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Jury Coercion

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JURY COERCION

This subject has been much to the fore in some of the Atlantic States as the result of what is known as the case of Juror Andrew, who stood out for conviction in the Macri murder case at New Haven, Conn., some time ago; and it brought a renewal of interest, on the part of Bar Associations and leading daily newspapers, in the charge of Judge Hoar delivered about 75 years ago. Failure of the jury to agree within a reasonable time caused Judge Hoar to send for the jurors, and charge as follows:

"The only mode, provided by our constitution and laws for deciding questions of fact in criminal cases, is by the verdict of a jury. In a large proportion of cases, and perhaps, strictly speaking, in all cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must, of course, be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusion of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must be; and there is no reason to suppose that the case will ever be submitted to twelve more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on the one side or the other. And with this view, it is your duty to decide the case, if you can conscientiously do so. In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases. In the present case, the burden of proof is upon the commonwealth to establish every part of it, beyond a reasonable doubt; and if, in any part of it, you are left in doubt, the defendant is entitled to the benefit of the doubt, and must be acquitted. But, in conferring together, you ought to pay proper respect to each other's opinions, and listen, with a disposition to be convinced, to each other's arguments. And, on the one hand, if much the larger number of your panel are for a conviction, a dissenting juror should consider whether a doubt in his own mind is a reasonable one, which makes no impression upon the minds of so many men, equally honest, equally intelligent with himself, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth, and under the sanction of the same oath. And, on the other hand, if a majority are for acquittal, the minority ought seriously to ask themselves, whether they may not reasonably, and ought not to doubt the correctness of a judgment, which is not concurred in by most of those with whom they are associated; and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellows."

A verdict of "guilty" resulted, and the case went to the Supreme Court of Massachusetts (in 1851.) Judge Bigelow, writing the opinion, (*Commonwealth vs. Tuey*, 8 Cush. 1), said:

"We are clearly of the opinion, that so far from being improper, or of a nature to mislead, they (the instructions) were entirely sound.

. . . A proper regard for the judgment of other men will often greatly aid us in forming our own. In many of the relations of life, it becomes a duty to yield and conform to the opinion of others, when it can be done without a sacrifice of conscientious convictions; more especially is this a duty, when we are called on to act with others, and when dissent on our part may defeat all action, and materially affect the rights and interests of third parties."

The statement of several succeeding Massachusetts court personnels to the effect that the instruction went "to the extreme limit," has been considered, apparently, as merely descriptive, even by the Federal Court, (*Allen vs. U. S.*, 164 U. S. 501), but is now being quoted in criticism by the newspapers and some members of the Bar.

REVIEW OF IMPORTANT DECISIONS

By C. L. YOUNG

Gamble-Robinson Company v. Thoresen.

The plaintiff, a domestic corporation, submitted to the defendant, as state tax commissioner, the report required by Chapter 305 of the Laws of 1923, upon the prescribed blank, and in addition to deducting from the value of its shares of stock the value of its real estate and the value of its personal property listed for taxation and taxed at the rate of the general property tax, it deducted the amount of moneys and credits owned by it, and as a result no corporate excess remained taxable against the corporation. Thereupon the tax commissioner served notice upon the plaintiff that he was certifying to the county auditor of the county in which the corporation has its principal place of business, as the corporate excess taxable against the corporation, the balance remaining after deducting from the value of its shares of stock the value of its real estate and of its personal property taxed at the rate of the general property tax. This suit was instituted to enjoin the tax commissioner from certifying such amount. HELD: That moneys and credits must be deducted from the value of the corporation's shares of stock along with the value of its real estate and its personal property taxed at the rate of the general property tax; that failure to make such deduction would amount to a violation of Section 176 of the state constitution requiring taxes upon the same class of property, including franchises, to be uniform, and that it would amount further to a denial to the plaintiff of equal protection of the laws contrary to the provisions of the Fourteenth Amendment to the Federal Constitution. The franchise of the corporation was held to be property within the meaning of Section 176 of the state constitution.

Power v. Williams.

This is an action to recover the balance of the purchase price of land alleged to have been sold by plaintiff to the defendant. The jury after deliberation of more than twelve hours returned a verdict in favor of the plaintiff. Two jurors refused to concur in the verdict. The constitutionality of Chapter 333, Session Laws of 1923, authorizing the return of a verdict by ten jurors under certain conditions having been attacked, it is held that the Sixth and Seventh Amendments to the Constitution of the United States, securing trial by jury in civil and criminal cases, ex-