

cuss the merits of the controversy upon a superfluous averment would seem to be itself superfluous.

Plaintiffs demur to the ninth paragraph of the answer, which sets up a statute of limitations of the state of Kansas touching demands against decedents' estates. The liability of the stockholder being contractual and transitory, the limitation of time within which such liability shall be enforced against a person sued thereon is a matter to be determined by the laws of the state in which the action is brought.

The demurrer to the ninth paragraph is sustained, and plaintiffs given leave to withdraw the demurrer to the eighth paragraph within five days. If not thus withdrawn, it will be overruled.

SHEAHAN v. NATIONAL S. S. CO.

(Circuit Court of Appeals, Second Circuit. March 10, 1898.)

No. 87.

PRINCIPAL AND AGENT—DISCHARGE OF AGENT—NOTICE.

A contract of employment as agent, to sell on commission, may be terminated by the principal at any time without notice, in the absence of an express provision requiring it.

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

This was an action at law by Patrick Sheahan against the National Steamship Company to recover damages for breach of contract. The judgment below was for defendant, and plaintiff sued out this writ of error.

W. F. Randel, for plaintiff in error.

J. Parker Kirlin, for defendant in error.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. This is an action to recover damages for breach of contract. The plaintiff was the sole witness, and the only contract with defendant which his testimony tended to establish was one made in 1867, whereby defendant employed him as its agent to sell tickets on commission, with no limitation as to time or provision requiring notice of termination. After he had continued in such employment about nine years, defendant abruptly terminated the contract. In the absence of any provision requiring notice as a condition precedent to termination, or of any clause fixing a term of employment, defendant was entitled to dismiss its agent at pleasure, without thereby giving plaintiff a cause of action for damages sustained by reason of such discharge. The judgment of the circuit court is affirmed.

BURNHAM et al. v. NORTH CHICAGO ST. RY. CO.
 (Circuit Court of Appeals, Seventh Circuit. May 13, 1898.)

No. 470.

1. WRIT OF ERROR—COPY IN TRANSCRIPT—JURISDICTION.

Where a writ of error was duly issued and filed by the clerk of the circuit court, but no notation of its filing made, and by mistake a copy was attached to the transcript instead of the original, on production of the original, with the citation, and acknowledgment of service thereon, both certified by the clerk, they may be made or recognized as part of the record, or the want of a seal upon the copy may be supplied by an impression of the seal of the appellate court.

2. SAME—WHEN JURISDICTION ATTACHES.

The jurisdiction of the court of appeals attaches upon the filing of the writ of error in the office of the clerk of the circuit court, and is not defeated by irregularity in the transcript or in its certification.

3. APPEAL AND ERROR—TRANSCRIPT—SUPPLYING OMISSION.

Where a necessary part of the record has been omitted from the transcript, and is subsequently presented, duly certified, to the court of appeals, it may be made a part of the record by direct order, without writ of certiorari.

4. SAME—IRRELEVANT PAPERS—PRÆCIPE.

Irrelevant papers or proceedings need not be included in the transcript, and it is proper for the clerk to require of counsel for appellant or plaintiff in error a præcipe stating what the transcript shall contain, to attach a copy of such præcipe to the transcript, and certify that the transcript is full and correct according to the præcipe.

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

John A. Rose, for plaintiffs in error.

A. D. Wheeler, for defendant in error.

Before WOODS and SHOWALTER, Circuit Judges, and BUNN, District Judge.

WOODS, Circuit Judge. The motion to dismiss is on the ground that this court is without jurisdiction—first, because the supposed writ of error issued herein has never been filed in the circuit court; second, because no return has been made by the clerk of the circuit court to the supposed writ of error; third, because the supposed writ of error did not issue under the seal of any court; fourth, because the clerk of the circuit court, to the judges of which the supposed writ was directed, has never made return to the writ by returning with the same to this court an authenticated transcript of the record of the cause; fifth, because there is no authenticated transcript of the record of the cause filed in this court, and nothing which purports to be such record or a transcript thereof. In support of the motion is offered a certified copy of docket entries, showing the taxation of costs in the case, including the filing of the petition for and the issuing, but not including the filing, of the writ of error. In answer to the motion it is satisfactorily shown that a writ of error in proper form was duly issued by the clerk of the circuit court under the seal of that court, and that the writ, with a copy thereof for the defendant in error,