

MOODY *v.* ROGERS.

Opinion delivered February 4, 1905.

MANDAMUS NOTICE.—Under Kirby's Digest, § 5158, providing that writs of mandamus, except where used by a court for enforcing its judgments and orders, shall be obtained by motion, and *Id.* § 4481, providing that notice of such motion shall be served upon the party against whom the judgment or order is sought at least ten days before that motion is made, an order granting a writ of mandamus on less than ten days' notice will be set aside on appeal.

Appeal from Sebastian Circuit Court, Greenwood District.

STYLES T. ROWE, Judge.

Reversed.

STATEMENT BY THE COURT.

This is an appeal from an order of the circuit court granting a writ of mandamus against Jake Moody and John Moss, mayor and recorder, respectively, of the town of Hartford, commanding them to issue liquor licenses to appellees, etc. Petition for the writ was

filed January 9, 1905. Notice that application would be made to the court for the writ on January 21, 1905, and was served on the appellants January 19, 1905. The order granting the writ was made January 21, 1905.

Appellants appeared only for the purpose of suggesting want of jurisdiction.

T. B. Pryor, for appellants.

George S. Evans, for appellees.

WOOD, J., (after stating the facts). It does not appear that the writ was for the purpose of enforcing any order or judgment of the court. The proceedings therefore as to notice are controlled by section 4481 of Kirby's Digest, which requires ten days' notice after filing the petition before the motion for mandamus is made. See Kirby's Digest, § 5158.

Reversed and remanded for further proceedings.
