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Trial-Motions for a Direct Verdict

TRIAL—MOTIONS FOR A DIRECTED VERDICT.—This action was brought for damages for injuries sustained by decedent while driving an automobile which collided with a train operated by defendant. At the close of the plaintiff's evidence the defendant filed a written motion for a directed verdict in its favor. Before any action was taken upon this motion, plaintiff filed a similar motion. The court then overruled the defendant's motion whereupon the defendant then moved the court to proceed with the trial before the jury and to permit the defendant to introduce his evidence. On the plaintiff's objection to the latter motion of the defendant, it was overruled. Thereupon the court sustained the plaintiff's motion for a directed verdict. The jury was then discharged and the lower court found for the plaintiff and judgment was rendered in accordance with the finding. Held, the filing of a motion for a directed verdict by each of the parties does not of itself have the legal effect of a waiver of a jury trial, but the trial must proceed before the jury upon an appropriate request of the party whose motion has been denied.[1]

There are two conflicting rules as to the effect of motions by both parties for directed verdicts. The rule prevailing in a majority of the states is that where each of the parties to an action requests the court to direct a verdict in his favor and makes no request that the jury be allowed to determine any question of fact, the parties will be presumed to have waived the right to trial by jury and to have constituted the court a trier of questions both of law and of fact.[2] The minority rule is that motions for directed verdicts by both parties do not constitute a waiver of the right to trial by jury even though no request is made to proceed with the jury trial.[3]

The principal case presents an interesting question for the Indiana lawyer for, as the opinion points out, the precise question has never been raised in this jurisdiction. Heretofore in Indiana, when the situation arose in which both parties to a suit, at the conclusion either of the plaintiff's evidence[4] or of all the evidence,[5] made simultaneous motions for directed verdicts, the courts held that such motions constituted a waiver of the jury and in effect a request that the cause be submitted to the court for its decision on the evidence that had been introduced. This obviously is a variation of the majority rule since it ignores the possibility that a party may request the trial to proceed before the jury.[6]

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[1] Michigan Central Railroad Co. v. Spindler (Ind. 1937), 5 N. E. (2d) 632.

[2] Beutell v. Magone (1895), 157 U. S. 157, 15 S. Ct. 566; see annotations 18 A. L. R. 1433 and 69 A. L. R. 633.

[3] Mechanics Savings Bank v. Polk County (1923), 195 Iowa 1142, 193 N. W 401, Sterrett v. Inter-State Trust Co. (1929), 140 Okla. 125, 282 P. 290.

[4] Deeter v. Burk (1914), 59 Ind. App. 449, 107 N. E. 304; Indianapolis v. Vaughn (1917), 65 Ind. App. 581, 117 N. E. 673, Kleine v. Houk (1922), 78 Ind. App. 146, 134 N. E. 872; Goings v. Davis (1923), 82 Ind. App. 231, 141 N. E. 473, McKinney v. Crawford (1927), 87 Ind. App. 431, 155 N. E. 185, Cooper v. Cooper (1935), 100 Ind. App. 252, 193 N. E. 722.

[5] Goings v. Davis (1923), 82 Ind. App. 231, 141 N. E. 473; Continental Casualty Co. v. Klings (1924), 82 Ind. App. 277, 144 N. E. 246; Connersville Hydraulic Co. v. City of Connersville (1930), 95 Ind. App. 234, 173 N. E. 641.

[6] Deeter v. Burk (1914), 59 Ind. App. 449, 107 N. E. 304, and Indianapolis T & T Co. v. Vaughn (1917), 65 Ind. App. 581, 117 N. E. 673, contain dicta intimating that if a proper request to proceed with a jury trial had been made, it should have been granted.

The principal case expressly modifies the rule set forth in the former Indiana cases and holds that where such motions are made by both parties, the party whose motion is denied may insist by appropriate request upon proceeding with the trial before a jury and such request must be granted. The principal case in definitely placing upon the rule of the former Indiana cases the limitation that the jury trial is not waived even though motions for directed verdicts have been made by both parties where an appropriate request is made that the trial continue, clearly places Indiana within the majority rule.

In limiting the rule of the older cases the court did not purport to overrule any of them, but held that they are distinguishable in that in none of the earlier cases was anything done by the party whose motion had been denied which would indicate that he did not elect to stand upon his motion and to waive the jury trial.

In the case of McKinney v. Crawford,[7] after both parties had filed motions for directed verdicts and appellee's motion had been sustained, appellants requested the withdrawal of their motion to instruct the jury which motion was denied. The appellate court of this state held that motions by both parties amounted to a request for a withdrawal of the case from the jury, and affirmed the lower court. It would seem that in the McKinney case something was done after the party's motion was denied which indicated that they wished to proceed with the jury trial. Yet the court refused to let the moving party proceed with his evidence. Hence it would seem that the McKinney case on this point has been overruled in spite of the language of the court to the contrary.

However, it must be remembered that in the principal case the court held that a party might by request insist upon proceeding with the trial after his motion has been denied only if his request is an appropriate one. This affords a basis of distinction between the principal case and the McKinney case. In the principal case the request was actually made to proceed with the trial, while in the McKinney case the only action taken by the moving party was that his motion for a directed verdict be withdrawn. Also in the principal case the request was made before the other party's motion had been ruled upon while in the McKinney case the request was made only after the moving party's motion for a directed verdict had been denied and the other party's motion had been sustained. If this is a valid basis of distinction, the McKinney case still is law in this state.

Hence the present rule in Indiana seems to be that where motions for directed verdicts are made by each of the parties to the suit, and an appropriate request is made for the trial to continue before the jury, such motions do not constitute a waiver of the trial proceeding before the jury. As far as the appropriateness of the request is concerned, under the principal case, the rule is that if an actual request is made to proceed with the jury trial, it is made in time even though the moving party's motion for a directed verdict had been denied. The writer suggests that even more liberality will be afforded the requesting party in view of the fact that the general rule in

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[7] (1927), 87 Ind. App. 431, 155 N. E. 185.

other jurisdictions is that a request to go to the jury is made in time, provided a verdict has not been entered for the opposing party.[8] McKinney v. Crawford should be kept in mind, for the exact status of the case is not definite.[9] Hence to be safe a lawyer should do something more than request the withdrawal of his motion for a directed verdict after the motion has been ruled upon.

The writer submits that the effect of the principal case is a salutary one. Heretofore in this state a lawyer for a defendant after the plaintiff's evidence has been introduced, even though he believed it insufficient to constitute a cause of action, moved for a directed verdict only with a great deal of uncertainty, since if he were mistaken about the effectiveness of the plaintiff's evidence and the plaintiff filed a similar motion for a directed verdict, the case would be taken from the jury and a verdict rendered for the plaintiff on his evidence. The principal case has made it clear that a party is entitled to proceed with the trial before a jury if he makes an appropriate request. It is somewhat unfortunate that the elements of an appropriate request have not been clearly set forth. However, the principal case should have the effect of cutting short trials in which there is clearly no meritorious cause of action.

O. E. G.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE.—Congress passed an act establishing a National Bituminous Coal Commission with power to set up code districts and separate boards for each district for the purpose of administering the codes contained in the act. By the code the boards were given power to fix the price of coal, as well as maximum hours of labor and minimum wages at the mines. The present actions were begun shortly after the act became effective and were consolidated in the argument before this court. The chief case was a suit by a stockholder to enjoin the corporation from complying with the provisions of the Code. Held, that mining is not interstate commerce and thus the regulation of hours of labor and wages by Congress was unconstitutional. Further, that the statute was not separable, so that the whole act including regulation of prices in the coal industry was unconstitutional.[1]

In view of the fact that there were three opinions in this case, it might be well to outline them. The majority opinion held that the sale of goods to be shipped in interstate commerce was interstate commerce and could be

[8] 18 A. L. R. 1449; 69 A. L. R. 637. The courts of New York allow a request to go to the jury if made any time before entry of judgment by the clerk, Brown Paint Co. v. Reinhardt (1914), 210 N. Y. 162, 104 N. E. 124. On this question there seems to be a tendency on the part of the courts not to lay down strict rules, but to hold that the requesting party must make his request at the earliest opportunity after the ruling of the court, Nead v. Hershman (1921), 103 Ohio St. 12, 132 N. E. 19. The opportunity of a party to make his request to go to the jury cannot be defeated by any quick action of the court, International Battery Co. v. Westerich (1918), 182 App. Div. 843, 170 N. Y. Supp. 149.

[9] Laredo Nat. Bank v. Gordon (1932), 61 F (2d) 906, cites the McKinney case to the effect that parties may not play fast and loose with the courts in withdrawing their motions after they have been ruled upon.

[1] Carter v. Carter City Coal Co. (1936), 56 S. Ct. 855.