

Cases Omitted in the Reports.

SCRUGGS *v.* MEMPHIS AND CHARLESTON RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

No. 391. October Term, 1881.—Decided December 12, 1881.

Service of notice of citation on the attorney of a party is sufficient. An appeal bond for costs need not be signed by all the appellants. Being approved by the court it stands as security for all the appellees.

THIS was a motion to dismiss. The case is stated in the opinion. The final disposition of the case will be found in 108 U. S. 368.

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

This motion is denied. There is sufficient evidence of the service of the citation on the attorney of Viser, and that is enough. *United States v. Curry*, 6 How. 111; *Bacon v. Hart*, 1 Black, 39. The bond for the appeal is sufficient. The appeal does not operate as a *supersedeas*. The security is for costs only. The bond need not be signed by all the appellants. *Brockett v. Brockett*, 2 How. 240. Having been approved by the judge, it stands as security for all the appellees.

The controversy in the suit is as to the account between Mrs. Scruggs and the railroad company, growing out of the purchase by the company of the hotel in Corinth. The amount in dispute, as shown by the exceptions to the master's report, is more than five thousand dollars. Viser seeks payment of a debt due him from Mrs. Scruggs out of the proceeds of the litigation between Mrs. Scruggs and the railroad company, and if it should appear that she was not bound to return the company any of the money which was paid to her, he can have no decree against her personally. The relief which he asks is a mere incident to the accounting between Mrs. Scruggs and the railroad company.

In addition to this, it appears that the original claim of Viser exceeded \$5000. Mrs. Scruggs resisted the payment of the whole. It has all been allowed in the progress of the cause. The final decree in his favor was less than \$5000, because the remainder of the claim had, by an order of the court, been paid before from the proceeds of the litigation.

Mr. J. H. Viser for the motion.