
Kinner & Butler vs. Dodds et al.

KINNER & BUTLER VS. DODDS et al.

PRACTICE IN SUPREME COURT: *No writ of error pending appeal.*

A party who has taken an appeal with supersedeas, and failed to prosecute it, must docket the appeal in the supreme court and dismiss it, before he can take a second appeal, or a writ of error.

ERROR to *Jefferson* Circuit Court.

Hon. J. A. WILLIAMS, Circuit Judge.

Martin & Taylor, for plaintiff in error.

T. B. Martin, contra.

Kinner & Butler vs. Dodds et al.

ENGLISH, C. J. There was a trial by jury of the issues made by the pleadings. Verdict and judgment for plaintiffs below. Defendants moved for a new trial, which the court overruled, and without taking any bill of exceptions, bringing upon the record the evidence, instructions of the court, etc., prayed an appeal, which was granted.

The judgment was entered on the verdict May 20, 1878.

The motion for a new trial was overruled, and the appeal prayed and granted May 24, 1878.

An appeal bond was executed, and approved by the clerk, June 18, 1878, and on the same day a supersedeas was issued.

On the twenty-sixth of September, 1878, defendants, without having docketed and dismissed their appeal in this court, sued out a writ of error to the judgment, upon which the transcript before us has been returned, and the cause submitted on motion to affirm as a delay case.

1. Practice
in Supreme
Court:
No writ of
error pend-
ing appeal.

The writ of error must be dismissed. A party who has taken an appeal, with supersedeas, and failed to prosecute it, must docket the appeal here and dismiss it, before he can take a second appeal, or a writ of error. *Yell, Gov., use, etc., v. Outlaw et al.*, 14 Ark., 413, *Turner v. Tapscott, ad.*, 29 Ark., 318.

Writ of error dismissed.