Buffalo Law Review

Volume 2 | Number 1 Article 51

12-1-1952

Courts—Quotient Verdict Rules Held Inapplicable to Trial Judge

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that the objectionable expenditures are closely associated with the illegality complained of, and cannot be disposed of by the maxim *de minimis*. The judiciary is also cognizant of the fact that it is unwise to decide questions in the abstract, or to harass local government and its agents with a multiplicity of actions in which the public is not genuinely concerned. But in view of the broad holding of *Altschul v. Ludwig*, it seems doubtful whether any taxpayer will ever be denied standing to complain of conduct which may injure or affect him and his fellows, though it does not necessarily affect municipal tax rates.

Conclusion

While Judge Dillon has attempted a theoretical justification of municipal taxpayers' suits, it seems well to affirm, as did the South Carolina court,[50] that the rule governing public nuisances simply does not apply in such cases. Certainly in New York, taxpayers' suits are an attempt to supply a remedy, better supported by practical considerations than on principle.

Hilary P. Bradford

RECENT DECISIONS

COURTS—QUOTIENT VERDICT RULES HELD INAPPLICABLE TO TRIAL JUDGE

A widow petitioned to have decedent's real estate set apart for her, exempt from administration. Creditors objected to a report which valued the realty at $1500. By statute in Alabama, homesteads are exempt from execution only to the value of $2,000. In an action to determine the value of said property, witnesses testified before a probate judge, who upon completion of the trial *orally* stated: "Twenty-seven witnesses have testified in this case to a total of $47,229, which gives an average figure of $1747, which is less than $2000. The petition of the widow is therefore granted. . . ." However, no such statement appeared in the transcript of the judgment. On appeal the creditors sought to apply the established principle that a "quotient verdict" of a jury will be set aside on motion. *Held:* the ruling of the trial judge is affirmed. His statements showing the basis on which his conclusion of fact is founded are not part of the judgment, and on appeal the judg-

50. *Gaston v. State Highway Department*, 134 S. C. 402, 132 S. E. 680 (1926).

ment is to be considered separate and apart from such statements. *Beasley v. Beasley,* 256 Ala. 647, 57 So. 2d 69 (1952).

The general rule is that a verdict is invalid if rendered as the result of an express or implied agreement among the jurors to accept one-twelfth of the aggregate amount of their individual estimates. *Fortson v. Hester,* 252 Ala. 143, 39 So. 2d 649 (1949); *International Agricultural Corp. v. Abercrombie,* 184 Ala. 244, 63 So. 549 (1913); *Benjamin v. Helena Light & R. Co.,* 79 Mont. 144, 255 Pac. 20 (1927), see anno. 52 A. L. R. 41 (1928); *Smith v. Cheetham,* 3 Gaines 57 (N. Y. 1805); *Harvey v. Rickett,* 15 Johns. 87 (N. Y. 1818); *Robert v. Failis,* 1 Cow. 238 (N. Y. 1823); *Casstevens v. Texas Pacific Ry. Co.,* 119 Tex. 463, 32 S. W. 2d 637 (1930), see anno. 73 A. L. R. 93 (1931); *contra: Cleveland v. Carlisle Borough,* 186 Pa. 110, 40 Atl. 288 (1898). The objection is that the traditional jury process of deliberation, consideration, and judgment is omitted, and a chance or gambling process is substituted. It is as if twelve individual verdicts were averaged instead of a reasoned and deliberative collective verdict being made. *Louisville & N. R. v. Marshall,* 289 Ky. 129, 158 S. W. 2d 137 (1942). To render such a verdict invalid it is essential that the agreement be made beforehand to abide by a contingent result. *Dana v. Tucker,* 4 Johns. 487 (N. Y. 1809). Such agreement need not be among all the jurors. *Sylvester v. Town of Casey,* 110 Iowa 256, 81 N. W. 455 (1900).

However, this practice has been held unobjectionable if the average so computed is used merely as a basis for discussion and consideration. *Birmingham R. Light & P. Co. v. Clemons,* 142 Ala. 160, 37 So. 925 (1904); *Dana v. Tucker, supra.* The verdict is also valid if the agreement is made subsequent to the computation of the quotient, and the latter is deliberately assented to and accepted as the verdict, *Western U. Teleg. Co. v. Hill,* 163 Ala. 18, 50 So. 248 (1909); or where the quotient method is used but subsequently repudiated, and after further deliberation the same figure is agreed upon, *Dotham v. Hardy,* 237 Ala. 603, 188 So. 264 (1939); *Gulling v. Hinds,* 122 Colo. 345, 222 P. 2d 413 (1950), noted 37 VA. L. R. 148. For complete discussion on topic, see *Chance and Quotient Verdicts,* 37 VA. L. R. 849 (1951).

A distinction may be drawn between the invalid computation of the individual jurors' estimates and the averaging of the witnesses' estimates by the jury, which has been held valid, *Harrison v. Powell,* 24 Ga. 530 (1858); *contra: Illinois R. Co. v. Freeman,* 210 Ill. 270, 71 N. E. 444 (1904), if due consideration has been given to the credibility of such witnesses. *Harvey v. Boswell,* 65 Ga. 550 (1880).

But the foregoing rules as to "quotient verdicts" have no application to a judgment rendered by a trial judge without a jury; in the absence of a statute to the contrary, a verdict is a decision by a jury, while a finding by a judge results in an order or judgment and not a verdict. *Hancock v. Oliver,* 228 Ala. 548, 154 So. 571 (1934). This rule is applied not only to findings of fact, *Scott v. People,* 64 Colo. 396, 172 Pac. 9 (1918), but also to conclusions of law stated by the judge, whether made during or after the trial of the case, *Amsinck & Co. v. Springfield Grocer Co.,* 7 F. 2d 855 (8th Cir. 1925). Since the decision of the court is its judgment, while its opinion represents the reasons given for the judgment, such reasons are no essential part of the decision. *Crell v. Hammans,* 232 Iowa 95, 5 N. W. 2d 169 (1942), *Ombrello v. Duluth, S. S. & A. Ry.,* 252 Mich. 396, 233 N. W 357 (1930); *Galiger v. McNulty,* 80 Mont. 339, 260 Pac. 401 (1927), and in the eyes of the reviewing court are not material if the decision itself is proper. Thus, it has been held permissible for a court to change its oral decision, before judgment has been entered. *Ritter v. Johnson,* 163 Wash. 153, 300 Pac. 518 (1931); *Gates v. Green,* 151 Cal. 65, 90 Pac. 189 (1907).

The instant case, therefore, does not depart from established rules. However, it seems to be one of the rare instances where a judge sitting as a trier of fact and law expressly referred to a quotient method. While the trial judge may not have used the quotient method mechanically, it seems remarkable that, if he gave due consideration to the credibility and intelligence of the witnesses, he treated them all as equally credible and intelligent. While the holding is technically correct, it is submitted that the law should not condone the substitution of any mechanical process for the time-tested judicial process. In every case the decision or verdict should be the result of reason, reflection, and conscientious conviction.

John J. Callahan

COURTS—SUMMARY PUNISHMENT OF CRIMINAL CONTEMPT

Petitioners were defense counsel for the eleven communists tried for violations of the Smith Act, *Dennis v. United States,* 341 U. S. 494 (1950). At the conclusion of the trial, and after entry of verdict, the trial judge, relying on petitioners' misconduct during the course of the trial, cited them for criminal contempt. In so doing he acted summarily under Rule 42(a) of FEDERAL RULES OF CRIMINAL PROCEDURE. The sole question before the