

OGLETREE *v.* WELKER.

Opinion delivered May 23, 1932.

APPEAL AND ERROR—TIME OF FILING BILL OF EXCEPTIONS.—A bill of exceptions filed after the term of court will not be considered on appeal where no time for filing same was given.

Appeal from Arkansas Circuit Court, Northern District; *W. J. Waggoner*, Judge; affirmed.

*William Gibson, George M. Chapline and Joseph Morrison, for appellant.*

*George C. Lewis, for appellee.*

KIRBY, J. (on rehearing). This suit was brought by appellant in the Arkansas Circuit Court for the possession of certain property. There was a judgment for the appellees, and an appeal was prosecuted to this court. This court, on April 18, 1932, reversed the cause and remanded with directions.

Our attention is now called to the fact that we overlooked the failure of the appellant to file a bill of exceptions within the time allowed. Judgment was rendered in the circuit court on August 4, 1931, and on the 5th day of August, 1931, motion for new trial was filed. The court on September 1, 1931, overruled the motion for a new trial, and granted an appeal to the Supreme Court, but did not give any time for filing bill of exceptions.

The clerk's certificate shows the bill of exceptions was filed in the clerk's office November 24, 1931. Since the record does not show that any time was given in which to file a bill of exceptions, and it was not filed until November 24, 1931, court having adjourned on November 16, 1931, the bill of exceptions was not filed during the term of court, and cannot be considered. *Petroleum Products Ass'n v. First Nat. Bank*, 165 Ark. 267, 263 S. W. 965; *Engles v. Oklahoma Gas & Oil Co.*, 163 Ark. 270, 259 S. W. 749.

Since the bill of exceptions cannot be considered and no error appears on the face of the record, it follows that the judgment of April 18, 1932 is erroneous. The petition for rehearing is granted, the judgment heretofore entered in the case is set aside, and the judgment of the Arkansas Circuit Court is affirmed.

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