

**Owings Vs. Tiernan**

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**Court :** US Supreme Court

**Decided On :** 1835

**Appeal No. :** 35 U.S. 447

**Appellant :** Owings

**Respondent :** Tiernan

**Judgement :**

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**35 U.S. (10 Pet.) 447**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF KENTUCKY*

## **SYLLABUS**

The transcript of the record had been lodged by the plaintiffs in error with the clerk of the court on 24 October, 1835, who refused to file it or docket the cause until the plaintiffs had given the fee bond in pursuance of the thirty-seventh rule of the

Court. The counsel for the plaintiffs in error moved to have the transcript filed and docketed, alleging they had done all the law required to be done in order to bring the case before this Court. On the part of the defendant in error, his counsel filed and read in open court certified copies of the writ of error, citation, and appeal bond, and of the judgment of the circuit court, and having stated that the plaintiffs in error had failed to have the case docketed according to the thirtieth rule of the Court, they moved to have the case docketed and dismissed. The Court overruled the motion to docket and dismiss the cause and also the motion to have the transcript filed and the cause docketed without the fee bond being first given. These motions were overruled on 18 January, 1836, and the Court allowed the plaintiffs in error until 1 March following to give to the clerk the fee bond, on the failure so to give the same, the writ of error to be dismissed.

Mr. Underwood, counsel for the defendant in error in this cause, having filed and read in open court certified copies of the writ of error, citation, and appeal bond in this case and the judgment of the Circuit Court of the United States for the District of Kentucky rendered in said cause, and having stated that the plaintiffs in error had failed to have their transcript of the record of said cause filed with the clerk and their cause placed upon the calendar of this Court according to the rules thereof, now moved the Court to have said writ of error docketed and dismissed in pursuance of the thirtieth rule of the Court, which motion was opposed by Messrs Loughborough and Crittenden, counsel for the plaintiffs in error, who stated that the transcript of the record of the cause had been lodged with the clerk of this Court 24 October, 1835, who refused to file the record or docket the cause until the plaintiffs in error had given the usual fee bond under and in pursuance of the thirty-seventh rule of this Court of January term, 1831, and that at the same time the clerk gave Mr. Loughborough, counsel as aforesaid, a blank fee bond, which the plaintiffs in error had not executed,

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supposing that they had done all that was required by law of them to do, and the said counsel for the plaintiffs in error moved the Court to order said transcript to be filed and the cause to be docketed. On consideration whereof and after mature

deliberation thereupon, it was ordered by the Court that the motion of Mr. Underwood to docket and dismiss be overruled.

"And it is further considered and ordered by the Court that the motion of Messrs Loughborough and Crittenden to have the transcript filed and the cause docketed without the usual fee bond be and the same is hereby overruled. And it is further now here ordered by the Court that upon the plaintiffs in error's giving to the clerk the usual fee bond, he, the clerk, shall file the transcript and docket the cause. And it is further now here ordered by the Court that if the plaintiffs in error shall fail to give to the clerk of this Court the usual fee bond required by the thirty-seventh rule of this Court of January term, 1831, on or before 1 March next ensuing this date, that then and in that case the writ of error in this cause shall be docketed and dismissed."

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