STONE *v.* GATHRIGHT.

4-9165 228 S. W. 2d 474

Opinion delivered April 3, 1950.

APPEAL AND ERROR.—If the litigant seeking affirmative relief does not abstract the evidence, nor rely upon testimony abstracted by the appellee, factual sufficiency will be presumed; and where there was no abstract of the motion for a new trial or the instructions, the Supreme Court will examine the record (as distinguished from the bill of exceptions) to determine whether error appears on its face.

Appeal from Howard Circuit Court; *Wesley Howard,* Judge; affirmed.

John P. Vesey, for appellant.

Howard Stone and *Bobby Steel,* for appellee.

GRIFFIN SMITH, Chief Justice. W. C. Gathright and others sued Edd Stone and his son, Guy Edd, alleging personal injuries and property damage because of young Stone's negligent conduct in driving his father's truck. It was alleged that the son, 18 years of age, was incompetent and inexperienced, and that this was known to the father, who had neglected to equip the truck with clearance lights. Aggregate demands were $1,100; the verdict was for $375.

Appellants' brief contains a statement of what they conceived the facts to be, but the testimony is not abstracted. There is also failure to abstract the motion for a new trial and the instructions.

There is no error on the face of the record. Appellants do not insist that the partial abstract of testimony made by appellees sufficiently presents the matters in controversy; but, irrespective of these deficiencies, a majority of the Judges think that the judgment, on the merits of the case, should be affirmed as to both appellants. It is so ordered.