trial court refuse to submit the issue of wantonness to the jury unless the facts alleged justify such a finding.

The decision in the principle case seems clearly sound, and it is hoped that it will have a salutary effect in the future.

GEORGE BAILEY.

PRACTICE

VOIR DIRE EXAMINATION AND AUTOMOBILE INSURANCE

One of the most important of the recent decisions rendered by the Supreme Court of Ohio was the decision of the case of *Dowd-Feder, Inc.* v. *Truesdell*, 130 Ohio St. 530, 5 Ohio Op. 179 (Decided March 18, 1936).

The action was brought to recover damages for injuries sustained by the plaintiff, when he was struck by an automobile driven in a negligent manner by an employee of the defendant. The defense was being conducted by an attorney known by counsel for the plaintiff to be an "insurance company's lawyer." At the trial counsel for the plaintiff on the voir dire examination of prospective jurors was permitted to question them as to their relationship to or interest in a casualty insurance company. The defense moved for withdrawal of a juror because of those questions, and such motion having been denied, exceptions were duly taken. A verdict was returned for the plaintiff and judgment was rendered thereon. The defendant prosecuted error to the Court of Appeals where the judgment was affirmed. The case was presented to the Supreme Court on the allowance of a motion to certify.

The Supreme Court held: "In the examination of a prospective juror upon his voir dire in cases involving property damage, personal injury, or both, he may be asked the general question whether he has or has had any connection with or interest in a casualty insurance company. * * * "

"All questions in the voir dire examination must be propounded in good faith. The character and scope of such questions cannot become standardized, but must be controlled by the court in the exercise of its sound discretion, the court having for its purpose the securing to every litigant an unbiased jury."

The decision of the Supreme Court in the principal case apparently settles that much debated question as to the extent to which counsel may

be permitted to interrogate jurors in regard to their relations to or interest in a casualty insurance company.

The court modifies the rule previously promulgated in the case of *Vega, Admr.* v. *Evans,* 128 Ohio St. 535, 191 N.E. 757, 40 O.L.R. 650, 95 A.L.R. 381 (1934). In the latter case the court held that it was error to permit counsel on the voir dire examination of prospective jurors to question them as to their connection with or interest in a liability insurance company, unless such an insurance company is a party to the action or unless such company or the defense had previously disclosed to the court that the insurance company is actively and directly interested in the result of the action.

The decision of the Supreme Court in *Pavilonis* v. *Valentine,* 120 Ohio St. 154, 165 N.E. 730, 28 O.L.R. 639 (1929), overruled by its holding in the case of *Vega, Admr.* v. *Evans, supra,* was virtually reaffirmed by the rule laid down in the *Dowd-Feder* case, *supra.* In the *Pavilonis* case the court held: "It is not error to permit the examination of a prospective juror on his voir dire as to his connection with, interest in or relationship to a casualty insurance company where such a company is directly or indirectly interested in the result of the trial."

A potent objection to the principle established by the decision of the Supreme Court in the *Dowd-Feder* case, was voiced by Chief Justice Marshall in his opinion dissenting from the decision in the case of *Pavilonis* v. *Valentine,* when he stated: "* * * Experience has shown that parties insured for $5,000 frequently are subjected to verdicts for $10,000, $15,000, or more. * * * After this decision is published the owner of an automobile will be between the upper and nether millstone. If he omits to carry insurance, he will carry a very great risk. If he carries a $5,000 policy, which is the amount usually carried, he runs a greater risk of an adverse verdict, *and that verdict may be enormously larger than the amount of the policy.*" (Italics mine).

The Wisconsin legislature in 1931 authorized the joining of casualty insurance companies as parties defendant in cases where they are interested in the outcome of the litigation. Wis. Stat. (1931) Sec. 260.11. In any case where such an insurance company has been joined as a party defendant, proper disclosure of the extent of its liability could be made at the trial. It is submitted that the enactment of such legislation in Ohio would afford a sufficient remedy to alleviate the evil which might arise in cases where the amount of the defendant's liability insurance has not been disclosed, and where as a result of such non-disclosure the defendant is exposed to the risk of an excessively large verdict.

Objection might be raised to the enactment of similar legislation,

on the ground that the rates of casualty insurance would be increased to a very great extent as a result of the disclosure to the jury that an insurance company is interested in the case. The extent of the increase in rates which the proposed legislation might engender, may be suggested by a comparison of certain rates in Wisconsin with those in Minnesota where joinder is not permitted. Territorially, the comparison may be fairly based on that unit area known as "remainder of state" area, which includes the rural districts and thus affords the largest and most substantially similar (as to driving conditions) basis of comparison. The Manual of the National Bureau of Casualty and Security Underwriters reveals that the personal injury liability insurance rates in Wisconsin are approximately fifty per cent higher than the rates in Minnesota. A similar comparison of rates in Wisconsin with those in Ohio discloses that the rates in the former state are forty-one per cent greater than the Ohio rates for the same coverage. This material difference in rates, it is reasonable to suppose, is due in no small degree to the greater risk arising from the authorized disclosure that an insurance company is a party defendant. Thus a similar increase in casualty insurance rates in Ohio may be reasonably expected to result from the decision of the Supreme Court in the case of *Dowd-Feder, Inc.* v. *Truesdell, supra.*

Some lawyers have suggested the possibility of avoiding the risk of enormous verdicts against insured defendants in cases where insurance companies have been "insinuated" into the case. This would take the form of a voluntary disclosure revealing all the facts relative to insurance.

The lack of financial responsibility on the part of a great number of motorists has become a focal point for agitation in numerous states for remedial legislation. The most far reaching of the statutory enactments to date is the Massachusetts Compulsory Insurance Law. Ann. Laws of Mass., Chap. 90, Sec. 34A, etc. (1925). This legislation requires as a condition precedent to the registration by an owner of his motor vehicle, that he prove his financial responsibility with respect to liability for personal injuries arising out of an automobile accident. Although the statute stipulates three alternative methods by which this proof may be made, such proof has in almost every case taken the form of a liability insurance policy.

Ohio is numbered among those states which have enacted so-called "Financial Responsibility Laws." Ohio Gen. Code, Sec. 6928-1, etc. The laws, although serving a worthy purpose, are by no means adequate, for they provide that type of protection which is metaphorically termed, "locking the stable door after the horse has been stolen." These laws

usually provide that after a judgment has been rendered against a motorist for damages arising out of an automobile accident, if such judgment remains unsatisfied, he must provide proof of his financial responsibility by securing insurance protection, depositing security with the state, or providing a satisfactory bond; otherwise his motor vehicle license is subject to revocation.

Under a "compulsory insurance law" such as that in effect in Massachusetts, the jury could reasonably assume that an insurance company was interested in the action and therefore no prejudice would arise by reason of the questioning of prospective jurors upon their voir dire as to their connection with or interest in a liability insurance company.

A group of eminent lawyers, the "Committee to Study Compensation for Automobile Accident," has suggested a plan of compensation for injuries resulting from motor car accidents comparable to that of the workmen's compensation laws. An outline by Arthur B. Ballentine, chairman of the committee, appears in 18 Am. Bar Assoc. Jour. 221 (1932). A symposium in 32 COL. L. REV. 785 (1932) presents the arguments for and against this plan.

If such a step is not feasible it might be possible to combine in Ohio the essential features of the Wisconsin statute permitting the joinder of insurance companies as parties defendant, with those of the Massachusetts "compulsory insurance law." This would obviate possible objections to the decision of the Supreme Court in the case of *Dowd-Feder* v. *Truesdell, supra.* More important, it would assure the financial responsibility of those who own and operate motor vehicles.

JAMES R. TRITSCHLER.

TRUSTS

NATURE OF THE RIGHT OF A CESTUI QUE TRUST WITH PARTICULAR REFERENCE TO TAXATION

Plaintiff, an Ohio resident, held seven transferable trust certificates, representing undivided equitable interests in land, some parcels of which were situated within and some without Ohio. The beneficiary was entitled to a share of the rentals, while exclusive powers of management were vested in the several trustees. The Ohio Intangible Tax Law, Sections 5323, 5328-1, 5370, 5389, 5638, General Code, provided for a tax, measured by five per cent of the income yield, on the investments of Ohio residents. The definition of investments included "equit-