

DRAINAGE DISTRICT NO. 1 OF CROSS COUNTY *v.* ROLFE.

Opinion delivered December 7, 1914.

APPEAL AND ERROR—APPEAL FROM JUDGMENT HOLDING CIRCUIT COURT HAS JURISDICTION—FINAL ORDER.—The dismissal by the circuit court of an appeal from a judgment of the county court entering an order *nunc pro tunc*, is merely a holding by the circuit court that the order was properly made by the county court, and an affirmance thereof, and such judgment of the circuit court not being a final order or judgment, it can not be appealed from.

Appeal from Cross Circuit Court; *W. J. Driver*, Judge; appeal dismissed.

*L. C. Going*, for appellant.

*O. N. Killough* and *J. F. Summers*, for appellee.

KIRBY, J. A full statement of this case is found in *Drainage Dist. v. Rolfe*, 110 Ark. 374, where it was reversed, the court holding that the judgment of the circuit court was void for want of jurisdiction, there being no order of the county court granting an appeal to the circuit court in the record of the proceedings in that court. The court also held that, since the necessary orders

granting the appeal had been entered by the county court *nunc pro tunc* and certified to the circuit court, it was within the power of that court to permit the record from the county court to be amended accordingly so as to show the necessary jurisdictional facts and remanded the case for further proceedings.

The drainage district appealed from the judgment of the county court entering the *nunc pro tunc* orders, to the circuit court, and that court dismissed the appeal, and from its judgment this appeal is prosecuted. The dismissal of the appeal from the judgment of the county court making the *nunc pro tunc* orders was in effect but a holding that such orders were properly made and an affirmance thereof, giving the circuit court thereby jurisdiction to hear and determine the cause. Said judgment was not a final order or judgment determining the rights and liabilities of the parties nor the merits of the cause and can not be appealed from. *Atkins v. Graham*, 99 Ark. 496; *McPherson v. Consolidated Casualty Co.*, 105 Ark. 324.

Its only effect was to hold that the circuit court had jurisdiction to determine the controversy, and if we should affirm the court's judgment, it would leave the entire cause pending there and undetermined. The judgment not being final, the appeal was premature and must be dismissed. It is so ordered.

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