

Cheek v. Berry, Adm'r, etc.

[DECEMBER

CHEEK v. BERRY, as Adm'r, etc.

APPEALS—*When taken before adoption of Code.*—Where an appeal was taken before adoption of the Code of Practice, the provisions of the Code, in relation to bringing appeals into this court, do not apply; the law in force at the time of granting the appeal will govern.

APPEAL FROM CRITTENDEN CIRCUIT COURT.

HON. J. M. HANKS, *Circuit Judge.*

O. P. Lyles, for Appellant.

U. M. Rose, for Appellee.

HARRISON, J.—The appeal in this case was taken at the May term, 1868, of the Circuit Court of Crittenden county, and a recognizance entered into for a stay of execution; but no transcript of the record and proceedings in the court below was filed in this court until the 24th day of January, 1871, and the appellee has filed a motion to dismiss the appeal because the transcript was not filed within the time prescribed by law.

The appeal having been taken before the adoption of the Code of Civil Practice, its provisions in relation to the manner of bringing appeals into this court have no application to the case; it must be governed by the law then in force. *Sedgwick Statute Law*, 188, 202; *Couch vs. McKee*, 6 Ark., 484.

The law in force, at the time the appeal was taken, required all appeals taken thirty days before the first day of the next term of this court, to be returnable to such term; and those taken less than thirty days to the second term thereafter, and that the transcript of the record and proceedings should be filed, at least, ten days before the commencement of the term. *Section 23, 24, Chapter 134, Gould's Digest.*

This court then did not acquire jurisdiction of the appeal, by the filing of the transcript, after the time prescribed, and the only order we can make in the case is to direct it to be stricken from the docket. *Clay, adm'r. vs. Notrebe, exr's.*, 11 Ark., 631.

TERM, 1871.]

If the appellee wishes to have the benefit of his decree, now suspended by the recognizance, he must produce to us, in pursuance of the statute, a certificate from the clerk of the court below, of the taking of the appeal and giving of the recognizance, and moved that it be affirmed.

The motion is overruled.