

## KARATOFSKY v. FYBUSH.

Opinion delivered April 12, 1909.

APPEAL AND ERROR—SUFFICIENCY OF APPELLANT'S ABSTRACT.—Whether the trial court erred in refusing certain instructions asked by the appellant will not be considered on appeal if his abstract fails to set out the instructions which were given by the court.

Appeal from Garland Circuit Court, *W. H. Evans*, Judge; affirmed.

*Greaves & Martin*, for appellee.

The judgment should be affirmed:

1. Because the bill of exceptions does not purport to set out all the evidence introduced at the trial. 81 Ark. 238; 75 Ark. 76; 80 Ark. 79; 74 Ark. 553.

2. Because appellant has failed to comply with rule nine. Has brought into his abstract only one of the instructions given by the court, and the pleadings and evidence are not abstracted in such way as to give the court a full understanding of the questions to be presented. 78 Ark. 379; 88 Ark. 449.

HART, J. Appellees, Fybush Brothers, brought suit against appellant, J. Karatofsky, in the Garland Circuit Court to recover the sum of \$1,090.30, alleged to be due upon account for goods, wares and merchandise sold appellant by appellees.

There was a trial before a jury, and a verdict returned in favor of appellees for the sum of \$917.17. The case is here on appeal. The only assignment of error is based upon the action of the trial court in refusing to give a certain instruction asked by appellant. This instruction is set out in appellant's abstract, but it appears that other instructions were given by the court, and that they are not set out in appellant's abstract. Rule nine of this court requires that the instructions given, as well as those

refused, by the court should be set out. The rule was adopted for the purpose of facilitating the work of the court, and is a very salutary one.

Appellees have moved to affirm the judgment for non-compliance with this rule, and the motion will be granted. For cases in point, where the rule has been enforced, we refer to the cases of *Mine LaMotte L. & S. Co. v. Coal Co.*, 85 Ark. 123, and *Files v. Law*, 88 Ark. 449, in which earlier cases applying the rule are cited.

Judgment affirmed.

BATTLE, J., absent.

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