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Quotient Verdicts—Admissible Evidence to Prove Same

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STUDENT NOTES AND RECENT CASES

QUOTIENT VERDICTS — ADMISSIBLE EVIDENCE TO PROVE SAME.—
 A verdict should be the result of intelligent discussion, honest deliberation and the expression of the ultimate conviction of the jurors as to the rights of the parties under the law and evidence of the case. Wherever it can be shown that the verdict was not so found it must be set aside.¹ Some verdicts, invalid because not predicated upon the above rule, are the chance verdict,² certain forms of compromise verdicts,³ and the quotient verdict. The quotient verdict is the result of a prior agreement of all the jurors that each shall mark down the amount to which he believes the prevailing party is entitled, the amounts so indicated being added together and the total divided by twelve, and the quotient thereof accepted as the verdict.⁴ It is the prior agreement to accept the quotient, so derived, that invalidates the verdict. Thus where the process was purely tentative, and the quotient so determined, the jury agreed to accept it as their verdict, the manner of the finding was held to be immaterial.⁵ The distinction may at first seem to be technical, but it will appear less so when it is considered that absence of the agreement to adopt the quotient as the verdict leaves the jury free further to discuss the fitness of the sum found and even to change it. But in a case where there is no further discussion, would it not seem that the verdict is equally as bad as if the agreement to be bound thereby had been made beforehand? If in the latter case the verdict is declared invalid because the party has been denied his right of having his damages based upon the discussion and conscientious deliberation of the jury by reason of the prior agreement to be bound by the quotient verdict, the former is none the less obnoxious where the jury has arbitrarily denied him the same right, though without resorting to the mere formality of an agreement. The distinction, then, is one that may or may not be justified, depending upon the caprice of the jury.

¹ Abbott's Civil Jury Trial, 4th ed. 844.

² *Ottawa v. Gilliland*, 63 Kan. 165, 65 Pac. 252, (1901).

³ *Simmons v. Fish*, 210 Mass. 583; 97 N. E. 102, (1912).

⁴ *Wash. Park Co. v. Goodrich*, 110 Va. 692; 66 S. E. 978. (1910).

⁵ *Groves & S. R. R. Co. v. Herman*, 206 Ill. 34, 69 N. E. 36, (1903).

The rule declaring true quotient verdicts invalid assumes that substantial justice will not be done by them. If that assumption is disputed, the argument could only be somewhat as follows: Practically, resort will be had to the quotient verdict only after prolonged discussion where apparent failure to reach a verdict looms ahead; that such a verdict will render more substantial justice than would no verdict at all where a right to recover is conceded; that each juror in setting down what he believes to be just will seek to offset the sum assessed by others whose estimate is most strongly antagonistic to his own, and thus an equitable and fair verdict will be the outcome; therefore the end justifies the means. But it will be seen at once that these arguments are utterly speculative, possibly ascribing to the jury a sagacity and foresight they do not merit. Speculation has no limits. Therefore, the conclusion is that to get at the right we must resort to something more tangible and accordingly turn to the salutary common law rule.

If, then, the rule is vindicated in theory, do the rules excluding evidence offered to impeach this kind of verdict destroy its practicability and render it useless if theoretically sound? The process by which a quotient verdict is derived falls into that class of acts to which is applied the term misconduct of the jury.⁶ It has long been held that a juror cannot testify to impeach a verdict based upon his own misconduct.⁷ This rule excludes the affidavits of jurors tendered to show that the verdict was found by the process of averaging estimates.⁸ In California a statute which permitted jurors to testify toward impeaching their verdict on grounds of misconduct was construed to exclude all evidence of this nature except that which showed the verdict to have been determined by chance.⁹ Even in those states where the jury may be polled, it was held error for the court to permit counsel to ask the jurors to state in what manner they arrived at the amount of the damages reported by them.¹⁰ The finding of a piece or pieces of paper in the jury room inscribed with twelve different amounts, the total being divided by twelve, and the quotient agreeing with the verdict is generally held not to raise a presumption of a prior agreement to fix upon the amount of the verdict.¹¹ The Virginia court has

⁶ *Roy v. Goings*, 112 Ill. 656, (1885).

⁷ *Vasie v. Delaval*, 1 T. R. 11, K. B. (1785); *Pickens v. Broom Co.* 58 W. Va. 11, 50 S. E. 872, (1905).

⁸ *Lowther v. Oil and Gas Co.* 88 W. Va. 650, 108 S. E. 276 (1921); *C. & O. R. R. Co. v. Patton*, 9 W. Va. 649, (1876); *Shepherd v. Lumber Co.* 86 Ore. 652, 168 Pac. 601, (1917); *Shelton v. R. Co.* 255 Fed. 182, (1918).

⁹ *Hoare v. Hudley*, 49 Cal. 275, (1874).

¹⁰ *Roy v. Goings*, *Supra*.

¹¹ *John Spry Lumber Co. v. Duggan*, 80 Ill. App. 394, (1899); *Driscoll v. Nelligan*, 46 N. Y. App. Div. 324, 61 N. Y. S. 692, (1899). *Contra*, *South R. Co. v. Williams*, 113 Ala. 620, 21 So. 328, (1896).

gone even further and refused to declare paper of this character admissible.¹² If such papers are inadmissible, and if the jurors cannot testify to their own misconduct, they being the only ones, presumptively, who know of misconduct of this character, it may be asked what defence can be made for this rule.

This disability placed upon jurors by the common law, has in some states been removed by statute, as for instance in South Dakota.¹³ In Iowa it was held that under the statute the affidavits of jurors may be admitted to show that the jury found a quotient verdict.¹⁴ Where an attorney, or one not a juror testifies that he believed the jury to have found a quotient verdict, basing his belief upon the finding of papers in the jury room, and his testimony is not contradicted, the court granted a new trial.¹⁵ But a juror in such case can deny that the verdict was so found, for while he cannot testify to impeach his verdict based upon his misconduct, he is at liberty to testify in support of it.¹⁶ In a recent Kansas case the affidavits of jurors were admitted and a new trial was granted on the ground that the affidavits showed the verdict to have been found by the quotient method.¹⁷ In Alabama an affidavit by one of the jurors admitting a quotient verdict to have been found was admitted.¹⁸ Where, in a Texas case there were conflicting affidavits of jurors as to how the verdict was found, the court after considering them all held that there had been no abuse of discretion in granting a new trial;¹⁹ in accord wherewith is a recent Washington decision.²⁰

West Virginia has adopted the general rule laid down in an early Virginia case²¹ that a juror's affidavit offered to impeach his verdict is inadmissible, the court adding that there are no exceptions.²² But few cases have arisen in this jurisdiction involving the question of quotient verdicts and in these cases the affidavits of jurors impeaching such a verdict have been excluded.²³ The value of the rule is minimized by the difficulties attendant upon its application.

—H. C. H.

¹² *Washington Park Co. v. Goodrich*, 110 Va. 692, 66 S. E. 977, (1910).

¹³ *Murphy v. Murphy*, 1 S. D. 316, 47 N. W. 142, (1890).

¹⁴ *Hendrickson v. Kingsbury*, 21 Ia. 379 (1867); *Clary v. Blondel* 178 Ia. 101 159 N. W. 604, (1916).

¹⁵ *Hauk v. Allen*, (Ind.) 11 L. R. A. 706, (1890).

¹⁶ WIGMORE, EVIDENCE, Vol. IV, § 2352; *Okla. K. & M. R. Co. v. McGhee*, (Okla.) 202 Pac. 277, (1922).

¹⁷ *Anderson v. Kirby*, 105 Kans. 596, 185 Pac. 894, (1919); *Wichita v. Stallings*, 59 Kans. 779, 54 Pac. 639, (1898).

¹⁸ *Louisville & N. R. Co. v. Bishop*, (Ala.) 85 So. 859, (1920).

¹⁹ *Bryan & C. I. R. Co. v. Elleson*, 241 S. W. 542, (Tex. Civ. App. 1922).

²⁰ *Oliver v. Taylor*, 205 Pac. 746, (Wash. 1922).

²¹ *Bull v. Commonwealth*, 14 Gratt. 613, and note., (1857).

²² *C. & O. R. Co. v. Patton*, 9 W. Va. 649, (1876).

²³ *C. & O. R. Co. v. Patton*; *Lowther v. Oil and Gas Co.*, *supra*.