VIETOR & HUBER, Appellants, v. **F. N. VINES**, Appellee.

ARGUED APRIL 21, 1915. DECIDED MAY 10, 1915.

Dossen, C. J., and Johnson, J.

1. There is nothing in the statutes on appeals which prevents a person, who has appealed from the judgment of a justice of the peace to the Circuit Court, from taking an appeal from the final judgment of that court to the Supreme Court.

2. A person who signs an appeal bond for another must state in what capacity he signs same: and unless this is done, or his authority to bind the party can be implied from the context of said instrument, the case will be dismissed.

Mr. Justice Johnson delivered the opinion of the court:

Debt—Appeal from Judgment—Motion to Dismiss. In this case counsel for appellants filed a motion to dismiss the appeal for the following reasons:

1. Because the appellants have not filed a bond in said case;

2. Because this appeal is an exception to the practice of this court, in that the appellant appealing from the justice to the Circuit Court, the appellant could not appeal from the final judgment to this court except on a writ of error or certiorari.

The statute law on which appellee bases his contention is found in chapter XX, of the Blue Book, section I, and reads as follows: "Every person against whom any judgment is rendered, shall be entitled to appeal from the opinion or decision of any court except such courts of appeal."

While the statutes permit appeals to be taken from the judgment of a justice of the peace to the Circuit Court, the latter court does not review the judgment as in the case of an appeal from a court of record to a superior court. The case is merely retried in the Circuit Court without reference to the proceedings before the justice of the peace.

We are of the opinion that there is nothing in the above cited law to prevent a party from appealing from the judgment of the Circuit Court under the circumstances hereinbefore mentioned.

Under the first point raised in the motion, appellant submitted for the consideration of the court, that there is nothing to show in what capacity Meyer, who signs the appeal bond filed in this case, acted; or that he had authority to sign same.

In the case Manheimer v. Fuller (I Lib. L. R. 211) it was held that the signing of an instrument by another can only be binding, when done by authority

expressed or implied. This principle has also been established in the case Kruger v. Johns (Lib. Semi Ann. Series, No. 1, p. 4).

On inspecting the copy of the appeal bond filed in the case at bar we find that it purports to be signed by one Meyer for Vietor & Huber, appellants, without stating in what capacity he signs same, nor can his authority to bind Vietor & Huber be implied from any document filed in the records of the case, or from the context of the bond.

We are, therefore, of the opinion that the case should be dismissed with costs against appellant, and it is so ordered.

C. B. Dunbar, for appellant.

P. J. L. Brumskine, for appellee.