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Jurors--Interest--Competency for Trial of Cause When Juror is a Member of Organization Active in Indicting Defendant

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JURORS—INTEREST—COMPETENCY FOR TRIAL OF CAUSE WHEN JUROR IS A MEMBER OF ORGANIZATION ACTIVE IN INDICTING DEFENDANT.—One of the primary duties of every good citizen is that of obeying our laws and encouraging their obedience. From time to time, organizations have been formed, having among their objects, that of detecting crime and furnishing information regarding the violation of our laws to the prosecuting attorney. Such a practice is unquestionably a worthy one, and no doubt results in convicting law-breakers who would otherwise go unpunished. The question occasionally arises as to whether or not a member of such an organization is competent to serve as a juror in a case where his particular local organization has been active in securing information against, and indicting the defendant. Such a question was recently presented to the West Virginia Supreme Court of Appeals in *State* v. *Lohm.* The Court held, "When a representative of an organization at the instance of several members thereof, procures affidavits and turns them over to the prosecuting attorney for use in a particular case, mere membership in such an organization does not *per se* disqualify a juror in that case." As authority for this proposition, *Clark* v. *State*[2] was cited. This decision holds, "The rule seems to be settled that the mere membership in societies or other organizations for the suppression of crime does not operate as a disqualification of a juror, unless it is shown that the particular individual has actual bias, *or is directly connected with the matter under investigation in a way that bias or prejudice will be implied.*" In *Clark* v. *State* the objection was made to a member of the Ku Klux Klan serving as a juror because the Miner's Union, of which defendant was a member, had passed a resolution condemning the Ku Klux Klan. The Court overruled the objection because it was impertinent. In *State* v. *Lohm* the objection was made because the juror was a member of the local organization which was active in having the defendant indicted. The distinction in the facts of the two cases is quite obvious. It appears that such a situation as accrued in *Stat* v. *Lohm* could be reasonably brought under the exception stated in the rule of *Clark* v. *State.* A West Virginia case, which, in principle, is apparently on all fours with *State* v. *Lohm* is *State* v. *Dushman.*[3] That was a case where an employee of a railway company was objected to as a juror because his employer had the

[1] State v. Lohm, 97 W. Va. 652, 125 S. E. 758 (1924).
[2] Clark v. State, 154 Ark. 592, 243 S. W. 868 (1922).
[3] State v. Dushman, 79 W. Va. 747, 47 S. E. 166 (1917).

defendant indicted for stealing brass from the railway company. The court said, "Though strictly speaking, the railway company is not actually a party, it is certainly interested in this prosecution. Its employees would certainly not be competent jurors to sit in a trial against the defendant. Is it not interested in the result of this prosecution [so] as to make the reason for the rule applicable? We are disposed to hold that it is, and that its employees offered as jurors would presumptively be subject to some bias or prejudice, or under some control or influence of the corporation." "As a general rule the mere fact that certain persons are members of an association for the detection of crime, pay dues, etc., and are liable to assessment by the association, does not disqualify them as jurors, *in the absence of a showing that the association to which they belong is in some manner connected with or interested in the prosecution of the particular case.*"[4] The Massachusetts Court in *Commonwealth* v. *Moore*[5] held, "A member in a voluntary organization formed for the enforcement of laws against the sale of intoxicating liquors, is incompetent to sit as a juror in a prosecution for a violation of the liquor laws, where it appears that the complaint was instituted by an agent of the association."

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an *impartial jury* of the state.[6] The real question, of course, is that of determining just what facts must be present to raise a presumption that a juror will not be impartial. At common law, the principal causes of challenges *prima facie* disqualifying jurors were, (1) kinship to either party within the ninth degree, (2) that the juror was an arbitrator on either side, (3) that he has an interest in the cause, (4) that an action is pending between the juror and either party to the cause, (5) that the juror has taken money for his verdict, (6) that he was formerly a juror in the same cause, (7) that he is the party's master, servant, counsellor, steward, or attorney, *or in the same society* or corporation with him; *and causes of the same class or founded upon the same reason should be included.*[7] Our statute does not remove these common law disabilities,[8] and unless superseded by express terms, they remain in force as common law disabilities.[9] From these common law disabilities and some of the cases cited, it is seen that the law presumes a great weakness in

[4] 16 R. C. L. 277, and cases cited. Also see 35 C. J. 332, § 358.
[5] Commonwealth *v.* Moore, 143 Mass. 136, 9 N. E. 25 (1886).
[6] U. S. CONST., ART. VI.
[7] N. 3, *supra.*
[8] N. 3, *supra.*
[9] Crawford *v.* United States, 212 U. S. 183, 53 L. ed. 465 (1909).

our human make-up. A relative, for example, may most solemnly swear upon his *voir dire* that he is wholly free from bias, prejudice or interest, and will a true verdict render, according to the law and the evidence. Interest, however, will be presumed, and prevails as a disqualification over the juror's oath. A member of an organization, active in indicting the defendant, can be presumed to possess the following interests which would tend to render him an incompetent juror: first, he possesses class feeling acquired by being a member of any organization; second, he is in sympathy with the objects of his organization; third, he may be under the control of his organization, or bound by secret promises; fourth, there is the fear of failing to render a verdict not in accord with the wishes of his brother members; fifth, he may have been present in the meetings in which the defendant was discussed.

The object of the law is, in all cases in which jurors are impaneled to try the issue, to secure men for that responsible duty whose minds are *wholly free* from bias or prejudice.[10] A big part of the battle is the selection of the jury, and an impartial jury is the corner-stone of the fairness of trial by jury.[11] Just where to draw the line in determining whether or not a juror will be impartial is a matter of much conjecture. However, as there is no alarming shortage of jury material in our country at the present time, the best policy would seem to be that of giving the defendant the benefit of the doubt when there is a strong presumption that the juror may be an interested party.

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[10] State *v.* Hatfield, 48 W. Va. 561, 37 S. E. 626 (1900).
[11] Melson *v.* Dickson, 63 Ga. 682, 36 Am. Rep. 128 (1879).