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MONTGOMERY COUNTY

LAW REPORTER

CONTAINING CHIEFLY

REPORTS OF CASES

DECIDED BY

THE COURTS OF MONTGOMERY COUNTY,

TOGETHER WITH ALL THE CASES ARISING IN
SAID COUNTY, DECIDED BY

THE SUPREME COURT OF PENNSYLVANIA,

FOR THE YEAR 1886.

VOL. II.

REPORTED BY

F. G. HOBSON,

OF THE MONTGOMERY COUNTY BAR.

NORRISTOWN, PA.:

1887.

THOMAS H. WENTZ vs. T. S. C. LOWE.

Pending a motion for a new trial on a promissory note, the Judge who tried the case died. Among his papers was found an order directing a new trial written at the Judge's dictation by the official stenographer, but never signed or filed. Held that this paper was outside of the record and failed to establish that a new trial had been granted by the former Judge.

ERROR to the Court of Common Pleas of Montgomery county.

Case on a promissory note tried before his Honor Judge Ross, which resulted in a verdict for the defendant.

The further facts are set forth in the opinion of the court overruling the motion for a new trial, delivered March 21, 1883, by BOYER, P. J.

I have read and considered with great care the charge of the court in this case, and I have not found any point which was not fairly and clearly presented to the jury.

The whole case turned upon a question of fact which, from the instruction and explanation of the court, the jury could not fail to comprehend. There was a conflict of testimony, and that conflict was clearly pointed out by the court in their charge. Upon that the jury have decided. Their verdict is the unanimous conclusion of twelve minds. No misconduct or undue influence is alleged. It may be that another jury might have come to a different conclusion. This is always a possibility where there is a conflict of testimony. But even if the court should think that the verdict was against the weight of the testimony, that would not be a sufficient reason to set aside the deliberate verdict of a jury after a fair trial.

It is said that had the Judge who presided at the trial survived, a new trial would have been granted; and it appears that he actually had prepared an order to that effect, but neither signed nor filed it.

It appears to have been written at his dictation by William M. Clift, the official stenographer of the court, who sometimes acted as amanuensis for the Judge. This paper was found among Judge Ross's private papers after his death, and by leave of my predecessor, Judge Stinson, placed on file.

I do not hesitate to declare that if I felt an assurance that his Honor Judge Ross had reached a final conclusion on this point, I should feel in a manner bound to carry it out. But the evidence of such intention on the part of Judge Ross to my mind is unsatisfactory. I find by the record that since the date of the paper, January

Wentz vs. Lowe.

16, 1882, Judge Ross held three Courts of Common Pleas, one of which was the stated adjourned court for argument, commencing February 6, 1882, another the regular term in March following, and he held court on the 10th of April, 1882, which was the last court held by him before his death.

I cannot resist the inference that if Judge Ross had finally concluded to grant a new trial in this case, he would have filed the paper, and that he had either never fully concluded to do so or had changed his mind after the paper had been prepared.

As after a careful search I can find nothing showing that the case was not fairly submitted to the jury upon the trial, nor anything in the evidence disclosing any injustice to the plaintiff other than what may arise from a conflict of testimony to one party or the other in all similar cases, the motion for a new trial is overruled.

George N. Corson, Esq., for plaintiff in error.

Charles Hunsicker, Esq., for defendant in error.

The opinion of the Supreme Court was filed May 10, 1886.

PER CURIAM.—This case turned on a question of fact. The evidence was conflicting, but it was submitted to the jury in a clear and correct charge. The plaintiff, who dealt with the People's Gas Light and Fuel Company as a corporation, cannot in this suit and in the manner proposed controvert its existence as such. Whether a new trial had been granted by either or both of the predecessors of the present Judge was to be determined by the record. The present court committed no error in holding all the outside papers failed to establish that fact.

Judgment affirmed.