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FEDERAL COURTS-MOTION FOR JUDGMENT UNDER RULE 50(B) POWER OF CIRCUIT COURT OF APPEALS TO DIRECT ENTRY OF JUDGMENT CONTRARY TO VERDICT DIRECTED BY THE TRIAL COURT

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FEDERAL COURTS—MOTION FOR JUDGMENT UNDER RULE 50(B)—
POWER OF CIRCUIT COURT OF APPEALS TO DIRECT ENTRY OF JUDGMENT
CONTRARY TO VERDICT DIRECTED BY THE TRIAL COURT—In an action
for breach of warranty, defendants' motion for a directed verdict was denied
and verdict was directed for plaintiff. Defendants' motion for a new trial was
denied, and no motion was made for judgment in accordance with their previous
motion for directed verdict. The circuit court of appeals reversed and re-

manded, with directions to enter judgment for defendants.¹ On certiorari, *held*, reversed. Since defendants had not made timely motion for judgment under Rule 50(b), the circuit court had no power to direct entry of judgment in their favor. *Globe Liquor Co. v. San Roman*, (U.S. 1948) 68 S.Ct. 246.

It has long been held that judgment notwithstanding the verdict cannot be given in a federal court as a means of correcting a failure to direct a verdict.² The same result is achieved by the court's reserving decision on a motion for directed verdict until after the jury has returned its verdict. The court may then set that verdict aside and enter judgment in accordance with the motion for directed verdict.³ When timely motion for judgment is made after return of the verdict, the power of the circuit court of appeals to direct entry of judgment is clear.⁴ In only one case, *Cone v. West Virginia Paper Co.*,⁵ had the Supreme Court considered the necessity of this motion for judgment made after return of the jury's verdict. It was held that, in the absence of such motion, the circuit court of appeals did not have power to direct entry of judgment contrary to the verdict. The decision was based on the terms of Rule 50(b), specifically the provision that when the motion is made the trial court "may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed." The Supreme Court held that this meant that "Determination of whether a new trial should be granted or a judgment entered under Rule 50(b) calls for the judgment in the first instance"⁶ by the trial judge. The principal case differs from the *Cone* case only in the one respect that the verdict was directed. The circuit court of appeals recognized the rule of the *Cone* case but took the position that the direction of the verdict was an exercise of the trial court's judgment satisfying the requirements of Rule 50(b).⁷

¹ (C.C.A. 7th, 1947) 160 F. (2d) 800.

² *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 33 S.Ct. 523 (1913). This case has been severely criticized. See, Thorndyke, "Trial by Jury in United States Courts," 26 HARV. L. REV. 732 (1913).

³ *Baltimore & Carolina Line v. Redman*, 295 U.S. 654, 55 S.Ct. 890 (1935).

⁴ Motion for judgment erroneously denied: *Mutual Life Ins. Co. of New York v. Asbell*, (C.C.A. 4th, 1947) 163 F. (2d) 121, cert. den., (U.S. 1947) 68 S.Ct. 221; *Brunet v. S. S. Kresge Co.*, (C.C.A. 7th, 1940) 115 F. (2d) 713. Motion for judgment erroneously granted: *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 61 S.Ct. 189 (1940).

⁵ 330 U.S. 212, 67 S.Ct. 752 (1947). The circuit courts were in agreement that absence of this motion did not deprive them of power to direct judgment: *Berry v. United States*, (C.C.A. 2d, 1940) 111 F. (2d) 615, reversed on other grounds, 312 U.S. 450, 61 S.Ct. 637 (1941); *United States v. Halliday*, (C.C.A. 4th, 1941) 116 F. (2d) 812, reversed on other grounds *Halliday v. United States*, 315 U.S. 94, 62 S.Ct. 438 (1942).

⁶ 330 U.S. 212 at 216, 67 S.Ct. 752 (1947).

⁷ "Where the court . . . has sustained the motion of the plaintiff for a directed verdict, the legal consequence is the same as if the district court had submitted the case to the jury, the jury had returned a verdict for the plaintiff, and the district court had overruled the motion of the defendants for judgment notwithstanding the verdict." (C.C.A. 7th, 1947) 160 F. (2d) 800 at 803.

The Supreme Court held that direction of the verdict is of no importance for this purpose.⁸

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⁸ Principal case at 247.