

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 E. 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 appeared in the litigation.

The opinion in this case, which was heard in the last court in November, 1921, was delivered by District Judge Theodore Lentz, sitting in place of Associate Justice Clark, who was disqualified by reason of the fact that he was a subscriber in the Yellowstone court when the matter was originally heard there.

It was alleged in the complaint that Tompkins purchased 250 head of cattle from Price-Moffitt 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, 1921, unlawfully invaded on the cattle land notes, 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 \$22,000.

As a special defense the defendants set up the contention that Frost is a half-breed Indian who has never received any title; that the alleged sale of the cattle from Tompkins to Frost was only a pretended sale in furtherance of a conspiracy to enable Tompkins to pasture his cattle on lands leased by the defendants; that Tompkins aided and abetted defendants in counting up and shipping the cattle which were later sold and the proceeds applied on the Price-Moffitt 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-Moffitt Company was a substitute 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. Plaintiff 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 plaintiff's case was in, the district court sustained a motion for a mistrial, 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-Moffitt 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 mistrial. How the recovery shall be divided between plaintiffs, or what their respective interests may be in the judgment is of no concern to the defendant."

"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 proceeds 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 mistrial 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-Stratford 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 \$200 cash, and offering to raise additional money by putting on an extra performance of the horse talent play which they have been practicing for two months past. Many farmers and business men have looked up members of the county seat committee 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 "green-in-the-wool" officials 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. Gunn, Raeb & Hall, attorneys for Hobson, have advised that they believe they have a strong case.

PERSONALS

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

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

H. J. Kibbani, district engineer of the state highway commission, went to Helena Thursday night, to attend a conference of state highway engineers and officials.

Supreme Court Rules In Favor of Grimstad/Brown

Clipped By:



seabix1
Sat, Sep 5, 2020