

FAULKNER COUNTY BOARD OF EDUCATION *v.* COMMON
SCHOOL DISTRICT No. 103.

Opinion delivered May 25, 1931.

SCHOOLS AND SCHOOL DISTRICTS—CONSOLIDATION OF DISTRICTS.—On appeal from an order of the county board of education consolidating school districts, the circuit court has power only to grant the prayer of the petition or to deny it entirely.

Appeal from Faulkner Circuit Court; *W. J. Waggoner*, Judge; reversed.

J. Wendell Henry and *R. W. Robins*, for appellant.

C. A. Holland, for appellee.

SMITH, J. Electors residing in Rural Special School District Number 2, Common School District Number 37, Rural Special School District Number 49, Common School District Number 103, and Conway Special School District Number 1 petitioned the county board of education of Faulkner County, in which county all of said districts were located, pursuant to act 156 of the Acts of 1927 (page 549), to abolish the four districts first named and to consolidate them with the Conway district.

A remonstrance was filed by the directors of Common School District Number 103, but the prayer of the petition was granted by the board of education, from which order an appeal was duly prosecuted to the circuit court.

The practice upon such appeals is defined in the cases of *Board of Education of Van Buren County v. Suggs*, ante p. 535, and *School District No. 26 v. School District No. 32*, 177 Ark. 497, 6 S. W. (2d) 826. See also *School District No. 14 v. County Board of Education*, 177 Ark. 734, 7 S. W. (2d) 798.

Pursuant to the practice defined in the cases cited, the circuit court heard testimony and modified the order of the board of education by excluding district 103 from the consolidated district, which had been designated Conway Special School District Number 1, and from this order and judgment the Conway district and the board of education have appealed.

We think the court was in error in the order made. The consolidated district, as established by the circuit court, was not the district petitioned for and established by the board of education. The court should either have granted the prayer of the petition or have denied it entirely, and should not have adjudged that the consolidated district be established after excluding district 103. *Rural Special School District No. 21 v. Common School District No. 87*, ante p. 329; *School District No. 26 v. Baxter County Board of Education*, ante p. 295.

The judgment of the court below will therefore be reversed and the cause remanded, with directions to the circuit court to adjudge, upon the trial *de novo* which the statute contemplates, whether the district petitioned for shall be established, including all the five districts.
