
Opinion of the court.

and the defendant, and its execution by the plaintiff, are substantially averred, and that the original contract is set out as inducement. It is said by the counsel for the plaintiff in error, that if such a contract be alleged, it is done with careful ambiguity and indefiniteness. Conceding this to be so, it is a case, not of a defective title, but of a title defectively stated, which is always cured by the verdict.*

JUDGMENT AFFIRMED WITH COSTS.

BARREL *v.* TRANSPORTATION COMPANY.

A petition for an appeal to this court from the Circuit Court, filed in the office of the clerk of the Circuit Court merely, unaccompanied by an allowance of the appeal by that court, does not bring the case up. An appeal thus made dismissed.

MOTION by *Mr. Browning* (*Mr. Rae, contra*) to dismiss an appeal from the Circuit Court of the United States for the Northern District of Illinois.

The record showed that no appeal had been prayed or allowed in the Circuit Court. Accompanying the record, however, was a petition addressed to that court, which prayed for an appeal. This petition was dated on the 20th July, 1865, ten days after the decree, and was filed on the same 20th of July, in the office of the clerk of the Circuit Court.

The CHIEF JUSTICE: The motion to dismiss in this case must prevail. The proceeding in the case is not warranted by any act of Congress, and we have no authority to act on such a petition. The filing of it in the clerk's office, even if it could be regarded as addressed to the Circuit Court, would be of no avail, unless accompanied by an allowance of an appeal by that court; and in the case before us there was no allowance.

CASE DISMISSED.

* 1 Chitty's Pleading (10th American ed.), 672.