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LEGISLATIVE ASSEMBLY,

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CHALLENGING JURORS, &c.

the defendant be in custody or on bail, and must in like manner, enter therein all indictments found during the term, and on which issues of fact are joined.

Issues on the calendar how disposed of.

SEC. 163. The issues on the calendar, must be disposed of in the following order, unless, upon the application of either party, for good cause, the court direct an indictment to be tried out of its order:

1. Indictments for felony, where the defendant is in custody;
2. Indictments for misdemeanor, where the defendant is in custody;
3. Indictments for felony, where the defendant is on bail; and,
4. Indictments for misdemeanor, where the defendant is on bail.

After plea, defendant entitled to four days for trial.

SEC. 164. After his plea, the defendant is entitled to at least four days to prepare for his trial, if he requires it.

Clerk to keep a register.

SEC. 165. The clerk must keep a register of all the criminal actions in the court, in which he must enter:

Register what to contain.

1. All cases returned to the court by a magistrate, whether the defendant be discharged or held to answer:

2. All indictments found in the court, or sent or removed thereto for trial, with the time of finding the indictment, or when it was sent or removed; and,

3. The time of arraignment, of the demurrer, or plea, and of the trial, conviction or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

Register to be submitted to the court at the commencement of term.

SEC. 166. The register must be submitted to court at its opening at every term.

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SEC. 167. When an indictment is called for trial, or at any time previous thereto the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term, or to another term; the affidavits read on both sides upon the application must at the same time be filed with the clerk.

When cause may be postponed.

SEC. 168. If when the indictment is called for trial, the defendant appear for trial, and no sufficient cause for postponing the same, be shown by the district attorney, the court must order the indictment to be discharged, unless being of the opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

Affidavits must be filed.

When defendant discharged, unless cause be shown for postponement.

SEC. 169. If the court order the indictment to be discharged, the order is not a bar to another prosecution for the same offence, unless the court so direct; if the court so direct, judgment of acquittal must be entered.

Order not a bar to another prosecution.

SEC. 170. A challenge is an objection made to the trial jury, and is of two kinds:

Challenge defined.

- 1. To the panel:
- 2. To an individual juror.

SEC. 171. When several defendants are tried together, they cannot sever the challenges, but must join therein.

Defendants must join in challenge.

SEC. 172. A challenge to the panel is an objection made to all the petit or trial jurors returned, and may be taken by either party.

Challenge to the panel defined.

SEC. 173. A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury.

Challenge to the panel on what founded.

SEC. 174. A challenge to the panel must be taken before a jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

When and how taken.

SEC. 175. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge; the exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein, to be true.

If sufficiency of the facts be denied, adverse party may except.

SEC. 176. If on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge; if the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

On such challenge, court how to proceed.

SEC. 177. If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court, and the court must proceed to try the question of fact.

Denial of challenge how made, and trial thereof.

SEC. 178. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Who may be examined on trial of challenge.

SEC. 179. If either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury so far as the trial of the indictment in question is concerned, and no

If challenge allowed jury to be discharged.

other jury for the trial thereof can be summoned for the same term. If it be disallowed, the court must direct the jury to be impaneled.

Defendant to be informed of his right to challenge individual juror.

SEC. 180. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

Kinds of challenge to individual juror.

SEC. 181. A challenge to an individual juror, is either,
1. Peremptory; or
2. For cause.

Challenge when taken.

SEC. 182. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge how taken.

SEC. 183. A peremptory challenge can be taken by the defendant only, and may be oral; it is an objection to a juror, for which no reason need be given, but upon which the court must exclude him.

Number of peremptory challenge to which defendant is entitled.

SEC. 184. If the offence charged, be punishable with death, or with imprisonment in the territorial prison for life, the defendant is entitled to twenty peremptory challenges; on a trial for any other offence, he is entitled to five peremptory challenges.

Challenge for cause by whom taken.

SEC. 185. A challenge for cause may be taken either by the United States, or by the defendant.

Definition of challenge for cause.

SEC. 186. It is an objection to a particular juror, and is either,
1. General, that the juror is disqualified from serving in any case;
or,

2. Particular, that he is disqualified from serving in the case on trial.

General causes of challenge.

SEC. 187. General causes of challenge are,

1. A conviction for a felony;
2. A want of any of the qualifications prescribed by the laws to render a person a competent juror;
3. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror.

Particular causes of challenge.

SEC. 188. Particular causes of challenge are of two kinds:

1. For such a bias, as when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this statute as implied bias;
2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the triers, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this statute, as actual bias.

Grounds of challenge for implied bias.

SEC. 189. A challenge for implied bias, may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant;
2. Standing in relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence, or on whose complaint the prosecution was instituted, or in his employment on wages;
3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;
4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person, whose death is the subject of the indictment;
5. Having served on a trial jury, which has tried another person for the offence charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it :

7. Having served as a juror, in a civil action, brought against the defendant, for the act charged as an offence :

8. If the offence charged, be punishable with death, the entertaining of such conscientious opinions, as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

SEC. 190. A challenge for actual bias, may be taken for the cause mentioned in the second subdivision of section one hundred and eighty-eight, and for no other cause.

Grounds of challenge for actual bias.

SEC. 191. An exemption from service on a jury, is not a cause of challenge, but the privilege of the person exempted.

Exemption not a ground of challenge

SEC. 192. In a challenge for implied bias, one or more of the causes stated in section one hundred and eighty-nine, must be alleged ; in a challenge for actual bias, the cause stated in the second subdivision of section one hundred and eighty-eight, must be alleged ; in either case the challenge may be oral, but must be entered upon the minutes of the court.

Causes of challenge how stated.

SEC. 193. The adverse party may except to the challenge, in the same manner as to a challenge to a panel, and the same proceedings must be had thereon, as prescribed in section one hundred and seventy-four, one hundred and seventy-five, and one hundred and seventy-six, except that if the exception be allowed, the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Exception to challenge and denial thereof.

SEC. 194. If the facts be denied, the challenge must be tried as follows :

Challenge how tried if denied.

1. If it be for implied bias, by the court :

2. If it be for actual bias, by triers.

SEC. 195. The triers must be three impartial persons not on the jury panel, appointed by the court. All challenges for actual bias must be tried by the triers thus appointed, a majority of whom may decide.

Triers how appointed majority may decide.

SEC. 196. The triers must be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are true, and to decide the same according to evidence.

Triers must take an oath.

SEC. 197. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness, to prove, or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

Juror challenged may be examined.

SEC. 198. Other witnesses may also be examined on either side ; and the rules of evidence applicable to the trial of other issues must govern the admission or exclusion of testimony on the trial of the challenge.

Rules of evidence on trial of challenge.

SEC. 199. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Challenge for implied bias how determined.

SEC. 200. On the trial of a challenge for actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if the evidence establishes the existence of a state of mind on the part of the juror in reference to the case, or to either party, which satisfies them, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging ; and that, if otherwise, they must find the challenge not true. The court can give them no other instruction.

Trial of challenge for actual bias.

SEC. 201. The triers must thereupon find the challenge either true or not true ; and their decision is final. If they find it true, the juror must be excluded.

Verdict of triers, and its effect.

Challenges must be first by the defendant then by the U. States.

SEC. 202. All challenges to an individual juror, except peremptory, must be taken first by the defendant, and then by the United States; and either party, must exhaust all his challenges before the other begins.

Order of challenges

SEC. 203. The challenges of either party need not all be taken at once; but they may be taken separately, in the following order, including in each challenge, all the causes of challenge belonging to the same class:

1. To the panel,
2. To an individual juror, for a general disqualification.
3. To an individual juror for implied bias.
4. To an individual juror, for actual bias.

Peremptory when may be taken.

SEC. 204. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted.

Form of oath to be administered to jurors.

SEC. 205. The following oath shall be administered to all jurors for the trial of all criminal cases not capital, "You shall well and truly try the issue between the United States and the defendant (or defendants, as the case may be) according to evidence; so help you God." In capital cases the following oath shall be administered to the jurors "You shall well and truly try, and true deliverence make, between the United States and the prisoner at the bar, whom you shall have in charge, according to evidence; so help you God."

Jurors may affirm.

SEC. 206. Any juror who is conscientiously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, "This you do under the pains and penalties of perjury," instead of the words "so help you God."

Person on trial for felony must be present.

SEC. 207. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted for smaller offences, may, at their own request, by leave of the court, be put on trial in their absence and may appear by an attorney duly authorized for that purpose.

Court may order a view by the jury.

SEC. 208. The court may order a view by any jury impaneled to try a criminal case.

Proceedings when defendant is acquitted of a part of the offence charged.

SEC. 209. Whenever any person indicted for a felony, shall on trial be acquitted, by verdict, of part of the offence charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged, shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue, of such indictment, and shall be sentenced and punished accordingly.

When defendant charged with assault with intent to commit felony may be convicted of assault.

SEC. 210. In all cases of indictment in the district court, for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the assault; and the court shall have power to sentence the person so convicted, to be punished by imprisonment in the jail of the county, for a term not exceeding one year, or by fine not exceeding five hundred dollars.

Verdict in case of insanity.

SEC. 211. When any person, indicted for an offence, shall on trial be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Defendant when not liable for costs.

SEC. 212. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution shall be liable for any cost or fees of officers, or for any charge for subsistence while he was in custody.