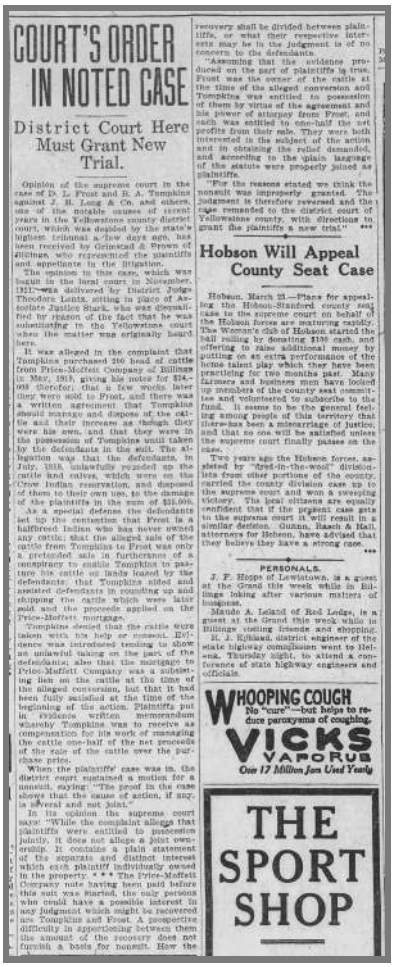

COURT'S ORDER IN NOTED CASE

District Court Here Must Grant New Trial.

Opinion of the supreme court in the case of D. L. Frost and B. A. Tompkins against J. H. Long & Co. and others, one of the notable causes of recent years in the Yellowstone county district court, which was decided by the state's highest tribunal a few days ago, has been received by Grimstad & Brown of Billings, who represented the plaintiffs and appellants in the litigation.

The opinion in the case, which was begun in the local court in November, 1921—was delivered by District Judge Theodore Lentz, sitting in place of Associate Justice Stark, who was disqualified by reason of the fact that he was substituting in the Yellowstone court when the matter was originally heard here.

It was alleged in the complaint that Tompkins purchased 200 head of cattle from Price-Moffett Company of Billings in May, 1919, giving his notes for $24,-000 therefor; that a few weeks later they were sold to Frost, and there was a written agreement that Tompkins should manage and dispose of the cattle and their increase as though they were his own, and that they were in the possession of Tompkins until taken by the defendants in the suit. The allegation was that the defendants, in July, 1919, unlawfully rounded up the cattle and calves, which were on the Crow Indian reservation, and disposed of them to their own use, to the damage of the plaintiffs in the sum of $35,000.

As a special defense the defendants set up the contention that Frost is a halfbreed Indian who has never owned any cattle; that the alleged sale of the cattle from Tompkins to Frost was only a pretended sale in furtherance of a conspiracy to entitle Tompkins to pasture his cattle on lands leased by the defendants; that Tompkins aided and assisted defendants in rounding up and shipping the cattle which were later sold and the proceeds applied on the Price-Moffett mortgage.

Tompkins denied that the cattle were taken with his help or consent. Evidence was introduced tending to show an unlawful taking on the part of the defendants; also that the mortgage to Price-Moffett Company was a subsisting lien on the cattle at the time of the alleged conversion, but that it had been fully satisfied at the time of the beginning of the action. Plaintiffs put in evidence written memorandum whereby Tompkins was to receive as compensation for his work of managing the cattle one-half of the net proceeds of the sale of the cattle over the purchase price.

When the plaintiffs' case was in, the district court sustained a motion for a nonsuit, saying: "The proof in the case shows that the cause of action, if any, is several and not joint."

In its opinion the supreme court says: "While the complaint alleges that plaintiffs were entitled to possession jointly, it does not allege a joint ownership. It contains a plain statement of the separate and distinct interest which each plaintiff individually owned in the property. * * * The Price-Moffett Company note having been paid before this suit was started, the only persons who could have a possible interest in any judgment which might be recovered are Tompkins and Frost. A prospective difficulty in apportioning between them the amount of the recovery does not furnish a basis for nonsuit. How the recovery shall be divided between plaintiffs, or what their respective interest may be in the judgment is of no concern to the defendants.

"Assuming that the evidence produced on the part of plaintiffs is true, Frost was the owner of the cattle at the time of the alleged conversion and Tompkins was entitled to possession of them by virtue of the agreement and his power of attorney from Frost, and each was entitled to one-half the net profits from their sale. They were both interested in the subject of the action and in obtaining the relief demanded, and according to the plain language of the statute were properly joined as plaintiffs.

"For the reasons stated we think the nonsuit was improperly granted. The judgment is therefore reversed and the case remanded to the district court of Yellowstone county, with directions to grant the plaintiffs a new trial." ***

Hobson Will Appeal County Seat Case

Hobson, March 23.—Plans for appealing the Hobson-Stanford county seat case to the supreme court on behalf of the Hobson forces are maturing rapidly. The Women's club of Hobson started the ball rolling by donating $100 cash, and offering to raise additional money by putting on an extra performance of the home talent play which they have been practicing for two months past. Many farmers and business men have looked up members of the county seat committees and volunteered to subscribe to the fund. It seems to be the general feeling among people of this territory that there has been a miscarriage of justice, and that no one will be satisfied unless the supreme court finally passes on the case.

Two years ago the Hobson forces, assisted by "fred-in-the-wool" diehards from other portions of the county, carried the county division case up to the supreme court and won a sweeping victory. The local citizens are equally confident that if the present case gets to the supreme court it will result in a similar decision. Gunan, Rasch & Hall, attorneys for Hobson, have advised that they believe they have a strong case. ***

PERSONALS.

J. F. Hoops of Lewistown, is a guest at the Grand this week while in Billings taking after various matters of business.

Maude A. Leland of Red Lodge, is a guest at the Grand this week while in Billings visiting friends and shopping.

R. J. Ejkland, district engineer of the state highway comiission went to Helena, Thursday night, to attend a conference of state highway engineers and officials.

Supreme Court Rules In Favor of Grimstad/Brown

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