

Jacobs Vs. George

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SooperKanoon Citation : sooperkanoon.com/87199

Court : US Supreme Court

Decided On : Nov-27-1893

Appeal No. : 150 U.S. 415

Appellant : Jacobs

Respondent : George

Judgement :

Jacobs v. George - 150 U.S. 415 (1893)

U.S. Supreme Court Jacobs v. George, 150 U.S. 415 (1893)

Jacobs v. George

No. 87

Submitted November 20, 1893

Decided November 27, 1893

150 U.S. 415

APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF ARIZONA

SYLLABUS

When an appeal is allowed in open court and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary.

When an appeal is allowed at the term of the decree or judgment, but is not perfected until after the term, a citation is necessary to bring in the parties, but if the appeal be docketed here at the next ensuing term, or

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the record reaches the clerk's hands seasonably for that term, and legal excuse exists for lack of docketing, a citation may be issued by leave of court although the time for taking the appeal has elapsed.

When an appeal is allowed at a term subsequent to that of the decree or judgment appealed from, a citation is necessary, but it may be issue, properly returnable even after the expiration of the time for taking the appeal if the allowance of the appeal were made before.

A citation is one of the necessary elements of an appeal taken after the term, and if it be not issued and served before the end of the next ensuing term of this Court, and be not waived, the appeal becomes inoperative.

The case is stated in the opinion.

THE CHIEF JUSTICE.

Judgment in this case was rendered by the Supreme Court of the Territory of Arizona, January 19, 1889, that the judgment of the court below under review by that court be reversed, and the complaint dismissed, with costs.

January 13, 1890, being one of the days of the next regular term of the court, an appeal was prayed to this Court. The appeal was allowed January 14, 1890, conditioned on giving bond, and certain findings of the supreme court were filed that day. January 24, 1890, the required bond was approved and filed, and the

record was filed here March 14, 1890 at October term, 1889. No citation was issued and served, nor has any appearance for appellee been entered, nor is any waiver of citation shown.

It must be regarded as settled that: (1) where an appeal is allowed in open court and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary; (2) where the appeal is allowed at the term of the decree or judgment, but not perfected until after the term, a citation is necessary to bring in the parties; but if the appeal be docketed here at our next ensuing term, or the record reaches the clerk's hands seasonably for that term, and legal excuse exists for lack of docketing, a citation may be issued, by leave of this Court, although the time for taking the

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appeal has elapsed; (3) where the appeal is allowed at a term subsequent to that of the decree or judgment, a citation is necessary, but may be issued properly returnable, even after the expiration of the time for taking the appeal if the allowance of the appeal were before; (4) but a citation is one of the necessary elements of an appeal taken after the term, and if it is not issued and served before the end of the next ensuing term of this Court, and not waived, the appeal becomes inoperative. *Hewitt v. Filbert*, [116 U. S. 142](#) ; *Richardson v. Green*, [130 U. S. 104](#) ; *Evans v. Bank*, [134 U. S. 330](#) ; *Green v. Elbert*, [137 U. S. 615](#)

Appeal dismissed.