
IN THE MATTER OF A REFERENCE AS TO THE
INTERPRETATION OF THE JURY ACT OF
ALBERTA.

1946
*Oct. 22
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*Statute law—Juror—Qualification of—Liability to serve as—Age limits—
Section 3 of The Jury Act, R.S.A. 1922, c. 74 (now R.S.A. 1942, c. 130).*

Section 3 of *The Jury Act* of Alberta provides that “* * * any inhabitant of the province of Alberta over twenty-five and under sixty years of age * * * shall be liable to serve as a juror in all civil and criminal cases tried by a jury * * *”.

Held that persons outside of the age limits prescribed in section 3 are neither qualified nor liable to serve as jurors.—*The Jury Act*, in that respect, must be taken to be a code intended to embody the law of the constitution of the jury and section 3 by a necessary implication prescribes the qualification of jurors in substitution for that previously existing. *Mulcahy v. The Queen* (L.R. 3 H.L. 306) dist.

*Present at the hearing of the appeal:—Kerwin, Hudson, Taschereau, Rand, Kellock and Estey J.J.—Hudson J. died before delivery of the judgment.

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APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (1), on a Reference to the Court as to the interpretation of *The Jury Act* of that province, and more specially of section 3 of that Act.

H. J. Wilson, K.C. for the Attorney General of Alberta.

John J. Connolly, appointed by the Attorney General of Alberta.

The judgment of Kerwin, Taschereau, Rand, Kellock and Estey J.J. was delivered by

RAND J.:—This reference raises a question of interpretation of *The Jury Act* of Alberta, R.S.A. 1922, c. 74. The precise issue is whether persons under 25 and over 60 years of age are competent to serve as jurors, although not bound to do so.

Section 3 of the Act is the controlling provision and, under the heading "Liability to serve as juror", is in these words:

3. Subject to the exemptions and disqualifications hereinafter mentioned, any inhabitant of the province of Alberta over twenty-five and under sixty years of age, being a natural born or naturalized subject of His Majesty, shall be liable to serve as a juror in all civil and criminal cases tried by a jury in the judicial district or sub-judicial district in which he or she resides.

Prior to the enactment of chapter 74 the matter was governed by the *Northwest Territories Act*, section 71 of which was as follows:

71. Persons required as jurors for a trial shall be summoned by a judge from among such male persons as he thinks suitable in that behalf; and the jury required on such trial shall be called from among the persons so summoned as such jurors and shall be sworn by the judge who presides at the trial.

By the general rule at common law, disregarding special cases where aliens were concerned, all male natural born subjects over the age of 21 years, (*liberi*) *probi et legales homines*, (Comyn, Challenge A3) were qualified to act as jurors subject to exemptions and challenges. It will be seen, therefore, that section 3 makes an important change by extending the class liable to include women. What, then, are the qualifications of a woman, and where are they to be found? Only in section 3 is there any

language from which they may be inferred, the language imposing the conditions of liability; the characteristics prescribed for that, including the ages mentioned, must, therefore, be the qualifications for the additional class. If that is so and as all men and women liable are designated by the word "inhabitant", how can the implication necessary to women be withheld from application to men? Mr. Wilson sought support from the *Sex Disqualification (Removal) Act* passed by the province in 1930, but that can be of no assistance in the interpretation of an enactment of 1921.

The statute contains a number of references to qualification, disqualification and liability for service, and that the distinction between these terms was in the mind of the draughtsman is obvious. For instance: Section 5: "*shall be compelled to serve*". Section 6: "*qualified to serve*". Section 7: "*compelled to serve*" * * * "*qualified persons*". Section 8: "a separate list * * * of persons *liable to be returned as jurors*". Section 4: "*shall be exempt from being returned and from serving*". Section 14, form A: "List of persons *liable to be returned and to serve as jurors*". Section 15: "*qualification of the jurors*". Section 17: "*qualification, exemption and disqualification*". Section 35: "*qualification, exemption or disqualification*".

These provisions make it clear that the persons to be returned on the sheriff's list are those only who are liable to serve as jurors. The names of persons outside of the prescribed ages should never appear on the list, and it is only persons properly listed who are to be summoned. But it is argued that the judgment in *Mulcahy v. The Queen* (1), concludes the question. As is generally the case, however, where the question is on a statute, that decision is not *in pari materia*. In *Mulcahy* (1) the statute, it is true, directed the sheriff to return only the names of those qualified by the Act, but the qualification prescribed for persons between the ages of 21 and 60 was a property qualification which modified the existing law in that respect, and the affirmative provision was that all persons between the ages mentioned so qualified should be liable to jury service. This was treated as implying that persons over 60 years of age, qualified as to property, presumably

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by existing law, would be entitled to claim exemption, in contrast to being liable, but not be subject to challenge. It was the distinction between exemption and disqualification. Here, the terms of qualification are those of the conditions of liability, while there each was dealt with separately.

The exemption which is suggested for persons between 21 and 25 years of age and over 60 is an implied personal privilege by reason of age alone. Such a privilege was unknown at common law or even under the Statute of Westminster 2, 13 Edw. 1, c. 38; and any reason why there should be attributed to the legislature as an implication from doubtful language the intention to deem a man of 24 years of age to be qualified as a juror, but to sit only if he pleases while his neighbour of 25 should be bound to that duty, has not been made evident to me.

I take the Act in these respects to be a code intended to embody the law of the constitution of the jury; that section 3 by a necessary implication prescribes the qualification of jurors in substitution for that previously existing; and that persons outside of the prescribed age limits are neither qualified nor liable.

I would, therefore, dismiss the appeal without costs.

Appeal dismissed without costs.
