

1960

# Troy A. Nance and Thomas B. Hanley v. Sheet Metal Workers International Association : Reply Brief of Plaintiffs and Respondents and Cross Appellants

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

---

## Recommended Citation

Reply Brief, *Nance v. Sheet Metal Workers*, No. 9111 (Utah Supreme Court, 1960).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/3441](https://digitalcommons.law.byu.edu/uofu_sc1/3441)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT

of the  
STATE OF UTAH

FILED

NOV 21 1968

TROY O. NANCE, and  
THOMAS B. HANLEY,

Clerk, Supreme Court, Utah

Plaintiffs and Respondents  
and Cross-appellants, )

vs. )

Case No. 9111

SHEET METAL WORKERS )  
INTERNATIONAL )  
ASSOCIATION, an )  
unincorporated association, )  
Defendant and Appellant. )

REPLY BRIEF OF PLAINTIFFS AND RESPONDENTS  
AND CROSS APPELLANTS

I

THE COURT ERRED IN OVERRULING  
PLAINTIFFS' MOTION FOR A NEW TRIAL

Defendant argues strenuously that the  
court below properly overruled plaintiffs'

motion for a new trial, notwithstanding the fact that the court found that the jury's verdict was against the preponderance of the evidence. The short answer to this argument is that, as an examination of the transcript of the evidence adduces before the jury will disclose, the jury's verdict is not only against the weight or preponderance of the evidence but against the overwhelming weight of the evidence. If there were any doubt as to this, then, we submit, the case should be remanded to the court below for the purpose of making an express finding on the issue. This was the procedure followed by the Supreme Court of California in People v Robarge, 41 Cal 2d 628 262 2d 14. In that case, the Court said:

The final contention of the defendant is that the trial court misinterpreted its duty and

erroneously denied his motion for a new trial solely because it felt bound by the jury's decision on the evidence. While it is the exclusive province of the jury to find the facts, it is the duty of the trial court to see that this function is intelligently and justly performed, and in the exercise of its supervisory power over the verdict, the court on motion for new trial, should consider the probative force of the evidence and satisfy itself that the evidence as a whole is sufficient to sustain the verdict. (Citations omitted.) It has been stated that a defendant is entitled to two decisions on the evidence, one by the jury and the other by the court on motion for a new trial. (Citations omitted.) This does not

mean, however, that the court should disregard the verdict or that it should decide what result it would have reached if the case had been tried without a jury, but instead that it should consider the proper weight to be accorded to the evidence and then decide whether or not, in its opinion, there is sufficient evidence to support the verdict. (Citations omitted.)

In passing upon a motion for a new trial the trial judge has a very broad discretion and is not bound by conflicts in the evidence, and reviewing courts are reluctant to interfere with a decision granting or denying such a motion unless there is a clear abuse of discretion. In the present

case it clearly appears that the

trial judge misconceived its duty under the foregoing authorities and for that reason failed to give the defendant the benefit of a proper review of the evidence. In ruling on the motion, the court stated that it was mindful of the "rule that the jury are the sole judges of the credibility of the witnesses. It adheres to that rule to the extent that even though the Court disbelieves what the witnesses may have said, if there is sufficient evidence upon which the jury may base their decision, even though the Court sits as a thirteenth juror, it is not in a position to upset the verdict of the jury."

The statement by the trial

Judge that "the Court sits as

a thirteenth juror" has an unfortunate connotation; the phrase is misleading, and it does not properly describe the function of the trial judge in passing upon a motion for a new trial. As we have seen, it is the province of the trial judge to see that the jury intelligently performs its duty, and in the exercise of a proper legal discretion, to determine whether there is sufficient credible evidence to sustain the verdict.

After reviewing the testimony of Muldraw, who was the only witness to identify defendant positively, the trial court saw that there were inconsistencies that "were awfully hard for the

Court to believe." It compared his testimony with that of Manus, who had the same opportunity as Muldraw but was unable to identify defendant as the robber, and pointed out that Manus was a much better witness than Muldraw. The court then stated that, "Those are the things that were given to the jury, under the instructions of the Court, and under the law (were) the sole judges of the credibility of the witnesses and the determiners of the facts. If there is any evidence upon which they have the right to base their conclusion, this Court is not in a position where it could upset it." Other remarks clearly show that the trial



court disbelieved much of Muldraw's testimony, and entertained serious doubts as to the validity of his identification of defendant, but the court nevertheless indicated that it was bound by the contrary conclusion of the jury. It is therefore evident that the court failed to give defendant the benefit of its independent conclusion as to the sufficiency of credible evidence to support the verdict. (Citations omitted.)

The judgment and the order denying the motion for a new trial are vacated with directions to again hear and determine the motion for a new trial in accordance with the rules hereinbefore stated.

In People vs Hines, 128 Cal App 2d 421 275 P. 2d 585, the California District Court of Appeals followed the same procedure. It was shown to the satisfaction of the Appellate Court that the trial judge had followed an erroneous standard in passing upon a motion for a new trial. The Court of Appeals, following the Robarge case, vacated the order denying a new trial and remanded the case to the trial court to determine the issue in accordance with the rules which should govern trial courts in passing upon a motion for a new trial.

At this point we wish to emphasize that we are not urging this Court to re-evaluate the evidence. We are urging an error of law, -- that in passing upon the motion for a new trial, the court below misconceived its duty and applied an erroneous standard.

We have no quarrel with any of the decisions of this Court cited by the Defendant in its Reply brief. We do not contend, and never have contended, that a trial judge may set aside a verdict merely because he would have reached a conclusion different from that reached by the jury. This is the so-called "thirteenth juror" doctrine which has been repudiated both by this Court and, as shown by the quotation set forth above, by the Supreme Court of California. As said by Chief Justice Gibson in the Roberge case, supra, the phrase "has an unfortunate connotation and it does not properly describe the function of the trial judge in passing upon a motion for a new trial." As he took pains to point out in that case, however, it is not only the province of the trial judge but also his duty to see that the jury intelligently and justly performs its duty. **The point, we do urge,**

and urge most emphatically, is that where, as in this case, the trial judge is convinced that the verdict of a jury is against the weight of the evidence, then it is duty of the trial judge to grant a new trial.

Again we urge that if there is any doubt in this Court's mind as to whether the verdict is against the overwhelming weight of the evidence, the case, as to that issue, and as to that issue alone, should be remanded to the trial court for the purpose of making an express finding thereon.

Defendant seeks to distinguish the case of Gulf Power Co. vs Bagby, 113 L/a 739, 152 Po 23, on the ground that it is merely an application of the "thirteenth juror" doctrine. This we deny. The courts of California, which have in the strongest terms condemned that doctrine,

have none the less followed the rule of that case -- namely, that where it is manifest that a trial judge has applied an erroneous standard or rule of law in passing upon a motion for a new trial, then the error may, and should, be corrected on appeal.

In conclusion, we desire only to point out that, as stated by Mr. Justice Holmes in decision after decision, both on the Supreme Judicial Court of Massachusetts and on the Supreme Court of the United States, a trial by jury is not a trial by a number of laymen alone, but a trial by laymen, guided and supervised by the judge. Of course, the judge should and must not usurp the functions of the jury, or impose his personal opinion as against its verdict; otherwise a trial by jury would be meaningless. But on the other hand, he cannot abdicate his duty to see that the jury

justly and intelligently performs its function. In the present case it is manifest that the judge of the court below was convinced that the jury had not done so. Again, we reiterate that if there is any doubt as to this, the case should be remanded to the trial court for an express finding on the subject. The trial judge is in a far better position than anyone else to determine this matter, having heard and seen the witnesses. We cannot, of course, forecast what his finding will be. But we are convinced that anyone who heard the evidence and has the training, skill, experience and ability to evaluate it, could come to but one conclusion -- that the verdict is against the overwhelming weight of the evidence.

## II

### THE COURT BELOW PROPERLY AWARDED EXEMPLARY DAMAGES FOR PLAINTIFFS' WRONGFUL EXPULSION

There is but one other contention raised

by Defendant in its Reply Brief, namely, the contention that the Court below improperly awarded exemplary damages for plaintiffs' wrongful expulsion because this issue should have been left to the jury, which requires comment. This contention is palpably without merit. As we pointed out in our earlier brief, the parties stipulated that the issue as to plaintiffs' wrongful expulsion should be left to the decision of the Court. This necessarily implied that the court was to decide the question of what punitive damages, if any, was to be awarded for the arbitrary and malicious actions of the Defendant in procuring Plaintiffs' expulsion.

The court did not award any punitive damages for malicious or arbitrary action of the defendant subsequent to the expulsion. Therefore, the award of punitive damages for Defendant's malicious and arbitrary

actions in causing Plaintiffs to be expelled should be considered as outside the issues to be submitted to the jury, and one to be decided exclusively by the court. Otherwise all the evidence previously adduced before the court on the issue of wrongful expulsion would have to be again submitted before the jury.

Furthermore, the question as to what, if any, pecuniary damages should be awarded because of Plaintiffs' wrongful expulsion was one peculiarly within the province of the court when it was called upon to decide the issue as to whether Plaintiffs' expulsion was wrongful. All of the evidence as to Defendant's actions leading to and including Plaintiffs' expulsion was adduced before the court: none before the jury. The Court, and the Court alone, was in a position to decide whether Defendant had



acted arbitrarily and maliciously in procuring Plaintiffs' expulsion. The jury was in no position to do so.

### CONCLUSION

It is respectfully submitted that the judgment of the court below should in all respects be affirmed, except, insofar as it denies Plaintiffs' recovery of compensatory and actual damages for acts of Defendant and the officers committed after Plaintiffs' expulsion, and as to those matters and those matters alone, the cause should be remanded for a new trial, or for determination by the trial court whether a new trial should be granted in accordance with the rules which should guide a trial court

**in passing on a motion for a new trial.**

**Respectfully submitted,**

**James P. McCune  
53 North Main Street  
Nephi, Utah**

**A. M. Dreyer  
109 South Third Street  
Las Vegas, Nevada**

**Attorneys for Plaintiffs and  
Respondents and Cross  
Appellants**