was paid, realization upon the security at a public sale, determination of when the sale should be held, the right to bid at the sale, and the right to control the property during the period of default.[18] The Court added by way of dictum that the scope of the Congressional bankruptcy power was not limited by the power that Congress had exercised under it in the past but only by the Fifth Amendment.[19]

W. R. E. '37.

CONSTITUTIONAL LAW—JURY TRIAL—NEW TRIAL FOR DIRECTION OF VERDICT.—At a time when most courts are far behind in their dockets and any prolongation of litigation adds considerably to its cost, both the legal profession and its clients should welcome any decision sustaining the validity of a method of procedure by which a large number of new trials can be avoided. The Supreme Court of the United States has recently made such a decision in the case of *Baltimore & Carolina Line, Inc. v. Redman* (1935) 55 S. Ct. 890. Plaintiff brought an action in the Federal District Court in New York to recover damages for personal injuries caused by the negligence of defendant. At the conclusion of the evidence defendant moved for a directed verdict on the ground that the evidence could not support a verdict for the plaintiff. The court expressly reserving the legal issue whether it should direct a verdict for defendant, submitted the case to the jury, which found for the plaintiff. The court then ruled for the plaintiff on the point of law reserved and defendant appealed. The Court of Appeals held that upon the evidence the trial court should have granted defendant's motion, and ordered a new trial, denying defendant's motion for dismissal of the complaint. The Court of Appeals stated that a new trial was required by the decision of the Supreme Court in *Slocum v. N. Y. Life Ins. Co. (1912) 228 U. S.* 364. Defendant then obtained a writ of certiorari from the Supreme Court which granted his motion for dismissal of the complaint and held that a new trial was unnecessary.

Before considering the grounds of the present decision it is well to recall the opinion in the *Slocum* case, which the Supreme Court held inapplicable. That was an action in the Federal District Court in Pennsylvania upon a life insurance policy. The defendant's motion for a directed verdict was denied, and the jury found for the plaintiff. The defendant then asked for judgment notwithstanding the verdict, allowed by a Pennsylvania statute, on the ground that his motion should have been granted. His request was denied by the trial court, but on appeal the Court of Appeals sustained his contention and entered judgment for him. Plaintiff took the issue to the Supreme Court insisting that his constitutional right to jury trial had been violated. A bare majority of the judges held that the Court of Appeals was right in reversing the judgment but that it should have granted a new trial. It was decided that the Seventh Amendment preserved the right to

[18] Ibid., l. c. 865-66.
[19] Ibid., l. c. 862-3.

trial by jury in substance as it was at common law when the amendment was adopted;[1] that at common law there had to be a verdict of the jury on issues of fact raised by the pleadings even though the verdict be directed by the court;[2] that the right to such a verdict was a substantial part of jury trial;[3] and, hence, when a verdict has been set aside, there must be a new trial if such issues exist, even though the verdict must be directed in the new trial if the necessary evidence is not produced.

The ruling in the *Slocum* case has continued to govern federal practice,[4] but the state courts which have passed on the question have almost uniformly held contrary to that case.[5] The state courts take the view that the substance of a jury trial is not the formal rendition of a verdict upon issues of fact raised by allegations in the pleadings, but it is the determination of issues of fact raised by evidence produced in support of the allegations. When a party fails to produce sufficient evidence to support any of the essential facts in his case, then the other party is entitled to recover as a matter of law, and the rendition of a verdict by the jury according to the court's direction is a mere formality. The first party is not denied his right to jury trial if the appellate court decides, as the trial court should have decided, that there is no actual issue of fact and, not having a jury to direct, merely enters judgment against him. Furthermore, a party may obtain judgment upon a demurrer to the evidence without a verdict on issues of fact raised by the pleadings. The Supreme Court in the Slocum case tried to distinguish a demurrer to the evidence from a motion for directed verdict on the ground that judgment could not be entered on the former unless the other party joined in the demurrer, thereby consenting to such procedure. But as the dissenting judges point out that he was forced to join in the demurrer if it was in proper form.

In the present case the Supreme Court distinguished the *Slocum* case on the ground that in that case the court did not, as it did here, reserve the point of law whether it should direct a verdict for defendant before sub-

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[1] Parsons v. Bedford (1830) 3 Pet. 433.

[2] Walker v. N. Mex. & S. Pac. Ry. (1897) 165 U. S. 593; Capitol Traction Co. v. Hof (1899) 174 U. S. 1.

[3] Hodges v. Easton (1882) 106 U. S. 408; Baylis v. Traveler's Ins. Co. (1885) 113 U. S. 316.

[4] Pedersen v. Delaware Ry. (1912) 229 U. S. 146; Young v. Central Ry. (1913) 232 U. S. 602; Myers v. Pittsburgh Coal Co. (1913) 233 U. S. 184 (followed in 210 F. 897; 257 F. 433; 298 F. 245; 1 F. (2nd) 904).

[5] In re Baird's Estate (1924) 195 Cal. 59, 231 Pac. 744; Mirich v. T. J. Forschner Contracting Co. (1924) 312 Ill. 343, 143 N. E. 846; Bothwell v. Boston El. Ry. (1913) 215 Mass. 467, 102 N. E. 665; Anderson v. Fred Johnson (1911) 116 Minn. 56, 133 N. W. 85; Gulf & S. I. Ry. v. Hales (1925) 140 Miss. 829, 105 So. 458; Richmire v. Andrews & Gale Elec. Co. (1902) 11 N. D. 453, 92 N. W. 819; Middleton v. Whitridge (1915) 213 N. Y. 499, 108 N. E. 192; Baily v. Willoughby (1912) 33 Okla. 194, 124 Pac. 955; Dalmas v. Kemble (1906) 215 Pa. St. 410, 64 Atl. 559; Gunn v. Union Ry. Co. (1905) 27 R. I. 320, 62 Atl. 118; Fishburne v. Robinson (1908) 49 Wash. 271, 95 Pac. 80; May v. Baraboo (1905) 127 Wis. 1, 105 N. W. 654. CONTRA: Manning v. New Orleans (1894) 42 Neb. 712, 60 N. W. 953.

mitting the case to the jury. The court cites authorities to prove that the practice of taking verdicts subject to the opinion of the court on points of law reserved was settled at the time the Seventh Amendment was adopted.[6] It refers also to its own approval of such practice. In *Chinoweth v. Haskell* (1830) 3 Pet. 92, the court submitted the case to the jury subject to its opinion on defendant's demurrer to the evidence, and the Supreme Court, holding that the demurrer should have been sustained, entered judgment for defendant. But on the other hand, in *Baylis v. Traveler's Ins. Co.* (1885) 113 U. S. 316, the trial court, after it had submitted the case to the jury subject to its opinion on the sufficiency of plaintiff's evidence, gave judgment for defendant and the Supreme Court held it should have granted a new trial. That case is certainly contra to the present one. The present decision does not go as far as the state decisions in eliminating new trials because whether the appellate court can enter judgment without granting a new trial is made to depend on whether the trial court in the exercise of its discretion reserves the point of law. But hereafter, should counsel make the request there is no reason why the court should deny it; hence the decision is not objectionable on this point. However, in the light of logical analysis it is apparent that the Supreme Court has either reversed its opinion that the right to a verdict on the pleadings is a substantial one, or else it has permitted that right to be denied on exceedingly technical grounds.

R. Y. '36.

HUSBAND AND WIFE—LIABILITY OF HUSBAND FOR NECESSARIES—ATTORNEY'S FEES IN DIVORCE ACTION.—A sued his wife for divorce. During the suit she made no application for an allowance for attorney's fees, and after its termination her attorneys brought an independent action against the husband to recover for their services as necessaries furnished the wife. *Held* for plaintiff.[1]

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[6] Carleton v. Griffin (1758) 1 Bur. 549, 97 Eng. Rep. 443; Coppendale v. Bridgen (1759) 2 Bur. 814, 97 Eng. Rep. 576; Bird v. Randall (1762) 3 Bur. 1345, 97 Eng. Rep. 866; Price v. Neal (1762) 3 Bur. 1355, 97 Eng. Rep. 871; Bassett v. Thomas (1763) 3 Bur. 1441, 97 Eng. Rep. 916; Timmins v. Rowlinson (1765) 3 Bur. 1603, 97 Eng. Rep. 1003; 2 Tidd's Practice (4th Ed.) 900; Thayer on Evid. 241. The theory of the English courts on this point is, according to the opinion in Treacher v. Hinton (1821) 4 B. & Ald. 413, that the jury hears the reservation of the right to enter judgment against its verdict, and if no objection is made, the jury will be held to have impliedly consented. According to Dublin Ry. v. Slattery (1878) 3 App. Cas. 1155 at 1204 however, the theory is that upon a new trial the jury would be bound to render a verdict as directed, and it is desirable that the court enter the verdict itself thus obviating the expense and inconvenience of a new trial. For state cases illustrating the practice of taking verdicts subject to opinion of the court on legal issues reserved see Rees v. Clark (1906) 213 Pa. 617, 63 Atl. 364; Newhard v. Pa. Ry. (1893) 153 Pa. 417, 26 Atl. 105; Shellington v. Howland (1873) 53 N. Y. 371.

[1] Robinson v. Roberts (1935) 281 N. Y. Supp. 23, 24.