

SPARKS vs. BEAVER.

This court, as repeatedly held, will not reverse the decision of the circuit court refusing a new trial, when the only ground presented is the mere weight of evidence; unless there is a total want of evidence upon some point absolutely necessary to a recovery, or unless the verdict is clearly and palpably contrary to the weight of evidence.

Where there is a conflict of evidence, the jury being the exclusive judges of the facts, their verdict will not be disturbed.

Appeal from the Scott Circuit Court.

Solomon R. Beaver sued Mitchell Sparks before a justice of the peace of Scott county, on an account for \$34.37, for 13 $\frac{3}{4}$ days work upon a gin house, at \$2.50 per day. The plaintiff failing to recover before the justice, appealed to the circuit court, where, on a trial by jury, he obtained a verdict for \$20.75. Sparks moved for a new trial on the grounds that the verdict was contrary to law and evidence, which the court (Hon. W. W. FLOYD, J. presiding) refused, and he excepted, set out the evidence, and appealed to this court.

DUVAL, for the appellant.

Mr. Justice WALKER delivered the opinion of the Court.

This court has repeatedly decided that it will not reverse the decision of the circuit court for refusing a new trial where the only ground presented was the mere weight of evidence, unless there is a total lack of evidence upon some point indispensably necessary to a recovery, or unless the verdict is clearly and palpably contrary to the weight of evidence. (*Drennen vs. Brown*, 5 Eng. Rep. 138.) There is no other question presented by the record in this case, and as the testimony of several of the witnesses tended to prove the liability of the appellant, while oth-

ers tended to disprove such liability, under the circumstances the jury were the exclusive judges of the evidence; and whilst we might have found differently from the evidence presented upon the record, the jury with the advantages of the witnesses before them, in view of their credibility and the weight to be given to each may have decided correctly.

Let the judgment of the circuit court be affirmed with costs.

