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WEST v. BRASHEAR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

No. 93. January Term, 1839. — Decided February 19, 1839.

The court on appellant's motion reinstate a case which had been docketed and dismissed on motion of appellees.

Mr. Sergeant, of counsel for the appellants, having stated to the court that the appellants had lodged the transcript of the record of this cause with the clerk of this court some time in the month of January in the year 1838, more than a twelve-month since, but had not been able to obtain the fee bond to the clerk required by the 37th rule of this court until since this appeal had been at the present term of this court docketed and dismissed, but that the appellant was now prepared to give the usual fee bond, and to have the record filed and docketed, now here moved the court to strike out and rescind the order entered in this case on the 19th January of the present term of this court, and for leave to file the record and docket the cause; which was opposed by *Mr. Crittenden*, of counsel for the appellees, who stated that at the last term of this court he applied to have this appeal docketed and dismissed on the

Ex parte Harmon.

transcript of the record lodged with the clerk by the appellants, which this court refused until he produced the certificate required by the 30th rule of this court, since when he had obtained the necessary certificate, and whereon the appeal had been regularly docketed and dismissed with costs: whereupon this court, not being now here sufficiently advised of and concerning what judgment to render in the premises, took time to consider.

PER CURIAM. On consideration of the motion made in this cause on a prior day of the present term of this court, to wit, on Saturday, the 16th instant, and of the arguments of counsel thereupon had, as well in support of as against the motion: It is now here ordered by the court that said motion be and the same is hereby granted, that said order be and the same is hereby rescinded and annulled; and that the appellants have leave to docket this appeal, upon the payment of the costs in this case, and filing the usual fee bond.

So ordered.

Mr. Sergeant for appellants. *Mr. Crittenden* for appellees.¹

EX PARTE HARMON. IN RE DIXON *v.* MILLER.

ORIGINAL.

No. 2. December Term, 1845.—Decided December 30, 1845.

On application for mandamus on a Circuit Court, that court having made return, this court will not, on the suggestion of a third party, pass any order implying that the return was imperfect or might work injustice to the petitioner.

RULE on judges of the Circuit Court of the United States for the District Court of Columbia to show cause why a writ of mandamus should not issue. Motion of A. D. Harmon to be made a party respondent. The case is stated in the opinion.

MR. CHIEF JUSTICE TANEY delivered the opinion of the court.

At the last term of this court a petition was filed by Turner Dixon setting forth that he obtained a judgment in the Circuit Court of the District of Columbia for the county of Alexandria against William Deane, Aaron D. Harmon and Joseph H. Miller, upon which, on the 5th of December, 1843, he sued out a *fieri*

¹ The cause was redocketed February 19, 1839, as No. 93 of January Term, 1839.