

BUTTS VS. KING ET AL.

The decision in *Miller vs. Ratliff*, 14 Ark. 419; *Houch vs. Lynch*, 17 Ib. 478, and *Lindsay vs. Wayland*, Ib. 385; that this Court will not reverse the verdict of the jury unless there be a total want of evidence to sustain it, adhered to.

Appeal from the Circuit Court of Johnson county.

The Hon. FELIX J. BATSON, *Circuit Judge*.

MAY for the appellant.

CUMMINS & GARLAND for the appellees.

Mr. Justice HANLY, delivered the opinion of the Court.

This was an action of replevin in the *detinet* for the recovery of a horse, brought by the appellees against the appellant in

Butts vs. King et al.

[JULY.]

the Johnson Circuit Court. Plea of *non detinet*, and issue: a jury trial, and verdict and judgment for the appellees: motion for a new trial on the following grounds:

1st. Verdict against the evidence; 2d, verdict contrary to law; 3d, verdict contrary to instructions.

Motion for new trial overruled, and exceptions setting out all the evidence. Butts appealed.

There is nothing in the transcript before us showing that any instructions were moved for by either party, or given or refused by the Court: consequently, the other grounds for a new trial can only be looked to or regarded in 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 on the weight of evidence.

It is the uniform doctrine of this Court that a judgment may be reversed upon a motion for a new trial overruled, where there is a total want of evidence of some material matter necessary to uphold the verdict; but because a verdict may appear to be against evidence, or the weight of 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 vs. Ratliff*, 14 Ark. Rep. 419; *Houch vs. Lynch*, 17 Ark. Rep. 478; *Lindsay vs. Wayland*, *Ib.* 385.

The judgment of the Circuit Court of Johnson county is therefore affirmed with costs.

Absent, Mr. Chief Justice ENGLISH.