

SUBLETT *v.* SUBLETT.

Opinion delivered March 18, 1918.

APPEAL AND ERROR—FAILURE TO ABSTRACT—MOTION FOR NEW TRIAL.—

This court will not reverse a judgment for an error not appearing upon the face of the record, unless this error is assigned as a ground for a new trial.

Appeal from Fulton Circuit Court, *J. B. Baker*, Judge; affirmed.

Ellis & Jones, for appellant.

Kay & Northcutt, for appellee.

SMITH, J. Appellee recovered judgment in the court below upon the contract upon which the suit was based. This contract provided for a payment to appellee's wife of the sum of \$500.00, the same being the

consideration for her deed to appellant to a tract of land which she owned. The existence of the debt to appellee's wife was not denied but appellant questioned appellee's ownership of this debt and his right to maintain this suit for its collection. It is also argued in the brief that the suit was prematurely brought, as the debt had not matured at the time of the institution of the suit. In the brief of counsel for appellant it is also argued as ground for the reversal of the judgment that incompetent evidence was admitted and that certain of the instructions given were erroneous.

The motion for a new trial, however, has not been abstracted and we cannot therefore know which, if any, of these alleged errors were assigned as ground for the new trial in the court below. This court will not reverse a judgment for an error not appearing upon the face of the record, unless this error is assigned as a ground for a new trial, and the judgment of the court below will therefore be affirmed.
