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Are Justice of the Peace Courts Impartial Tribunals?

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COMMENTS

ARE JUSTICE OF THE PEACE COURTS IMPARTIAL TRIBUNALS?

Does due process of law as to legal procedure require that a judge be not personally interested in any case before him?

Due process of law as to legal procedure does not always require a judicial tribunal,¹ but it does require an impartial tribunal.² It is a maxim of the common law that no one ought to be a judge in his own cause, and from the time of Lord Coke³ to date⁴ it has been held that when a judge's own rights are in question he has no power to determine the cause, whether or not he is a party to the record. An exception to this rule has been made where the interest is so remote, trifling and insignificant that it may fairly be supposed to be incapable of influencing the conduct of an individual, as where the judge's interest is merely that of a taxpayer in a tax case or a member of a state bar association in a disbarment proceeding, but otherwise the principle has been adhered to whenever tested in court.⁵

Yet in spite of this principle of the common law it has been the practice in Indiana and other states of the United States to allow justices of the peace, mayors, and other lesser officials to hold court when their compensation was made to depend in part or wholly upon convictions, and they thus apparently had a personal pecuniary interest in the case.⁶ It is difficult to understand how it could have been thought that such a judge had the legal power to try such a case; but evidently it has been so thought, for justices of the peace, etc., have been trying cases and convicting people throughout United States' history.

Are such tribunals impartial tribunals under the due process clause of the Fourteenth Amendment to the United States Constitution?

In the recent case of *Tumey v. State of Ohio*⁷ the United

¹ *Fallbrook Irrigation District v. Bradley* (1896), 164 U. S. 112; *United States v. Ju Toy* (1905), 198 U. S. 253.

² *Cooley, Constitutional Limitations* (Eighth Ed.), 870-873; *Moore v. Dempsey* (1923), 261 U. S. 86.

³ *Bonham's Case* (1610), 2 Brownl. 255.

⁴ *Cooley, Constitutional Limitations* (Eighth Ed.), 870.

⁵ *Ibid.*, 872-873.

⁶ *Burns Annotated Indiana Statutes* (1926), Sec. 2322; *Watson's McDonald's Treatise*, p. 252.

⁷ (1926) 47 Sup. Ct. 437.

States Supreme Court has at last given us an answer to this question. In this case one *Tumey* was arrested and brought before the mayor of a village in Ohio, charged with unlawfully possessing intoxicating liquor. Under the laws of Ohio the mayor, as well as justices of the peace, and certain other judges, had jurisdiction to try the case and he was entitled to retain the amount of his costs in each case in addition to his regular salary, but no costs were to be paid him except by the defendant in case of conviction. The mayor denied defendant's motion to dismiss the case because of the mayor's disqualification, convicted him of the offense charged and fined him one hundred dollars and costs (in this case twelve dollars for the mayor) and ordered him to be imprisoned until the fine and costs were paid. The common pleas reversed this judgment, the Court of Appeals reversed the judgment of the common pleas and the Supreme Court dismissed a petition of right asking that the judgment of the mayor's court be reversed on Constitutional grounds. The case was then taken to the United States Supreme Court on a writ of error, and the United States Supreme Court reversed and remanded the case on the ground that the defendant had been denied due process of law because not tried before an impartial tribunal.

Chief Justice Taft, writing the opinion first announced the general rule of disqualification of judicial or *quasi* judicial officers whenever they have an interest in the controversy to be decided; then admitted that there were certain exceptions to the rule in cases of minute, remote, trifling, or insignificant interest, as where the judge is a member of a class of taxpayers, where there is no other judge not equally disqualified and where legislative discretion is allowed in certain matters of remoteness of interest in kinship, personal bias, or state policy; and then added, "But it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." Chief Justice Taft admitted that in determining what is due process of law consideration must be given "to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors" and to state precedents in the United States, but after a careful investigation of English and United States history he finally decided that "From this review we conclude that a system by which an in-

ferior judge is paid for his service only when he convicts the defendant has not become so embedded by custom in the general practice, either at common law or in this country, that it can be regarded as due process of law, unless the costs usually imposed are so small that they may be properly ignored as within the maxim "*de minimis non curat lex.*"

The decision involved only a mayor but it would seem that the doctrine of the case should apply to justices of the peace and all other judges who are circumstanced as was the mayor in the Ohio case, and a court in Ohio has so held.⁸

The decision in the instant case ought to be regarded as sound and the Supreme Court should be commended for it. The remarkable thing about it is not that it has at last been rendered but that it was not rendered before. It would seem to spell the doom of the courts of justices of the peace, at least so far as they are not on a salary basis, for Tumey has pointed the way for all criminal defendants;⁹ but if any part of our judicial system needs reforming it is that part concerning justices of the peace. The goal of justices of the peace in the United States seems to have been to develop as poor a court as possible. They have attained their goal. Their work has been accomplished. It is hard to see how any court could be any worse. They ought now to be relieved from further labor. They should have been reformed or abolished long ago by political action; and

⁸ *Foster v. State of Ohio* (1927), 26 N. P. (N. S.) 476; *In re Canfield and Duckett* (1927), 26 N. P. (N. S.) 465.

⁹ In the case of *Tari v. State of Ohio*, 17 Oh. St. 274, the Supreme Court of Ohio, while assuming that the decision in the Tumey case applies to justices of the peace, took the position that it did not declare unconstitutional the statutes of Ohio so far as they established a tribunal that was not impartial and that the judgments of such courts were not void, but only voidable, and that the effect of the decision was to give to defendants the privilege of objecting to the disqualification of the judge and that if this is not done the disqualification is waived and the defendant has had due process of law as to procedure in spite of the fact that the tribunal is not impartial. The case of *Ex parte Baer* (1927), 20 Fed. (2nd) 912, took the opposite position. Probably, because of the procedural rules that no one not injured can raise a constitutional point and that the Supreme Court will not consider questions not raised in the state courts the result reached by the Ohio court cannot be escaped; but it is difficult to follow the court when it makes the startling statement that the Tumey case did not decide the question of the constitutionality of the Ohio Statutes. Of course the Supreme Court never repeals a statute,—not even when it expressly declares it unconstitutional.

it is an encouraging sign that though politicians may neglect their duties the judiciary does not.¹⁰

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¹⁰ The Indiana Constitution (Art. 7, Sec. 14) provides for the election for four years of "a competent number of Justices of the Peace" "by the voters in each township," and that "their powers and duties shall be prescribed by law." The Indiana statutes (Secs. 2019-2022, 2322 Burns Anno. Stat. 1926) provide for the compensation of justices of the peace through a system of fees, as in Ohio, in all townships in which there is no city of at least forty-five thousand population, where they are placed upon a salary basis (but there is a question as to the constitutionality of that part of the law which relates to townships having such cities, under Art. 4, Sec. 22 of the Indiana Constitution.) Hence whatever has been said in this comment about the Tumey case, *supra*, applies to justices of the peace in Indiana (with the possible exception of those in townships having a city with a population of at least forty-five thousand). In Indiana, where the duties of city judge have been devolved upon the mayor, the latter is entitled by law to a salary of six hundred dollars (Sec. 10264 Burns' Anno. Stat. 1926)