

BAUGHER V. RUDD.

Decided October 11, 1890.

Appeal from order of county court opening road.

The provision in the road law of 1871 (Mansf. Dig., sec. 5940) for an appeal from a final decision of the county court opening a county road is not repealed by the general act of later date (Mansf. Dig., sec. 1436), regulating appeals from final orders and judgments of the county court.

APPEAL from *White* Circuit Court.

M. T. SANDERS, Judge.

W. R. Coody for appellant.

By section 1436, Mansfield's Digest, appeals are granted as a *matter of right* from all *final orders* and *judgments* of the county court.

The rule is that when the legislature takes up the whole subject and covers the entire ground of other statutes and

intended it as a substitute for the whole, the prior acts are repealed. 10 Ark., 589; 41 Ark., 149; 27 Ark., 418; 30 Ark., 560; 31 Ark., 17. The expression of one thing implies the exclusion of another. 38 Ark., 205; 20 Ark., 410.

McRae & Rives for appellees.

COCKRILL, C. J. Section 5940 of Mansfield's Digest, which was enacted as a part of the road law of 1871 to establish the time and mode of prosecuting appeals from orders of the county courts directing the opening of public roads and defining the duties of the county court and its officers in such cases, was not repealed by the subsequent enactment of section 1436 regulating appeals generally from the county court. The former is a special provision governing a class of cases in which the public interest demanded special protection. The rule of construction is, that "a general affirmative statute does not repeal a prior particular statute, or particular provisions of a prior statute upon the same subject, unless there is an invincible repugnancy between the two." *Chamberlain v. State*, 50 Ark., 132. The two provisions under consideration may stand together. The appellant did not comply with the special provision governing his cause in the attempt to perfect his appeal to the circuit court, and it was properly dismissed.

Affirm.
