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Anthony vs. Brooks.

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ANTHONY VS. BROOKS.

BILL OF EXCEPTIONS: *Office of, appeal, etc.*

The office of a bill of exceptions is not to show facts that are properly matters of record, but to bring upon the record such matters as would not otherwise appear. And a statement in the bill of exceptions that an appeal was asked and granted, is no evidence of the fact, where the record is silent.

APPEAL from *Ashley* Circuit Court.

HARRISON, J.:

The transcript in this case, which is very awkward and bungling, does not show the grant of an appeal. It commences with what purports to be a bill of exceptions, which is not any where shown to have been filed, and is not so marked; and then follow the pleadings and record entry, in a most unseemly state of confusion.

In the bill of exceptions, it is stated that an appeal was asked and granted; but there is no entry on the record proper, of such fact. It is not the office of a bill of exceptions to show facts that are properly matters of record, but to make such things that would not otherwise appear in it.

The prayer for and grant of the appeal is, necessarily, a matter of record, and is not the subject of an exception; and a statement in a bill of exceptions, that an appeal was prayed and granted, cannot countervail the record, when it is silent as to such fact.

There is nothing before us for our consideration; we have, however, looked into the case as presented in the transcript, but with no view of determining it, and are of opinion no cause exists for a reversal of the judgment.

The sole ground of the motion for a new trial was, that the verdict was contrary to the evidence, when the evidence strongly

conducted to prove the issues in favor of the plaintiff, for whom they were found.

Instructions given for the plaintiff were not excepted to, and none offered by the defendants were refused.

The case is dismissed.

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