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Evidence--Admissible for One Purpose, Inadmissible for Another--Limitation of Effect

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Evidence—Admissible for One Purpose, Inadmissible for Another—Limitation of Effect. — In an action on an insurance policy plaintiff introduced in evidence a card mailed plaintiff by defendant insurer, referring to payment of ten dollars on “your recent claim.” In the presence of the jury, defendant objected, on the ground that waiver had not been pleaded specially, as required by statute¹ and plaintiff stated that he thought the evidence proper to show the balance due on the policy. Defendant never sought, by instruction or otherwise, to limit the effect of the evidence to the issue of the balance due. At the conclusion of the evidence defendant moved to strike the testimony as to payment. In overruling the motion, the trial court remarked, “I think it can go in for what it is worth, not in particular as a waiver of defenses.” Defendant claimed prejudicial error in that this statement was not in the presence of the jury, who knew of no limitation as to the purpose of the evidence. Held, the objection and answer in their presence sufficiently apprised the jury of the limitation so that they could not have been misled as to the purpose of the evidence to the prejudice of defendant. Leftwich v. Inter-Ocean Casualty Co.²

Evidence admissible for one purpose, but inadmissible for others, is generally admitted even though the jury possibly may use it erroneously for the wrong purpose,³ unless the risk of confusion exceeds the advantage of using it.⁴ However, the court upon proper application should limit the effect of the evidence by adequate instruction.⁵ Such instruction suffices to limit the effect of the evidence.⁶ By the better opinion, the opponent of the evidence must ask for the instruction or he will be deemed to waive it as unnecessary for his protection.⁷

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¹ W. Va. Code (Michie, 1937) c. 56, art. 4, § 22.
² 17 S. E. (2d) 209 (W. Va. 1941).
⁶ Sprinkle v. Davis, 111 F. (2d) 925 (C. C. A. 4th, 1940); 1 Wigmore, Evidence § 13.
⁷ Adkins v. Brett, 184 Cal. 252, 193 Pac. 251 (1920); Pegg v. Warford, 7 Md. 632 (1855); Commonwealth v. Fect, 235 Mass. 562, 127 N. E. 602 (1920); St. Louis v. Worthington, 331 Mo. 182, 52 S. W. (2d) 103 (1932); 1 Wig-
Judge Kenna concurred in the result, in the instant case, because defendant alone, not plaintiff or the court, had the duty to limit the effect of the evidence, and he failed to ask for an instruction, the general objection alone not barring the evidence since it was admissible to show the balance due. He did not argue however that the colloquy between the trial judge and the attorneys as to the purpose of the evidence prevented the jury’s being misled, but asserted that such a proposition is “a wide departure from well settled principles of jury deliberation and that if followed hereafter, the consequence will be quite confusing.”

The jury may occasionally but frequently and indeed usually, it does not understand the effect of objections and statements of attorneys. It depends upon the court’s instructions to learn the effect of the claims and arguments of counsel. No authority has been cited or found in support of the majority opinion that objections and statements of counsel may sufficiently apprise the jury as to the effect of evidence. It is submitted that the approach of the concurring opinion is more reasonable than that of the majority opinion.

H. L. W., Jr.

PLEADING AND PRACTICE — NONSUIT AFTER MOTION TO DIRECT A VERDICT. — Issue was joined on a plea of “not guilty” in an action of trespass on the case, and a jury was impaneled to try the case. After the plaintiff had introduced his evidence, the court retired to chambers where the defendant moved for a directed verdict. Before the court directed the jury to return the verdict for the defendant, but after it had sustained the motion, the plaintiff moved for a nonsuit, but was denied. Held, that this was an error, thus permitted a nonsuit to be taken after the court had sustained a motion to direct. Lykens v. Jarrett.1

At common law a party could take a nonsuit at any time before the verdict.2 The West Virginia statute has limited the time for a nonsuit,3 requiring it to be taken before the jury retires from the bar. Where the case is heard by the court in lieu of a jury, this statute has been construed to mean that the nonsuit must be

1 Lehtwi.ch v. Inter-Ocean Casualty Co., 17 S. E. (2d) 209, 213 (W. Va. 1941).
3 W. VA. CODE (Michie, 1937) c. 56, art. 6, § 25.