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Supreme Court Rules As to Transcript of Record

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SUPREME COURT RULES AS TO TRANSCRIPT OF
RECORD

One must not use capitals for emphasis but only italics or blackfaced type. "Strict conformity" is required. This does not apply to Briefs.

South Carolina, as late as 1925, characterized the record that went up for review as the "case". Now, it is the "Transcript of Record". Since the "Procedure on Appeal" has been heretofore set forth in detail, it is not necessary to discuss what a Record or Return must contain. It depends in the last analysis on what the exceptions contain and what legal questions they respectively raise. Only that which is pertinent to those questions need be in the Transcript of Record. Anything else is surplusage, and if the appellant wins, he is penalized in that he is not allowed to recover costs against his adversary for printing same. Section 7-425. Rule 4, Section 4. So, it behooves appellant's attorney to be careful. Section 4 of Rule 4 should always be integrated with Section 7-425 as to what testimony must be printed in question and answer form.

Also young trial attorneys should be sure to read carefully *Cox v. Am. Oil Co.* (1937), 183 S. C. 519, 191 S. E. 704; not only as to both trial and appellate procedure, but as a warning relative to trial conduct. It is worthwhile to quote at length from Justice Bonham's opinion on this aspect of the case beginning at page 530:

The motion to dismiss the appeal because it does not comply with the provisions of Rule 4 of the Court might have some merit if plaintiffs' counsel were in position to make it, but his persistent [sic] disregard of the rulings of the trial Court in various rulings is responsible for the numerous and repetitious exceptions made by the defendant; and plaintiffs' counsel cannot take advantage of a violation of this rule, in view of the effect of his own violation of the rules of the Court in relation to the introduction of evidence against, and in spite of, the rulings of the trial Court that such evidence is irrelevant and incompetent.

However, the occasion is opportune to suggest to the members of the profession that the habit of counsel of making unnecessary and repetitious exceptions, and of

subdividing these into other exceptions, is contrary to the rule of the Court, and entails on this Court unnecessary work. The continued disregard of the rule may compel the Court to inflict upon the violator thereof the penalty of dismissing his case.

We shall not attempt to dispose *seriatim* of the exceptions made by appellant.

The cardinal question in this case is this:

May counsel, in the face of the rulings of the trial Judge limiting the issue to be tried to one special thing, by repeated and persistent examination of witnesses upon issues expressly excluded by the Court, and overruled when offered, thus get before the jury the matter excluded?

It is not a sufficient answer to this question to say that the trial Judge has warned the jury not to consider the testimony thus attempted to be put before it.

In this case plaintiffs, in their original complaint, attempted to interject the issue that defendant had entered into a conspiracy with other oil companies that such other oil companies should not sell to plaintiffs oils and greases; that in consequence of this alleged conspiracy plaintiffs had been unable to buy oil and greases from any other companies. Manifestly, the purpose of offering this testimony was to get to the jury the very things which had been excluded by the Court. Yet counsel persisted, time after time, in offering it, and thus getting it into the record, despite the objection of counsel. In other words, although the Court said he could not do it, he conveyed to the jury his contention that this corporation, by a conspiracy with other oil companies, had prevented plaintiffs from buying oils and greases from these companies.

A Transcript of Record must always be printed, unless a "party" files an affidavit with the Clerk of the Supreme Court that he is financially unable to do so, in which event he can use mimeographed or typewritten carbon copies. Section 7-426, Supreme Court Rule 6. His attorney must file an affidavit that he believes his client to be unable to pay for printing. Rule 6.

If there is a dispute as to what the Transcript of Record shall contain and the trial court has ruled thereon under Sec-