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Damages

Edgar I. King

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does not weigh the evidence. It will not review the determination that the verdict is against the weight of the evidence. However, in a case where the Supreme Court has found that there is sufficient evidence of second degree murder and has remanded the case to the court of appeals to pass upon the weight of the evidence, the court of appeals has no power to modify the verdict and make a finding of manslaughter in the first degree. The case must be returned to the common pleas court for a new trial.⁵⁷

*State v. Sholiton*⁵⁸ raised the question of the effect of the death of the defendant pending appeal when counsel for defendant had filed a motion to abate the criminal prosecution and all proceedings in trial and appellate courts, and the prosecutor had filed a motion to dismiss the appeal. It was held that there is no abatement. However, upon motion to dismiss the appeal, the case becomes moot and is properly dismissed. Upon the dismissal of the appeal, the judgment of the trial court remains in full force and effect.

MAURICE S. CULP

DAMAGES

As is usual, most of the expressions by the courts of Ohio during the past year on the subject of damages have been confined to bare statements that the evidence did or did not support the award and that certain evidence was or was not too speculative for the jury to consider. Two cases, however, are of at least passing interest.

In *Maus v. New York, Chicago & St. Louis RR. Co.*¹ a court of appeals held that it was proper for the trial court to refuse a requested instruction to the jury that "any amount received by the plaintiff as compensation for personal injuries is exempt from federal income taxation, and you must take this fact in consideration in arriving at the amount of your verdict." The propriety of the jury giving consideration to the non-taxable features of a verdict is a question which is being raised with considerable frequency in trial courts over the country. It is, however, a question which has been passed upon by the courts of last resort in few jurisdictions. The court in the present case was of the opinion that to give such an instruction to the jury would "so confuse the ordinary jury with technical tax questions as to defeat the purpose of a trial."² The refusal of the instruction is subject to question. The necessity of paying federal income taxes is a matter of

⁵⁷ *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955).

⁵⁸ *State v. Sholiton*, 128 N.E.2d 666 (Ohio App. 1954). The court expressed no opinion upon the liability of the defendant's estate for the payment of costs in the criminal proceeding since that issue was not presented by this case.