

ARKANSAS COAL, GAS, FIRE-CLAY & MANUFACTURING
COMPANY *v.* HALEY.

Opinion delivered March 7, 1896.

SUMMONS—SERVICE ON CORPORATION.—A return on a summons in a suit against a domestic corporation is insufficient, under Sand. & H. Dig. sec. 5669, where it shows service on an agent of the corporation, without showing that the president of the company was absent from the county.

APPEARANCE—EFFECT OF APPEAL.—A defendant who appeals from an order denying a motion to quash service of summons will be treated as in court, although the service is held invalid.

Appeal from Ouachita Circuit Court.

CHARLES W. SMITH, Judge.

Thomas Haley sued the Arkansas Coal, Gas, Fire-Clay & Manufacturing Company, a domestic corporation. Summons was issued and returned served on R. Hibbard, "agent of the Arkansas Coal, Gas, Fire-Clay & Manufacturing Company." Defendant appeared specially, for the purpose of moving to quash the service of summons. The motion was denied, and defendant appealed.

Gaughan & Sifford for appellant.

1. A defendant can enter his appearance for the purpose of objecting to service, without giving jurisdiction for purposes of judgment *in personam*. 5 Ark. 517; 11 *id.* 301; 28 S. W. 424.

2. Defendant being a domestic corporation, service cannot be had upon an agent, unless the president is absent. Sand. & H. Dig. sec. 5669.

3. Judgment without service is absolutely void. Sand. & H. Dig. sec. 4190; 48 Ark. 334; *id.* 349; *id.* 500; 45 *id.* 271; 49 *id.* 411.

4. An agent's authority cannot be established by his own statements or admissions. Mechem on Agency, sec. 100; 31 Ark. 212; 46 *id.* 222.

5. Judgment cannot be taken for want of an answer on an open account, without evidence, unless the same is properly verified. Sand. & H. Dig. sec. 2972.

BATTLE, J. The return upon the summons issued by the clerk in this action does not show a legal service upon appellant, because it fails to state that its president or other chief officer was not to be found in the county of Ouachita. Sand. & H. Dig. sec. 5669; *Cairo & Fulton Railroad Co. v. Trout*, 32 Ark. 17, 23; *Same v. Rea, Id.* 29; *Southern Building & Loan Association v. Hallum*, 59 Ark. 583; *St. L., I. M. & S. Ry. Co. v. Barnes*, 35 Ark. 95; *Bruce v. Arrington*, 22 Ark. 362.

The judgment of the circuit court is reversed, and the cause is remanded for further proceedings. Appellant will be treated as in court, by reason of the prosecution of this appeal, and will have leave to answer the complaint.

Bunn, C. J., being disqualified, did not sit in this case.

Service of
summons on
corporation.

Taking ap-
peal is an
appearance.