

L. O. WOOD *versus* EDWARD HILL.

A writ made returnable upon a day out of term, is void, and cannot be amended.

THE writ in this case was made returnable on the first Tuesday of August, 1829, when it should have been made returnable on the third Tuesday of August.

Peabody, for the plaintiff, moved for leave to amend the writ, and make it returnable on the third Tuesday of August.

Boardman, for the defendant.

By the court. It seems to be well settled, that a writ made returnable on a day out of term is void. 1 Strange, 399, *Mills v. Bond* ; 2 L'd Raymond, 722, *Green v. Rivet* ; 5 Mass. Rep. 100, *Bullard v. Nantucket Bank* ; 4 Johns. 309, *Burk v. Barnard* ; 2 Johns. Rep. 190, *Bunn v. Thomas* ; 2 W. Bl. 845 ; 3 Wilson, 341.

A void writ cannot be amended.

Writ abated.

A. BROWN, and another *versus* J. S. MATHES.

Referees, under a rule of court, if not restricted by the rule, have authority to award costs.

And in such a case, if the title to real estate was in question, the costs will not be limited, because a small sum was awarded to the plaintiff.

THIS was an action of trespass, for breaking and entering the plaintiff's close, being part of lot numbered seven in Ossipee.

The cause was submitted by a rule of this court, to three referees, with authority to determine the dividing line between lots No. 2 and 7, in Ossipee, so far as the same line runs between the lands of the plaintiff and defendant ; and at January term, 1830, the referees reported, that the plaintiff was entitled to recover \$3,00 dam-

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