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Term, 1869.]State v. Jones.

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STATE *v.* JONES.

WHAT JUDGMENTS ARE APPEALABLE. Where a motion to dismiss for want of jurisdiction is made in a criminal case, and allowed, but without entry of *final judgment*, this court *can not* take cognizance of the appeal thereon.

*Appeal from Carroll Circuit Court.*

HON. ELIAS M. HARRELL, Circuit Judge.

ATTORNEY GENERAL, for appellant.

GREGG, J.

It appears from the transcript that, at the November term, 1866, of the Carroll county circuit court, the defendant was indicted for an assault with a deadly weapon, with intent to inflict a bodily injury upon one Calvin C. Shouse, without any considerable provocation.

The indictment is in good form and contains all the statutory requisites to charge the offense.

At the February term, 1869, the defendant appeared in that court and filed his motion to dismiss the prosecution, because the court had no jurisdiction to try him. .

The record, which is certified to this court to be "a true, correct, and complete transcript of the proceedings in this cause," recites that, "the court being advised of the matters and things arising on the motion to dismiss this case for want of jurisdiction, heretofore filed, doth sustain said motion," and thus concludes the record entry without any final judgment upon the motion or otherwise.

This court can not, on appeal, adjudicate the alleged error of the court below, in refusing to exercise its jurisdiction, until the case is there prosecuted to final judgment.

The appeal is dismissed for want of jurisdiction in this court.

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