

Syllabus.

proper draft for a deed, and requested him to execute the same, which he refused and still refuses to do, and has given notice that he will sell the premises upon other executions in his hands. Wherefore the petitioner prayed the Circuit Court to lay a rule upon the appellee, as such marshal, to show cause at the next term of the court why he should not make to him as the purchaser a good and sufficient deed in fee simple of the described tract, and he also prayed for an order staying all further proceedings under the said other executions in his hands towards a resale of the premises which he purchased.

Subsequently the appellee appeared and filed an answer, and the record shows that the court, at the succeeding November Term, rendered judgment for the appellee, directing that the rule be discharged and that the petitioner pay all costs. Whereupon the petitioner appealed to this court.

Such a motion as the one first described and the rule granted under it were proceedings at law, and so also were the judgment and the order of the court directing that the petitioner should pay all costs, and the court is of the opinion that the judgment could not be removed into this court in any other way than by a writ of error; that an appeal will not lie to this court in such a case under the twenty-second section of the Judiciary Act, and that the appeal must be

DISMISSED FOR WANT OF JURISDICTION.

HAMPTON v. ROUSE.

Where a writ of error was made returnable to the first Monday of December (a return day then, within a month, abolished by act of Congress), instead of being made returnable the second Monday of October, next ensuing, the day which the act fixed thenceforth as the return day, *held* that the mistake was amendable under the third section of the act of June 1st, 1872, "to further the administration of justice," which empowers the court to allow amendments in certain cases, including the

Statement of the case.

case "where the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ."

ON motion to amend a writ of error.

Prior to the 24th of January, 1873, the annual session of this court began on the first Monday of *December* in each year; and writs of error were, of course, returnable to that day. But by an act approved on the 24th, just mentioned,* the day was changed; Congress enacting that thenceforth the session should commence "on the second Monday of *October* of each year."

By an act of a previous date, the act of June 1st, 1872, "to further the administration of justice,"† it had been thus, in the third section of the act, provided:

"That the Supreme Court may, at any time, in its discretion, and upon such terms as it may deem just, and where the defect has not injured and the amendment will not prejudice the defendant in error, allow an amendment of a writ of error, when there is a mistake in the teste of the writ, or a seal to the writ is wanting, or when the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ."

In this state of statutory enactment, one Hampton, against whom, in a suit against him by Rouse, a judgment had been given in the Circuit Court for the Southern District of Mississippi, took a writ of error to this court. The writ bore teste of the 25th of February, 1873, about one month after the law changing the return day had passed, and before it was much known. And it was made returnable in the old way, that is to say, to the first Monday of December then next ensuing.

Mr. W. W. Boyce, in support of the motion to amend, relied on the act of June 1st, 1872, above quoted; Mr. P. Phillips, contra, now moved to dismiss the writ.

* See the act, 14 Wallace, vii.

† 17 Stat. at Large, 197.

Opinion of the court.

Mr. Justice SWAYNE delivered the opinion of the court.

The case is before us on a motion to amend the writ. It bears teste on the 25th of February, 1873, and was made returnable on the first Monday of December, instead of the second Monday of October, then next ensuing. The commencement of the terms of this court was changed from the former to the latter time by the act of January 24th, 1873. The passage of this act was doubtless unknown to the clerk when he issued the writ. Authority to amend it in the particular in question is given by the third section of the "act to further the administration of justice," of June 1st, 1872.

THE MOTION IS GRANTED, and the amendment may be

MADE ACCORDINGLY.

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