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Evidence--Confessions--What Constitutes Involuntariness

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disqualify him from voting for a contract in which he had such interest. Yet the trend of authority generally is to the effect that if the interest of a public officer is only indirect the cases are to be considered on their special facts and are to be held illegal only where there is a lack of proper disclosure, a fraudulent intent, or where some unfairness exists. III WILLISTON, CONTRACTS, §1735. Nevertheless, our court has held that the slightest interest will disqualify a judge. *Findlay v. Smith*, 42 W. Va. 299, 26 S. E. 370; *Coal Company v. Doolittle*, 54 W. Va. 210, 46 S. E. 238. Also, the fact that a juror was an employee of the corporation which is the prosecuting witness in a larceny case in which the juror was called to serve was held a sufficient interest to disqualify him. *State v. Dushman*, 79 W. Va. 747, 91 S. E. 809. In these cases the law is zealous in its protection of the individual. By analogy, should the law not protect as fully the rights of the public to its guarantee of officers acting without personal interest in the business of the public? Our court has said that the true intent of the legislature is the law in construing statutes. *Waldron v. Taylor*, 52 W. Va. 284, 45 S. E. 336; *State v. Harden*, 62 W. Va. 313; 60 S. E. 394; *Click v. Click*, 98 W. Va. 419, 127 S. E. 194. Every statute is to be interpreted with reference to the object to be accomplished. *Association v. Sohn*, 54 W. Va. 101, 46 S. E. 222. The court found that there was no interest. It is suggested that this finding is at least doubtful in view of the fact that the alleged interested member's vote was necessary to authorize the purchase and since the property in question adjoins the property of the alleged interested member. It is further suggested that the public interest would have been served and the legislative intent satisfied if such doubt had been resolved in favor of the plaintiffs in this suit. The precedent here established upon these facts certainly should not be extended.

—R. Paul Holland.

EVIDENCE—CONFESSIONS—WHAT CONSTITUTES INVOLUNTARINESS.—Defendants, who were accused of murder, were confined separately and were taken out and questioned each day for several weeks by a private detective and two witnesses. They finally made confessions which the state

introduced as evidence. Defendants objected to the admission of the confessions on the ground that they were not voluntary. *Held*, the confessions were admissible. *State v. Richards*, 101 W. Va. 136, 132 S. E. 375.

The court seems to have followed the rule laid down in *Smith v. Commonwealth*, 10 Grat. (Va.) 734, "A confession of the prisoner may be given in evidence unless it appears that it was obtained by some inducement of a worldly or temporal character, in the nature of a threat or promise of benefit, held out to him in respect of his escape from the consequences of the offense, or the mitigation of the punishment, by a person in authority, or with the apparent sanction of such a person." This rule has been consistently followed by the West Virginia courts. *State v. Morgan*, 35 W. Va. 260; *State v. Goldizen*, 93 W. Va. 325, 116 S. E. 687; *State v. Zaccario*, 100 W. Va. 36, 129 S. E. 736. The rule is but a statement of the orthodox view on the subject. "By the middle of the nineteenth century, the phrase 'threat or promise' had come to be regarded by the great number of judges as in itself sufficient, and the rule was frequently laid down that any threat or promise would exclude a confession, irrespective of any attempt to measure its influence to cause a false confession." WIGMORE, EVIDENCE, §825. *Regina v. Gibney*, Jebb C. C. 15; *Regina v. Moore*, 2 Den. C. C. 525; *Bartley v. People*, 156 Ill. 234, 40 N. E. 831; *State v. York*, 37 N. H. 183; 18 L. R. A. (N. S.) 768. That the application of this rule has led to some absurd decisions is beyond doubt. The admonition "you had better confess" uttered by one in authority has been held to vitiate the resulting confession on the ground that any inducement, however slight, is sufficient to invalidate. *State v. Alexander*, 109 La. 557, 30 So. 600; *Commonwealth v. Nott*, 135 Mass. 269. So it was formerly held that the statement "what you say will be used for or against you" made the subsequent confession bad, the reason given being that the accused might think it was an inducement to admit guilt. *Regina v. Drew*, 8 C. & P. 140. And it has been held that a question directed to the accused, involving the assumption of his guilt, excluded the resulting confession. *State v. Clarissa*, 11 Ala. 57. Despite the hopeless confusion resulting from the application of this rule, the courts have

almost without exception clung to it. It was thus laid down in the federal courts until recently. *Hansen v. United States*, 156 U. S. 51; *Hopt v. Utah*, 110 U. S. 574. But in 1924 a new test was formulated for the federal courts. D was accused of murder and was subjected to a severe and continuous questioning, despite the fact that he was very ill. On the thirteenth day, being exhausted, he made a confession, apparently to get rid of his questioners. Nevertheless the Court of Appeals held the confession admissible on the ground that it was not procured, by promise or threat—applying the rule as followed by the West Virginia courts. *Wan v. United States*, 289 Fed. 908. But on appeal to the United States Supreme Court the confession was held to be inadmissible. The court broke away from the orthodox rule of admissibility and laid down a simpler test. It stated that the requisite of voluntariness was not satisfied by establishing merely that the confession was not induced by threat or promise, but that it must be voluntary in fact. *Wan v. United States*, 266 U. S. 1, 14. It is submitted that this decision shows a salutary tendency to break away from the mechanical test of threat or promise, hope or fear. The proper test should be whether the circumstances attending the confession were such as to have created in any considerable degree a risk that a false confession would be made. WIGMORE, EVIDENCE, §824.

—William Thomas O'Farrell.

SUPREME COURT REVERSES ITSELF ON QUESTION OF PARTY WALLS—RIGHT OF THE ASSIGNEE COVENANTOR TO SUE.—In a deed by which the grantor conveyed half of a building to defendant, it was agreed that the dividing wall should be a party wall and that either party, or his vendee, was to have the right to extend the wall higher, and the other party, or his vendee, was to pay for half of so much of the wall as he should elect to use. The grantor conveyed the other half of the building to the plaintiff. The plaintiff built this wall up another story, placing the joists of defendant's floor in the new wall. Plaintiff then sued defendant for half the cost of the wall. Judgment for defendant below was reversed. *A. W. Cox Department Store v. Solof*, 138 S. E. 452 (W. Va. 1927).