

PRITCHETT *v.* ROAD IMPROVEMENT DISTRICT No. 4.

Opinion delivered February 2, 1925.

## APPEAL AND ERROR—REVERSAL WITH DIRECTIONS TO ENTER JUDGMENT.—

Where this cause was remanded for a new trial for the reason that the undisputed evidence showed that appellee owed appellant a larger sum than allowed by the jury's verdict, and on a second trial the testimony was the same as on the first trial, the cause will be reversed and remanded with directions to the circuit court to enter judgment for the sum shown to be due with interest.

Appeal from Van Buren Circuit Court; *J. M. Shinn*, Judge; reversed.

*W. G. Riddick*, for appellant.

MCCULLOCH, C. J. This case has been here on a former appeal, and, as all the facts concerning it are stated in the former opinion (158 Ark. 285), it is unnecessary to restate them.

On the first trial of the issues the jury rendered a verdict in favor of appellant for the recovery of the sum of \$1,600, and on the appeal we held that the undisputed evidence adduced by appellant showed that he was entitled to recover a sum largely in excess of that amount, and we remanded the case for a new trial. Appellee did not introduce any testimony either on the first trial or the last, and the testimony introduced by appellant on the last trial was the same as that introduced on the first trial. On the last trial the verdict was in favor of appellant for recovery of \$1,500.

The same reasons given for reversal in the former trial call for a reversal of the judgment now appealed from. Our reason for remanding the case on the former appeal was that appellee might desire to introduce testimony, but, as no testimony was introduced on the retrial of the case, no useful purpose would be served by remanding the case again for a new trial.

The evidence is undisputed that appellant is entitled to the sum of \$3,387.19, the amount of the certificate of indebtedness given by the road commissioners to appellant, together with interest.

The judgment of the circuit court is therefore reversed, and judgment will be rendered here for the sum mentioned above, with interest at legal rate from the date of the filing of the claim in the circuit court, together with all costs of the proceeding, including the costs of this appeal, and the judgment thus rendered will be certified down to the circuit court for enforcement, in accordance with the statute winding up the affairs of the road district.