HOUCH

v.

LYNCH.

The case of *Miller v. Ratliff*, 14 *Ark.* 419, and other decisions, that this court will not interfere with the finding of a jury upon the weight of evidence, approved.

Appeal from Crawford Circuit Court.

THE HON. FELIX J. BATSON, Circuit Judge.

S. F. Clark, for the appellant.

HANLY, J. This was an action which originated before a justice of the peace of Crawford county, founded on a detailed account for balance due, for goods, wares and merchandise, amounting to $64.51. On submission of the cause to the justice, there was a finding and judgment for the amount of the balance of the account sued for: from which, the appellant took an appeal to the circuit court of *Crawford county. The cause [*479 coming on for trial in that court, a jury was called, who, upon hearing all the evidence adduced on both sides, returned a verdict in favor of the appellee for the sum of $64.51, the amount o

the judgment recovered before the justice; upon which verdict, the court below rendered judgment. The appellant moved the court for a new trial, which being overruled, he accepted; setting out all the evidence adduced, and appealed to this court.

We will not state the evidence, for the reason that there were no instructions given or refused by the court, and the decision of the jury was upon the weight of evidence, which, in our judgment, was clearly in favor of the verdict.

A judgment may be reversed upon a motion for a new trial overruled, when there is a want of evidence of some material matter necessary to uphold the verdict; but because a verdict may appear to be against evidence, this court will not assume the power of dictating to juries, that they must believe evidence, against their own convictions of its truth. See *Miller v. Ratliff*, 14 *Ark. Rep.* 419, and the several decisions made at the present term on this point.[1]

The judgment of the circuit court of Crawford county, is, therefore, affirmed with costs.

Absent, Mr. Justice Scott.

1. On granting new trial on weight of evidence, see Howell v. Webb, 2-364; note 2.

Cited:—19-118; 26-145; 30-509.