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Crowell vs. State.

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CROWELL VS. STATE.

1. CRIMINAL PRACTICE: *Bill of exceptions not allowed in time, no part of record.*

When it does not appear that a bill of exceptions, in a criminal case, was allowed by the judge within the time given, or even before the end of the succeeding term, beyond which it could not have been extended by the court, it will not be considered as any part of the record.

APPEAL from *Scott* Circuit Court.

Hon. THOMAS H. BARNES, Special Judge.

*Duval & Cravens* for appellant.

*Henderson*, Attorney General, *contra*.

HARRISON, J. Edward Crowell was, at the June term, 1878, of the Scott circuit court, convicted of the crime of rape, and sentenced to be hanged. He prayed an appeal to this court, and ninety days from the date of the order, which was the fourteenth day of June, 1878, was given

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him, in which to prepare and present to the judge a bill of exceptions.

An appeal was granted by a judge of this court.

The bill of exceptions, which was not in the transcript when filed, but has since been brought here in a return to a *certiorari*, is without date, and was filed with the clerk on the twenty-sixth day of December, 1878, and after the term succeeding the trial. It does not appear that it was allowed by the judge within the time given, or even before the end of the succeeding term, beyond which it could not have been extended by the court.

We can not, therefore, consider it as any part of the record.

Our attention has not been called to, nor do we find, anything in the record for which the judgment should have been arrested.

The judgment is affirmed.

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