

SETER *v.* GREER.

Opinion delivered November 13, 1911.

APPEAL AND ERROR—FAILURE TO BRING UP EVIDENCE—PRESUMPTION.—
Where the record in an equity case shows that it does not contain all

the evidence, it will be presumed on appeal that there was evidence to sustain the chancellor's finding and decree.

Appeal from White Chancery Court; *John E. Martineau*, Judge; affirmed.

J. N. Rachels, for appellant.

S. Brundidge, Jr., for appellee.

HART, J. A. B. Greer filed a petition under the statute to confirm his title to certain wild and unimproved lands situated in White County, Arkansas. The court entered a decree confirming the title of petitioner. At a subsequent term of the court the decree was set aside on motion of A. B. Senter, and he was allowed to make a defense to the petition for confirmation.

Upon final hearing, the chancellor entered a decree confirming and quieting the title to said lands in the petitioner, A. B. Greer, and Senter has appealed.

The decree appealed from recites that the cause was submitted to the court "upon the complaint of the plaintiff and the exhibits thereto; the answer and amendment thereto of the defendant; the intervention of A. P. Moody and the depositions of witnesses; testimony of witnesses in open court and the record, evidence and argument of counsel." The recitals in the decree, therefore, show that the cause was heard upon oral as well as written and record evidence. The oral testimony does not appear in the transcript at all. It is not brought into the record by bill of exceptions or otherwise.

"In a case where the record showed that it did not contain all the evidence, this court held that it would presume that the evidence was sufficient to sustain the findings and decree of the chancellor. This presumption in favor of the decree, the court said, 'prevails to the extent of curing every defect in the allegations of the pleadings which by reasonable intendment may be considered as having been proved.'" *Hardie v. Bissell*, 80 Ark. 74; *Beecher v. Beecher*, 83 Ark. 424; *Dierks Lumber & Coal Co. v. Cunningham*, 81 Ark. 427; *Jones v. Mitchell*, 83 Ark. 77; *Pirtle v. Southern Lumber Co.*, 98 Ark. 266.

It can not be said that the face of the record shows error; for the decree is responsive to the issues made by the pleadings and the evidence.

The decree will therefore be affirmed.