

Porter Vs. Foley

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Court : US Supreme Court

Decided On : 1858

Appeal No. : 62 U.S. 393

Appellant : Porter

Respondent : Foley

Judgement :

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Porter v. Foley

62 U.S. (21 How.) 393

ERROR TO THE COURT OF

APPEALS OF KENTUCKY

SYLLABUS

This Court has already decided at the present term (see page 62 U.S. 195|195 of this volume) that a writ of error made returnable on the third Monday in January, and the defendant in error cited to appear on that day, is irregular and must be

dismissed.

A motion to remand the case to the court below, with leave to amend the writ of error and citation, cannot be granted. But if the plaintiff in error desires it, he may, in order to save expense, withdraw the transcript, and use it in connection with the proper and legal process to bring the case here.

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A motion was made to dismiss the writ, upon the ground stated in the opinion of the Court.

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

The writ of error in this case was issued on the 27th day of December last, and made returnable on the third Monday in January, and the defendant in error cited to appear on that day.

It has already been decided at the present term, in the case of *Insurance Co. of the Valley of Virginia v. Mordecai*, that such a writ of error cannot be supported, and does not bring the case before the Court.

A motion has been made, on behalf of the plaintiff in error, to remand the case to the court below, with leave to amend the writ of error and citation. But, as the transcript stands, there is no case before us in which we can exercise a power of amendment. We can do nothing more than dismiss it for want of jurisdiction.

But if the plaintiff desires it, he may, in order to save expense, withdraw the transcript, and use it in connection with the proper and legal process to bring the case here, and if withdrawn, a receipt for it must be left with the clerk.

But as it now stands, it must be

Dismissed for want of jurisdiction.

