

DAVID TURNER V. WILLIAM O. ROSEWARREN, ET AL

5-4883

440 S.W. 2d 769

Supplemental Opinion on Rehearing  
Delivered June 9, 1969

[Original opinion delivered May 5, 1969, p. 798.]

**Appeal & Error—Reversal—Necessity of New Trial.**—Ordinarily, procedure in reversing judgments in law cases is to remand for another trial for it is only where it clearly appears there can be no recovery that it is considered proper to dismiss the cause.

Appeal from the Circuit Court of Johnson County; *Russell C. Roberts*, Judge; petition for rehearing, granted in part.

CARLETON HARRIS, Chief Justice. We find no merit in the petition for rehearing on the main case, but, in line with our decisions in *St. Louis Southwestern Railway Company v. Clemons*, 242 Ark. 708, 415 S.W. 2d 332,

and *Hayes Brothers Flooring Company v. Carter, Adm.*, 240 Ark. 522, 401 S.W. 2d 6, the cause is remanded for another trial, rather than dismissed. In *Hayes v. Carter, supra*, we said:

“Appellant asks that we reverse and dismiss, but, after due consideration, we think it is possible that the case has not been fully developed. In fact, our ordinary procedure in reversing judgments in law cases is to remand for another trial, rather than dismiss the cause of action. It is only where it clearly appears that there can be no recovery that we consider it proper to dismiss the cause. *Pennington v. Underwood*, 56 Ark. 53, 19 S.W. 108, and *Arkansas Natural Gas Company v. Gallagher*, 111 Ark. 247, 163 S.W. 791.”

It might be added that, in remanding this cause, we have given no consideration whatsoever to the so-called “petition for new trial.”

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