1914

Can Affidavits of Jurors to Show Misconduct be Admitted for the Purpose of Setting Aside a 'Quotient Verdict'?

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CAN AFFIDAVITS OF JURORS TO SHOW MISCONDUCT BE ADMITTED FOR THE PURPOSE OF SETTING ASIDE A "QUOTIENT VERDICT?"—A recent Oklahoma case raises one phase of a question which has been perplexing the courts ever since jury trials were invented, and in regard to which there is a great contrariety of opinion. After a verdict had been rendered for the plaintiff in a personal injury suit, the defendant made a motion for a new trial on the ground of misconduct of the jury, and in support of his motion offered the affidavits of several of the jurors to the effect that the verdict was determined upon as the result of an agreement whereby each one of the jurors was to set down on paper the sum to which he thought the plaintiff entitled, the final verdict to consist of the amount obtained by dividing the sum of the respective amounts so set down by the number of jurors. The trial court refused to hear these affidavits and its ruling was sustained by the supreme court on the ground of public policy. *Tulsa Street Railway Co.* v. *Jacobson* (Okl. 1913), 136 Pac. 410.

While it is universally conceded that such a verdict is illegal and void where, as in the principal case, the jurors agree in advance to be bound by the result, yet in a great many courts the law will not, on a supposed ground of public policy, allow the fact to be shown by the only evidence by which in most cases it can be shown, viz., the affidavits of the jurors themselves. *Owen* v. *Warburton,* 1 Bos. & Pul. (N. P.) 326; *Burgess* v. *Langley,* 5 Man. & Gr. 722; *Vasie* v. *Delaval,* 1 T. R. 11; *Dana* v. *Tucker,* 4 Johns (N. Y.) 487; *Wilson* v. *Berryman,* 5 Cal. 45 (Now changed by statute); *State* v. *Desnoyer,* 1 Minn. 156, 61 Am. Dec. 494; *Pleasants* v. *Heard,* 15 Ark. 403; *Heath* v. *Conway,* 1 Bibb. (Ky.) 398; *Birchard* v. *Booth,* 4 Wis. 85; *Dorr* v. *Fenno,* 12 Pick. (Mass.) 521; *Sawyer* v. *Railroad,* 37 Mo. 240; *Handley* v. *Leigh,* 8 Tex. 129; *Sheppard* v. *Lark,* 2 Bailey (S. C.) 576; *Schwamb Lbr. Co.* v. *Schaar,* 94 Ill. App. 544; *Montgomery St. Ry. Co.* v. *Mason,* 133 Ala. 508. In Kentucky it has been held the affidavits of jurors may be received to show that a verdict was arrived at by lot but for no other purpose. *Gartland* v. *Conner,* 22 Ky. L. Rep. 920. "The grounds stated for the rejection of such affidavits have usually been, first, because they would tend to defeat the solemn act of the juror under oath; second, because their admission would open the door to tamper with jurymen after their discharge; third, it would furnish to dissatisfied and corrupt jurors the means of destroying the verdict to which they assented." *Chicago Sanitary District* v. *Cullerton,* 147 Ill. 385; *Taylor* v. *Garnett,* 110 Ind. 287.

It seems almost incredible that so many courts should still adhere to this antiquated belief in the sanctity of the jury, when justice and common sense combine to demand a more liberal interpretation of their functions. To make the apprehension of their misconduct dependent upon the chance discovery of some eaves-dropper is to perpetuate the very evils which the jury system was designed to eliminate. To be sure these affidavits must be received with caution, for a too liberal rule would lead to the same unfortunate result from the opposite direction. What is perhaps the true view and the one most consistent with sound principles of justice is that which prevails in a few of our courts, and which is to the effect that while affidavits of jurors will not be received to show any fact resting in the personal consciousness of the juror, they will be received to establish the commission of any overt act, whether done within or outside the jury room. The reasonableness and feasibility of this rule is well shown by the following statement of it in *Perry* v. *Bailey,* 12 Kans. 539. "Public policy forbids that a matter resting in the personal consciousness of one juror should be received to overthrow the verdict, because being personal it is not accessible to other testimony; it gives the secret thought of one the power to disturb the expressed conclusions of twelve; its tendency is to produce bad faith on the part of a minority; to induce apparent acquiescence with the purpose of subsequent dissent; to induce tampering with individual jurors subsequent to the verdict. But as to overt acts, they are accessible to the knowledge of all the jurors; if one affirms misconduct, the remaining eleven can deny it. One cannot disturb the action of the twelve; it is useless to tamper with one for the eleven may be heard."

This statement of the rule was quoted with approval by the Supreme Court of the United States in the case of *Mattox* v. *U. S.*, 146 U. S. 140, where it was held that the affidavits of jurors were receivable to show that a newspaper account of the trial was read by the jury before they rendered their verdict. Whether the rendering of a "Quotient Verdict" would be held to come within the rule as adopted by the Federal courts is somewhat in doubt by reason of a recent decision in one of the District courts wherein its application to such a state of facts was denied. The court in that case, while recognizing the rule, said that this was a matter inhering in the verdict itself, and was therefore not an overt act in the sense contemplated by the Supreme Court in the *Mattox* case. *McDonald* v. *Pless*, 206 Fed. 263. The state courts which have adopted this more liberal procedure have, however, come to a different conclusion and have held that the rendition of a "Quotient Verdict" is within the operation of the rule. *Joyce* v. *State*, 7 Baxt. (Tenn.) 273; *Hendrickson* v. *Kingsbury*, 21 Iowa 379; *Johnson* v. *Husband*, 22 Kans. 277. It is believed that the view taken by the state courts is sound, for this is an act necessarily known to all the jurors and consequently is capable of easy proof; it is not something present only in the consciousness of the individual juror and influencing the motives which induce him to find for the one party or the other.

In a few jurisdictions the rigor of the old practice has been modified somewhat by statutes which provide that the testimony of jurors may be employed to show that a verdict was obtained by chance. It is, however, seldom that the statutes have gone any farther than this, but the courts in construing them have quite uniformly held that a "Quotient Verdict" is a chance verdict within the terms of the statute. *Dixon* v. *Pluns*, 98 Cal. 384, 35 Am. St. Rep. 180, overruling *Turner* v. *Water Co.*, 25 Cal. 398; *Gordon* v. *Trevanthan*, 13 Mont. 387; *Flood* v. *McClure*, 3 Idaho 587; *Long* v. *Collins*, 12 S. D. 621; *Pawnee Ditch Co.* v. *Adams*, 1 Colo. App. 250; *Goodman* v. *Cody*, 1 Wash. T. 329. See also *Block* v. *Telephone Co.*, 26 Utah 451.

G. C. G.