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St. L., I. M. & S. Railway Co. v. Murphy Bros.

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ST. L., I. M. & S. RAILWAY CO. V. MURPHY BROS.

1. PRACTICE: Bill of exceptions on overruling motion; presumption.

When there is no bill of exceptions showing upon what evidence the Circuit Court sustained or overruled a motion, this court will presume that the court ruled correctly.

APPEAL from Clark Circuit Court.

HON. H. B. STUART, Circuit Judge.

Dodge & Johnson, for Appellant.

“The party objecting to the decision must except at the time, etc., and time may be given to reduce the exceptions to writing, but not beyond the succeeding term.” Sec. 4694, Gantt’s Digest.

The words “exceptions taken and noted” were written in the bill of exceptions, but the clerk failed to enter the motion for new trial.

It was the duty of the Court to have granted the motion for nunc pro tunc order. The record should have been amended so as to speak the truth.

Williams & Battle, for Appellee.

The motion for a new trial is not incorporated in bill of

exceptions. 30 Ark., 585; 28 Ib., 450; 35 Ib., 536; Gantt's Dig., Sec. 4698; 21 Ark., 286; 26 Ib., 536.

ENGLISH, C. J. The complaint in this case was loosely drawn, and fancifully paragraphed, but substantially sets out a cause of action. Its formal defects were cured by the verdict.

Appellant took a bill of exceptions, setting out the evidence and instructions, but making no reference to a motion for a new trial.

At the next term it applied to the Court to cure this defect by a nunc pro tunc amendment of the bill of exceptions, which the Court refused. No bill of exceptions was taken to show upon what evidence the Court acted in refusing to sustain the application, and the presumption is in favor of the correctness of the ruling.

Affirms.

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