WILLIAM and **A. A. MORRIS**, Appellants, vs. **WILLIAM** and **SARAH GATLIN** and others, Appellees.

LRSC 6; 1 LLR 252

[January Term, A. D. 1893.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

1. The service of the notice of appeal upon the appellee can only be legal when done by the ministerial officer of the Supreme Court or his lawful deputy, and when returns thereto are made by the same persons.

2. Where a bond filed in an appeal in a civil action fails to contain the statutory clauses the appeal shall be dismissed.

This is an appeal from the ruling of the Court of Quarter Sessions, Sinoe County, at its March term, 1892, in a matter of habeas corpus then before said court, and is brought here by a bill of exceptions for review. At the call of the case the appellees, through counsel, submitted for the consideration of this court a motion to dismiss the appeal, 1st, "Because the record shows that Willis and Sarah Gatlin and others were plaintiffs below (now appellees) while the docket of this court shows a docket by William and Sarah Gatlin and others;" 2nd, "Because the appeal was not docketed within sixty days after the court had rendered its final judgment;" 3rd, "Because the writ or notice bringing the case up for review was illegally served, in that it was not served by the Marshal of this court;" 4th, "Because the return to the writ is both illegal and insufficient;" and, 5th, "Because the appeal bond filed in this case has not the stipulation expressly required by the statute."

It is the opinion of this court that the jurisdiction of courts over parties to a suit, although confined by law, does not warrant such court in exercising jurisdiction over cases not properly docketed for trial, and that although trivial errors, such as docketing a case in a wrong name, could be by leave of the court corrected, this should be done before legal objections are set up against the same. To this point we say that no leave has been given by this court; and here the court repeats the potent doctrine of the statute, as set forth in the Statute of Appeals, that an appeal not taken within sixty days after final judgment is without the statute. It is clear to the mind of this court that the law intends that an appeal shall be docketed in the appeal court within sixty days.

It is hardly necessary to say that the Marshal is by law the ministerial officer of this court, and all writs and other precepts issued by this court must be served by him, or his lawful deputy, and returned by him as is required by law. And the court says further, that while

an appeal arrests and suspends the judgment of the court from which the appeal is taken, the statute allowing said appeal justly provides that every appellant must give security, to be approved by the court, that he will indemnify the appellee from any injury arising from the appeal, and will further comply with the judgment of the court to which the appeal is taken, or his appeal shall be dismissed.

It is the opinion of the court that the objections set up by the appellees against the bond filed in this case is well founded in law, for upon careful inspection of said bond the court finds it does not bear any such construction as is calculated to indemnify the appellees, nor does it stipulate to abide the decision of the appeal court, as is required by law, and from the law there should be no departure. The court adjudges that the appeal is dismissed, and that the appellees recover from the appellants all lawful costs of the appeal.

Key Description: Appeal (Bond, Dismissal for failure to file adequate approved appeal bond in statutory time)