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## CHAPTER 116.

## CHALLENGING JURORS.

**§ 7351. Definition and kinds of challenge.**

A challenge is an objection made to a trial jury, and is of two kinds:

First. To the panel;

Second. To an individual juror.

(G. S. 1866, c. 116, § 1; G. S. 1878, c. 116, § 1.)

**§ 7352. Defendants must join in challenge.**

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

(G. S. 1866, c. 116, § 2; G. S. 1878, c. 116, § 2.)

**§ 7353. Challenge to panel defined.**

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

(G. S. 1866, c. 116, § 3; G. S. 1878, c. 116, § 3.)

**§ 7354. Same—To be founded on what.**

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.

(G. S. 1866, c. 116, § 4; G. S. 1878, c. 116, § 4.)

A challenge to the panel of a petit jury will, under this section, lie only for a material departure from the form prescribed by law in respect to the drawing and return of the jury. *State v. McCartney*, 17 Minn. 76, (Gil. 54.)

No challenge can be taken to the panel of grand jurors summoned on a special *venire*, except for the causes allowed by statute to the panel summoned on the general *venire*. *State v. Gut*, 13 Minn. 341, (Gil. 315.)

**§ 7355. Same—When and how taken.**

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

(G. S. 1866, c. 116, § 5; G. S. 1878, c. 116, § 5.)

In the absence of fraud or collusion in the selection of a jury, an objection to the array, or to a single juror, is too late after verdict, unless it is shown that the party objecting was prejudiced by the irregularity. *Steele v. Malony*, 1 Minn. 349, (Gil. 253.)

**§ 7356. Exception to challenge—How made, etc.**

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

(G. S. 1866, c. 116, § 6; G. S. 1878, c. 116, § 6.)

**§ 7357. Same—May be withdrawn, etc.—Amendment of challenge.**

If, on the exception, the court deems the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge; if the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

(G. S. 1866, c. 116, § 7; G. S. 1878, c. 116, § 7.)

**§ 7358. Denial of challenge—Proceedings.**

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

(G. S. 1866, c. 116, § 8; G. S. 1878, c. 116, § 8.)

**§ 7359. Evidence on trial of challenge.**

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.  
(G. S. 1866, c. 116, § 9; G. S. 1878, c. 116, § 9.)

**§ 7360. Defendant to be told when challenge must be made.**

Before a juror is called, the defendant shall be informed by the court, or under its direction, that if he intends to challenge an individual juror, he shall do so when the juror appears, and before he is sworn.  
(G. S. 1866, c. 116, § 10; G. S. 1878, c. 116, § 10.)

**§ 7361. Challenge to individual juror.**

A challenge to an individual juror is either:

- First. Peremptory; or,
- Second. For cause.

(G. S. 1866, c. 116, § 11; G. S. 1878, c. 116, § 11.)

**§ 7362. Same—When taken.**

It shall 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.

(G. S. 1866, c. 116, § 12; G. S. 1878, c. 116, § 12.)

To permit a juror to be questioned as to his qualifications before challenge is discretionary. A challenge admitted cannot be withdrawn. *State v. Lautenschlager*, 22 Minn. 514; *State v. Smith*, (Minn.) 57 N. W. Rep. 325.

A challenge to a juror for actual bias, which was made and withdrawn, may be renewed at any time before the jury is complete. *State v. Dumphey*, 4 Minn. 438, (Gil. 840.)

When the defendant fails to challenge a juror peremptorily when he is called, he cannot do so after the panel has been completed, though the jury has not been sworn. *State v. Scott*, 41 Minn. 365, 43 N. W. Rep. 62.

See *State v. Armington*, 25 Minn. 29.

**§ 7363. Peremptory challenge defined—Who may take.**

A peremptory challenge can be taken either by the state or by the defendant, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

(G. S. 1866, c. 116, § 13, as amended 1868, c. 86, § 1; G. S. 1878, c. 116, § 13.)

**§ 7364. Peremptory challenge—Number allowed.**

If the offence charged is punishable with death, or with imprisonment in the state prison for life, the state is entitled to seven peremptory challenges, and the defendant to twenty peremptory challenges. On a trial for any other offence, the state is entitled to two peremptory challenges, and the defendant to five peremptory challenges.

(G. S. 1866, c. 116, § 14, as amended 1868, c. 86, § 2; G. S. 1878, c. 116, § 14.)

This section is not an *ex post facto* law, and is applicable on the trial of offenses committed prior to its passage. *State v. Ryan*, 13 Minn. 370, (Gil. 343.)

See *People v. Comstock*, (Mich.) 21 N. W. Rep. 384.

**§ 7365. Who may challenge for cause.**

A challenge for cause may be taken either by the state or by the defendant  
(G. S. 1866, c. 116, § 15; G. S. 1878, c. 116, § 15.)

**§ 7366. Challenge for cause defined.**

It is an objection to a particular juror, and is either:

- First. General, that the juror is disqualified from serving in any case; or,
- Second. Particular, that he is disqualified from serving in the case on trial.

(G. S. 1866, c. 116, § 16; G. S. 1878, c. 116, § 16.)

**§ 7367. General cause of challenge.**

General causes of challenge are:

First. A conviction for a felony.

Second. A want of any of the qualifications prescribed by the laws to render a person a competent juror.

Third. 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.

(G. S. 1866, c. 116, § 17; G. S. 1878, c. 116, § 17.)

**§ 7368. Particular causes of challenge.**

Particular causes of challenge are of two kinds:

First. 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 chapter as implied bias;

Second. 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.

(G. S. 1866, c. 116, § 18; G. S. 1878, c. 116, § 18.)

**§ 7369. Causes of challenge for implied bias.**

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

First. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any one of the attorneys, either for the prosecution or for the defence.

Second. Standing in relation of guardian and ward, attorney and client, master and servant, 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.

Third. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him, in a criminal prosecution.

Fourth. Having served on the grand-jury which found the indictment, or on a coroner's jury which inquired into the death of the person whose death is the subject of indictment.

Fifth. Having served on a trial jury, which has tried another person for the offence charged in the indictment.

Sixth. 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.

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

Eighth. If the offence charged is 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.

(G. S. 1866, c. 116, § 19, as amended 1878, c. 24, § 1; G. S. 1878, c. 116, § 19.)

This section has no application to district judges. *Sjoberg v. Nordin*, 26 Minn. 501, 5 N. W. Rep. 677.

Defendant was indicted and convicted of perjury, committed on the trial in the district court of an appeal from a justice of the peace. One of the jurors on the trial of the indictment had been a juror on the trial of the cause in the justice court, upon an appeal in which the perjury was subsequently committed, which was unknown to defendant or counsel on either side. Held, that such fact was not ground for challenge within §§ 7367, 7368, or 7369, and not available in arrest of judgment. *State v. Thomas*, 19 Minn. 484, (Gil. 418.)

See *Williams v. McGrade*, 18 Minn. 82, (Gil. 65, 67.)

(1922)

**§ 7370. Cause of challenge for actual bias.**

A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section eighteen, and for no other cause.

(G. S. 1866, c. 116, § 20; G. S. 1878, c. 116, § 20.)

Cited, *McNulty v. Stewart*, 12 Minn. 434, (Gil. 319, 325.)

**§ 7371. Exemption from jury duty not a cause.**

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

(G. S. 1866, c. 116, § 21; G. S. 1878, c. 116, § 21.)

Cited *McNulty v. Stewart*, 12 Minn. 434 (Gil. 319, 325.)

**§ 7372. Causes of challenge, how stated.**

In a challenge for implied bias, one or more of the causes stated in section nineteen shall be alleged; in a challenge for actual bias, the cause stated in the second subdivision of section eighteen shall be alleged; in either case, the challenge may be oral, but shall be entered upon the minutes of the court.

(G. S. 1866, c. 116, § 22; G. S. 1878, c. 116, § 22.)

**§ 7373. Exception to challenge.**

The adverse party may except to the challenge in the same manner as to a challenge to a panel, and the same proceedings shall be had thereon as prescribed in sections five, six, and seven, except that if the challenge is sustained the juror shall be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

(G. S. 1866, c. 116, § 23; G. S. 1878, c. 116, § 23; as amended 1881, c. 9, § 1.)

**§ 7374. Trial of challenge.**

If the facts are denied, the challenge shall be tried as follows:

First. For implied bias, by the court;

Second. For actual bias, by triers, unless, in cases not capital, the parties consent to a trial by the court.

(G. S. 1866, c. 116, § 24; G. S. 1878, c. 116, § 24.)

Where a challenge to a juror for actual bias is admitted by the opposite party, there is nothing to try on the challenge, and the challenging party has no right to examine the juror. *Morrison v. Lovejoy*, 6 Minn. 319, (Gil. 224.)

What questions may be put to jurors on the trial of challenges for implied bias, in a murder case, see *State v. Hanley*, 34 Minn. 430, 26 N. W. Rep. 397.

**§ 7375. Triers shall be appointed.**

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

(G. S. 1866, c. 116, § 25; G. S. 1878, c. 116, § 25.)

**§ 7376. Triers to be sworn.**

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

(G. S. 1866, c. 116, § 26; G. S. 1878, c. 116, § 26.)

Triers of challenges to jurors need not be resworn for every challenge submitted to them. *State v. Brown*, 12 Minn. 538, (Gil. 448.)

**§ 7377. Juror challenged may be examined.**

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.

(G. S. 1866, c. 116, § 27; G. S. 1878, c. 116, § 27.)

**§ 7378. Challenge as to citizenship—Evidence.**

Whenever any person called as a juror is challenged on the ground that he is not a citizen of the United States, the testimony of such person shall be competent evidence of the fact of naturalization, or declaration of intention

to become a citizen, without the production of any records or certificates, but his testimony may be disputed by the party challenging.

(1891, c. 34, § 1.)

Laws 1889, c. 49, is repealed by § 2 of this act.

### § 7379. Rules of evidence on trial.

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

(G. S. 1866, c. 116, § 28; G. S. 1878, c. 116, § 28.)

Refusal to issue a subpoena, and suspend proceedings to obtain a witness desired by the defendant on trial of a challenge for actual bias in a murder case, held not error. *State v. Barrett*, 40 Minn. 65, 41 N. W. Rep. 459.

### § 7380. Court shall determine implied bias.

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

(G. S. 1866, c. 116, § 29; G. S. 1878, c. 116, § 29.)

### § 7381. Actual bias—Instructions to triers.

On the trial of a challenge for actual bias, when the evidence is concluded, the court shall 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 shall find the challenge not true. The court can give them no other instruction.

(G. S. 1866, c. 116, § 30; G. S. 1878, c. 116, § 30.)

### § 7382. Decision of triers—Effect.

The triers shall thereupon find the challenge either true or not true, and their decision is final. If they find it true, the jurors shall be excluded.

(G. S. 1866, c. 116, § 31; G. S. 1878, c. 116, § 31.)

The decision of a court upon a question of actual bias of a juror, submitted to it for determination by consent, is final. *State v. Mims*, 26 Minn. 191, 2 N. W. Rep. 492.

### § 7383. Defendant shall first challenge.

All challenges to an individual juror shall be taken first by the defendant, and then by the state; and each party shall exhaust all his challenges before the other begins.

(G. S. 1866, c. 116, § 32; G. S. 1878, c. 116, § 32.)

When a juror is called the defendant must exhaust all his challenges to that juror, and then the state must exhaust its challenges to him, and so on, successively, as each juror is called. *State v. Smith*, 20 Minn. 376, (Gil. 323.)

### § 7384. Challenges—In what order taken.

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:

First. To the panel;

Second. To an individual juror, for a general disqualification;

Third. To an individual juror, for implied bias;

Fourth. To an individual juror, for actual bias.

(G. S. 1866, c. 116, § 33; G. S. 1878, c. 116, § 33.)

In impaneling a jury for the trial of an indictment, according to correct practice, under the provisions of this chapter, challenges by either party to an individual juror, whether for cause or peremptory, should be interposed and determined when he is called, and in the prescribed order, before proceeding further in the call. *State v. Armington*, 25 Minn. 29.

<sup>1</sup>An act relating to evidence in the trial of challenges to jurors. Approved April 1, 1891.