the plaintiff the amount of the certificate, with interest. The judgment of the appellate court for the First district is affirmed. Judgment affirmed.

CASE v. PHILLIPS et al.

(Supreme Court of Illinois. Oct. 13, 1899.)

APPEAL — ABANDONMENT OF ASSIGNMENT — EVIDENCE—SETTLEMENT—STIPULATION.

1. Where appellant fails to urge before the appellate court error of the trial court in admitting copy of papers used in another action, because not part of the record in such transaction, the failure is an abandonment of the assignment of such error, and it cannot be urged in the supreme court as ground for reversing the judgment of the appellate court.

2. In an action for the price of articles consigned for sale, it appeared that, in another action by a third party against plaintiff, he had pleaded such demand as a set-off, and the parties had afterwards stipulated that the cause was "settled in full and discontinued," and it appeared that the cause was disposed of by it, but not that judgment was entered on the stipulation. There was no countervailing proof. *Held*, that a finding that the demand was discharged was justified.

3. Where, in an action by a corporation, defendant sets off a debt of a third person, on the ground that it was incurred by him as general manager of plaintiff, and plaintiff satisfies the debt, it is extinguished so far as defendant is concerned, and he cannot afterwards sue such third person for it.

Magruder, J., dissenting.

Appeal from appellate court, First district.

Bill by George F. Case against Ophelia E. Phillips and others. From a decree for defendants affirmed by the appellate court (82 Ill. App. 231), complainant appeals. Affirmed.

Newman, Northrup & Levinson, for appellant. M. B. & F. S. Loomis, for appellees.

BOGGS, J. This was a bill in chancery filed by appellant, praying for a decree declaring that a conveyance of certain real estate by one James W. Phillips, now deceased, to appellee Ophelia E. Phillips, his wife, was without consideration, and in fraud of the rights of appellant as a creditor of the grantor. In 1888 and 1889 said James W. Phillips was resident manager in Chicago of the James Cunningham Sons Company, a corporation engaged in the business of dealers in buggies, carriages, and other vehicles. The appellant was then engaged in similar trade in Detroit, Mich. He consigned three secondhand coupélets to the Cunningham Company, and at another time three other secondhand coupélets and a hearse to said Phillips. The vehicles were to be sold for the benefit of the appellant. It is conceded the hearse was received, sold, and accounted for by the Cunningham Company. The coupélets were sold by Phillips, and the full proceeds thereof were not accounted for to the appellant. The theory of the bill is that said James W. Phillips, deceased, received the coupélets, not as manager for the Cunningham Company, but in his individual capacity, and the demand sought to be enforced against the land is the balance alleged to remain unpaid of the proceeds of the sale of the vehicles. The alleged demand has not been reduced to a judgment, but the record does not present any question relative to the jurisdiction of equity in the cause. Answer was filed by the appellee Ophelia E. Phillips, one of the defenses presented being the demand had been paid to appellant by the Cunningham Company. Issue thereon was joined by replication. The cause was referred to the master to take and report the proof and his conclusions of law and fact. It appeared from the master's report that the respective parties stipulated that the only issue to be submitted and decided was as to whether the alleged claim of appellant had been paid and satisfied by the Cunningham Company. Though counsel for appellant discuss other issues, they do not challenge, and have not in any manner challenged, the correctness of the report of the master that the contention was restricted, by voluntary agreement, to a single issue. The findings and conclusions of the master were adverse to appellant. The report was approved by the chancellor, and decree entered that the bill be dismissed. The decree was affirmed by the appellate court on appeal, and this appeal has been perfected to review the judgment of the appellate court.

It is the contention of appellee that it appeared from the proofs that the appellant insisted that the Cunningham Company was legally liable to answer to him for the proceeds of the sale of the vehicles, and that he presented such liability, by way of plea or notice of set-off, in an action at law brought in the circuit court of Wayne county, in the state of Michigan, by the said Cunningham Company against said appellant, and that the claim was adjusted and settled in that proceeding. Appellant contends that this defense cannot avail to support the decree, for two reasons: First, because, as he insists, it did not appear from the record of the proceedings in the said suit referred to that the claim of appellant was adjusted or paid; and, second, that the Cunningham Company was a stranger to the transaction between appellant and said Phillips, and that whatever was done in the suit referred to was without the knowledge or approval of the debtor, and that, under such circumstances, the payment, if proven, would not have the effect to discharge the debt. We will consider the contentions in the order as urged.

1. The appellees produced before the master a certified copy of the narr., plea, and notice of set-off, bill of particulars under such notice, and a stipulation of the parties making disposition of the case of the Cunningham Company against appellant in the circuit court of Wayne county, Mich., and also a certified transcript of the orders of that court. The appellant seeks in this court to urge that the master and the chancellor erred

in admitting the bill of particulars and the stipulation for dismissal in evidence, on the ground that neither of these documents constituted a part of the record in that cause, and could not be authenticated by the certificate of the clerk of the court. The appellees contend that neither of these objections was raised in the appellate court, and, in pursuance of leave given in this court, have filed here a certified copy of the brief and argument filed by the appellant in the appellate court. It does not appear from this brief the appellant presented these questions to the appellate court. The purpose of this appeal is to bring the judgment of the appellate court in review in this court. We cannot declare the appellate court erred upon a point or points not presented to it for decision. The failure of the appellant to call the attention of the appellate court to the alleged error was an abandonment of the assignment of such error. Railway Co. v. McDougal, 113 Ill. 603. Objections not mooted in the appellate court cannot be raised in this court as ground for reversing the judgment of the appellate court. Coal Co. v. Kelly, 156 Ill. 9, 40 N. E. 938; Casualty Co. v. Waterman, 161 Ill. 632, 44 N. E. 283. It appeared from the pleadings in the action at law in the circuit court of Wayne county, Mich., that the Cunningham Company claimed certain demands against the appellant, and that appellant pleaded, as a set-off to such demands, that the Cunningham Company was indebted to him for the unpaid balance of the proceeds of the sale of the coupélets, and that the parties signed and filed in the court a stipulation, as follows: "It is hereby stipulated that the above-entitled cause is settled in full and discontinued, without costs to either party." It did not appear that the court made or entered any order or judgment upon the stipulation, but it did appear that the cause was disposed of by it. The chancellor held that the pleadings in the Michigan case and the stipulation of the parties sufficiently established that the Cunningham Company had settled and discharged the demand which the appellant was seeking to enforce by this proceeding. There was no countervailing proof. Indeed, the only other evidence touching upon the point tended to corroborate the view taken by the chancellor. There is no reason the ruling of the chancellor should be regarded as erroneous.

2. Cases cited by appellant to the effect that a party who has covenanted or promised must perform the engagement himself, and cannot plead in bar satisfaction or performance by a stranger, are not here applicable. The Cunningham Company cannot be deemed a stranger to the transaction out of which the demand of appellant arose. He insisted it was liable to respond to him for the claim on the ground that Phillips received and disposed of the vehicles as its general manager, and pleaded such alleged liability in defense in the action at law. Under such circumstances, a satisfaction of the demand by it would extinguish the obligation, as far as the appellant is concerned. Whether a right would arise or demand exist in favor of the Cunningham Company to recover is not here involved.

We need not discuss the contention that the master erred in admitting the affidavit of one Strobridge in evidence, for the reason that the chancellor, upon exception to the master's report, excluded the affidavit, and made his finding from other competent evidence. The testimony that the affidavit excluded supports the decree. The judgment of the appellate court is affirmed. Judgment affirmed.

MAGRUDER, J., dissenting.

WEST CHICAGO ST. RY. CO. v. MARKS.

(Supreme Court of Illinois. Oct. 25, 1899.)

CARRIERS—STREET RAILROAD—INJURIES TO PASSENGER—DECLARATION—INSTRUCTION.

1. A declaration alleging that plaintiff became a passenger on defendant's cars, and defendant did not use proper care to see that plaintiff should be carried safely; that it negligently ran its cars so near to a fixed structure that there was not room enough, unless standing very close to the car, when riding on the footboard, to be carried in safety; and that the plaintiff did not know of the existence of the fixed structure, and was not warned of it by defendant, and, while riding on the footboard, and using due care and caution for his safety, was unavoidably struck and injured,—states a cause of action.

2. The declaration alleged that plaintiff, while riding, as a passenger, on the footboard of defendant's cars, and while using due care for his safety, was struck by a viaduct, which stood near the track, and along which defendant negligently ran its cars. The jury, after retiring, sent the following communication to the court: "The city built the bridge, and takes care of repairing it, and the city railway company pays license for its cars to go across, and that, in my estimation, the city is in fault, and not the railway company." The court instructed the jury that they must decide the case on the law and the evidence, and whether the city was liable or not was not a question before them. *Held*, that the instruction was proper.

Appeal from appellate court, First district.

Action by John Marks, by his next friend, Mary Marks, against the West Chicago Street-Railway Company, for personal injuries. From a judgment of the appellate court (82 Ill. App. 185) affirming a judgment of the lower court in favor of plaintiff, defendant appeals. Affirmed.

This is an action by appellee against appellant to recover for personal injuries received by him while a passenger on one of defendant's cable cars. The declaration contains two counts, in the first of which it is alleged that defendant suffered plaintiff to ride on its cars in a dangerous place, to wit, on the left-side step of a summer car, standing room on such car step being the best accommodation afforded when plaintiff was received and con-