

YOWELL *v.* FORT SMITH PURE MILK COMPANY.

Opinion delivered May 17, 1915.

APPEAL AND ERROR—APPEAL FROM ORDER GRANTING A NEW TRIAL.—An appeal from an order granting a new trial in the circuit court, will be dismissed when the appellant has not complied with the statute, Kirby's Digest, § 1188.

Appeal from Sebastian Circuit Court, Fort Smith District; *Daniel Hon*, Judge; appeal dismissed.

*Holland & Holland*, for appellant.

*H. C. Mechem*, for appellee.

Wood, J. This appeal is prosecuted from an order of the circuit court sustaining a motion for a new trial on behalf of appellee who was the defendant below. Appellant attempts to appeal from an order of the trial court granting appellee a new trial.

Section 1188 of Kirby's Digest provides, in part:  
\* \* \* "But no appeal to the Supreme Court from an order granting a new trial, in a case made or, bill of exceptions, shall be effectual for any purpose unless the notice of appeal contains an assent on the part of the appellant that, if the order be affirmed judgment absolute shall be rendered against the appellant."

The appellant does not show that he has complied with this statute, therefore his attempted appeal can not avail him. See, *St. Louis, I. M. & S. Ry. Co. v. Hix*, 101 Ark. 90.

The appeal is therefore dismissed.