

NEW TRIALS FOR IMPROPER RECEPTION OR REJECTION OF EVIDENCE.

1. Where the fact in dispute is proved otherwise than by the obnoxious evidence: *Stindt v. Roberts et al.* 5 D. & L. 460; 12 Jurist 518; 17 L. J. Q. B. 166).

2. Where the evidence was improperly received to explain a supposed latent ambiguity in a written document which the Court must itself construe without reference to the finding of the jury: *Bruff v. Conybeare*, 13 C. B. N. S. 263.

The ground on which new trials are ordered on account of the rejection of evidence relative to the issue is that the Court cannot weigh the degree of relevancy, or say what effect any fact that is relevant would have had on the minds of the jury.

In *Tyrwhett v. Wynne*, 2 B. & Al. 554, 558, Abbott, C. J., said: "Now, even supposing that in strictness these (mineral leases) were receivable in evidence, still that alone will not be sufficient, for it must be further shewn and substantiated, that if they had been received, they would have led to a probable conclusion in favour of the defendant; but I am clearly of opinion that they would not, and that the rejection was not of any importance as to the result of the verdict. No new trial, therefore, ought to be granted on this ground."

The rejection of evidence which, if admitted, would merely prove a fact sufficiently established by other evidence is no ground for a new trial: see *Edwards v. Evans*, 3 East, 451; *Alexander et al. v. Barker*, 2 C. & J. 133; *Mortimer v. McCallan*, 6 M. & W. 58, 75; *Doe Welsh v. Lungfield*, 16 M. & W. 496.

In *Crease v. Barrett*, 1 C. M. & R. 919, a well considered case, it was held that, where evidence has been improperly rejected, the Court will grant a new trial unless, with the addition of the rejected evidence, a verdict given for the party offering it would be clearly against the weight of evidence.

In *Hughes v. Hughes*, 15 M. & W. 701, 704, Alderson, B., said: "Where evidence has been improperly rejected or admitted, the Court will not grant a new trial, if with the evidence rejected a verdict given for the party offering it would be clearly against the weight of evidence, or if without the evidence received there be enough to warrant the verdict."

It is by sec. 45 of 13 & 14 Vict. cap. 36, enacted as regards Scotland, "That a bill of exceptions shall not be allowed in any cause before the Court of Session upon the ground of the undue admission of evidence if, in the opinion of the Court, the exclusion of such evidence could not have led to a different verdict than that actually pronounced, and it shall not be imperative on the Court to sustain a bill of exceptions, on the ground of the undue rejection of documentary evidence, when it shall appear from the documents themselves that they ought not to have affected the result at which the jury by their verdict have arrived."

It is now provided by rule 3 of Order 39, made under the English Supreme Court of Judicature Act, 1875, that, "A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless, in the opinion of the Court to which the application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof and direct a new trial as to the other part only."

This closely resembles s. 34 of our Administration of Justice Act, 1874, which enacts that "A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence unless, in the opinion