

LAFLIN *v.* INTERSTATE CONSTRUCTION COMPANY.

Opinion delivered June 23, 1930.

1. APPEAL AND ERROR—ERROR AS TO NOMINAL DAMAGES.—In the absence of a showing of actual damages, a judgment will not be remanded for a new trial for a technical error depriving appellant of his right to nominal damages.
2. APPEAL AND ERROR—CONCLUSIVENESS OF VERDICT.—A verdict on conflicting evidence is conclusive, as the jury are the sole judges of the credibility of witnesses and the weight of the testimony.
3. APPEAL AND ERROR—ERROR AFFECTING NOMINAL DAMAGES.—Where the plaintiff in an action of trespass was clearly entitled to nominal damages, error of the court in refusing to direct a verdict in plaintiff's favor for at least nominal damages will not call for a new trial, but the judgment will be reversed and judgment entered in her favor for all the costs incurred, including the costs of the appeal.

Appeal from Polk Circuit Court; *B. E. Isbell*, Judge; reversed.

W. N. Martin and *Alley & Olney*, for appellant.

Minor Pipkin, Daily & Woods and *C. W. Knott*, for appellee.

BUTLER, J. The appellant brought suit in the Polk Circuit Court for alleged damages for trespass of land owned by her. The case was submitted to a jury under proper instructions and on conflicting testimony. From a verdict and judgment adverse to her, appellant has prosecuted this appeal on the ground that the court should have directed a verdict in her favor under the undisputed facts in the case, because under any view of the testimony, she would be entitled to nominal damages.

It is well settled that in the absence of a showing of actual damages a judgment will not be reversed and remanded because of a technical evasion of some right which would result in the assessment of nominal damages.

The proof is undisputed that the appellant was the owner of the land over which the highway was built, and that a small house was occupied for a time as a blacksmith shop by the persons building the highway. There is testimony on behalf of the appellant tending to show that the house was damaged by the appellee in the construction operations and her husband, who testified as her agent, testified that the damage amounted to as much as \$600. There was also some testimony to the effect that some rock had been piled on appellant's land and brush and stumps taken from the right-of-way and burned, the fire from which spread to, and damaged some young timber; also, that a quantity of rock was taken from the appellant's land and used in the construction of the highway and forest roads cut through her timber for the purpose of moving rock from her lands; that a stone crushing equipment was installed upon said land without appellant's consent and was operated thereon and a quantity of broken rock left near the place where it was situated, but it was not shown in what particular or to what extent the appellant's land was damaged by the alleged unauthorized acts of appellee.