Supplementary Material

Chapter 7: The Republican Era—Equality/Gender/Jury Service

People ex rel. Fyfe v. Barnett, 319 Ill. 403 (1925)

Hannay Beye Fyfe in 1924 was stricken from the jury list in Cook County, Illinois, because she was a woman. Fyfe claimed this action was illegal because a state law passed in 1874 declared that "the legal voters of each town" were eligible to sit on juries. Illinois, she noted, enfranchised women in 1913 and the United States in 1920 passed a constitutional amendment forbidding sex discrimination in access to the ballot. A local trial court accepted this argument. Joseph Barnett, a local jury commissioner, appealed to the Supreme Court of Illinois.

The Supreme Court of Illinois unanimously declared that Fyfe did not have a legal right or obligation to sit on a jury. Judge Heard's opinion declared that the phrase "legal voters" in Illinois law referred to people who were legal voters when the law was passed in 1874. What principle of interpretation did Heard use to justify that decision. Did he correctly employ that principle? Heard did not discuss the meaning of the Nineteenth Amendment. How might such an analysis have influenced his opinion?

JUDGE HEARD

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The Nineteenth Amendment to the Constitution of the United States makes no provision whatever with reference to the qualifications of jurors. Since the adoption of the amendment to the Constitution, the Legislature of the state of Illinois has not enacted any legislation on the subject of the eligibility or liability of women for jury service. While this amendment had the effect of nullifying every expression in the Constitution and laws of the state denying or abridging the right of suffrage to women on account of their sex, it did not purport to have any effect whatever on the subject of liability or eligibility of citizens for jury service. Since the adoption of the amendment, the Legislature of Illinois in 1921 granted to women the full right of suffrage, and they became, equally with men, electors and legal voters.

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It is a primary rule in the interpretation and construction to be placed upon a statute that the intention of the Legislature should be ascertained and given effect. If in a statute there is neither ambiguity nor room for construction, the intention of the Legislature must be held free from doubt. What the framers of the statute would have done had it been in their minds that a case like the one here under consideration would arise is not the point in dispute. The inquiry is what, in fact, they did enact, possibly without anticipating the existence of such facts. This should be determined, not by conjecture as to their meaning, but by the construction of the language used. The only legitimate function of the court is to declare and enforce the law as enacted by the Legislature. The office of the court is to interpret the language used by the Legislature where it requires interpretation, but not to annex new provisions or substitute different ones. The endeavor should be made always, in construing one or more statutes, to ascertain, by the history of the legislation on the subject, the purpose and intent of the Legislature, and to that end it is not only proper to compare statutes relating to the same subject passed at the same or different sessions of the Legislature, but to consider statutes upon cognate subjects, though not strictly in *pari material* [on the same subject]. The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and

that state of the law existent at the time of their enactment. The words of a statute must be taken in the sense in which they were understood at the time the statute was enacted. . . .

At the time of the passage by the Legislature of the act . . . providing for the appointment of a jury commission and the making of jury lists, the words "voters" and "electors" were not ambiguous terms. They had a well-defined and settled meaning. By section 1 of article 7 of the Constitution of 1870 it is provided:

> "Every person having resided in this state one year, in the county ninety days, and in the election district thirty days next preceding any election therein who was an elector in this state on the first day of April, in the year of our Lord 1848, or obtained a certificate of naturalization before any court of record in this state prior to the first day of January, in the year of our Lord, 1870, or who shall be a male citizen of the United States, above the age of twenty-one years, shall be entitled to vote at such election."

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. . . Applying the rules of construction herein mentioned, it is evident that when the Legislature enacted the law in question, which provided for the appointment of jury commissioners in counties having more than 250,000 inhabitants and imposing upon them the duty of making a jury list, using the words "shall prepare a list of all electors between the ages of twenty-one and sixty years, possessing the necessary legal qualifications for jury duty, to be known as the jury list," it was intended to use the words "electors" and "elector" as the same were then defined by the Constitution and laws of the state of Illinois. At that time the Legislature did not intend that the name of any women should be placed on the jury list, and must be held to have intended that the list should be composed of the names of male persons, only. . . . We must therefore hold that the word "electors," as used in the statute, means male persons, only, and that the petitioner was not entitled to have her name replaced upon the jury list of Cook county.