

Amis Vs. Pearle

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SooperKanoon Citation : sooperkanoon.com/79746

Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 211

Appellant : Amis

Respondent : Pearle

Judgement :

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Amis v. Pearle

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MOTION TO DISMISS

MOTION on behalf of the defendant in error to docket and dismiss the suit under the forty-third rule of the court.

STORY, JUSTICE, delivered the opinion of the Court.

In this case, a motion has been made on behalf of the defendant in error, to docket and dismiss this suit under the 43d rule of the Court. That rule allows the suit to be

docketed and dismissed upon the production of a certificate from the clerk of the court below certifying that the writ of error had been duly sued out and allowed. In the present case, no such certificate is produced. But the original writ of error (signed by the clerk of the court below) and also a citation signed by the judge of the court, is produced by the defendant in error and is now before us. Under these circumstances, we are of opinion that the substance of the rule is complied with. The certificate of the clerk is but *prima facie* evidence of the issuing and allowance of the writ of error, whereas the production of the writ of error, with the citation, is the highest evidence of the fact that the writ of error has been duly sued out and allowed. Under these circumstances, the Court is of opinion that the motion ought to be granted. In point of fact, this same question came before this Court in the case of *Ward v. Commonwealth Bank of Kentucky*, at January

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term 1838, under circumstances less cogent, and the same decision was then made. In that case, certified copies of the writ and citation, were filed, and not the originals, and the Court ordered the case to be docketed and dismissed.

Motion granted.