SUPREME COURT

OF THE

STATE OF ILLINOIS.

DECEMBER TERM, 1822, AT VANDALIA.

Present, THOMAS REYNOLDS, *Chief Justice**.
THOMAS C. BROWNE, JOHN REYNOLDS, WILLIAM WILSON, *Associate Justices.*

JOSEPH CORNELIUS, Appellant, *v.* DAVID COONS AND PARKER JARVIS, Appellees.

APPEAL FROM ST. CLAIR.

An appeal will lie, by consent entered of record, from an interlocutory order dissolving an injunction.

CORNELIUS exhibited his bill in chancery, in the St. Clair circuit court, praying an injunction to enjoin Coons from the collection of certain judgments which he had obtained against Cornelius, before Clayton Tiffin, a justice of the peace, and also to enjoin Jarvis, the constable, from collecting the executions issued upon those judgments. An injunction was awarded by the judge in vacation. Jarvis answered, setting forth his powers to act as constable, by virtue of the executions. Coons answered, and denied every material allegation in the complainant's bill. Upon a hearing of the cause upon bill and answers, the court dissolved the injunction. The errors assigned, question the correctness of the court below in dissolving the injunction, and in rendering that judgment in vacation.

Opinion of the Court by Chief Justice REYNOLDS. It is a sufficient answer to the second error assigned, that the judgment of the court, and this appeal, were both had by consent entered of record. Without such consent, no appeal would lie upon an order dissolving an injunction, it being an inter-

* In place of Chief Justice PHILIPS, who resigned on the 4th day of July, 1822.

locutory, and not a final judgment. The correctness of the judgment in dissolving the injunction, can not be questioned. If the bill contained any equity, it is completely destroyed by the defendant's answer. The judgment of the court below is affirmed. (*a*) (1)

Judgment affirmed.

(*a*) No appeal from an interlocutory decree dissolving an injunction. *Young* v. *Grundy*, 6 Cranch, 51.

(1) The general rule is well settled—that an appeal or writ of error will not lie from an interlocutory order; it must be a final adjudication or judgment to enable a party to have it reviewed by an appellate court. *Pentecost et al.* v. *Magahee*, 4 Scam., 326. *Fleece* v. *Russell et al.*, 13 Ill., 31. *Hayes* v. *Caldwell*, 5 Gilm., 33. *Woodside* v. *Woodside*, 21 Ill., 207; and it is also equally as well settled that consent of parties will not confer jurisdiction on a court which has no jurisdiction of the subject matter. *The People* v. *Scates*, 3 Scam., 353. *Foley* v. *People*, post. *Allen* v. *Belcher*, 3 Gilm., 595. *Ginn et al.* v. *Rogers*, 4 Gilm., 135. *Williams* v. *Blankenship*, 12 Ill., 122. *Randolph County* v. *Ralls*, 18 Ill., 29. The rule established by the case last cited is, "That jurisdiction of the subject matter can not be conferred upon a court by consent of the parties, nor can want of it be waived; but when the law confers upon the court *original jurisdiction* of the subject matter, full appearance, without objection, confers upon the court jurisdiction of the person, and it may then adjudicate." The same distinction is taken in the other cases cited.

The jurisdiction of the supreme court in existence when this decision was made was fixed by the constitution of the state, and was as follows: "The supreme court shall be holden at the seat of government, and shall have an *appellate jurisdiction only*, except in cases relating to the revenue, in cases of mandamus, and in such cases of impeachment as may be required to be tried before it." Constitution of 1818, Article 4, Section 2. The present constitution is substantially the same. Article 5, Sec. 5.

From these principles we think it follows, that the order appealed from being interlocutory only, the supreme court had no jurisdiction over it; that that court possessing only *appellate* jurisdiction, the consent of parties could not confer jurisdiction; and that consequently the decision of the court was erroneous.

And this view, it is believed, is sustained by the reasoning of the court in subsequent cases, although the question here has never been directly before the court. In *Crull et ux.* v. *Keener*, 17 Ill., 246, in speaking of cases authorized to be certified to the supreme court from the circuit court, Caton, C. J. said: "Nothing can be more manifest than that this was never designed to allow a case to be taken to the supreme court till a final decision had been made in the circuit court, so that it could be taken up in the ordinary way by filing a complete record." And again in *Cunningham* v. *Loomis et al.*, id. 555, which was attempted to be taken to the supreme court in the same manner: "However clear we might be that the circuit court decided correctly, so far as that decision went, yet, as there is no final order in the case, this court has no jurisdiction to affirm or reverse the decision. The judgment which was rendered was but interlocutory. It could not be final, till the damages were assessed. Should we affirm the judgment it would not be an end of the case. As yet, the plaintiffs' judgment is for nothing. It merely determines that they are entitled to recover something. How much they are entitled to recover, is a question still pending before the circuit court, which has exclusive jurisdiction over it. That question may be tried in that court at the same time we are hearing this cause here, and bythe timethis decision is made, the condition of the cause may be very different from what it was when this case was brought up."