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GEO. E. ELWELL EDITOR.
GEO. C. ROAN, FOREMAN.

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THE COLUMBIAN,
Bloomsburg, Pa.

FRIDAY, MAY 3, 1895.

VANDERSLICE VS. SNYDER.

A New Trial Refused by Judge Rice.—Opinion of the Court.

In disposing of this rule we shall first consider the reasons alleging errors in the admission and rejection of testimony.

FIRST.

As we understood the question raised by the offer, it was whether a composite photograph of several genuine signatures might be put in evidence for purposes of comparison with the disputed signature. In his valuable work, A Manual of the Study of Documents, Dr. Persifor Frazer says: "Composite photography is a method of obtaining the essence of a number of objects, and (in so far as those objects are typical of similar phenomena) of recording the relations of things to each other, and the effects produced by a certain force or certain forces on matter." p. 125. In an earlier part of the same work (p. 111) the learned author says: "If it be conceded that the result of an effort made by a living being to repeat an action it has become habituated to make it is within certain limits uniform, then the way is clear to study these results and to obtain from their average the ideal which each of these actions or series of actions has tended, probably without complete success, to produce. If we could divide such an ideal into three component parts, A., B. and C., and if we found that out of thirty efforts A has remained constant in twenty five, B in twenty five, and C in twenty five; while A, B and C have only appeared together in fifteen cases out of thirty, we are justified in concluding that these fifteen cases though they represent but half the whole number of results constitute in reality the ideal which the agent has always intended to produce." The purpose then of making a composite photograph of a number of genuine signatures is to show the salient elements of the various signatures, and the result is claimed to be the ideal signature, or near it, which the writer tried to make and had in his mind, but at no one time ever succeeded to make perfectly. This is more fully explained in the testimony of Dr. Frazer, from which we quote: "The Court: Then in examining as to the genuineness of the signature you by this method obtain what you consider a standard? A. An ideal. The Court: An ideal with which you compare the disputed signature? A. Not I, but—Q. If you were to determine the question yourself? A. If I were permitted to determine the question it would aid me greatly in determining what were the characteristic points and what were the accidental variations; in what part of the signatures given to me for examination there were accidental variations and in what parts there were comparitive agreements with a signature in dispute. The only object of such a standard, as your Honor properly calls it, is to enable somebody, whoever has the power of judging, to compare that ideal with the signature in dispute." We have not stated at all fully the principles of composite photography, much less the details of their application in cases of disputed handwriting, yet we think we have fairly stated the purpose of the composite as evidence. The question thus presented does not, in our opinion, require a discussion of the arguments for and against the reliability and value in a jury trial of such evidence as it might if the law upon the subject of the comparison of handwriting were not so well settled in Pennsylvania, that (1) the comparison is to be made by the jury between the disputed paper and other well authenticated writings of the same party; (2) the test documents to be compared should be established by the most satisfactory evidence before being admitted to the jury. Travis vs Brown, 43 Pa., 9. Even a letter press copy has been held not admissible for the purpose. Cohen vs. Teller, 93 Pa, 123. After a careful reconsideration of the question our opinion that the admission of the testimony would be a departure from well settled rules remains unchanged.

SECOND.

Prior to the execution of the release Agnes Vanderslice would have been incompetent to testify against the defendant as to any matter occurring prior to the death of Mary Snyder, for the reason that as a distributee of the estate of Mary G. Vanderslice, her mother, she had an interest adverse to the right represented by the defendant. But the statute provides that such person not being otherwise disqualified may become fully competent for either party by a release or extinguishment in good faith of his interest upon which good faith the trial judge shall decide as a preliminary question. Act of May 23rd 1887, P. L. 518. It is suggested that she is not bound by the release, but we cannot agree with the counsel in this position. We discover no evidence to warrant it, nor is it the case of a person selling his title and his testimony with it. The right of the estate of Mary G. Vanderslice in and under the paper in question does not depend in any degree upon the assignment or release, but is entirely complete without it. The case comes within the rule which existed prior to the statute that where an action is brought by an executor or administrator on behalf of an estate, a legatee or distributee who has been absolutely paid his legacy or has released or assigned all interest in the verdict, is competent. Miller on Competency of Witnesses, 58; Heft vs. Ogle, 127 Pa., 244, and cases cited. After this rule was argued the defendant's counsel, upon notice to the plaintiff's counsel, submitted to me a copy of the testimony, or a portion thereof, of Agnes Vanderslice given before the auditor which it is claimed is inconsistent in some particulars with that given by her on the trial. Clearly we cannot consider this upon the ground that it is after discovered. Whether it be offered to prove a fact or to impeach the witness by proof of contradictory statements, it was available at the trial and if offered then it might possibly have been explained. To say nothing of the rights of the parties, it was due to the witness that she should have an opportunity to explain. 1 Gr. Ev., Sec. 462.

THIRD and SEVENTH.

The purpose of the offer of the will of Mary Snyder was to show her disposition towards Daniel Snyder and his creditors. We think the court went to the extreme limit in admitting testimony as to the acts and declarations of Mary Snyder for this purpose, but the testimony admitted related to acts and declarations so near the time when the paper in question bears date as to tend to show the improbability of her having executed it, but the will was signed two years afterwards and was too remote from the transaction to throw any light upon the question. Still more clear is it that the account of the executor of Mary Snyder was not competent evidence for the purpose for which it was offered. The value of her estate in 1877 might possibly have been a pertinent fact, but its value in 1890 clearly was not and the account filed in 1890 would not even tend to show its value in 1877.

EIGHTH.

We do not think that there can be any doubt that Mr. Funk was an incompetent witness as to the facts referred to in the defendant's offer on page 84 of the notes of testimony to which we assume this reason relates. The offer includes evidence of conversations had prior to the death of Mary G. Vanderslice not in the presence of any person adverse in interest to Mary Snyder or of any one who was called to testify in behalf of the estate of Mary G. Vanderslice, and as a legatee under the will of Mary Snyder the witness was interested adversely to the right represented by the plaintiff. The fact that these conversations were had in presence of witnesses who were called in behalf of the defendant would not make the witness competent under the act of 1891. Toth's estate, 150 Pa., 261, Cake vs. Cake, 162 Pa., 584. Krumrine vs. Grenoble, 165 Pa. 98, Thomas vs. Miller, 165 Pa., 193.

The remaining reasons allege misconduct an the part of one of the jurors, (1) in forming and expressing an unalterable opinion on the merits before the close of the case; (2) in permitting other persons, not jurors, to converse with him concerning the merits of the case in such language as to prejudice him against the cause of the defendant, and then accepting an invitation to drink at their expense. It is not alleged that the parties to the case were in any way concerned in the matter, but we do not think it can be questioned that if the statements of fact contained in the affidavits upon which the rule was granted be true there was such misconduct on the part of the juror as would require the granting of a new trial. The difficulty is not in the sufficiency of the facts alleged, but in the proof. The material allegations are emphatically denied by the juror, and as to the conversation on Friday evening he is corroborated by two men with whom he is alleged to have been talking, and as to the conversation on Saturday morning by a man who is alleged to have been in the bar room. None of the witnesses on either side appear to have any pecuniary interest in the case or to be connected in any way with any of the parties. It is true that the witnesses called to corroborate the juror were subpoenaed on the trial for the plaintiff, but, on the other hand, one of the witnesses who swears to the charges was subpoenaed and testified on the trial for the defendant. No such interest is shown as would of itself entitle the testimony of one to less weight than that of the other. It is alleged that the juror is an incompetent witness on the rule for a new trial, but this objection is overruled. While the testimony of jurors is not admissible to impeach their verdict upon the ground of their own misconduct it is admissible to disprove an allegation of misconduct. Because of the accusation against him and the proceedings to punish him for contempt the juror is an interested witness, and if the denial of the allegations rested on his testimony alone we might well say that the evidence in support of the rule preponderated. But, as we have suggested, he is corroborated by other witnesses and without rejecting them as unworthy of belief we are unable to say that the evidence in support of the rule so clearly preponderates as to justify the court in setting aside the verdict and subjecting the parties to the expense and delay incident to a retrial of the case. The remarks of Judge Dana in the case of Lacoe vs. Sherwood, 6 Luz. Leg. Reg., 147, might well have been written for the present case with the qualification that the conversations alleged here were not with a party to the case. "It is gross misbehavior for any person to speak to a juryman or for a juryman to permit any person to converse with him respecting the case he is trying, at any time after he is summoned and before the verdict is delivered. It is a practice which corrupts one of the sources of justice and is to be resolutely repressed and when detected punished by the courts. It must be known that a party may lose but cannot gain by conversing with a juror after he is sworn unless it be open and by permission of the court; that if the verdict be against him it will stand; if for him it will be set aside. But, in view of the serious nature of the accusation it must not be forgotten that the jurors have rights as well as parties litigant and are neither to be presumed or held guilty of misbehavior and their verdict set aside without satisfactory proof of the charge. To yield to accusations against them lightly made or without strong proof would weaken if not bring into contempt that useful and indispensible institution in the administration of justice: Rogers J., in Com. vs. Flannagan, 7 W. & S., 421. * * * * There is some evidence of conversation between one of the jurymen and the defendants, or one of them, but this is specifically and positively denied by the juror and the parties charged. We cannot say that the fact is so far established as to warrant the court in setting aside the verdict."

We do not think much importance should be attached to the remark alleged to have been made by the juror in the dining room. The remarks which he admits he made to Mr. Fowler even if made in reply to an inquiry were improper and in disregard of the admonition of the court. But it is to be observed that they were not made to a party or any one interested in the case and taken as a whole do not clearly show a prejudgment—"a strong disposition to favor the one side or the other, a determination to find in one way let the evidence be what it will." McCausland vs. McCausland, 1 Y., 372.

Upon a careful review of the whole case we find no sufficient reason for setting aside the verdict of the jury, therefore the rule is discharged.

CHARLES E. RICE,
Pres't Judge 11 Jud. Dict.
Specially presiding.

CHARTER NOTICE.

Notice is hereby given that an application will be made to the Governor of Pennsylvania, on the 24th day of May A. D. 1895, by William A. Marry, Samuel H. Kaercher, Edwin C. Price, E. P. Hunter, Edward Shillman, and others, under the Act of Assembly entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation to be called the "Schuylkill Telephone Company," the character and object of which is the constructing, maintaining and leasing lines of telegraph for private use of individuals, firms, corporations, municipal or otherwise for general business, and for the transaction of any business in which electricity over or through wires may be applied to any useful purpose in the counties of Schuylkill, Columbia and Northumberland, and for these purposes to have, possess and enjoy all the rights, benefits and privileges of said Act of Assembly and supplements thereto.

C. M. CLEMENT,
Solicitor.

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