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Bar Leader Discovers New Law

Dicta Editorial Board

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DICTA

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Bar Leader Discovers New Law*

Do you know about the law of "provoke?"

Well, neither did Tappan Gregory, of the American Bar Association's War Work Committee, but when he was asked by a soldier for a list of states recognizing the law of provoke, he decided to look into the matter. Another prominent Chicago lawyer, Charles P. Megan, put him on the trail of the leading case on this subject, reported in the *Akron, Indiana, News*, of January 1, 1929, as follows:

"PENCE-HARMON CASES ARE SETTLED SATURDAY

"Justice of Peace Monroe Morris has had very busy sessions recently. * * * Saturday morning at ten o'clock the case in which Fern Harmon, plaintiff, charged Walter Pence, defendant, with provoke was started after the plaintiff refused to settle by paying half of the court costs. Mrs. Harmon called for a jury trial. Justice of Peace Monroe Morris then ordered the constable, Frank Bright, who deputized G. W. Kline, to find four men for a jury. After four men had been secured for a jury it was found that a full jury of twelve was required for the case. It was decided to try the case at the public library due to the lack of room. After a period of time the constable and deputy drafted what men they

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could find about town and after seating them discovered they had fourteen. Two of the men were then released. The justice of peace then asked the plaintiff and the defendant if they had any objections. Fred Blackburn secured his release after asking the defendant to object to him being on the jury.

“The evidence was then heard and the jury was taken to the engine room in the library by the constable who remained with them. The question they were to decide on was, whether Pence was ‘guilty’ of provoke or ‘not guilty.’ After being out about five minutes the jury did not know whether they were trying the case in which Pence was the defendant or the case tried two weeks previous in which Pence was the plaintiff, in which he charged Mrs. Harmon with provoke. (Here the narrative is somewhat garbled, but apparently the case heard two weeks earlier was continued to this same Saturday at 2 p. m.) The justice of peace then went to the jury room and cleared the argument as to what case they were trying. At 12:15 the jury had not agreed so they adjourned for noon. During the noon hour Roscoe Davis informed the constable that he would be unable to serve on the jury in the afternoon as he had to carry the mail. He was told to write a number of votes and give them to the constable, who later turned them over to the deputy, who was to hand one in every time the jury voted. After several votes the jury began turning just opposite to what the Davis votes were. Finally his vote was the only one remaining which found Pence ‘not guilty,’ so the constable said he would take it upon himself to change Davis’ vote from ‘not guilty’ to ‘guilty.’ After this change the jury was agreed.

“The jury came out and the verdict was the defendant was found guilty, but there were only eleven chairs in the jury box filled.

“It was then found out that irregularities had taken place and Pence demanded the case be thrown out.

“The case was then set for retrial at four o’clock. At this time it was agreed to settle both cases by paying the costs, which amounted to \$2.28 each.”

Stoner Is New Member of Board of Governors

The board accepted the resignation of Arthur Aldrich from the First Judicial District, and accepted the appointment of Christian D. Stoner of Golden to replace him. Mr. Aldrich is moving from Idaho Springs to Washington. Special commendation was extended to Charles Rosenbaum of Denver, whose committee on sustaining membership has added many such members to the rolls for this year.