

WILLIAM S. ANDERSON, Appellant, vs. HENRY W. DENNIS, Appellee.

LRSC 6; 1 LLR 505 (1872) (1 January 1872)

[January Term, A. D. 1872.]

Before His Honor S. L. Parsons, Chief Justice, and the Honorable Associate Justices.

MOTION TO DISMISS APPEAL.

In the case of William S. Anderson, appellant, vs. Henry W. Dennis, appellee, the said appellee respectfully motions this honorable court to dismiss said appeal, and rule the said appellant to costs, for the following legal reasons:

1. Because the said appellant took his appeal at the March term of the court below, A. D. 1870, and failed to complete his appeal by paying the costs and giving his bond within sixty days, as the law directs.
2. Because the said appellant failed and neglected to have his bill of exceptions filed in said appeal case signed by the judge below, as the law requires, and therefore this court cannot legally take cognizance of the matters laid in said bill of exceptions nor in anywise consider this appeal.
3. Because the said appellant has not stated in his said bill of exceptions that the judge of the court below went contrary to the law in granting a new trial on the motion of defendant below, nor has he stated any other reason in law why he takes this appeal, so as to give notice to the appellee, as the law requires, of what he intends to prove before this court, so as to enable this court to clearly determine whether or not the decision of the court below was in accordance with the law in the case.
4. And also because the said appellee was not summoned or notified to defend this case of appeal in this court until the first day of the session of the court, and therefore this honorable court should not hold him to answer in this action.

For the several foregoing reasons the appellee respectfully motions the honorable court to dismiss this appeal case, and to render a decree in favor of the said appellee for all his costs; and this the said appellee will ever pray.

Respectfully submitted,

H. W. DENNIS,

By his Counsel, W. M. Davis.

COURT'S RULING.

In the case of W. S. Anderson, appellant, vs. H. W. Dennis, appellee, Counsel W. M. Davis for the appellee filed a motion to dismiss the case on the ground that there is no legal bill of exceptions before the court, as the bill filed in the record is not signed by the judge of the lower court as the law directs.

This question has been already decided, in the case of the South Baptist Mission vs. McGill Brothers, January term, A. D. 1861, namely, that this court cannot consider any case of appeal as legally before it, unless upon a bill of exceptions duly signed by the judge of the court from which the appeal was taken. The court finds that the bill of exceptions in this case is not signed. It is due to the judge who tried the case, to sign the bill of exceptions, and as there appears no evidence in the present case to show that he either neglected or refused to sign the bill of exceptions, it is therefore presumed to be the fault of the appellant.

The court dismisses the appeal, and rules the appellant to pay costs. The clerk is hereby commanded to issue a mandate to the court below, informing it of this decision. Supreme Court, January Term, 1872.

Key Description: Appeal and Error (Bill of exceptions; Conclusiveness of record; Necessity of bill of exceptions, decisions not otherwise reviewable)