

McDANIEL *v.* PRAIRIE COUNTY.

4-2918

Opinion delivered March 20, 1933.

1. RECORDS—RESTORING LOST RECORDS.—A petition to restore the lost record of a claim against the county and of the allowance thereof by the county court, which alleged the filing of the claim duly verified and its allowance by the county court, but that the order was not placed on the court records and no warrant was issued, and that the claim has been lost, *held* to State a cause of action.

2. RECORDS—RESTORING LOST RECORDS—LIMITATION.—A petition to restore a lost record of a claim against the county and of its allowance by the county court is not demurrable on the ground that the claim is now barred if it was not barred when allowed, since when restored it relates back to the original allowance.
3. RECORDS—RESTORING LOST RECORDS.—The right to have the record of a claim against the county and its allowance by the court restored cannot be defeated on the ground that the original claim was not properly verified.
4. RECORDS—RESTORING LOST RECORDS.—Where a claim against the county was duly allowed, and no appeal therefrom was taken, on a petition to restore the claim and its allowance, it is no defense that the claim should not have been allowed under Constitution, Amendment 10, prohibiting allowances in excess of the revenues of the current fiscal year.

Appeal from Prairie Circuit Court, Northern District; *W. J. Waggoner*, Judge; reversed.

STATEMENT BY THE COURT.

This suit was brought by Roy McDaniel, appellant, to restore lost records of the allowance of a claim and the claim for road work done by him on a county road in Prairie County under the statute (§§ 8342-43, Crawford & Moses' Digest).

The petitioner stated the facts relating to the claim for road work on the county roads of Prairie County done under the supervision and direction of the road overseer and the county judge. That the claim was duly verified as required by law, approved by the county judge, and a warrant ordered drawn on Consolidated Road District No. 1 of Prairie County for the amount allowed, \$125. That said warrant was ordered issued on November 15, 1928, but no order was put on the record, the order being made and indorsed on the back of the claim, and the county clerk never issued the warrant; and the claim had been lost or mislaid and could not be found, etc. This petition was verified by the petitioner, appellant, and also by the affidavits of George W. Craig, county judge at the time the allowance was made; J. B. Burnett, the road overseer of the district when the work for which the claim was made was alleged to have been done, and C. C. Tunstall, county clerk, who filed the original claim.

The court denied the prayer of the petitioner, and an appeal was taken to the circuit court where appellee's

attorney filed a motion to require the claimant to make his account more specific and also requiring him to attach a copy of the order alleged to have been made in November, 1928, allowing the claim, and also the original claim filed, or a copy thereof, and to require the claimant to itemize his account, showing what part of the road was worked on, the materials used and the character of the work done. This motion was sustained.

A demurrer was also filed, alleging that the petition and account showed on its face that the statute of limitations has barred the claim, that same is not itemized as the law requires, and is for services rendered in 1928, which is barred under the provisions of the Constitution as set forth under Amendment No. 11 thereto. The demurrer was sustained as to the second and third counts, and judgment rendered accordingly.

Appellant states in his brief that he did not think paragraphs 2 and 3, which were sustained in the demurrer, had anything to do with the case, and offered to prove that the claim was itemized as required by law and was not barred under the statute of limitations, but the court refused to allow this to be done, and the appeal was prosecuted accordingly.

Craig & Craig, for appellant.

Emmet Vaughan, for appellee.

KIRBY, J., (after stating the facts). The statute expressly allows restoration and reinstatement of a claim and order of the court thereon, §§ 8342-43, Crawford & Moses' Digest.

The petition was sufficient, and was not only verified by affidavit of the petitioner, but was supported by affidavits of the former county judge, who made the allowance, the county clerk, who filed it, and the road overseer, under whose supervision and direction the work for which the claim was presented was done.

There is no question about notice, since the county appeared and resisted the proceeding, which was one, as already said, to restore and reinstate a lost order and claim and not to procure the allowance of a claim against the county in the regular course.

The court erred in sustaining the demurrer to the complaint upon the two counts as alleged, since, if the order of allowance were reinstated in conformity with the allegations of the petition, it would have the same force and effect and relate back and take effect from the time when the original allowance, judgment or decree was rendered. *Id.*, § 8343.

Neither could the right to the reinstatement be defeated by any contention that the original claim was not itemized according to law, nor that the claim was barred under the provisions of the Constitution as set forth in Amendment No. 10 thereto, the claim as originally made having been duly allowed with no appeal therefrom.

As already said, this is not a proceeding to verify or collect the claim, in which such contention could have been made if the conditions warranted, but only to restore the record, the order of allowance of the claim long since properly made, the original claim as presented for such allowance, and their reinstatement upon the records of the court. *Chicago Title & Abstract Co. v. Hagler Special School District*, 178 Ark. 443, 12 S. W. (2d) 881; *Williams v. Dawson*, 185 Ark. 1190, 46 S. W. (2d) 634.

The court erred therefore in sustaining the demurrer and dismissing the complaint, and the judgment is reversed and the cause remanded with directions to overrule the demurrer and for further proceedings according to law.
