

Wood Vs. Lide

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Court : US Supreme Court

Decided On : 1807

Appeal No. : 8 U.S. 180

Appellant : Wood

Respondent : Lide

Judgement :

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ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF GEORGIA

SYLLABUS

If a writ of error be served before the return day, it may be returned afterwards, even at a subsequent term, and the appearance of the defendant in error waives all objection to the irregularity of the return.

The writ of error was dated 23 December, 1805, and returnable to February term, 1806; the citation also bore the same date, and commanded the defendant in error to appear at the same term. The writ of error was filed in the clerk's office of the court below on the same 23 December. The judgment below was not signed until 4 January, 1806. The writ of error was not returned and filed in the clerk's office of the Supreme Court until 18 March, 1806, after the Court had closed its session.

P. B. Key, for plaintiff in error, suggested that in such a case the writ of error ought to be dismissed of course.

The Court, however, inclined to be of a contrary opinion, but informed Key that they would give him an opportunity to show the contrary.

On a subsequent day he contended that the writ could not be returned at any other term than that to which it was returnable and to which the defendant in error had been cited to appear. After the expiration of the term, it was void. The execution of a writ of error is the sending up the record according to its command, and to send the record up at another term is no execution of the writ.

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THE CHIEF JUSTICE stated that there had been some difference of opinion among the judges, which arose from their not understanding perfectly the facts of the case.

If the writ of error had been served when it was not in force (that is, after its return day), such service would have been void. But if served while in force, a return afterwards will be good.

The service on a writ of error is the lodging a copy thereof for the adverse party in the office of the clerk of the court where the judgment was rendered. 1 Laws U.S. 63, s. 23

If it be so served before the return day, the service is good.

In the case cited from 4 Dallas, it does not appear which party made the motion nor whether there was an appearance for the opposite party.

In the present case, the writ of error having been served when in full force and the writ of error returned, although not at the first term, the appearance of the defendant in error has waived all objection to the irregularity of the return.

The judgment was

Affirmed.

Note. No notice was taken of the fact that the writ of error was served before the judgment below was signed.

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