

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal Dagnino v.
Bellotti from the Supreme Court of Gibraltar ;
delivered July 16th, 1886.*

Present :

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

THEIR Lordships do not think it necessary to call upon the counsel for the Respondent.

This is an appeal against a judgement and decree of Her Majesty's Supreme Court of Gibraltar, dated the 2nd of June 1885, in which, in an action for goods sold and delivered, judgement was entered for the Respondent, the Plaintiff, for the sum of 20,842 pesetas, together with the costs of suit. By the Charter of Justice of the Court of Gibraltar, that Court consists of a single Judge, and it is provided that "all issues of fact arising in civil suits, or actions depending in the said Court, shall be tried and decided by the said Judge and three assessors to be appointed as hereinafter mentioned, until otherwise provided for by law; and that the verdict of the said Judge and assessors, on the trial of any such issue, shall be according to the majority of votes, but if such votes shall be equally directed, then according to the opinion of the said Judge; and every such verdict shall be delivered in open Court by the mouth of the said Judge." By the same Charter a provision is made for an appeal to Her Majesty in Council in certain cases, and it is also provided that on

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trials before the Judge and assessors in appealable cases the evidence given in the case shall be recorded. By another portion of the Charter a power is given to make Rules of Court, and by one of those rules it is provided: "That all
 " judgements shall be promulgated at the
 " expiration of eight days from the time of
 " their being pronounced, and in case of a trial
 " by the Judge and assessors, or by a jury,
 " each party shall be allowed four clear days
 " after Judgement pronounced in which to
 " move the Court, if in term, or take out a
 " summons before the Judge if in vacation, for
 " a new trial, upon such grounds alone as new
 " trials are granted upon by the Courts at
 " Westminster, giving two clear days' notice of
 " the motion or the summons."

In the present case it is contended that the judgement was wrong, because it gave effect to a verdict which was not warranted by the evidence. If the verdict was not warranted by the evidence, the case fell within the rule which has just been read, which states that the party may move for a new trial. The proper course for the Appellant to have adopted was, if he considered that the verdict was not warranted by the evidence, to move the Court for a new trial. He has not exhausted the remedies which the rules and practice of the Court directed should be observed in cases where a verdict of the Judge and assessors is objected to upon the ground that it is not warranted by the evidence. It would be very inconvenient if parties, without moving the Court for a new trial, could be at liberty to ask Her Majesty in Council to set aside the judgement upon the ground that the verdict was wrong, without having taken that course which is pointed out by the rules made in pursuance of the Charter to be adopted in the case of an objection to a verdict. The

parties may be put to very great expense by an appeal to Her Majesty in Council in a case in which that expense might be avoided by adopting the course of applying to the Court below; and it would be very inconvenient if the parties could come here and ask Her Majesty in Council to reverse that judgement without going in the first instance to the Judge who had seen the witnesses and knew the whole of the circumstances of the case, and applying to him to have that verdict reviewed.

Her Majesty cannot alter the verdict or set it aside, and their Lordships are of opinion that they cannot advise Her Majesty to direct a new trial, the parties not having applied to the Court in the regular course instead of coming here.

Their Lordships will therefore humbly recommend Her Majesty to affirm the judgement of the Court below. The Appellant must pay the costs of this appeal.

