Indiana Law Journal

Volume 14 | Issue 2 Article 8

12-1938

Criminal Law-Double Jeopardy-Dismissing after Jury Impaneled

CRIMINAL LAW—DOUBLE JEOPARDY—DISMISSAL AFTER JURY IMPANELED.—Defendant was indicted by the grand jury, pleaded not guilty, and the cause was submitted to a jury for trial. In his opening statement to the jury, the defense counsel made remarks to the effect that the prosecuting witness, the defendant's daughter, was under arrest and took the witness stand as an unwilling witness. Defense counsel continued to make similar remarks after being reprimanded by the court. As a result of these statements the court discharged the jury. Later, the defendant filed his motion for a discharge from further prosecution and from jail on the grounds that he had been once placed in jeopardy and that the jury had been discharged without legal right and over his objections. This motion was overruled, exceptions were duly saved, and the court's action is assigned as error on appeal. Held, reversed. *Armentrout v. State* (Ind. 1938), 15 N. E. (2d) 363.

It is an established maxim at common law that a man shall not be brought into danger of his life or limb for one and the same offense more than once.[1] This principle has been incorporated into the Constitutions of the United States and of the various states, giving the maxim the added weight of a constitutional guarantee. Where a legal indictment has been returned by a competent grand jury to a court having jurisdiction of the person and the offense, and the defendant has pleaded, and a jury has been duly impaneled and sworn, and all the preliminary requisites of record are ready for the trial, settled law in this state holds that the prisoner has been once put in jeopardy.[2]

Under the strict practice which formerly prevailed the discharge of the jury for any cause after the proceedings had advanced to such a stage that jeopardy had attached, but before a verdict, was held to sustain a plea of former jeopardy, and therefore to operate practically as a discharge of the prisoner.[3] In deference, however, to the necessities of justice, this strict rule has been greatly relaxed, and the general modern rule is that the court may discharge a jury without working an acquittal of the defendant, in any case

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21 Meyers v. Bethlehem Shipbuilding Corp. Ltd. (1938), 58 S. Ct. 459. In answer to appellant's contention that rights guaranteed by the Federal Constitution would be denied unless the court had jurisdiction the Court said, "The contention is at war with the long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."

22 Federal Trade Commission v. Claire Furnace Co. (1927), 274 U. S. 160, 47 S. Ct. 160.

1 State v. Elder (1879), 65 Ind. 282, 32 Am. Rep. 69; Ex Parte Lange (1873), 85 U. S. 163, 21 L. ed. 872.

2 Joy v. State (1860), 14 Ind. 139.

3 State v. Beal (1930), 199 N. C. 278, 15 S. E. 604.

where the ends of justice, under the circumstances, would otherwise be defeated.[4] A state may appeal before or after a verdict, if the appeal does not affect the defendant; a judge or a juror may die or become insane; a jury may be discharged for misbehavior; a jury may fail to agree on a verdict and be discharged. In all these cases there is no legal jeopardy though a lawful jury has been impaneled and sworn and it is said that jeopardy attaches at that moment.[5] Improper statements by the defense counsel injecting new issues were held as a matter of law to be justifiable cause for discharge of the jury.[6] Juror's illness, conduct of witness, spectator, or attorney,[7] and similar occurrences, taking place without fault of defendant, may, as regards former jeopardy, be sufficient ground for declaring mistrial.[8]

Evidently in this case, the Supreme Court in overruling the lower court's judgment, decided that the trial judge erred in discharging the jury; that there was no legal necessity for the discharge of the jury. Here the trial had barely begun. Had this prisoner been placed in danger of his life or limb? True, the administration of justice requires that verdicts, criminal as well as civil, shall be found by impartial juries, and shall be the result of honest deliberations absolutely free from prejudice or bias. Further, it will not be disputed that a prisoner should not be put in jeopardy twice for the same offense. But the public as well as the accused have rights which must be safeguarded. It is this policy which demands that the court be clothed with the power to judge the necessity for discharging a jury.[9] In every case of this sort, however, the court must exercise a very sound discretion on the facts, and this power must obviously be used with the greatest caution.[10]

In the principal case the trial court seems to have followed the modern trend, which the Supreme Court has rejected. In so doing the Supreme Court, the writer believes, has failed to balance sufficiently the policies underlying this proposition of double jeopardy. It has followed a strict interpretation of the rules laid down by the older cases on this point in preference to the majority viewpoint in the United States. I. D. B.

INDEPENDENT CONTRACTOR, LIABILITY FOR ACTS OF—INJURY CAUSED BY CONTRACTOR OPERATING VEHICLE UNDER CARRIER'S PERMIT.*—Action by Mayer, administrator, against defendant corporation for death of motorist in collision caused by truck driver's negligence. The truck causing the injury was owned by the truck driver subject to a mortgage, although defendant's name was on it. Defendant held a permit from the Public Service Commission of Indiana to operate the truck as a common carrier. The trucks were operated on

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[4] Thompson v. United States (1894), 155 U. S. 271, 15 S. Ct. 73; United States v. Perez (1824), 22 U. S. 579, 6 L. ed. 165; Dreyer v. People (1900), 188 Ill. 40, 58 N. E. 620, 58 L. R. A. 869; People v. Simos (1931), 345 Ill. 226, 178 N. E. 188.

[5] Willis, Constitutional Law, p. 529.

[6] Commonwealth v. Cronin (1926), 257 Mass. 535, 15 N. E. 176.

[7] But recently Justice Pecora of the New York Supreme Court in the Hines case discharged the jury on the ground of an improper question to a witness by the prosecutor. Certainly in this case Hines could not be said to have been in jeopardy.

[8] People v. Simos (1931), 345 Ill. 226, 178 N. E. 188.

[9] State v. Slorah (1919), 118 Me. 203, 106 Atl. 768, 4 A. L. R. 1256.

[10] United States v. Perez (1824), 22 U. S. 579, 6 L. ed. 165.

* Two cases discussed.