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Juries in Inferior Courts

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JURIES IN INFERIOR COURTS

Magistrate court: At common law one was not entitled to have a jury pass upon his rights in what is now designated as a magistrate court. But Sections 43-93 *et seq.* and 43-115 *et seq.* give the right upon demand by either party in civil and criminal cases respectively. In the latter cases even the prosecutrix may exercise the right. Justice Pope in *State v. Nash* (1897), 51 S. C. 319, 28 S. E. 946, at page 321 said:

> The next question relates to the empanelling a jury at the demand of the prosecutrix, and against the protest of the defendant. Section 884 of the Civil Statutes of South Carolina, vol. 1, of the Revised Statutes of this State, 1893, provides that either party to a trial before a magistrate shall be entitled to a jury. The only question under this Section is, is a prosecutor a "party to a suit?" If the State, who is a party, should demand a jury, it would necessarily make known such demand by some one who represents the State. If the attorney general or solicitor had been present, a demand by either one of them for a trial by jury would have been recognized as a demand therefor by the State. Why may not the prosecutrix represent the State, in making demand for a jury trial? This, no doubt, was the view entertained by the Circuit Judge, and I cannot find any error in such view.

In civil cases not only is either party entitled to the right of a statutory jury of six upon demand but if he "refuses to pay in advance the costs of summoning and paying jurors" such a refusal will not be deemed a waiver since the right is not conditioned upon such payment. *Pinckney v. Green* (1903), 67 S. C. 309, 45 S. E. 202.

Can women serve on juries in magistrate courts? Section 43-94, as to civil cases, does not use the word "male" when referring to whom may be selected, but Section 43-116, as to criminal cases, provides that the appointed officer "shall write and fold up eighteen ballots, each containing the name of a *respectable* (emphasis added) voter of the vicinity." Women can now vote. They are no less respectable than men, to say the least. Why aren't the names of some of them written on some of the "ballots" prepared for a magistrate court trial? Or why doesn't the legislature change the language of the Section to conform to the times?

Drawing a jury in a Magistrate Court: As stated above the constable has to furnish the names of only "respectable voters" of the vicinity in criminal cases. In civil cases, however, Section 43-94 which didn't exist prior to the 1952 Code, provides that the constable shall furnish each side with a list of 18 jurors, numbered from 1 to 18, such jurors to be "drawn and selected by ballot from the whole number of jurors who are drawn." The Section nowhere says when that "whole number" is to be drawn, how many are to be included, or where and in what kind of container the names are to be kept, whether they are just to be "respectable voters" or qualified electors.

The writer is informed that in applying that Section in the magistrate court in the City of Columbia, the constable selects the names of a few more than 18 male persons. These he checks with the county registration books so as to ascertain who of the selected number are qualified electors. He puts 18 names of those so qualified on the striking list, copies of which are handed to the attorneys, he keeping the original for recording the strikes.

Whichever of the above sections apply, trouble can arise as has happened in the past. If all strikes are used, and the constable goes out to summon the 6 who are to serve, he might find one or even two who are away, or sick, and unless the parties agree to go ahead with the five or four as a jury, the constable must make out another list of three times the number deficient. After each side has struck alternately, he goes out to summon the one or two who are to serve as jurors, hoping that he will be successful. Sometimes continuances would result; always there was a waste of time.

As already noted Section 43-116, which is the law as brought over from the 1942 Code, then Section 3711 and which applied to both civil and criminal cases, governs only criminal cases now. That section provides for taking care of a deficiency in the event, when the constable goes out to summon the 6 jurors, one or more can't be found or are unable to serve.

However, Section 43-94 makes no provision for putting three or six more names on a later striking list so that a jury of six can finally be obtained. One asks oneself: what is the constable to do in the event he can get only four or five of the six first selected? Since Section 43-94 gives no answer,

and the question must be answered when the occasion requires, the logical conclusion is that new Section 43-94 and old Section 43-116 will have to be construed together, where they do not conflict, in order to get a practical, definite, well-rounded procedure.

Judge DuPre of the Juvenile and Domestic Relations Court in Columbia started a practice when Columbia magistrate which tends toward trial efficiency. In order to save time and not have to put off a trial, the jury list of 18 was handed out to the attorneys of each side several days prior to the selecting of the jury. Instead of waiting until the day of trial, on a day agreed upon the attorneys came in and struck the jury.

He said that the practice began because of the feasibility of each side only taking five strikes, thereby leaving one name on each side as an alternate in the event that, when the constable goes out to get the striken jury in, if there is one or even two who can't serve, or whom he can't find, the court then has leeway and can still get a jury of six, because the constable can serve the seventh juror or the seventh and eighth, thus causing a required jury of six to report on the trial day. This procedure is still followed by the present Columbia magistrate.

Municipal court: In drawing trial juries in municipal courts the writer is informed that there are minor variations throughout the state, hence an attorney has to ascertain what is the particular method used in any given city. However, the basic steps are set forth in the Code. Articles 2 to 7, Chapter 6 of the Code, beginning at page 602 will have to be studied when dealing with any municipal court. And Section 15-1013 must be kept in mind when a child under 17 years of age is being investigated; likewise Section 15-1314 as to certain cases in the children's court of Greenville County.

Courts of the City of Charleston are dealt with in a separate Chapter, namely Chapter 9. For juries for the several courts in that city one must refer to Articles 1 and 2 of that chapter.

Municipal Courts, more often referred to as recorder's courts, are of much longer standing and hence the code sections pertaining thereto have been before the Supreme Court quite often. But the sections dealing with the other inferior courts, being of rather recent origin, have only in rare in-

stances been before the highest court, and hence all that one can do, when practicing in any of those courts, is to study and analyze carefully their respective code sections from 15-1101 thru 15-1619, thence go to general authorities, such as C. J. S., to ascertain what, if anything, has been adjudicated in other jurisdictions.

Municipal courts have had their powers construed quite often by the Supreme Court and hence there is the added responsibility of checking and studying the annotations to their respective Code sections.

It should be noted that Section 15-901 gives to intendents and mayors "all the powers and authority of magistrates in criminal cases . . . " This would appear to empower such officers to try a criminal case involving the violation of a state statute. However, the Supreme Court gave a strict interpretation to the above quoted language and held that such power did not extend beyond authority to try offenses involving the violation of city ordinances. *Keels v. Sumter* (1913), 95 S. C. 203, 78 S. E. 893. Section 15-1010, as to the powers of recorders in cities of 1500 and not over 50,000 has similar language but has not as yet been construed. However, there can be little, if any, doubt that the identical construction, would be placed upon it as was given to the similar language in the *Keels* case, *supra.*

In checking the code sections relative to any inferior court, watch out for differences as to time periods in which any judicial step must be taken, and also as to whom is to be served. For example, in appealing from certain municipal or recorders' courts, one must serve on the recorder notice of appeal, and such service must be within *24 hours* after sentence or judgment. Section 15-1017. This is a very short time in which to act, but like other time periods for appealing, it would seem that the municipal court would have no power to extend the time. The statutory time limitation would be mandatory; hence, any attorney must be very careful and not delay.