

**RUSSEL MINUS, Sub-Treas. Sinoe County,  
Appellant, vs. S. J. CRAYTON, supt. Sinoe  
County, Appellee.**

**LRSC 6; 1 LLR 73 (1874)**

**[February Term, A. D. 1874.]**

*Appeal from the Court of Quarter Sessions and Common Pleas,  
Maryland County.*

*Appeals—Final judgment—Withdrawal of a suit.*

1. An appeal taken from an interlocutory judgment and before the rendition of final judgment cannot, under the statute, be entertained by the Appellate Court.
2. Where a plaintiff withdraws his suit without expressly reserving the right to renew same, by a formal entry upon the record to that effect, he is by statute barred from renewing same.

This case is an appeal from the ruling and opinion of the Court of Pleas and Quarter Sessions, Maryland County, at its November Term, A. D. 1873, brought up for review upon the record and a bill of exceptions. The same has had the careful consideration of this court, and after due examination of the important issues raised therein, this court has come to the following conclusions :

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1 st, That no appeal lies from a court of inferior jurisdiction to the Supreme Court until after final judgment has been given. On examination of the record and proceedings in this case, which were excepted to by the appellant, it appears conclusively that the bill of exceptions, upon which this appeal was brought, was taken before the rendition of final judgment by the court below, which

is contrary to the statute laws of the Republic governing appeals. In this, the appellant is guilty of miscontinuance.

2d, The court below did not err when it sustained the motion of the defendant to dismiss the suit upon the ground that the plaintiff, having brought and withdrawn his suit, could not renew the same, unless at the time of the aforesaid withdrawal he expressly reserved his right to renew his action. This ruling is strictly in accordance with the statute. The language of the statute is, "A plaintiff may, before the jury is affirmed, abandon his claim, reserving expressly his right to renew his action." This is the first case arising under the statute, and this statute is in perfect harmony with another, which reads as follows: "The plaintiff may once amend his complaint or withdraw it and file a new one, at any time before the case is ready for trial." The former points out, however, the method of securing said right, which for its obvious meaning can only be secured to the plaintiff by a formal entry on the record of the court in which the action is brought, declaring the same, and giving notice thereof to the defendant. Nowhere in the record does this appear to have been done.

The term "expressly," as made use of in the statute, means to make known and not left to implication. It is the opposite to "implied." A well founded maxim of law is, what is expressed renders what is implied silent. It does not, therefore, appear to this court why the judgment of the lower court should be reversed.

Therefore, the court adjudges that the judgment of the Court of Pleas and Quarter Sessions, Maryland County, rendered in this

case be affirmed, and that S. J. Crayton, Superintendent of the County of Sinoe, appellee, recover from Russel Minus, as aforesaid, his costs in this action.

Key Description: **Abatement and Renewal** (Withdrawal of suit without reserving right to renew operates as bar); **Appeal and Error** (As part of record, in general, Bills of exceptions, case, or statement; **Bill of Exceptions**; Interlocutory proceedings brought up, in general; Necessity of final determination);