

ABERCROMBIE v. GREEN.

5-2807

362 S. W. 2d 12

Opinion delivered November 26, 1962.

1. SPECIAL CIRCUIT JUDGES OR CHANCELLORS—ELECTION MANDATORY UNDER CONSTITUTION & STATUTES.—A special circuit judge or chancellor must be elected by the attorneys in attendance on the court and the proceedings entered upon the record. [Ark. Const. Art. 7, § 21; Ark. Stats. 1947, § 22-339.]
2. SPECIAL CIRCUIT JUDGES OR CHANCELLORS—EFFECT OF PROCEEDINGS WHEN SELECTED BY AGREEMENT.—Where the parties to a suit attempt to select a special judge by agreement, the proceedings are void and the appeal must be dismissed.

Appeal from Saline Chancery Court, *Mel Carden*, Chancellor; appeal dismissed.

J. B. Milham, for appellant.

Hall, Purcell & Boswell, for appellee.

GEORGE ROSE SMITH, J. This is an appeal from two orders entered by the Honorable John L. Hughes, Special Chancellor, in a child custody case. The only indication in the record of the special chancellor's authority to act in the case is this stipulation: "It is stipulated and agreed by and between the parties, Joe E. Purcell, Attorney for the plaintiff, and J. B. Milham, Attorney for the defendant, that John L. Hughes serve as special Chancellor to hear the petition of the plaintiff on February 10, 1962."

The constitution and statutes require that a special circuit judge or chancellor be elected by the attorneys in attendance on the court and that the proceedings be entered upon the record. Ark. Const., Art. 7, § 21; Ark. Stats. 1947, § 22-339. Where the parties attempt to select a special judge by agreement the proceedings are void, and the appeal must be dismissed. *Dansby v. Beard*, 39 Ark. 254; *Gaither v. Wasson*, 42 Ark. 126; *Jenkins v. Incorporated Town of Caraway*, 219 Ark. 236, 242 S. W. 2d 348.

Appeal dismissed.
