

SIMMONS v. SMITH.

PRACTICE—*When evidence conflicting.*—It is the province of the jury to weigh the evidence and find the facts, and this court will not disturb that finding in doubtful cases, or where the evidence is conflicting.

APPEAL FROM DREW CIRCUIT COURT.

HON. HENRY B. MORSE, *Circuit Judge.*

Gallagher & Newton, for Appellee.

GREGG, J.—This is an action of assumpsit, brought by the appellee against the appellant, in the Drew Circuit Court, for \$617.61½, for so much money received by the appellant of commissions due the appellee as the administratrix of the estate of John Smith, deceased.

The appellant plead non-assumpsit, payment and set-off, upon which issues were formed; a trial was had before a jury; verdict and judgment for the appellee for \$617.61½.

The appellant moved for a new trial, because the verdict was contrary to the law, the evidence, the instructions of the court, and the damages assessed were excessive.

The court overruled the motion; he excepted and appealed.

The evidence was conflicting; however, it seemed more favorable to the appellee. It was the province of the jury to weigh the evidence and find the facts; they did so, and the Circuit Court, in its discretion, would not disturb their finding, and, as has so often been holden, this court will not weigh the evidence in doubtful cases.

There being no sufficient grounds to warrant an appeal in this case, the judgment will be affirmed, and the appellant taxed with ten per cent. damages on the amount of the judgment against him.