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Constitutional Law-Is a Justice of Peace Court an Impartial Tribunal

Constitutional Law—Is a Justice of Peace Court an Impartial Tribunal.—This was an appeal from a judgment rendered against appellant upon overruling his exceptions to appellees' return to a writ of habeas corpus. The writ of habeas corpus was granted and served upon appellee pursuant to appellant's petition in which he alleged that he was held by virtue of a commitment issued by appellee Minas, as justice of the peace. The commitment was founded upon a judgment for fine and costs against appellant in a criminal proceeding before said justice of the peace. In his petition for writ of habeas corpus, appellant alleged, among other things, that the judgment and commitment of appellee were illegal and void; urging that appellee, as justice of peace, was entitled to no pay for his services, unless appellant was convicted and paid his fine, and that under the Fourteenth Amendment to the Constitution of the United States, such a procedure deprived 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 had a direct, personal, pecuniary interest in reaching a conclusion against him. Held, that a judgment and commitment after trial in a criminal proceeding before a justice of peace was not void as denying due process.[1]

The Constitution of Indiana provides that: "A competent number of justices of the peace shall be elected by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law."[2] It can readily be seen, therefore, that the Constitution of Indiana only provides for the office of justice of the peace, and that the extent of the powers and duties of such office has been

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187 Ind. 94, 118 N. E. 567; Nordlinger v. United States (1904), 24 App. D. C. 406, 70 L. R. A. 227; O'Donnel v. People (1904), 211 Ill. 158, 71 N. E. 842; Commonwealth v. Roby (1832), 29 Mass. 496; Woods v. State (1916), 15 Ala. App. 251, 73 So. 129; Commonwealth v. Croft (1925), 208 Ky. 220, 270 S. W. 816; Duvall v. State (1924), 111 Ohio St. 657, 146 N. E. 90.

21 State v. Hattabaugh (1879), 66 Ind. 223; State v. Elder (1879), 65 Ind. 282; State v. Rosenbaum (1899), 23 Ind. App. 236, 55 N. E. 110; State v. Blevins (1902), 134 Ala. 213, 32 So. 637; Sanford v. State (1918), 75 Fla. 393, 78 So. 340; Schroeder v. United States (1925), 7 F. (2d) 60.

22 Bryant v. State (1933), 186 N. E. 322 (Ind.).

1 Harding v. Minas (1934), — Ind. —, 190 N. E. 862.

2 Section 14, Article 7 of the Constitution of Indiana.

left entirely to legislative decree. Consequently, the Indiana legislature has provided that the justices of peace should have jurisdiction in criminal cases co-extensive with their respective counties; such jurisdiction being in some cases exclusive and in others, concurrent.[3] A further section[4] of the same act provides what fees justices of the peace may charge and what salaries certain justices of the peace are to receive. Justices of the peace located in townships not having a city or cities of or over a specified population are placed upon a fee basis only.

In the present case, the Indiana Supreme Court was faced with the question whether in a criminal proceeding such a tribunal as the present justice of the peace court, operating on a basis of fees payable as costs only upon conviction,[5] is an impartial tribunal under the due process clause of the Fourteenth Amendment to the United States Constitution. The Supreme Court of Indiana decided that such a court was an impartial tribunal, and in so doing seemingly disregarded the better weight of authority and judicial reasoning.

Due process of law as to legal procedure does not always require a judicial tribunal,[6] but it does require an impartial one.[7] The general rule is that officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy.[8] The question, however, often arises as to what the degree or nature of the interest must be. An exception to the 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.[9]

The cases show that in determining what due process of law is, under the Fifth or Fourteenth Amendment, the Court must look to those settled usages and modes of proceeding existing in the common and statutory law of England before the emigration of our ancestors, which were shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.[10] In the leading case of Tumey v. Ohio,[11] the Supreme Court of the United States was faced with the problem of whether there was any usage or practice at common law by which justices of the peace or inferior judicial officers were paid fees on condition that they convicted the defendant, such as to make a trial before such a tribunal due process. In this case, one Tumey was convicted before a mayor's court, the presiding officer of which was entitled to retain the amount of his costs in each case in addition to his salary, but no costs were to be paid except by the defendant in case of conviction. Chief Justice Taft, however, after an exhaustive treatment of English and United States

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3 Baldwin's Indiana Statutes (1934), sec. 2084.

4 Baldwin's Indiana Statutes (1934), sec. 2008.

5 Although there is in the act governing justices of the peace no direct provision as to payment of costs; there is likewise no provision that the state pay such costs. It is apparent, therefore, that costs can be assessed and paid only upon a conviction, as an acquitted defendant would not be liable for such costs. And this has been the general practice throughout Indiana.

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

7 Moore v. Dempsey (1923), 261 U. S. 86; Cooley, Constitutional Limitations (1927), 8th. ed.) 870-873.

8 Peace v. Atwood (1816), 13 Mass. 324; Taylor v. Commissioners (1870), 105 Mass. 225; Kentish Artillery v. Gardiner (1886), 15 R. I. 296; Moses v. Julian (1863), 45 N. H. 52; Railroad Company v. Howard (1870), 20 Mich. 18; State v. Crane (1873). 36 N. J. L. 394.

9 Cooley, Constitutional Limitations (1927, 8th. ed.) 872-873.

10 Ownbey v. Morgan (1920), 256 U. S. 94; Murray's Lessee v. Hoboken Land and Improvement Company (1853), 18 How. 272; Tumey v. Ohio (1926), 273 U. S. 510

11 (1926), 273 U. S. 510.

history upon the subject of such practices, concluded that, "A system by which an inferior judge is paid for his service only when he convicts the defendant has not become so imbedded 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 minimus non curat lex'." He further pointed out that in analogous cases it was very clear that the slightest pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he was to decide rendered the decision voidable.[12] And in deciding that such a practise as followed in the Ohio mayor's court rendered the court a partial tribunal, the Chief Justice said, "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 the case."

The decision in the Tumey case involved only a mayor, but it would seem that the doctrine of the case should apply as well to justices of the peace and all other judges who are circumstanced as was the mayor in that case,[13] and the courts of Ohio have so held;[14] although the Supreme Court of Ohio has taken the position that while the decision applies to justices of the peace, it had the effect of giving a defendant the privilege of objecting to the disqualification of the judge and that if this was not done, the qualification was waived and the defendant had due process of law as to procedure in spite of the fact that the tribunal was not impartial. This latter interpretation is open to serious question, and the United States District Court, in Ex parte Baer,[15] has taken the opposite position. The Supreme Court of Oklahoma, in a recent decision,[16] citing the Tumey case as an authority, has asserted that where the disqualification of a judge is considered a matter of public policy, a waiver will not be allowed; and that the judge is not authorized to sit in a case, even with the consent of the parties, where he has a direct interest, such as a financial interest, in the judgment to be rendered.

The Indiana Supreme Court in the principal case, relied completely upon two earlier Indiana cases for its decision. The latest of these, Cole v. Wherly,[17] also relied altogether on the earlier, State v. Schelton,[18] the leading case in this state. It is necessary, therefore, to examine this case carefully in an effort to determine whether the reasoning justifies the result.

The Indiana Supreme Court in the Schelton case decided that there were certain essential differences in the Indiana statute and practice which rendered the Tumey case inapplicable, thereby making a trial before a justice of the peace court due process. The court first pointed out that if the defendant entertained fears that the justice of peace would be influenced to convict in order to recover his fee, defendant had a right to call for a jury; whereas under the Ohio statute, he had no such right. It is difficult, however, to understand how such a privilege, even if exercised, would protect the defendant from a partial tribunal. The justice, like any other judge, would still be the presiding officer of the court, with the same powers to instruct the

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12 Bonham's Case (1610), 2 Brownl. 255; Hawkins, 2 Pleas of the Crown.

13 Willis, Are Justice of the Peace Courts Impartial Tribunals? (1928) 3 Ind. L. J. 654. A very clear treatment of the applicability of Tumey v. Ohio to the Indiana situation, by an outstanding scholar.

14 Foster v. State of Ohio (1927), 26 N. P. (N. S.) 476; In Re Canfield and Duckett (1927), 27 N. P. (N. S.) 465.

15 (1927), 20 Fed. (2nd.) 912.

16 State ex rel. Dabney v. Ledbetter (1932), 9 Pac. (2nd) 728 (Okla.).

17 Cole v. Wherley (1934), — Ind. —, 190 N. E. 56.

18 State v. Schelton (1933), — Ind. —, 186 N. E. 772.

jury, decide on admissability of evidence, and rule on motions. This is certainly not due process in any sense of the phrase.

The Supreme Court asserted as a second distinction that, under the statute, the defendant is entitled to a change of venue from the justice.[19] This, however, is an empty gesture, as the defendant can get only a change of venue to another township and another justice, or to a special justice, who shall be entitled to the same fees as the regular justice. Such a privilege, therefore, is of little value in supplying the defendant with an impartial tribunal. He will be subjected to the same prejudice wherever and by whomever he is tried.

The court points out as a third distinction that the defendant, if convicted by either justice or jury, had the right to appeal to the circuit court and there try his case de novo either before judge or jury; while under the Ohio statute, the defendant's right to appeal was considerably limited. There is more merit to this distinction than any other asserted by the court; nevertheless, the complete effect of such procedure is to force a defendant to try his case twice to get justice at the hands of a wholly impartial tribunal. This is a severe handicap upon the defendant who has neither the necessary time nor money with which to perfect the appeal and retrial of his case. Surely a satisfactory system of justice cannot sanction the placing of such a burden on the defendant.

The Indiana Supreme Court further urges that since the fees of the justice are small, they could properly be ignored as within the maxim "de minimis non curat lex." It may readily be admitted that the fees are small. But at the same time, it should not be forgotten that in most of the townships throughout the state these same fees are the only remuneration the justice of the peace receives. He makes his living that way; and his interest in rceiving these fees will not be diminished because they are not large. The courts of other states have held that where the judge has a direct pecuniary interest in the outcome of the case before him he is disqualified,[20] and the degree of interest is immaterial;[21] it need not be large,[22] but will disbar him from sitting in the cause no matter how small or trifling it may be.[23]

As an additional argument in favor of the justice of the peace courts, the Indiana Supreme Court says, "The office of justice of the peace has come down to us through the ages and has often been designated as the 'poor man's court.' It has a place in our system of courts—the whole system should not be condemned and uprooted from our judicial system." This is indeed a noble sentiment, but it is apparently based on the false assumption that justice of the peace courts are a fundamental part of the common law courts. In the early beginnings of the Anglo-American system of jurisprudence, justices of the peace were mere conservators of the peace, and not judges at all; and their gradual evolution into inferior judges was due largely to the exigencies of the times, rather than any inherent worth or logical development.[24] As already pointed out, Chief Justice Taft, in the Tumey case, came to the conclusion that a system whereby an inferior judge was

[19] Baldwin's Indiana Statutes (1934), sec. 1896, 1897, 1898.

[20] McConnell v. Goodwin (1914), 189 Ala. 390, 66 So. 675; Clyma v. Kennedy (1894), 64 Conn. 310, 29 Atl. 539; Foreman v. Hunter (1882), 59 Iowa 550, 13 N. W. 659; Northhampton v. Smith (1846), 11 Metc. 390.

[21] Lindsay-Strathmore In. Dist. v. Tulare County Super. Court (1920), 182 Cal. 315, 187 Pac. 1056; Findley v. Smith (1896), 42 W. Va. 299, 26 S. E. 370.

[22] People v. Whitridge (1911), 144 App. Div. 493, 129 N. Y. S. 300.

[23] In Re Honolulu Cons. Oil Co. (1917), 243 Fed. 348, 156 C. C. A. 128; MacMillan v. Spencer (1900), 28 Colo. 80, 62 Pac. 849; United States National Bank v. Guthrie National Bank (1897), 6 Okla. 163, 51 Pac. 119.

[24] Willis, Introduction to Anglo-American Law (1931) 113.

paid for his services only on conviction had no basis in historical or judicial precedent so as to warrant it to be due process of law; for even after the justices of the peace became a minor part of the English system of courts, there was no toleration of the dependency of the justice upon a conviction for his fees.[25] It is hard to see how these conclusions can be ignored or rebutted.

R. S. O.

Workmen's Compensation—Injury Arising Out of and in the Course of the Employment—Shooting of Non-Union Miner by Picket During Strike.—Union miners employed by appellee went out on strike on April 1, 1932, and appellee employed appellant and other nonunion miners to work in the mine. On the day of the injury, long before the usual quitting time, appellant and the other workers were ordered to stop working by the foreman. They were ordered to the top where they found the mine surrounded by pickets. Here the mine guards and bosses passed out rifles, ammunition, and dynamite and told them to protect the mine property in the event the pickets entered upon the mine property. They were also ordered to stay at the mine, under cover, until the sheriff arrived to escort them to their homes. While so waiting in the tipple and after several hours, appellant was shot in the arm by one of the pickets. Held, appellant's injury, as a matter of law, arose "in the course of and out of his employment."[1]

The question of Workmen's Compensation as respects injuries suffered by employees due to labor disorders and industrial strife is a unique one in spite of its seemingly possible prevalence. Dudine, J. far from overstated the status of the law on this problem when he said, "It is a new question for this court." In fact it would have been a new one for most courts, and the law reviews and journals seem consequently to be quite devoid of notes or articles precisely in point. Of course, technically, a solution may be found in some interpretation of the clause "accident arising but of and in the course of the employment,"[2] a clause, which of necessity is one that may include everything, anything, or almost nothing. But it is not the purpose of this note to deal with the many views already expounded on such interpretation.[3] Suffice to state, that if it is true, as has often been said, that the beauty of the law lies in its uncertainty, there is little danger of Workmen's Compensation litigation marring that attribute when we find what is termed a rough expression of the general principles[4] to be, "the statute imposing liability embraces all injuries that arise out of and occur while the workman injured is doing what a man under like facts and circumstances, engaged in like employment may reasonably do, in the conduct or projection of such work for the employer or in the promotion or safeguarding of such business, or for the protection of the men and properties while used or engaged for the purposes of the master's business."[5]

In other words, the facts and circumstances of each case should govern that case, and the facts and circumstances of the principal case being an altogether new situation to an Indiana court, the decision was unhampered

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[25] Tumey v. Ohio (1926), 273 U. S. 510.

[1] Bedwell v. Dixie Bee Coal Corp. (1934), 192 N. E. 723 (Ind.).

[2] Indiana Workmen's Compensation Act, Acts 1917, p. 673.

[3] R. A. Brown, "Arising out of and In The Course of the Employment" (1931-32), 7 Wis. L. R. 15 and 67; (1932-33), 8 Wis. L. R. 134 and 217; Heilbron, Accident "in Course of Employment," (1930), 18 Cal. L. R. 551.

[4] Harper, Law of Torts (1933), sec. 212.

[5] Ex parte Majestic Coal Co. (1927), 208 Ala. 86, 93 So. 728.