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Trial—Statute Prescribing Rules for Directing Verdict Assumption of Judicial Power by Legislature

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articles provided that "each faction hereby binds and obligates itself to abide by and be guided by the finding of said board."

Appellants declined to abide by the award for several assigned reasons, among them being that the board of arbitration did not decide the first two of three questions submitted and which appellants insist were the basis of the answer to and decision of the third question.

The controversy was finally carried to the district association of the church where all matters were heard and it was determined by that body that appellees, acting as trustees, and the faction which they represented were the true trustees and congregation.

The court held that this action in most church congregations, in the absence of anything to the contrary, would be conclusive, the rules of the church being supreme in such matters, citing *Poynter v. Phelps*, 129 Ky. 381.

That the award was not void or ineffectual in so far as it decided and determined any of the questions submitted to the board of arbitration.

That the award of the board was much more favorable to the appellants than was their right, and, that the appellees having generously accepted the award, that the appellants had no grounds to complain and affirmed the judgment of the lower court sustaining the award.

TRIAL—STATUTE PRESCRIBING RULES FOR DIRECTING VERDICT ASSUMPTION OF JUDICIAL POWER BY LEGISLATURE.

The Supreme Court of Wisconsin in the recent case of *Thoe v. Chicago, M. and St. P. Ry. Co.*, 195 N. W. 407, held a statute, which prohibited the court from directing a verdict after the jury had been selected, to be unconstitutional as an unauthorized assumption of the judicial power by the legislature. The case involved a suit to recover damages for the death of the deceased. The evidence was clearly insufficient as a matter of law to sustain a verdict for the plaintiff.

In passing on the statute which prohibited the direction of a verdict, the court said, page 410: "If the power to determine the legal sufficiency of the evidence is a judicial power, then the legislature has exercised that power by determining in every case that the legal sufficiency of the evidence is to go to the jury. If this does not constitute a clear exercise of judicial power, it is difficult to imagine a case where the judicial power can be invaded." The legislature attempts to interpose the statute where the courts have had power to act from time immemorial, i. e., to direct a verdict at the close of the testimony if the evidence cannot from any point of view support a verdict for the adverse party.

The court went on to deny the right of the legislature to declare in advance that evidence is sufficient. Its sufficiency is purely a judicial matter for the court. The fact that even though the trial court is prohibited from directing a verdict, an unwarranted verdict of the jury can be corrected at a subsequent time in the proceedings cannot affect the constitutionality of the statute. An

infraction of the constitution is to be measured by its character and not by its size.

The Supreme Courts of both North Dakota and Minnesota have arrived, apparently, at opposite conclusions to that of the Wisconsin Court. The case of *Zimmerman v. Chicago and N. W. Ry. Co.*, 129 Minn. 4, involved the constitutionality of a statute which prohibited the direction of a verdict by the court at the close of the testimony if the opposite party objected. The court held that the statute was valid and was merely a regulation of procedure as the effect of an improper verdict could be corrected subsequently in the case.

A statute of North Dakota in exactly the same wording as the Minnesota statute was upheld in the case of *First National Bank v. Strauss*, 194 N. W. 900. In this case the direction of a verdict by the court over the objection of the adverse party was held to be error. The court does not discuss its reasons for upholding as valid the statute but seems to assume its validity. Neither does the Minnesota court in the above cited case fully consider the question of the validity of that statute except, as above stated, in briefly passing over it to declare it a regulation of procedure.

Since the submission of a case to a jury implies that the evidence is sufficient to sustain a verdict for either party, and in view of the fact that the determination of that sufficiency is a purely judicial matter, the Wisconsin doctrine seems supported by the better reasoning. The effect of such a statute is more than a mere regulation of procedure; it creates a presumption of the sufficiency of the evidence, which is a judicial matter only, and therefore invades the judicial field. The legislative branch of the government has no right to do this in the absence of constitutional authority.
