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Trial--Polling the Jury--Manner of Conducting

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TRIAL — POLLING THE JURY — MANNER OF CONDUCTING. — Plaintiff brings action for sum of money due for gasoline sold and delivered. Upon verdict being returned for the plaintiff, counsel for the defendant aptly moved that he be allowed to poll the jury, which motion was allowed over objection of defendant. Defendant's counsel brought out in examination that at least one juror had reached his verdict on a compromise. Motion to set aside was allowed defendant and plaintiff appealed. *Held*: Court erred in allowing counsel to conduct the poll and in permitting examination to show the method by which the verdict was reached. *Columbus Oil Co. v. Moore.*[1]

The right of either party to a poll of the jury, upon a timely request, is recognized in North Carolina as being guaranteed by the constitution.[2] There is little doubt that this is true in most jurisdictions, although some states leave it with the discretion of the trial court.[3] Difficulty may arise as in the principal case as to the manner of conducting such poll. There it was said that to allow counsel to question the jurors "would violate the principle that no outside influence should be exerted upon the jurors with respect to their verdict." This seems to proceed upon the assumption that an examination by counsel in open court and under the direction thereof, with opposing counsel present,[4] would influence the jury. But must we assume it to be impossible for counsel to conduct a poll so as not to exert an influence upon the jury? In *Jackson v. State,*[5] an Alabama case, we find the court saying: "The clerk or the judge may propound the question, and *it would not be erroneous for another to do so,* but it must be done under the direction of the court . . . . but (the court) declined to allow defendant or his attorney to do the polling. In this there was no error."[6] It can hardly be said the court in that case would have held it error had the trial court allowed counsel to conduct the poll. Furthermore, it expressly says another besides court or clerk may conduct the poll. Now if another may do so, it is rather apparent that the counsel, under the court's direction, would be a competent examiner. There is

[1] 163 S. E. 879 (N. C., 1932).
[2] N. C. Const. Art. I, §§ 13, 19. See Culbreth v. Mfg. Co., 189 N. C. 208, 126 S. E. 419 (1925); State v. Young, 77 N. C. 498 (1877).
[3] State v. Daniel, 77 S. C. 53, 57 S. E. 639 (1907); State v. Hoyt, 47 Conn. 518 (1880); Commonwealth v. Costley, 118 Mass. 1 (1875).
[4] James v. State, 55 Miss. 57 (1877).
[5] 147 Ala. 699, 41 So. 178 (1906).
[6] Italics, the writer's.

no justifiable reason, no precedent given by the court in the principal case, except that it is the common practice to have the court or clerk conduct the poll. Admittedly, this has weight, but it is going a little far to hold examination by counsel reversible error.

The court's second, and seemingly secondary, ground for reversing the judgment here is that the questions propounded tended to impeach the jury. It is, of course, the general rule that such cannot be done. But counsel here merely attempted to show it was a compromise verdict. Does this divulge the deliberations of the jury? In one West Virginia case[7] a compromise verdict was, on writ of mandamus, ordered to be received and recorded. There is other authority to the effect that when, on a poll, it is shown the verdict was one of compromise the jury should be sent back to reconsider.[8] Certainly these courts were of the opinion that the motives of the jury had not been disclosed. The fact remains, however, that the secrecy of the verdict should be preserved and any attempt at impeachment of the jury strikes at the spirit of a jury trial as presently conceived. The great weight of authority permits the result of the verdict alone to be ascertained; and such is the case in Virginia.[9] The juror should be free to reach a result without being hampered with the thought of later having to disclose his motives.

Considering these points the North Carolina court could very easily have based the decision on the questions propounded rather than on who propounded them. It was unnecessary to reverse merely because someone other than the usual person conducted the poll. So long as the integrity of the verdict is preserved there is no apparent good reason why counsel should not be allowed to do this.

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[7] State *ex rel.* Neill v. Nutter, 99 W. Va. 146, 128 S. E. 142 (1925).
[8] Ostrander v. Lansing, 11 Mich. 693, 70 N. W. 332 (1897).
[9] Clark v. Commonwealth, 135 Va. 490, 115 S. E. 704 (1923).