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Davies Vs. Corbin

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Court : US Supreme Court

Decided On : Mar-18-1885

Appeal No. : 113 U.S. 687

Appellant : Davies

Respondent : Corbin

Judgement :

Davies v. Corbin - 113 U.S. 687 (1885)
U.S. Supreme Court Davies v. Corbin, 113 U.S. 687 (1885)

Davies v. Corbin

Submitted March 3, 1885

Decided March 18, 1885

113 U.S. 687

I N ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF ARKANSAS

SYLLABUS

The docketing by the defendant in error of a cause in advance of the return day of the writ of error does not prevent the plaintiff in error from doing what is necessary while the writ is in life to give it full effect.

Unless there is some color of a right to a dismissal, the Court will not entertain a motion made to affirm.

Motions to dismiss or affirm.

A statement of the litigation in *Davies v. Corbin* is contained in 112 U. S. 112 U.S. 36, which was also a motion to dismiss. The grounds for the motion in *Gaines v. Corbin* are substantially the same as those in the other case.

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

This is the second time a motion has been made to dismiss this cause. The ground of the present motion is that the security required by 1000 Rev.Stat. has never been given. Against this it is shown that a supersedeas bond was accepted by the judge, who signed the citation on the eighth of April, 1884. The judgment brought under review by the writ of error was rendered on the 11th of February, 1884. The writ of error was sued out and served on the 7h of March in the same year, and the citation was also signed and served on that day. The cause was duly docketed in this Court by the defendant in error on the 22d of March, in advance of the return day of the writ. On the same day, the defendant in error filed his motion to dismiss for other reasons than that now relied on. The plaintiff in error was notified that the motion would be presented to the court on the 14th of April. When the motion was filed, the security had not been given, but before the time fixed for hearing, it was tendered in proper form

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and accepted. Early in the present term, that motion was overruled.

The docketing of the cause by the defendant in error, in advance of the return day of the writ did not prevent the plaintiff in error from doing what was necessary while the writ was in life to give it full effect. The present motion to dismiss is therefore overruled.

The original rule allowing a motion to affirm to be united with a motion to dismiss, was promulgated May 8, 1876, 91 U. S. 607 , and in *Whitney v. Cook,* 99 U. S. 607 , decided during the October term, 1878, it was ruled that the motion to affirm could not be entertained unless there appeared on the record at least some color of right to a dismissal. This practice has been steadily adhered to ever since, and in our opinion prevents our entertaining the motion to affirm in this case. That motion is consequently

Denied.

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