

Coös, }  
June 24, 1937. }

FRANK S. BROWN *v.* ALFRED E. SMITH.

ALFRED E. SMITH *v.* FRANK S. BROWN.

*John J. Moke and George W. Pike (Mr. Pike orally), for Smith.*

*Irving A. Hinkley and John E. Gormley (Mr. Hinkley orally), for Brown.*

*Per Curiam.* Although the impropriety of permitting a deputy sheriff who has been a witness in a cause to have charge of the jury after it has been submitted to them, is not doubtful, it cannot be said, as a matter of law, that this procedure was inconsistent with

a fair trial. The motion to set aside the verdict presented typical questions of fact for the Presiding Justice to pass upon such as the trial court is constantly called upon to decide. *Wisutskie v. Malouin*, 88 N. H. 242; *Bennett v. Larose*, 82 N. H. 443; *Marshall v. Morin*, 79 N. H. 351; *Moran v. Fox*, 79 N. H. 523; *Bachman v. Insurance Co.*, 78 N. H. 100; *Beckley v. Alexander*, 77 N. H. 255; *Burnham v. Stillings*, 76 N. H. 122; *Manchester v. Duggan*, 75 N. H. 33; *Lee v. Dow*, 73 N. H. 101; *Burnham v. Butler*, 58 N. H. 568. The decision of the Presiding Justice upon such issues will not be reviewed here, and is final if there is evidence to sustain it. The findings of the court in the present instance are amply supported by the evidence that nothing was said to the jury during their deliberations other than a question by Moses as to whether they could agree before supper and by the action of Smith's counsel in disclaiming the charge that Moses used any influence on the jury.

It is unnecessary to consider the exceptions to the denial of the requested findings, since the alleged facts were wholly inconclusive and the findings, if made, could not have affected the result.

*Judgments on the verdicts.*

Merrimack, }  
Oct. 7, 1937. }

STATE v. LEO P. GILBERT.