

*THOMAS D. OWINGS, Plaintiff in error, v. LUKE TIERNAN's Lessee.

Practice.

The transcript of the record had been lodged by the plaintiffs in error with the clerk of the court, on the 24th of October 1835, who refused to file it or docket the cause, until the plaintiffs had given a fee-bond, in pursuance of the 37th rule of the court; the counsel for the plaintiffs in error moved to have the transcript filed and docketed; alleging they had done all the law required to be done, in order to bring the case before this court. On the part of the defendant in error, his counsel filed, and read in open court, certified copies of the writ of error, citation and appeal-bond, and of the judgment of the circuit court; and having stated that the plaintiffs in error had failed to have the case docketed, according to the 30th rule of the court, they moved to have the case docketed and dismissed. The court overruled the motion to docket and dismiss the cause; and also the motion to have the transcript filed, and the cause docketed without the fee-bond being first given. These motions were overruled on the 18th of January 1836; and the court allowed the plaintiffs in error until the 1st day of March following, to give to the clerk the fee-bond; on the failure so to give the same, the writ of error to be dismissed.

ERROR to the Circuit Court of Kentucky. *Underwood*, counsel for the defendant in error in this cause, having filed, and read in open court, certified copies of the writ of error, citation, and appeal-bond in this case, and the judgment of the circuit court of the United States for the district of Kentucky, rendered in said cause; and having stated that the plaintiffs in error had failed to have their transcript of the record of said cause filed with the clerk, and their cause placed upon the calendar of this court, according to the rules thereof; now moved the court to have said writ of error docketed and dismissed, in pursuance of the 30th rule of the court; which motion was opposed by *Loughborough* and *Crittenden*, of counsel for the plaintiffs in error; who stated, that the transcript of the record of the cause had been lodged with the clerk of this court, the 24th of October 1835; who refused to file the record, or docket the cause, until the plaintiffs in error had given the usual fee-bond, under and in pursuance of the 37th rule of this court, of January term 1831; and that at the same time, the clerk gave to Mr. Loughborough, counsel as aforesaid, a blank fee-bond, which the plaintiffs in error had not executed, *supposing that they had done [*448 all that was required by law of them to do; and the said counsel for the plaintiffs in error moved the court to order said transcript to be filed, and the cause to be docketed.

ON consideration whereof, and after mature deliberation thereupon, it was ordered by the court, that the motion of Mr. Underwood to docket and dismiss be overruled. And it is further considered and ordered by the court, that the motion of Messrs. Loughborough and Crittenden to have the transcript filed and the cause docketed, without the usual fee bond, be and the same is hereby overruled. And it is further now here ordered by the court, that upon the plaintiffs in error giving to the clerk the usual fee-bond, he, the clerk, shall file the transcript and docket the cause. And it is further now here ordered by the court, that if the plaintiffs in error shall fail to give to the clerk of this court the usual fee-bond required by the 37th rule of this court, of January term 1831, on or before the 1st day of March, next ensuing this date, that then and in that case, the writ of error in this cause shall be docketed and dismissed.