Washington University Law Review

Volume 1951 | Issue 2

1951

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Recommended Citation

Merle C. Basset, *Jury Trial—Necessity of Judge Receiving the Verdict*, 1951 Wash. U. L. Q. 270 (1951).
Available at: http://openscholarship.wustl.edu/law_lawreview/vol1951/iss2/10

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denied recovery, and, as indicated, they have denied recovery in cases where the defendant's conduct could be characterized only as negligence. This suggests that while the interference may be as serious in one case as in the other, the moral character of the defendant's conduct varies the result.

In the instant case the court apparently felt that in view of the modern attitude toward the value of the wife's interest in the sentimental elements of consortium, even conduct which is only negligent is sufficiently legally blameworthy, so that the balance of interests is in favor of recovery. This means, of course, that the court thinks it not unfair to hold the defendant liable for these consequences, simply because the wife's interest which was interfered with is sufficiently important to justify such an extension of liability. In reaching its conclusion the court took into consideration the inherent unfairness of treating a husband's interest in the sentimental elements of consortium differently from that of a wife, certainly a valid factor. It is not necessary to agree with the ultimate conclusion reached by the court in order to recognize the inherent value of the opinion. The court has gone far toward cutting down the forest of verbiage surrounding the earlier decisions, and toward recognizing clearly the real nature of the problem presented to it.

WARREN MAICHEL

JURY TRIAL — NECESSITY OF JUDGE RECEIVING THE VERDICT. In a recent Tennessee case,[1] condemnation proceedings were begun by the plaintiff. The trial court judge was unavoidably detained, so he called a member of the local bar and asked him to receive the verdict of the jury. Plaintiff objected to this procedure and immediately made a motion for a mistrial. The motion was overruled and the verdict received. In sustaining plaintiff's contention upon appeal, the court said that receipt of the jury's verdict under these circumstances was a nullity and void; that no consideration of public policy would justify the conclusion that a member of the bar, by merely assuming the judge's position, could clothe himself with the powers of a judge.

Whether a trial court judge can delegate his duty of receiv-

1. Tennessee Gas Transmission Co. v. Vineyard *et ux.*, 232 S.W.2d 403 (Tenn. 1950).

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ing the jury's verdict is a problem that has caused considerable difficulty. Occasionally there will arise circumstances which unavoidably detain a judge so that he cannot be in the courtroom when the jury is ready to return with their verdict. When he is so absent then the question arises whether either of the litigants has sufficient grounds on which to base a motion for a new trial. The decided cases show that there is a split of authority in the civil case,[2] while in the criminal field there appears to be a trend to follow the decision of the principal case;[3] especially is this true when felonies are involved. If the defendant is charged only with a misdemeanor then greater liberality is allowed.[4]

Burden v. People[5] involved a felony case in which one judge was substituted for another while argument was going on. The court said that, in prosecutions involving felonies, the presence of the same judge during the entire course of the trial is essential and a judge cannot delegate his judicial authority to another. This rule was followed in *McClure v. State*[6] even though the defendant consented to the judge's being absent. However, in *State v. Keehon*,[7] a substitute judge received the verdict in a murder case with the consent of the defendant; this procedure was sustained on appeal because the court felt that receiving the verdict was merely a ministerial act and that the parties could agree to have another judge receive such. A North Carolina case,[8] decided in 1891, goes farther that most cases in hold-

2. Granting a new trial are: Baltimore R. Co. v. Polly, 14 Gratt. 447 (Va. 1858); Allen v. Yarbrough, 201 N.C. 568, 160 S.E. 833 (1931); Brown v. Service Coach Lines Inc., 71 Ga. App. 437, 31 S.E.2d 436 (1944); Shurlman v. Stock, 89 Conn. 237, 93 Atl. 531 (1915); Ralston v. Stump, 75 Ohio App. 375, 62 N.E. 2d.293 (1942). Denying a new trial are: Dubuc v. Lazell, Dalley & Co., 182 N.Y. 482, 75 N.E. 401 (1905); Durkee v. Murphy, 181 Md. 259, 29 A.2d 253 (1942). *Compare* Nelson v. Wood, 210 F. 18 (3rd. Cir. 1916); Barger Bros. v. Alley, 167 N.C. 362, 83 S.E. 612 (1914). In Koon v. Phoenix Mut. Life Ins. Co., 104 U.S. 106 (1881) a sealed verdict was returned and judge later opened and received the verdict; the court refused to grant the defendant a new trial.

3. Walters v. State, 6 Ga. App. 565, 65 S.E. 357 (1909); State v. Keehn, 85 Kan. 765, 118 Pac. 851 (1911); Burden v. People, 192 Ill. 493, 61 N.E. 317 (1901); Jones v. State, 97 Ala. 77, 12 So. 274 (1893); Quinn v. State, 130 Ind. 340, 30 N.E. 300 (1892); State v. Austin, 108 N.C. 780, 13 S.E. 219 (1891).

4. Brown v. State, 63 Ala. 97 (1879).

5. 192 Ill. 493, 61 N.E. 317 (1901).

6. 77 Ind. 287 (1880).

7. 85 Kan. 765, 118 Pac. 851 (1911).

8. State v. Austin, 108 N.C. 780, 13 S.E. 219 (1891).

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ing that the clerk of the court can receive the verdict, except in capital cases, so long as the defendant has opportunity to voice his objections.

When the action is civil, there is a split of authority as to whether the judge's presence is necessary when the verdict is rendered. In *Dubuc v. Lazell, Dalley & Co.*[9] the parties consented to the judge's absence and the court held that the parties were bound by such agreement. The decision points out that parties can waive constitutional, statutory or any other right so long as it isn't against good morals or sound public policy, and that such stipulations will generally be enforced by the court. Actually such procedure is an irregularity because the court isn't organized when the judge is absent, but the consent of the parties cover this irregularity.[10] Various reasons for these decisions are expressed by the courts: that before a verdict becomes final it should receive the approval of the mind and conscience of the trial judge;[11] or that until the judge's approval is given to the verdict, it doesn't become binding if there is a motion for a new trial based on general grounds.[12] Several decisions hold that only the trial judge can receive the verdict even though the parties agree to his absence.[13]

At least one of the states, New Jersey, has dealt with the problem by statute.[14] The statute provides for the taking of the verdict by the clerk of the court when the trial judge is absent. But the cases decided under this statute have held that he can exercise no discretion in receiving the verdict;[15] if it isn't responsive to the issues, the clerk can't make the jury return for further deliberation.

It seems that the practice of giving consent to the judge's being absent could lead to many difficulties even though such agreements are not so contrary to public policy as to warrant their being declared void. It is well known that in many in-

9. 182 N.Y. 482, 75 N.E. 401 (1905).
10. Durkee v. Murphy, 181 Md. 259, 29 A.2d 253 (1942).
11. Brown v. Service Coach Lines Inc., 71 Ga. App. 437, 31 S.E. 2d 436 (1944).
12. Walters v. State, 6 Ga. App. 565, 65 S.E. 357 (1909).
13. Baltimore R. Co. v. Polly, 14 Gratt. 447 (Va. 1858); Britton v. Fox, 39 Ind. 369 (1872).
14. District Court Act, 2 Comp. St., 27 (1910).
15. Sockolowski v. Olkowski *et al.*, 102 N.J.L. 50, 130 Atl. 514 (Sup. Ct. 1925); Folkner v. Hopkins, 100 N.J.L. 189, 126 Atl. 633 (Sup. Ct. 1924).

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stances the verdicts of juries are not responsive to the issues submitted to them; especially is this true when special interrogatories are left to their decision. If the verdict is not responsive and the jury disperses then additional costs arise because a new trial will have to be held. Also the crowded court dockets and the additional delay involved, if the verdict is not responsive, seem to present other compelling reasons for avoiding such a practice, and an attorney should avoid any agreement whereby his client may suffer extra costs and delay in the long run.

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