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Jones v. Spencer.

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JONES V. SPENCER.

COST IN CIRCUIT COURT. *On appeals from justices of the peace.*

If in an appeal to the circuit court, the appellee recover less than he recovered in the justice's court, he must pay the cost in the circuit court.

APPEAL from *Marion* Circuit Court.

Hon. J. H. BERRY, Circuit Judge.

The appellant cited 23 *Ark.*, 59, 28 *ib.*, 466, *Gantt's Digest*, p 283, secs. 932 and 33.

HARRISON, J. This was a suit by specific attachment for rent of land, commenced before a justice of the peace.

Upon the motion of the defendant, the writ of attachment, which had been levied, was quashed; and upon the trial the justice found for the defendant, and he assessed his damages by reason of the attachment at twenty-five dollars; for which sum and for his costs, judgment was rendered in his favor.

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The plaintiff appealed to the circuit court.

In the circuit court the trial upon the plaintiff's demand was by the court without a jury, and the finding was again in favor of the defendant, but no damages were assessed, or awarded him; and judgment was rendered for him for his costs in the justice's court only.

The defendant appealed to this court.

It is insisted that he was entitled to costs in both courts.

Section 932, Gantt's Digest, is as follows:

"When an appeal shall be taken from a judgment of a justice of the peace in favor of the appellee, cost shall be adjudged in the following cases:

"First. If, on the trial *de novo*, the appellee shall recover as much or more than the amount of the judgment, or, if judgment be affirmed, the appellant shall pay all the costs.

"Second. If the judgment in the circuit court shall be in favor of the appellant, the appellee shall pay the costs of both courts.

"Third. If the appellant shall, at any time before his appeal is perfected, tender and offer to pay to the appellee any portion of the judgment, which shall not be accepted in satisfaction, and the appellee shall not, in the appellate court, recover more than the amount so tendered and refused, he shall pay the costs of the appellate court.

"Fourth. If no such tender shall have been made, and the appellee recover any sum in the appellate court, or if, after such tender and refusal, the appellee shall recover more than the amount tendered, the appellant shall pay the costs in both courts."

Though the plaintiff, who was the appellant in that court, did not recover in the suit or upon his demand in the circuit court, he was, however, the prevailing party upon the appeal, and the judgment was, in fact, in his favor, for the defendant,

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the appellee there, did not recover, as he did in the justice's court, any damages. The defendant was not, therefore, entitled to recover his costs in the circuit court or upon the appeal

Affirmed.

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