

TEXARKANA SPECIAL SCHOOL DISTRICT *v.* RITCHIE GROCER  
COMPANY.

Opinion delivered May 18, 1931.

1. PLEADING—LEGAL CONCLUSION.—An allegation in a complaint that on a certain day, which was neither an adjourned day nor a regular term of the county court, the county judge, pretending to be sitting as a court, made a void order refunding taxes, *held* a legal conclusion, not admitted to be true by demurrer.
2. PLEADING—ADMISSION BY DEMURRER.—A demurrer admits only those facts which are well pleaded.
3. PLEADING—SUFFICIENCY OF COMPLAINT.—In determining whether a demurrer to a complaint should be sustained, every allegation made therein, together with every inference reasonably deducible therefrom, must be considered.

Appeal from Miller Circuit Court; *Dexter Bush*, Judge; affirmed.

STATEMENT OF FACTS.

Appellant special school district brought this suit against appellee, an Arkansas corporation engaged in the wholesale dry goods and grocery business with its place of business located in the special school district, to recover certain school taxes which it alleged had been wrongfully refunded to appellee by an order of the county court as collected upon an erroneous assessment of its property.

It was alleged that appellee company has assessed its personal property in the school district for taxes for the years 1926 and 1927 at an aggregate value of \$26,322.75 for 1926 and \$19,650 for 1927 and paid the taxes thereon to the collector of taxes for the benefit of appel-

lant in the sum of \$669.57 for said two years. That, after the payment of said taxes and the tax collector had paid same in settlement to the county treasurer and the sum had been credited to appellant district, appellee filed a petition in the Miller County Court under the provisions of the statute, § 10,180, C. & M. Digest, and procured a refund of said sum of \$669.57 as having been collected upon an erroneous assessment.

It was further alleged that the order refunding the taxes was void as having been made by the county judge and not by the county court. The complaint reads:

“That on the 17th day of April, 1929, which was neither an adjourned nor regular term of the county court of Miller County, Arkansas, the county judge, pretending to be sitting as a court, made a void order and judgment that Miller County, Arkansas, refund to the petitioner, Ritchie Grocer Company, the sum of six hundred and sixty-nine and 57/100 dollars (\$669.57), taxes paid on the alleged erroneous assessment of the years 1926 and 1927, and the treasurer of Miller County, Arkansas, acting pursuant to and by authority of said void order and judgment, paid Ritchie Grocer Company the sum of six hundred and sixty-nine and 57/100 dollars (\$669.57), the sum so allowed by the void order and judgment made by the county judge pretending to be sitting as a court.”

It was alleged also that no member of the appellant school board was made a party to the proceedings for refunding the taxes, and that it had no notice of any such proceeding nor of the order making the refund until after it was done.

A demurrer was interposed to the complaint, to the jurisdiction of the court and because the matter complained of was *res judicata* by the order of the county court directing the refund of the taxes to appellee, and also because the proceeding was a collateral attack upon the order and judgment of the county court, and the circuit court is without jurisdiction to set aside said order and judgment of the county court or to try this case

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*de novo*. The demurrer was sustained, and, the appellant declining to plead further, the complaint was dismissed, and the appeal comes from this judgment.

*Willis B. Smith and Pratt P. Bacon*, for appellant.

*Jones & Jones*, for appellee.

KIRBY, J., (after stating the facts). Appellant insists that the order erroneously refunding the taxes to appellee was void as having been made by the county judge and not the court, and that the demurrer admits the allegations of the complaint showing such fact, and that the court therefore erred in sustaining the demurrer.

It is true the complaint alleges that the order was made on a certain day, "which was neither an adjourned nor regular term of the county court of Miller County, Arkansas, the county judge, pretending to be sitting as a court, made a void order and judgment, etc." to refund to appellee the sum claimed, taxes paid on the alleged erroneous assessment. It is also true that the allegation is that the order was made on a day, which was neither an adjourned or regular term of the court and that the county judge, "pretending to be sitting as a court, made a void order, etc.", but no fact is stated showing the order to have been void, and the allegation is that "the county judge, pretending to be sitting as a court," made such void order. This is but a legal conclusion not admitted to be true by the demurrer, which does not admit that the county judge made the order on a day or at a time when the court was not in session. A demurrer admits only those facts, which are well pleaded; and in determining whether a demurrer to a complaint should be sustained, every allegation made therein together with every inference, which is reasonably deducible therefrom, must be considered. *Hudson v. Simonson*, 170 Ark. 243, 279 S. W. 780; *House v. Road Imp. Dist.*, 158 Ark. 330, 251 S. W. 12; *Pierce Oil Corp. v. Hope*, 127 Ark. 38, 191 S. W. 405, S. C. 248 U. S. 498, 39 S. Ct. 172; *Brown v. Arkansas Central Power Co.*, 174 Ark. 177, 294 S. W.

709; *Moore v. North College Avenue Imp. Dist.*, 161 Ark. 323, 256 S. W. 70.

The court did not err in sustaining the demurrer, and the judgment must be affirmed. It is so ordered.

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