson were with him on the brief), for Chicago, B. & Q. R. Co.

Before BREWER, Circuit Justice, SANBORN, Circuit Judge, and RINER, District Judge.

BREWER, Circuit Justice. These two cases—831 and 959—grew out of a single action at law brought by W. O. B. Honey to recover damages for personal injuries. On the trial in the circuit court, the jury, on March 30, 1895, under the instructions of the court, returned a verdict in favor of the defendant, upon which verdict a judgment was duly entered. Time was given for the preparation of a bill of exceptions, which was extended by several stipulations of the parties to June 1, 1896. Before that date the bill was properly settled, signed, and filed. It was regular in form, and complete in all respects, save that it failed to state that it contained all the testimony given on the trial. This was through an oversight of counsel in the preparation of the bill, and not from any omission of the judge or neglect of the clerk. Thereafter, and on July 22, 1896, the transcript was filed in this court, and docketed as case No. 831. On April 7, 1897, on application of the plaintiff in error, and after notice and a hearing, the circuit court ordered that the bill of exceptions be amended by adding the statement that it contained all the evidence. The railroad company sued out a writ of error to reverse this order, and a transcript of the proceedings on this application was thereupon filed in this court, and docketed as case No. 959. It was also filed by the plaintiff in error as an amendment to the record in case No. 831. When these cases were called for argument, several motions were interposed by the railroad company. Without stopping to discuss any subordinate matters of practice, it is enough to say that the amendment of the bill of exceptions made long after the close of the trial term, and after the end of the time for settling the bill as fixed by the order of the court and the stipulation of the parties, and especially after a writ of error had been allowed, and the case removed to this court, was unauthorized and void. *Bank v. Eldred*, 143 U. S. 293, 298, 12 Sup. Ct. 450. It was not, however, a final decision of the circuit court, such as can be made the subject of a sepa-

rate suit in error in this court. In the absence of any showing that the record contains all the evidence, it is impossible to hold that the trial court erred in directing a verdict. *Railway Co. v. Cox*, 145 U. S. 593, 606, 12 Sup. Ct. 905; *Taylor-Craig Corp. v. Hage*, 32 U. S. App. 548, 16 C. C. A. 339, and 69 Fed. 581; *Oswego Tp. v. Travelers' Ins. Co.*, 36 U. S. App. 13, 17 C. C. A. 77, and 70 Fed. 225. Case No. 959 will therefore be dismissed, and in case No. 831 the judgment will be affirmed.

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LEARY v. COLUMBIA RIVER & P. S. NAV. CO. et al.

(Circuit Court, D. Washington, N. D. October 6, 1897.)

1. **FEDERAL COURTS—JURISDICTION—SUIT TO WIND UP FOREIGN CORPORATION.**  
 L., a citizen of the state of Washington, and a stockholder in an Oregon corporation, brought a suit in equity in a federal court in the former state against the corporation and against its officers, who were citizens of Oregon. The bill alleged an abuse by said officers of their trust, in utterly dissipating the earnings of the corporation, and a consequent danger of its insolvency, and prayed for a receivership, and for a decree that the individual defendants account and make good the depletion. The individual defendants were not within the jurisdiction of the court. The complainant claimed to be a creditor of the corporation for dividends that should have accrued, but had not reduced his claim to judgment. On demurrer, *held*, that the suit could not be maintained.
2. **CORPORATIONS—RIGHTS OF STOCKHOLDER TO DIVIDENDS.**  
*Held*, further, that until the corporation had a surplus in its treasury a stockholder could not say that there was a definite sum due to him, nor insist on a dividend being declared.
3. **SAME—RECEIVERS.**  
 While in such a suit against a corporation and its managing officers a receivership may be proper as a mere conservative provision, incidental to the main object of the bill, the principle does not apply to a case where the officers, being beyond the jurisdiction, cannot be brought to account, nor be compelled by the court to restore ill-gotten gains, and where the appointment of a receiver, for the protection of complainant's interests, is the main object of the suit.
4. **SAME—CONTRACT CREDITORS.**  
 A court of equity will not appoint a receiver of a corporation, without consent of the corporation itself, upon the application of a mere contract creditor, who has not secured an adjudication of his claim, and a judgment for an ascertained sum.
5. **SAME.**  
 A fortiori, one who cannot even claim a definite or certain amount to be due is in no position to demand such relief.
6. **SAME.**  
 Courts having jurisdiction to enforce their decrees in the state where a corporation has its home office should be resorted to in all cases where it is necessary to inquire into and regulate the internal affairs of the corporation.
7. **SAME.**  
 A court of equity will not take control of the property of a foreign corporation with a view of experimenting to ascertain if a stockholder's investment may not be made more profitable by having the business conducted by a receiver.

Ballinger, Ronald & Battle and S. M. Shipley, for complainant.  
 Preston, Carr & Gilman, for defendants.