

MARTIN v. BLAYLOCK.

Opinion delivered January 14, 1924.

DRAINS—ORDER ESTABLISHING DISTRICT.—An order of the county court establishing a drainage district was not invalidated by adding to the description of the lands “and of other lands which might be benefited by system of ditches,” evidently added in recognition of authority to subsequently extend the boundary so as to include other lands under Crawford & Moses’ Dig., § 3614, as it will be regarded as surplusage.

Appeal from Craighead Chancery Court, Western District; *Archer Wheatley*, Chancellor; affirmed.

Lamb & Frierson, for appellant.

1. The order undertaking to create the district is void for uncertainty in the description. Not only is there no description of “all other lands which would be benefited by such system of ditches,” but no possible way is suggested whereby it might be determined what other lands should be included. 122 Ark. 491; 105 Ark. 380.

2. The county court was without power, at a subsequent term, to cure defects in the order establishing the district. 96 Ark. 434; 92 Ark. 305; 87 Ark. 438.

Frierson & Penix, for appellees.

1. The language in the order creating the district, with reference to the inclusion of other lands, was without effect, jeopardized the rights of no one, and does not affect the validity of the order. If it can reasonably be determined what lands the court intended to include in the district, this court will uphold its validity, regardless of ambiguities. 138 Ark. 339, 344; 122 Ark. 491, 497.

2. It was within the well recognized powers of the court, on the ground that the language complained of did not constitute a part of the court's original judgment, to order the language stricken from record at a subsequent term. 103 Ark. 453; 40 Ark. 224; 33 Ark. 218; 23 Cyc. 864; *Id.* 867; 15 Corpus Juris, 975, 976; 35 Ark. 278; 34 Ark. 291; 35 Ark. 585; 33 Ark. 475.

HUMPHREYS, J. The main and only question necessary to be determined on this appeal is whether the order or judgment of the county court establishing Drainage District No. 25 of Craighead County, Arkansas, was invalidated by adding to the description of the lands the following expression, "and of other lands which might be benefited by such a system of ditches."

The act under which the district was formed makes provision for subsequently including lands in the district then outside of the district, if benefited by the improvement. Section 3614 of Crawford & Moses' Digest. We think the added words attributable to the power conferred in the act to embrace additional territory within the district, rather than an attempt to describe lands and include same in the district. It was simply added in recognition of the authority to subsequently extend the boundaries of the district so as to include other lands which might be benefited by the improvement. In this view the added expression must be regarded as surplusage in nowise affecting the order.

The decree will therefore be affirmed.