

UNION COUNTY VS. KELLY, AS S. COM'R.

On a reversal of a judgment of the county court on appeal to the circuit court, that court ought to set the case down for trial upon its merits, not remand it to the county court for trial.

*Appeal from Union Circuit Court.*

HON. LEN B. GREEN, Circuit Judge.

CARLETON, for the appellant.

Mr. Justice FAIRCHILD, delivered the opinion of the court.

Kelly, as common school commissioner for Union county, by petition to the county court, made claim to be paid out of the county treasury the amount of taxes that had been paid therein, from taxes assessed and collected on land in the six-

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teenth sections of the county, and which had been sold. The claim was founded of the 9th section, of chap. 154, of *Gould's Digest*. The county demurred to Kelly's petition, the county court sustained the demurrer, and Kelly appealed to the circuit court. That court reversed the judgment of the county court, but instead of setting the case down for trial, upon its merits, as it should have done on reversal of the judgment, remanded the case to the county court, with instructions to overrule the demurrer.

Such judgments from the probate court, under the statute regulating proceedings on appeals from that court to the circuit court, were held illegal in *Reagan vs. Mitchell*, 4 Ark. 630, and in *Dillard vs. Barnes*, 5 Ark. 302. In *Carnall vs. Crawford County*, 6 Eng. 622, this court adopted the same method of review of cases brought into the circuit court from the county court by appeal, and such judgments as the one in this case were pronounced to be reversible in *Clark County vs. Spence*, and *Clark County vs. Scott*, 21 Ark. 466 and 468.

The judgment of the circuit court of Union county is reversed, with directions to set the case for trial in that court upon its merits.

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