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Merchants Bank vs. Schatz: Defendant was cashier of plaintiff bank. M., defendant's father-in-law, deposited $1500 in plaintiff bank to the defendant's credit, for the specific purpose of enabling defendant to build a house. Defendant gave M. a note secured by mortgage on the house, which mortgage was recorded. The bank closed in 1926. Previous to the bank's closing defendant had used the money so deposited for other purposes, and used the bank's money to build his house. After the bank closed defendant sold the house to one I., who was a bona fide purchaser. The plaintiff bank re-opened and then started action to impress a trust on the property and alleging it superior to the claim of I. HELD: M. was a bona fide holder of a mortgage for value and has first lien on the property. The bank is liable to him for misappropriation of money deposited for a specific purpose. The bank is entitled to impress a trust on the property, but must take it subject to M's mortgage to the extent for which it is responsible for misappropriation of funds.

Ottertail Power vs. Clark: Plaintiff and defendant entered into a written agreement whereby defendant gave plaintiff an option to purchase the electric distribution system in city of A. Plaintiff exercised the option, paid the purchase price, and defendant executed and delivered a bill of sale, warranting present right to sell and quiet enjoyment of the property. Sale was made without defendant's obtaining permission from the Board of Railroad Commissioners in accordance with Public Utilities Act. Upon defendant's subsequent refusal to make such application, plaintiff instituted the action to compel defendant to perform his contract, plaintiff now operating the property. HELD: Lower court is correct in granting injunctive relief against the defendant, but specific performance will not lie. The primary duty to apply to the Railroad Commission for an order authorizing a proposed sale is on the vendor, but after contract for sale has been entered into, the vendee is vested with sufficient interest to make such application.

HOW CAN WE GET BETTER JURIES THAN WE DO?

Many fine addresses have been delivered, and fine articles written, by able jurists on the subject of jury trials, and many substantial changes have been made in some of our states; but all, or most all of them, have been along the line of reducing the size of the trial jury, fixing it so that unanimity is not necessary to the finding of a verdict, and the doing away with the jury in certain classes of cases. I am limiting my remarks to one simple phase of the case: how can we get better persons on the juries?

The need of the changes which I feel should be made should first be shown, and I know of no better way of showing it than by citing some cases. In an action brought for malpractice a juror of the kind who has his opinion and can't be changed, held out for a long time for a verdict in favor of the plaintiff, giving as his only reason that he had the doctor once and was pretty sure "he give me that wrong mediseen."

A few terms after the same juror, in a case involving many thousands of dollars, got on the jury because it was impossible to keep him off. The evidence was such that the Court directed a verdict for the defendant, who appeared to be unpopular because he was a rich and successful banker. The Supreme Court afterwards sustained the ruling of the trial court. At the end of that case, this same juror and two other members of the jury met the defendant's attorneys, abused them,

cursed the judge, and stated that they got on the jury purposely to "salt" the defendant. Three jurors, in other words, had sworn falsely because they hated the defendant. Were those men of sound mind and discretion?

Another man caused a disagreement in a criminal case. He insisted that the defendant's attorney might have crossed him off, and wished to punish the attorney. As a matter of fact, the attorney had suggested to the Court, in the presence of the jury, that the man was a fireman and exempt, hoping that he would claim his exemption.

Perhaps those are extreme cases, but nearly every attorney can remember some just as bad. Many times a juror has attended court for the whole term and not been allowed to serve on a single case, because the attorneys felt he was unfit to serve. He was not, in the opinion of the attorneys, of sound mind and discretion.

To get better juries we must commence at the beginning, and not let such men get on what I call the Jurors' Waiting List, or, if they do, then they should not get on the jury panel for the term.

There are four main steps in the selection of the twelve persons who shall serve on each case. As I hope these lines will be read by some who are not attorneys, I wish to examine these steps somewhat in detail.

The first step is that of determining who of the citizens are competent, and who of those declared competent are exempt from jury service. At present Sections 814 (amended 1921) and 2430, Compiled Laws, determine these two facts; but those sections can, and I think, should be amended.

The second step is that of selecting from those declared competent and not exempt a list of two hundred names of people in each county, which list must be kept full by the selection of additional names from time to time. This list, so far as I know, has no name given it by statute, so I have named it the "Waiting List."

The third step is that of selecting from that Waiting List the jurors who shall attend each term of court, and the persons so selected constitute what is called the Panel for the Term.

The fourth step is the selecting of the twelve persons from the Panel who shall act as the jury to try a case. As I do not intend to propose any changes in this step, I shall say nothing more concerning it, but I do feel that there is great need for changes in each of the first three steps. Let us examine them.

1. *Who Are Competent?*

Section 814, as amended, reads: "All citizens . . having the qualifications of electors, and of sound mind and discretion, and not judges of the supreme, district or county court, sheriff, coroner, jailer, attorney at law engaged in practice, and who are not subject to any bodily infirmity amounting to disability, and who have not been convicted of a criminal offense punishable by imprisonment in a penitentiary, and not subject to disability on account of the commission of any offense, which by special provision of statute law, disqualifies them, are competent to serve on all grand and petit juries in their respective counties or judicial subdivisions."

The balance of Section 814 declares who of those who have been made competent are excused from service, but before going further I wish

to suggest some changes which I think should be made as to who should be competent to act as jurors. As the statute reads a person can be convicted of crime and still be competent, provided the crime is not punishable by imprisonment in the penitentiary. A person who steals only $19.00, and is convicted, is still fit for jury service, and may help try a person accused of crime, or try any civil case, but if he steals $21.00, and is convicted, he cannot serve. A person may be convicted of rape under circumstances which make it rape in the first degree, and thereby become unfit to act as a juror; while another person may commit the same crime, under circumstances which show even more real criminal intent, and still, because it happens to be rape in the second degree and not punishable by imprisonment in the penitentiary, he is, by statute, still fit to serve on the jury. Is this a correct rule or measure to be used? I would prefer to have this section read that no person convicted of crime should be eligible for jury service, and no such name should get on the Waiting List.

The reader will notice the provision that the prospective juror must be of sound mind and discretion. I have failed to find in the city in which I reside any case where the Court has defined the meaning of those words, but I know I have seen men serving on juries whom I would not consider of sound mind and discretion, and they served on very important cases.

"These things ought not to be." I feel that those words should have a meaning, such meaning as would prevent the forwarding of some names to the clerk of court for a place on the Waiting List, and if they got that far they should never get on the Jury Panel for the Term. There is not even a hint in the statute as to when, where, or by whom it shall be determined whether or not a person is of sound mind and discretion within the meaning of that statute. Certainly it is no time to settle that question when a person is being examined on the Voir Dire as to his fitness to serve on that particular case. No doubt if it was known that a person being called, at some prior time, had been declared insane or idiotic by a proper court, the trial judge would excuse him from service at the suggestion of either party, and the same if it happened to appear from such examination that the proposed juror was of very weak mind. But most attorneys would hesitate a long time before trying to prove then, and in that manner, that the juror was not of sound mind and discretion. Yet there should be a time and place when and where it could be properly done. I feel that it should be done, so far as possible, at the time the names are being selected for places on the Waiting List, and, if any incapable persons' names got past that point, then at the time of selecting the Panel for the Term.

I personally feel, also, that some educational qualifications should be required by statute. The juror should be able, at least, to understand the English language, not simply understand it sufficiently to catch a part of the meaning of what is said, but sufficiently to understand its meaning fully.

I notice that in Texas (*See McCampbell vs. State,* 35 *Am. Dec.* 728) the trial judge allowed eight men who could neither speak or understand the English language to act on a jury and convict a person of a felony, in spite of defendant's objection. We are not told on what ground the judge so ruled, in spite of the decision of the supreme court of that state made six years before, but it seems to me that he might have done so on the ground that the statutes of that state did not call for any educational requirement.

2. *Who Are Excused or Exempt?*

After stating who are competent, Section 814, as amended, proceeds to excuse from jury service persons engaged in certain pursuits or occupations, and then excuses all "members in good standing of any regularly organized fire company." Now, it is all right for those who belong to a paid department in a city where they have only a few men who are kept on duty to fight fires, but there are in many small cities and large villages fire companies which are more or less regularly organized, and the statute should be so worded that members of such companies will not be held to be free from jury service. In many places the large majority of our most able men for jury service would be exempt, perhaps as the law now reads. Then, there is an attempt made in this section to excuse women from jury service. I hope to examine that provision in another article.

Then there is Section 2430 of our Compiled Laws, which excuses from jury service each member of the active militia, who shows that he has performed his duty for the year "immediately preceding a summons to act as a juryman," and also excuses any one who has been a member of the militia and been honorably discharged. No one, it seems to me, should be excused because he is or has been a member of the militia, unless it happens that he is called on such duty at the time the court meets. It is absolutely wrong to excuse any one from jury duty solely because his business is such as to make it inconvenient for him to serve, or because he might be injured financially, unless to such an extent as would lead all parties to excuse him at his own request. When all who are serving or have served on the militia, and all who are members of volunteer fire companies, and all who might suffer a slight financial loss, are excused by the Court, a large percentage of our very best material is lost. Many of our younger men, best fitted for jurors, are either volunteer firemen or members or ex-members of the state militia. Many business men get excused by the Court on the ground that business needs their attention. Some times I have thought they should not get excused so easily. The more his time is worth to himself, the better able is he, as a rule, to give some of his time for jury service. He is just the kind of man who is likely to have a suit some time and want good men to serve on his case. More of such applications for release from jury service should be refused.

The foregoing is part of an article submitted by Mr. C. E. Leslie of Hillsboro.

ATTENTION COMMITTEE CHAIRMEN

As this year's annual meeting comes early in August, to-wit: on the 15th and 16th, it is important that committee reports be submitted a little earlier than usual, in order to have Bar Briefs—containing the printed reports—in the hands of the attorneys prior to the meeting.

The following chairmen are, therefore, requested to have their reports in the hands of the Secretary by the 30th of July:

C. H. Starke, Automobile Insurance and Regulation;
W. A. McIntyre, Constitution and By-Laws;
R. W. Cooley, Legal Education and Admission;
L. J. Palda, Jr., Public Utilities;
William Lemke, Salaries-Terms-Powers of Judges;
Harry Lashkowitz, Uniform Laws;
P. B. Garberg, Bench and Bar Ethics.