

SIMON ATTIA, Appellant, vs. JAMES A. TUNING, Appellee.
LRSC 5; 1 LLR 512 (1880)

[January Term, A. D. 1880.]

Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, J. E. Moore and J. M. Priest.

MOTION TO DISMISS APPEAL.

The appellee, J. A. Tuning, by his counsel motions this honorable court to dismiss this case, in which Simon Attia, agent for J. Piza & Company, is appellant, in an action of damages for violation of a written contract, and to affirm the judgment of the court below and rule appellant to pay all costs, for the following reasons:

The appeal was taken, as the bill of exceptions will show, before the verdict of the jury was delivered and before final judgment was rendered in said case. (See the bill of exceptions, the verdict of the petit jury and final judgment.)

Respectfully submitted,

W. M. DNIS, J. J. Ross, Appellee's Counsel. 13th January, 1880.

COURT'S RULING.

A motion having been submitted by appellee to dismiss the case because "the appeal was taken, as the bill of exceptions will show, before the verdict of the jury was found and rendered and before final judgment was rendered in said case," the court would state that the statute prescribes that every appeal must be taken after final judgment, or, after a case shall have been decided by the court; but instead of appellant being confined or restricted to an appeal from final judgment, he is "entitled to an appeal from any decision or opinion of any court except such courts of appeal."

Reference has been made, in the arguments in support of the motion, to the decisions of this court in the case of *Minis vs. Crayton*, and *Cooper vs. McGill & Bro.* The court still entertains the opinion enunciated in those cases. In the first the court stated that "no appeal lies from a court of inferior jurisdiction to the Supreme Court until after final judgment has been given." In the other case, while confirming this, it was added, that "while the right to except from every decision, interlocutory or final, is granted the appeal cannot be taken until after final judgment is rendered." It will appear, therefore, that while based upon the statutes of this Republic and upon the general principles that appellate jurisdiction cannot be invoked until after some final determination has been made in the court below, these rulings or decisions restrict appellants as to the time of taking appeals. They are not confined in doing so to any particular opinion or decision.

It is argued that the bill of exceptions having been filed before the rendition of verdict or judgment, the case should be dismissed. We regard it unnecessary to refer to legal authorities to make it clear that there is at least a shade of difference between the bill of exceptions per se and an appeal; for the completion of the one does not necessarily imply a completion of the other. Authorities have been cited by counsel on each side to demonstrate that the time required for taking

and signing bills of exceptions is the same as that prescribed for taking out an appeal. We will regard this as not in dispute.

Another argument for dismissal of the case is that it does not appear upon the record that an appeal was prayed for after final decision had been given. While no prayer is found for the appeal, yet we do find that the bond was determined, offered and approved by the judge, and the record of the case ordered to be forwarded to the Supreme Court; and it is but a reasonable presumption that such proceedings of the court which should be subsequent to a prayer for appeal must have been founded on such a prayer, and that the appeal was thereby signed. The court therefore does not sustain the motion to dismiss the case.

Supreme Court, January 15th, 1880.

Key Description: Appeal and Error (Conclusiveness of record; Enforcement of judgment or order; Necessity of formal judgment or order)