

HALLIBURTON *et al.*, v. SUMNER.

APPEALS—*Motion to dismiss, etc.*—Where the record shows the appeal was regularly taken, this is what gives this court jurisdiction to examine the case upon its merits, and a motion to *peremptorily* dismiss for want of jurisdiction of the subject-matter in the court below, will not be entertained, but will be considered on examination of the merits of the case.

Appeal from Arkansas Circuit Court.

HON. HENRY B. MORSE, Circuit Judge.

Garland & Nash, for appellants.

Bell & Carlton, for appellee.

BENNETT, J.

This cause is now before us on a motion to dismiss the appeal for want of jurisdiction in the court below.

It appears by the transcript of the record, that William H. Halliburton and William A. Sample, brought an action of unlawful detainer against Jacob B. Sumner, in the circuit court of Arkansas county.

The issue joined in the cause below was submitted to a jury, who found for the defendant; the circuit court rendered judgment of possession in favor of the defendant and against the plaintiffs for costs and they appealed.

The appellee comes into this court and moves to dismiss the appeal for want of jurisdiction in the court below. This is what gives this court the jurisdiction to examine the case upon its merits. The question of the jurisdiction of the court below, as to the original matter in controversy, would be one that would properly come before us in the examination of the cause; if upon such an examination it was found that the court rendering the judgment had no jurisdiction, the proceedings would be declared null and void. But a motion to peremptorily dismiss the case from the docket of this court because the court below had no jurisdiction, cannot be entertained.

The appeal, being regular, the case must be heard on its merits. Motion to dismiss overruled.