

KIMERY *v.* SHOCKLEY.

5-965

290 S. W. 2d 442

Opinion delivered May 21, 1956.

APPEAL AND ERROR—ABBREVIATED RECORD—PRESUMPTIONS.—When an abbreviated record is free from apparent error, it will not be assumed that the omitted matter would require a reversal of the judgment.

Appeal from Garland Circuit Court; *C. Floyd Huff, Jr.*, Judge; affirmed.

Q. Byrum Hurst and *C. A. Stanfield*, for appellant.

Wood, Chesnutt & Smith and *Clayton P. Farrar*, for appellee.

GEORGE ROSE SMITH, J. This is an action brought by the appellees, real estate brokers, to recover a commission of \$1,050 under an exclusive listing contract by which the appellants employed the appellees to sell certain property. The jury returned a verdict for the plaintiffs.

The appellants concede that they would owe the commission if the property had been sold by the appellees or by any other broker, but they insist that under the particular wording of the contract they were entitled to sell the land themselves without liability to the brokers. The trouble with this argument is that the abbreviated record filed in this court contains nothing to show that the property was in fact sold by the owners themselves. When error appears in a record shortened without objection we are not to presume that the judgment is sup-

ported by the omitted matter, Ark. Stats. 1947, § 27-2127.6; but it goes without saying that when the abbreviated record is free from apparent error we cannot assume that the omitted matter would require a reversal of the judgment.

Affirmed.
