

Syllabus.

Railroad Company, and all the rights, privileges, franchises, and property of said Kansas City and Cameron Railroad Company were, by said consolidation, transferred to the Hannibal and St. Joseph Railroad Company, which then and thereby became the owner of and possessed of the same."

If only a sale of the road to another company had been authorized and made, then it might very plausibly have been contended that the purchasing company took and held it under its own charter only, without the franchises and privileges connected with it in the hands of the vendor company; but "consolidation" is not sale, and when two companies are authorized to consolidate their roads, it is to be presumed that the franchises and privileges of each continue to exist in respect to the several roads so consolidated. This point was considered in the case of *Tomlinson v. Branch*, 15 Wall. 460, and *Branch v. City of Charleston*, 92 U. S. 677, and was decided in accordance with this view. This being so, the authority given to consolidate, "upon such terms as may be deemed just and proper," would include the power to transfer to the consolidated company the franchises and privileges connected with the road, if the law itself did not have that effect; and the court has found that this was done. We think, therefore, that the point is not well taken.

The judgment of the circuit court is affirmed.

HASKINS *v.* ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY & Another.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF TENNESSEE.

Submitted October 9th, 1883.—Decided October 29th, 1883.

Appeal—Appeal Bond—Certiorari.

The authority conferred by R. S. § 1000 to take the security on an appeal cannot be delegated; and if the security is not given until after the term is over, citation must issue and be served.

Opinion of the Court.

A receiver was appointed in a suit in equity commenced below for the foreclosure of a railway mortgage. One Haskins, in the employ of the receiver, struck his head on the timber of a bridge while on duty on a train in motion, and was killed. Leave was granted to his widow to prosecute her claim for damages in the foreclosure suit. After hearing, the claim was disallowed. Appeal taken, and the case submitted by appellant, there being no appearance for the appellees.

Mr. F. E. Williams for appellant.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We have no jurisdiction in this case. The appellee has not appeared and has never been served with a citation. The decree was entered on the 14th of June, 1879, and at the foot of the entry is the following: "Petitioner prays an appeal, which is granted upon bond and security being given, according to law, within thirty days." A copy of what purports to be an appeal bond, filed on the 3d of July, 1879, is found in the transcript, but there is no evidence that it was ever approved or taken as good and sufficient security by the court or any justice or judge thereof. A commissioner of the circuit court has certified that he knew the obligors to be good and responsible for any cost that might accrue in the cause, but that is not enough. Sec. 1000 of the Revised Statutes requires the justice or judge signing the citation to take the security. This power cannot be delegated to the clerk or to a commissioner. *O'Reilly v. Edrington*, 96 U. S. 724, 726. If the appeal is allowed in open court the security may be taken by the court, and no citation is necessary, but if the security is not given until after the term is over, a citation must be issued and served. *Sage v. Railroad Co.*, 96 U. S. 712, 715. Unless an appellee voluntarily appears, we cannot proceed against him if the record does not show affirmatively that he has been brought within our jurisdiction by proper notice.

The appeal is dismissed for want of jurisdiction.