

BASSHAM *v.* RAILWAY COMPANY.

Opinion delivered January 27, 1894.

Appeal—Presumption.

Where a judgment is valid upon its face, and the evidence is not brought up for review, it will be presumed on appeal that the judgment was based on sufficient evidence.

Appeal from Fulton Circuit Court.

JOHN B. McCALEB, Judge.

Mandamus by Kansas City, Fort Scott & Memphis
Railway Company against Bassham, collector of Fulton

county. The facts are stated by the court as follows:

This appeal is from an order of the Fulton circuit court granting a writ of mandamus directed to appellant, who was the collector, commanding him to receive certain county warrants belonging to appellee, which had been barred by an order of the county court calling in county warrants for cancellation and re-issue, in payment of the taxes assessed against appellee. The record of the judgment of the circuit court granting the writ recites: "On this day this cause came on to be heard on its regular call, and both parties having announced ready for trial, and the defendant having filed his answer and exhibits, the motion heretofore filed by petitioner, as well as the petition praying this court to issue a writ of mandamus, etc., * * * and also the answer and exhibits of the defendant, together with all evidence introduced by both parties, being seen, heard and fully considered by the court, together with the argument of counsel for both parties, it is found by the court, from the pleadings and evidence in the cause, that the order of the county court barring said county warrants in said petition numbered and dated as follows, etc., * * * is insufficient and void. * * * It is therefore ordered, considered and adjudged by the court that a writ of mandamus be issued as prayed for by petitioner, etc., * * * to which finding and ruling the defendant at the time excepted, and, to save said exceptions, asked that the same be made of record, which is accordingly done, and thereupon the defendant prayed an appeal to the Supreme Court of the State of Arkansas which is granted."

Sam H. Davidson for appellant.

Wallace Pratt and Olden & Orr for appellee.

WOOD, J., (after stating the facts). There is nothing in the record proper to show error in the judgment

of the circuit court. The record recites that the court found from the "pleadings and the *evidence* in the cause." There was no motion for new trial, no bill of exceptions, no record of the evidence, no agreed statement of facts certified by the judge as the evidence upon which the court based its findings and judgment—none of the methods required by numerous decisions of this court for preserving and bringing before us matters *dehors* the record. The presumption, in the absence of a showing to the contrary, is in favor of the judgment. *McStea v. Mason*, 27 Ark. 395; *Worthington v. Welch*, 27 *id.* 464; *Fort Smith v. Yantis*, 35 *id.* 438; *Turner v. Collier*, 37 *id.* 528; *State v. Johnson*, 38 *id.* 568; *Wigley v. State*, 41 *id.* 225; *Bell v. Welch*, 38 *id.* 139; *Reid v. Hart*, 45 *id.* 41; *Riggan v. Wolf*, 53 *id.* 537; *Newton v. Askew*, 53 *id.* 476; *St. Francis County v. Lee County*, 46 *id.* 67; *Hershy v. Baer*, 45 *id.* 240; *Baltimore &c. R. Co. v. Trustees*, 91 U. S. 130.

Affirmed.
