

BERRY vs. SINGER.

Though a party appealing from a judgment of the circuit court to this court, may comply with all the pre-requisites required by statute to entitle him to an appeal, yet if no order of court granting the appeal appear of record, this court will dismiss for want of jurisdiction.

Appeal from Bradley Circuit Court.

Replevin by Berry against Singer, determined in the Bradley circuit court at the April term, 1848, before the Hon. WM. H. FIELD, judge. Verdict for defendant, and motion for new trial overruled; plaintiff excepted, prayed an appeal, filed the necessary affidavit, and entered into recognizance, but no order of court granting the appeal appears in the transcript.

RINGO & TRAPNALL, for appellee, moved to dismiss.

YELL, for appellant.

JOHNSON, C. J. This is a motion filed by the appellee to dismiss the appeal. The reason urged in support of the motion is that there is no showing of record that the appeal ever was allowed by the circuit court. The statute declares that the circuit court shall make an order allowing an appeal upon the performance of certain conditions therein specified. It is the order granting the appeal and not the prayer for it that operates to transfer the jurisdiction from the circuit to the supreme court. This being a question of jurisdiction no presumptions can be indulged, so that although the record should affirmatively show that every pre-requisite had been complied with, yet no jurisdiction could attach to this court without an order expressly allowing the appeal. It is conceded that in this case the party who prayed the appeal did every thing required by the statute, yet as the circuit court did no act by which to transfer the jurisdiction of the cause, it cannot be entertained by this court. Motion sustained and the case dismissed.
