A history of the petit jury in Iowa

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A HISTORY
of the
PETIT JURY IN IOWA

by

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AUTHOR'S PREFACE

While the Iowa country had passed under several sovereign and subordinate jurisdictions, it was not until the jurisdiction of the Territory of Michigan was extended over the Black Hawk Purchase in 1834 that the jury system became really effective in this region. Indeed, nearly all of the legal institutions of early Iowa were inherited from the Old Northwest through the Territory of Michigan and the original Territory of Wisconsin. Thus, an account of the petit jury in Iowa would properly begin with the year 1834. Indeed, the early provisions relative to the jury system in Iowa are to be found in the statutes of Michigan and Wisconsin. Later many minor alterations were made in the method of selecting jurors, in the number of jurors, in the list of persons exempt from jury service, and in the duties of jurors. But throughout all the changes the main features of the system have remained the same.

Perhaps the most important change has been in the matter of challenging jurors. The provisions of the early laws were decidedly in favor of the defendant, giving him not only a greater number of challenges but also the privilege of making challenges after the plain-tiff had first used his right of challenge. The later laws gradually reduced this advantage, until at present
the defendant and plaintiff are placed on an equal footing.

The author takes this opportunity of expressing his appreciation for the kindly advice and assistance of Dr. Benj. F. Shambaugh, at whose suggestion this work was undertaken, and who has read and edited the manuscript. To Dr. Dan E. Clark the writer is also indebted for valuable suggestions and instruction.

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I
INTRODUCTION

The jury system as found in the State of Iowa may properly be classified into three divisions, namely the grand jury, the petit jury, and the coroner's jury. The petit or trial jury, as distinguished from the grand jury, may be briefly defined as a group of twelve men, having the qualifications prescribed by law, who are impaneled to render verdicts in trial courts. In its broadest sense, the petit jury includes all jurors who have been summoned or who are subject to summons for the trial of any cause in the district court, superior court, police court, or justice of the peace court.

The grand jury, consisting of seven qualified electors of the State, is a separate institution. It is the function of the grand jury to meet in closed session and investigate charges brought against persons accused of crime, and to return an indictment against such persons when in the opinion of the jury the evidence is sufficient to warrant a trial. Indictments thus returned are presented to the court for a hearing before a trial jury.

The coroner's jury is made up of three persons, having the qualifications of electors, who act with the coroner in investigating deaths which are supposedly caused by unlawful means.
In the sake of efficiency, certain qualifications are required of all petit jurors. They must be not only generally qualified to act as jurors, but must also be qualified with reference to the particular case in which they are to serve. Each party to a suit is entitled to a certain number of challenges. Generally speaking, a challenge for cause may be issued against any juror who is biased or prejudiced, or who is related to either party, or who is not likely to render a fair and impartial verdict. A limited number of peremptory challenges, for which no legal reason need be given, may be exercised by either party.

As a matter of public policy some classes of persons are exempt from jury service. For example, such exemption extends to lawyers, teachers, physicians, and other classes of persons whose public duties would suffer if they were compelled to perform jury service.

The number of persons to be selected for petit juries is in general apportioned throughout the judicial districts so that each township contributes a proportionate share. Persons are selected in rotation, insofar as possible, in order to distribute the burden of jury service among the qualified citizens of the State.
II
THE MICHIGAN TERRITORY PERIOD

The petit jury became really effective in Iowa when the jurisdiction and laws of the Territory of Michigan were extended over the Black Hawk Purchase in 1834. Moreover, an examination of the Territorial statutes of Michigan reveals a well developed jury system in which all the features of the institution are present.

The Qualifications of Jurors.— The qualifications required of jurors at this time were necessarily liberal because the country was then thinly populated. Thus, most of the citizens of the Territory were eligible for jury service. The law required that jurors must be judicious persons, free white male inhabitants, and at least twenty-five years of age. Only two classes of persons were exempt from jury service: members and instructors in any school or academy, while in attendance, and firemen.

The Challenge of Jurors.— Both parties to a suit were given the right of challenge, but were required to make such challenge before the jurors had been sworn by the court, and no exception to a juror could be made on account of any legal disability after the juror had been duly sworn. By permission of the court each party was allowed two peremptory challenges to the panel.
emptory challenges are challenges for which no reason need be given, and when made it is the duty of the court to dismiss the jurors thus challenged regardless of their qualifications for jury service. Any person indicted for a crime that was punishable with death and who had voluntarily entered a plea of "not guilty" to such indictment was allowed thirty-five peremptory challenges to be made against the panel. In view of the fact that the panels were necessarily small in number at that time, because of the scattered population, thirty-five challenges had a telling effect upon the personnel of the jury. In comparison with the present laws of Iowa, which give the defendant and plaintiff ten peremptory challenges each in such cases, the above provision seems unnecessarily liberal.

Challenges for cause were allowed in the following cases: if the juror had served on the Grand Jury which had indicted the defendant, or had previously been convicted of any crime, or was in any way interested in the case, or who had an action pending which involved the defendant or plaintiff in the suit, or who had previously served as a juror in the same cause. Challenges for cause were also sustained if the juror was of kin to either party or stood in the relation of master, servant, counsellor, steward, or attorney to the defend-
ant or plaintiff. Having served as an arbitrator on either side of the same controversy, or having been subpoenaed as a witness in the case was a cause of challenge. Jurors could also be challenged for suspicion of prejudice against either party of for partiality for either party, or for any other reasonable cause that would render such person an undesirable juror. The validity of such challenges were determined by the court. The law further provided that when a jury had been selected, drawn, or summoned contrary to law, or where the sheriff or other officer did not proceed as directed by law, the whole array of the jury could be challenged and set aside. In such case a new venire was awarded and was subject to the regular procedure of summons and challenge as provided by law.9

The Drawing of Jurors.-- The manner of drawing jurors for jury service under the laws of the Territory of Michigan was a simple arrangement and avoided many of the complexities found in our present system.

It was the duty of the assessors in the several townships to make out annually a list of all persons in their respective townships who were qualified to serve as jurors, and to return such list to the supervisors of each township.10 The supervisors were required, at
their regular annual meeting in October, to select a list of names, not to exceed one hundred, from the list returned by the assessor, taking especial care that all were qualified as jurors, and to deliver the selection so made to the county clerk.

When the list came into the possession of the county clerk, it was his duty to write each name on a separate piece of paper, fold each in such manner as to conceal the name written thereon, and place it in a ballot box especially prepared for the purpose.

When a petit jury was needed in any court of record, the clerk notified the sheriff of that county to appear at the clerk's office to assist in drawing out the required number of names. The names having been drawn from the ballot box, the sheriff then took the venire thus drawn and summoned the persons so designated either in person or by notice.11

If for any reason the sheriff could not serve the summons, the court appointed some other person whom he deemed competent. The person appointed would then serve in the capacity of sheriff and summon the jurors under the direction of the court.12

When a sufficient number of jurors, by reason of challenges, sickness, or other causes, could not be
secured to make up the required panel, the court directed the sheriff, or his substitute, to draw from the list of talesmen until the panel was filled; and at the close of any session of court, the names of all such persons who had served on the jury in that manner, were taken from the jury lists and destroyed, thereby relieving them of further service in that term of court. 13

A provision was also made, guarding against possible corruption or undue influence on the part of the sheriff in summoning jurors. If evidence was offered which proved that the sheriff was interested in any cause, application could be made to the court by the complaining party, and if the court considered the protest to be deserving, he ordered the coroner to summon a jury to try the controversy in question. In case it should be proved that both the sheriff and coroner were partial to one side, or in case of death, resignation, or absence of these officers, the court could direct some other discreet and disinterested person to make the summons for that cause.

The above provisions are made in cases of a single petit jury, but further provisions were enacted for the selection of a second jury, if in the judgment of the court such jury was needed.

Much more difficulty was experienced in making
up the second jury; for in most cases the jury lists did not contain a sufficient number of names to make up two full panels. If additional names were needed to complete the second panel, the circuit and county courts directed the sheriff or his substitute to return a jury of bystanders or neighboring citizens having the proper qualifications for jury service.14

Petit juries were made up in the same manner for special sessions of any circuit or county court, as in a regular session except as to the number of jurors and the time of drawing the venire. For regular sessions the county clerk, with the assistance of the sheriff, were required to draw the names by lot from the box containing the names of jurors at least ten days before the sitting of court, while for special sessions only five days notice was required. The number of jurors making up a venire in a regular session was twenty-four, but in a special session this number could be increased or decreased at the discretion or order of the Judge of the Supreme Court or by a majority of the justices of the county court.

In case of death of a person who had been selected as juror or if any person selected shall have removed from the township in which he was summoned to act as juror before the time of drawing jurymen for any court,
it was provided that the names of such persons when designated for service should be destroyed and other names drawn in their stead. 15

Any juror who failed to attend court and serve as required by law, after being duly summoned, was subject to a fine at the discretion of the court. The fine, however, was not to exceed twenty-five dollars. 16

The Striking of Jurors. -- A peculiar feature of the Michigan law concerning juries was the provision for struck juries. Upon the demand of either party in any action or suit that was triable by a jury of twelve men, except in cases punishable by death, the circuit or county courts were empowered to order a jury struck for such trial. 17

The party making the application for a struck jury was required to give at least eight days notice to the opposite party and to the clerk of the court. The clerk of the court then selected forty names of persons whom he deemed impartial to both litigants in the suit and qualified to serve as jurors and presented the list to the contending parties for elimination. The list contained only names of persons who were residents of the county in which the suit was brought.
In striking out names from the list, it was the privilege of the party who demanded the struck jury, to first strike out one name only, then the opposing party, and alternately thereafter until each had struck twelve names, twenty-four in all, from the list. Either party might be represented by an attorney or agent.18

If it was impossible for the party not making the application for the struck jury, to attend to the striking of names at the time set by the court, and had no representative, it was the duty of the clerk of the court to strike out twelve names for him, alternately, as required by law.

After each party had struck twelve names from the list, the sixteen remaining of the original forty names, were designated to constitute the panel for that trial. The first twelve as they appeared on the list were to be summoned first.

The day appointed for striking the jury was at least thirty days before the sitting of court. The party making the application for the struck jury was required by law to pay the fees for striking same, and an additional fee of seventy-five cents per day for each juror so attending. If, however, in the opinion of the court, such a jury was necessary, because of the
nature of the case, the fees were disallowed and taxed up as a part of the regular costs. In such case, the extra expense was charged to both parties in equal proportion.19

The Convening of the Jury.-- In the matter of convening a jury for the trial of causes, large discretionary powers were given to the parties in the case. Whenever an agreement could be reached with respect to the facts of the case, both parties consenting, a jury was not summoned. At the same time, either party had a right to demand a jury trial for any cause and the courts were compelled to abide by such demand.

In all district court actions in which both parties joined issue on facts and gave their consent, the judges received the evidence and determined a verdict without a jury, and awarded damages, costs, or granted executions, depending upon the nature of the case.20

The Duties of the Jury.-- The duties of the jury under the laws of Michigan were similar to those prescribed by the statutes of Iowa today. The jurors decided all issues of fact, and determined the amount of damages, if any, to be awarded. The jury was also called upon to assess road damages. The owner of land through which a road was proposed to be run, had the privilege of claiming damages therefor; and in such case a jury
was summoned to assess the damages. In determining the amount of damages to be awarded the jury could either view the premises or summon witnesses who could give the desired facts, or they could do both under the direction of the court.  

The Fees of Jurors.--- Petit jurors attending the several circuit and county courts were each allowed seventy-five cents per day for each day's attendance, and five cents per mile for traveling expenses, in going to and returning from the place appointed for holding court. Such fees were paid out of the county treasury.  

The Conduct of Jurors.--- The present methods of guarding against conversation with jurors while serving on a case were in vogue in Michigan in 1834-1836 and were strictly enforced. No person was allowed to converse with any juror while serving on a case, and when the jurors had retired from the court room, whether in deliberation or for other purposes, not even the marshall was allowed to converse with them except under instructions and orders from the court. Disregard of these regulations was considered as contempt of court; and any juror guilty of such contempt was subject to a fine by the court not to exceed thirty dollars.

To prevent bribing or in any way influencing a juror in his decision unlawfully, it was provided that
if any person obtaining a verdict in his favor, in any
court should be found guilty of giving to any of the
jurors in said cause, any victuals or drink, or procure
the same to be done by way of treat, whether before or
after such verdict, such offence was a sufficient cause
for setting aside the verdict and awarding a new trial
in said cause. This provision could be enforced only
after due proof of the offence was made.25 There
appears to be nothing in the law that would punish a
person who was found guilty of bribing jurors in case
the verdict turned against him.

The Justice Court Jury.-- In cases arising within
the jurisdiction of justice courts, either party could
demand a jury of twelve men, for any cause, except in
cases of trespass. Justice courts, during that period,
had jurisdiction in cases where the amount in controversy
did not exceed fifty dollars.26 In a suit for trespass,
either party could demand a jury, but such jury was to
be composed of only six persons.27

If any juror refuse to serve on a jury in the justice
court when properly summoned, and did not present a suffi-
cient excuse, such juror was subject to a fine by the
court, said fine to be not less than one dollar nor more
than ten dollars.28
When the Congress of the United States organized the original Territory of Wisconsin, it was enacted by the Council and House of Representatives of the Territory of Wisconsin, in the year 1836, "That the existing laws of Michigan, as declared in full force in this territory by the act of congress organizing the territory of Wisconsin, be taken and construed liberally and beneficially, for the purpose of giving the said laws full force and effect, according to the true intent and meaning thereof; and in all cases where the words 'circuit and supreme courts of Michigan', occur, the district and supreme courts of Wisconsin shall be deemed and taken in lieu thereof; and all the duties required of the officers of said 'circuit and supreme courts of Michigan' shall be performed respectively by them in the supreme and district courts, as now established by law . . . . . . and whenever by the said acts powers are conferred and duties are imposed on the circuit courts or the judges thereof, or the county courts or the judges thereof, the same shall be executed and performed by the district courts and the judges thereof, in their respective districts."
While the Iowa country was under the jurisdiction of the Wisconsin Territory, the jury system of Michigan was put into operation; but during the two years from 1836 to 1838 a number of additional laws were passed so that the jury system of Iowa, under the laws of Wisconsin, was more complete and more comprehensive than during the Michigan period. Changes were made in the manner of selecting the jury; the fees of jurors were increased; more persons were exempted from jury service; and a provision was enacted which extended to jurors the privilege from arrest while on duty. Minor changes were also made in the laws governing the petit juries of justice of the peace courts; and a law was passed which regulated cases in which the jury could not reach an agreement.

Under the Michigan laws the county board of supervisors were required to select the list of jurors; but in the year 1838 Wisconsin legislature passed an act which placed the duties of selecting jurors in the hands of the county commissioners. The process of choosing jurors, making up the venire and panel, and final selection, remained unchanged. In the same year the fees of jurors were increased, allowing each juror one dollar per day for each day's service, instead of seventy-five per day, as formerly.
An additional act was passed in 1838 which prohibited the arrest of any juror during his attendance at court for jury service, except in cases of treason, felony, criminal offences, or for breach of the peace. This act also applied to jurors while going to and returning from court, if such errand was made in connection with their duties as jurors.  

The list of persons who were exempt from jury service was enlarged and included the following: the Governor, Secretary of the Territory, judges of the supreme and district courts, county commissioners, county treasurer, clerk of the supreme and district courts, clerk of the board of county commissioners, judges of probate, sheriff, under-sheriff, deputy sheriff, coroner, constable, marshall of the United States and his deputies, and all other offices of the United States, counsellors, attorneys, ministers of the gospel, officers of all colleges (not including trustees or directors thereof), preceptors and teachers of incorporated academies or universities, teachers in common schools, practising physicians and surgeons, all persons over sixty years of age, all persons not of sound mind or discretion, all persons subject to any bodily infirmity amounting to disability of any sort, and all persons who had previously been convicted of any infamous crime.
To encourage ferry-keepers in the performance of a public service, and to prevent interference with public convenience in the matter of travel, a law was passed in 1838 which excused ferry-keepers from jury service. 34

The Council and House of Representatives of the Territory of Wisconsin further required that the county commissioners, in making up the petit jury lists, should select jurors from year to year in rotation as far as possible, so that jury service might not become unnecessarily burdensome to any of the citizens of the county. No one could be excused from the jury list on account of extra service, but the commissioners were required by law to use the best possible means of obtaining information concerning such rotation and exercise reasonable justice in selecting names. 35

New features were added to the law with respect to juries in the justice of the peace courts. Either party could demand a jury trial, but such jury consisted of six persons only, and by agreement of both parties, any number less than six could try the cause and render a verdict. 36 Under the laws of Michigan, if either party demanded a jury trial, the statutes required that a jury of twelve men must be summoned in all cases except actions in trespass.
A further enactment by the Territory of Wisconsin declared that if any juror fail to attend a justice of the peace court after being duly sworn, he was subject to a fine by the justice of said court, not to exceed ten dollars, unless he could plead some good cause of his failure to attend.37

In the year 1837 a law was passed which provided that if a jury could not reach an agreement on a verdict, and the court was of the opinion that an agreement was not likely to be reached, the said court could discharge the jury and grant a new trial.38 This completes the changes made in the jury system while Iowa was under the jurisdiction of Wisconsin.
When the Iowa country was organized into a separate Territory by Congress in the year 1838, it was enacted by the Congress of the United States, that the "inhabitants of the said territory shall be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the Territory of Wisconsin, and to its inhabitants; and the existing laws of the Territory of Wisconsin shall be extended over said Territory, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified or repealed by the governor and legislative assembly of the said Territory of Iowa; and, further, the laws of the United States are hereby extended over, and shall be in force in said Territory, so far as the same or any provisions thereof, may be applicable."39

Thus, except so far as modified by the Legislative Assembly of the Territory of Iowa the laws of Michigan remained in force in the Territory of Iowa for a period of two years. But in the year 1840 it was enacted by the Council and House of Representatives of the Territory of Iowa, that all the "Acts of the Territory of Michigan, and the Territory of Wisconsin, which were in force in the Territory of Iowa on the fourth day of July, 1838, are hereby repealed."40
Although the laws of Michigan and Wisconsin which were in force in Iowa were comprehensive as regards the jury system, nevertheless the Council and House of Representatives of the Territory of Iowa enacted a number of laws which duplicated in many instances those already in force. Indeed, during the years 1838-1840 the laws governing the petit jury were seemingly ignored insofar as legislation on the subject was concerned. This resulted in no little confusion as to the exact status of the laws regulating the petit jury until the Michigan and Wisconsin laws were repealed in 1840.

In tracing the history of the petit jury, from the beginning of the Territorial period of Iowa, the various acts in reference to the development of the jury system will be noted as they appear from the first Legislative Assembly until the present time.

In order to show the historical development of the petit jury system in Iowa, each phase of the system will be discussed separately and the material presented in chronological order from 1838 down to the present date (1914). For the most part, the reasons for the various modifications or alterations which have been made in the laws are apparent, and so no attempt will be made to indicate the causes leading to jury legislation except in extraordinary cases.
The Qualifications of Jurors.-- The law of 1839 declared that all qualified voters of the Territory of Iowa, except persons of unsound mind and persons who had been convicted of a felony, were qualified to serve as jurors. To be a qualified voter, the person must have been twenty-one years of age, a free white male citizen and a resident of the Territory at least six months. These qualifications remained unchanged until the year 1894 when the law required that jurors must be qualified electors of the State, of good moral character, sound judgment, and in full possession of the senses of hearing and sight, and able to speak, read and write the English language.

Exemption from Jury Service.-- The list of persons who were exempt from jury service during the Iowa Territorial period, as prescribed in the law of 1839, is very similar to the present list of exemptions. The first exemption law, passed by the Territorial legislature, declared the following persons exempt from jury service: the Governor, Secretary of the Territory, judges of the supreme and district courts, clerks of the various boards of county commissioners, judges of probate, sheriffs, undersheriffs, deputy sheriffs, coroners, constables, marshall of the United States and his deputies, counsellors; attorneys, ministers of the gospel, officers of colleges,
(not including trustees or directors thereof) preceptors, and teachers of incorporated academies or universities, one teacher in each common school, practising physicians and surgeons, all persons over sixty years of age, all persons not of sound mind or discretion, all persons subject to any bodily infirmity which amounted to disability of any sort, and all persons previously convicted of any infamous crime. This law does not differ in any respect from the law which was already in force by virtue of the act of Congress extending the Wisconsin laws over the Territory of Iowa.

Another exemption was made in the Code of 1851, whereby any person could be excused from serving on the jury when he could prove that his own interests or the interests of the public would be materially injured by his attendance at court. A juror could also be excused from service by reason of poor health, or the death or serious sickness of a member of his family. In the same year the age limit was changed so as to exempt persons more than sixty-five years of age, instead of sixty years as heretofore.

The next legislation relative to exemptions was in behalf of certain religious persons. The Revision of 1860 provided that any person whose religious faith and practice required him to keep the seventh day (Saturday)
of the week as a day of rest and religious uses, need not serve as a juror. 47

Finding it necessary to provide some method of determining claims of exemptions -- in case a person set up a claim that he was not subject to jury service under the exemption laws -- the Twenty-fifth General Assembly of Iowa, required that when any persons claimed exemption he must appear before the auditor, clerk, and recorder of the county and show by affidavit his reason or grounds for exemption. The auditor, clerk, and recorder then determined the validity of the affidavit; and if in their opinion the affidavit entitled the claimant to exemption under the law, they could excuse him. However, in no case could they excuse a person from serving on the jury if such person did not come within the law of exemptions. They were further required to publish in at least three newspapers the time and place of meeting for the consideration of affidavits. It was also their duty at such meeting to examine the list of jurors, and if in their opinion there were names on the list which were entitled to exemption, to strike them from the list.

As a safeguard against misrepresentations as to claims of exemptions, the law declared that any person who knowingly made a false affidavit to secure exemption
from jury service was guilty of a misdemeanor, and was subject to a fine not to exceed one-hundred dollars, or imprisonment in the county jail for not more than thirty days.

Laws passed in 1894 and 1909 included registered pharmacists and dentists in the list of persons exempt from jury service. Other additions were made by the Twenty-sixth General Assembly, which declared that active members of any fire company, persons who were conscientiously opposed to acting as jurors because of religious faith, and all persons who had served one term as juror in the same year were exempt from jury service.

Finally, in the year 1909 a law was passed which provided that judges and clerks of the general election can not be compelled to serve as jurors during the year in which the general election occurs.

The Convening of the Jury. — The method of convening jurors as provided by the law of 1839 was practically the same as the provisions under the laws of Michigan and Wisconsin.

The selection of jurors was made by the county commissioners. At least thirty days previous to the sitting of court, the county commissioners in each county were required to select twenty-four persons who were
qualified to serve as jurors. The names were then given to the sheriff, who issued a summons to the persons thus selected, ordering their appearance at court at the time specified in the summons. The sheriff was required by law to issue the summons at least five days before the sitting of court.

The names of the twenty-four persons selected by the county commissioners were placed in a ballot box, especially prepared for the purpose, and thoroughly mixed. When a jury was needed for the trial of any cause the clerk drew twelve names from the ballot box, and the persons whose names were drawn constituted the jury for that trial unless challenged. If a juror was challenged and the challenge was sustained by the court, the clerk drew out additional names until a complete jury was secured.55

If a sufficient number of jurors could not be secured because of sickness, challenges, or other causes, it was legal for the sheriff to summon the required number from among the bystanders. Such summons was always made under the order and direction of the court, and jurors thus summoned were under the same obligations as to attendance and duties as regularly summoned jurors.

In the same year (1839) it was provided that if an objection was made against the sheriff tending to show
that he was interested in the case and liable to be pre-
judiced in the selection of jurors, the coroner should
serve the summons in his stead. 56

An amendment to the act of 1839 was passed in 1844
which increased the annual selection of jurors by the
county commissioners from twenty-four to one-hundred
fifty in each county. In counties not containing the
required number of persons who were qualified to serve
as jurors, the commissioners were required to select
the highest possible number who were eligible for jury
service.

The manner of apportionment and selection of jurors
was also changed by the same amendment. Under the new
provision the clerk of the board of commissioners in
each county was required to make an apportionment of
persons having the qualifications of jurors in accordance
with the number of jurors required for each county. The
apportionment was made annually, on the first Monday of
April, and was so arranged as to require each township
to furnish a proportionate share of jurors for each term
of court. This apportionment, together with the names
therein, was delivered to the sheriff who then notified
the judges of election as to the number of persons to be
returned as jurors from each township or precinct. The
notification of apportionment, consisting of a public
notice set up in the various townships and precincts of the county, was made by the sheriff at the time he gave notice of the general annual election.

After receiving notice from the sheriff, the judges of election of each township or precinct, on the day of holding the general election, selected their apportionment as required by law, and returned the list to the clerk of the board of commissioners in the county in which the election was held. Upon receiving the said list, the clerk prepared the names in ballot form and folded them so as to conceal the name of each, and placed them in the regular ballot box.

At least thirty days before any term of the district court, the clerk drew by lot and in the presence of the sheriff, twenty-four names, and the persons thus selected constituted the panel. Within three days after the drawing, the clerk of the board of commissioners, was required to deliver to the clerk of the district court, an attested copy of the names thus drawn. The clerk of the district, in turn, then delivered to the sheriff a venire or summons, under the seal of the court, commanding him to notify the persons thus selected and order them to appear at the court-house for jury service at the time designated by the summons.
Jurors who were selected to serve during the first term of court were not included in the drawing for the second term. If, however, there was necessity of more than two terms of court in any one year, the panel was drawn from all of the names which were returned from the different townships and precincts. However, should there be necessity of holding two or more terms of court in the same year, jurors serving on the first term were not required to serve a second time.\textsuperscript{58}

At the extra session of the Legislative Assembly in 1844, a slight change was made in the manner of giving official notice of apportionment to the judges of election by the sheriff. Instead of a public notice, which was set up in the various townships and precincts in the county, the sheriff was required to give a personal notice, such notice being directed to the several boards of township trustees.\textsuperscript{59}

In order to avoid the possibility of making jury service a burden to citizens of the county, because of repeated selection as jurors, an act was passed in 1846, similar to the early laws of Iowa which were enforced under the jurisdiction of the Wisconsin Territory, and which required the county commissioners to select jurors in rotation from year to year in accordance with the best possible information at hand. The new law required
the judges of election to select jurors in rotation, and not to select the same persons a second time, until in their judgment all persons in the county who were competent to serve as jurors had been previously selected.  

When the Code of 1851 was compiled an unimportant change was made which required the clerk to write out an attested copy of the list of jurors twenty days before the sitting of court, instead of thirty days as before provided.  

The Thirteenth General Assembly enacted a law which made it the duty of the county auditor to file the list of petit jurors and to act with the sheriff in comparing the list prepared by the clerk.  

Because of the difference in the population in the several counties a modification of the provision relative to the number of trial jurors was necessary, and in 1886 a law was passed designating that in counties containing a population of fifteen thousand or less the number of trial jurors should consist of fifteen; while in counties containing a population of over fifteen thousand the number selected should be twenty-four.  

The most important change in the selection of jurors was made by the Twenty-fifth General Assembly in the
year 1894. The legislation of that year required the assessor of each township to make out a list of all qualified electors in the township, between the ages of twenty-one and sixty-five, who were not exempt from jury service by law, and deliver the list to the county auditor. Instead of making out the list annually as heretofore, the assessor prepared the list every three years.  

The names were then filed in the offices of the county auditor and the county clerk, and were examined by the auditor, clerk, and recorder. It was their duty to strike from the list the names of all persons who came within the law of exemptions. After the list had been carefully revised each name was prepared in ballot form, on paper of uniform size and color, and the ballots folded so as to conceal the names. The ballots were then placed in a ballot box and thoroughly mixed.

When jurors were needed for the trial of any cause, the auditor, clerk, and recorder of the county met at the county seat and proceeded to draw by lot, the number required by law. The names of the persons thus selected were delivered to the sheriff, who thereupon issued a summons, commanding the persons named to appear for duty at the time designated in the summons.
The act of 1894 remained in force for a very brief period — less than two years; for at the next meeting of the General Assembly, in 1896, the entire act was repealed and a new statute substituted, which changed materially the method of selecting jurors, and which was much more complete and comprehensive than any previous legislation on this subject. The law was "An Act to Repeal chapter 70 of the Acts of the Twenty-fifth General Assembly, and chapter 10, title III of the Code and to provide for the selecting and drawing of jurors and providing punishment for violation thereof."67

The first provision of this act designates the number of jurors to be selected in the various counties, and provides that a list of persons, qualified to serve as jurors, shall be selected annually as follows: in counties containing a population of twenty thousand inhabitants or less, four hundred persons, with an additional one-hundred fifty for talesmen; in counties of more than twenty thousand, eight hundred were to be selected, with three hundred talesmen. The talesmen list was to be made up of persons who resided in the town or city in which the court was to be held, and from the township in which the city or town was located. In case there were less than one thousand inhabitants
in the district from which the talesmen were to be selected, the law provided that additional talesmen could be selected from the nearest townships.

It was the duty of the county auditor, under the law, to apportion the number of jurors and talesmen to be selected, among the precincts or townships. Such apportionment was to be made in proportion to the number of votes polled at the last election in each precinct, and must be made out annually, on or before the first Monday in September. It was a further duty of the county auditor to present his apportionment to the judges of election, together with a list of those persons who had served as jurors in the year previous. Thereupon the judges of election made the requisite selection in accordance with the apportionment assigned to their precinct or township, and returned the same to the county auditor.

But there was a proviso made that if the judges of election failed to make out this list as directed by law, it devolved upon the board of supervisors of the county to make the selection in the delinquent precinct.

The names returned to the county auditor by the judges of election, or the board of supervisors, were then prepared in ballot form by the county auditor and clerk of the district court. The list of petit jurors
was kept separate from the list of talesmen and grand jurors, and the names in ballot form were deposited in separate boxes on or before the first Monday in December. 69

At least twenty days prior to the first day of each term of court at which a petit jury was needed, the county auditor, clerk of the district court, and the recorder were required to meet at the court-house and draw by lot the names of persons who were to serve as petit jurors. The law required that the ballot box containing the qualified names should be opened in the presence of these three officials, and that one of the officials should draw out one ballot, pass it along to the second official, when the ballot should be unfolded and the name recorded. This process was repeated until the required number had been drawn out; whereupon the ballot box was resealed and returned to the clerk of the district court. The names of the persons thus drawn were delivered to the sheriff, who was required by law to issue a summons to the persons who had been selected as petit jurors. The summons to a jury is in effect an order to appear at the court-house, or place of trial, at the time and place designated in the order, and persons to whom a summons is directed are bound to comply therewith under penalty of the law.
Under the provisions of this law the jurors were com-
pelled to appear at the court-house, or at the place of
holding court at ten o'clock A.M. of the second day of
the term, at which time all excuses were reviewed and
determined by the court.

The number of jurors making up the active panel
under this law was as follows: in counties containing
a population of less than fifteen thousand the panel
consisted of fifteen jurors; in counties of fifteen
thousand or over the number was twenty-four. In dis-
tricts made up of a single county, the court was given
power to increase the number not to exceed seventy-two.
The judge of the district court was given important
powers in the matter of fixing the number of jurors to
be summoned. He had the power to increase the number
fixed by law, if in his judgment the business of the
court demanded a larger number; and, on the other
hand, he could discharge a part of the number if they
were not needed, and later in the term he could recall
as many as he deemed necessary. He also had the power
to direct the sheriff to issue a summons against by-
standers, if a sufficient number of regular jurors
could not be secured. The drawing of talesmen was also
under the direction of the court, and he could require
the clerk to draw from the talesmen list at any time in
order to complete the necessary number of jurors. However, an exception was made to the drawing of talesmen, in case a city or town was a party to the suit, to the effect that talesmen could not be drawn for service on such trial. The sheriff was required to summon the talesmen under the direction of the court.

The law further declared that the court had the power to discharge any list of jurors and order a new list to be drawn, if, in his opinion any illegal methods were used in selecting such list.70

The duties of the judge of the district court were increased again in the year 1907 by a law which provided that whenever the judge of the district court in any court determined that the lawfully drawn jury could not be obtained from the list returned by the election officials to the county auditor, or for other cause, the judge could order the board of supervisors of said county to prepare a list of persons qualified to serve as jurors and talesmen. The court was to "fix the time of meeting of said board of supervisors therefor and shall prescribe the time and manner of notice therefor to be given the several members of such board." The notice to be given to the board of supervisors could be served by any person whom the court directed.71
The law of 1907 also states that the board of supervisors are bound to obey such orders from the court and gives the board the power to hold a meeting for such purpose, regardless of any other business before the board. According to the provisions of the law the county auditor is required to make out the apportionment and deliver it to the board of supervisors, the board being compelled to abide by such apportionment, and to follow the methods used by the election officials in the regular selection of jurors.\(^\text{72}\)

An amendment passed in 1909 again changed the selection of jurors and talesmen. The law required that jurors and talesmen be selected biennially, and that the number of names making up the jury lists should be equal to "one-tenth of the inhabitants of the county as shown by the last preceding official census from which to select petit jurors, and three hundred persons in counties having twenty thousand inhabitants or less, and six hundred persons in counties having more than twenty thousand inhabitants from which to select talesmen. No person on the list shall be eligible to serve on more than one jury panel during the biennial period for which the list is made."\(^\text{73}\)

The legislation of 1909 remained on the statute books but a short time, for the next General Assembly
continued the policy of making alterations in the method of selecting jurors and talesmen, and the number to be apportioned. The act of 1911, which is the present law, requires that jurors and talesmen shall be selected biennially as in 1909; but, instead of a definite and fixed number, they shall be selected on a percentage basis. The number required under the present system is equal to "one-fourth of the whole number of qualified electors in said county, who voted in the last preceding general election as shown by the poll books of said election, from which to select petit jurors; and the number equal to thirty per cent of the whole number of qualified electors, who voted at the last preceding general election, as shown by the poll books of said election, in the city or town in which the district court is held and the township, or townships, in which said city or town is located, from which to select talesmen; provided however, that in no case shall such list for talesmen contain more than six hundred names."

The law further provides that where court is held in more than one place, the persons shall then be selected from the qualified electors of the separate divisions of the county, giving to each division, the number of jurors and talesmen to which it would be entitled if it were a separate county.74 This completes the series of
changes which have been made in the method of selecting jurors, and in the apportionment required.

The Illness of Jurors.-- A provision was embodied in the Code of 1851 which governed the proceedings of the trial in cases in which jurors became suddenly ill and unable to continue their duties as jurors. The provision declared that if a juror became sick, so as to be unable to perform his duties as juror, after a jury had been impaneled and before a verdict had been rendered, said juror should be discharged by the court. In case a juror was discharged on account of sickness, the vacancy was filled and the trial commenced anew. But the law provided that if both parties consented, and if in the opinion of the court such a course would be proper, the trial might proceed with the remaining eleven jurors and a verdict rendered which was as binding as if the entire jury had continued throughout the trial. The other alternative was in the hands of the court, who might at his discretion discharge the entire jury, order a new jury impaneled, and demand a new trial.75

These provisions were modified in 1883 when it was declared that in cases in which a juror was taken suddenly ill, so that he could not proceed with the trial, the said juror should be discharged, and the court at his
discretion could order the trial to proceed with the remaining jurors. In no case, however, could the trial proceed with a less number than ten. Under the new law both alternatives were placed at the discretion of the court, and he was empowered to discharge the entire jury and order a new trial with a new jury, or continue the trial with the remaining jurors if there were not more than two vacancies.76

Challenge of Jurors.— The privilege of challenging jurors is one of the most important features of the jury system and a privilege that is usually exercised to the fullest extent allowed by law. Much valuable time has been taken up in the trial of important causes, because of the method of challenging jurors. Legislation in Iowa concerning the challenge of jurors has always allowed considerable freedom in the exercise of challenges in an attempt to secure an impartial and competent jury. At the same time this liberality has often been abused by attorneys who "have no case", and who use every possible advantage of the law in an effort to secure one juror at least who can be relied upon to "hang the jury". It has ever been a difficult problem to arrange a system which would give both parties to a suit an opportunity of eliminating undesirable jurors and yet do away with costly delays and inefficiency.
The laws of Iowa during the Territorial period gave a decided advantage to the defendant in the matter of challenging jurors, but this advantage was gradually reduced by later legislation so that the present laws confer equal privileges on plaintiff and defendant.

The first law of the Territory of Iowa, passed in the year 1839, gave to the defendant the privilege of making twelve peremptory challenges and no more, if the indictment was for a capital crime. If the defendant was indicted for any other felony he could challenge six jurors peremptorily, and in offences less than felony he was allowed to make two peremptory challenges. The prosecuting attorney in each case had the privilege of challenging only one-half of the number to which the defendant was entitled under the law. In challenging jurors for cause, each party was entitled to an equal number of challenges in all criminal cases,—each being limited to three. In all civil actions each party was entitled to a challenge of three jurors without showing cause for such challenge.

The numerous changes which have been made in the matter of challenging jurors, since the enactment of the law of 1839 have all tended toward the development of a system which would make possible the selection of impartial juries. The first alteration was made in
1851 when the system was made more complete and definite. The Code of 1851 recognized two kinds of challenges, namely, challenge to the panel, and challenge to the individual juror. A challenge to the panel was founded only on evidence which showed a departure from the forms and rules prescribed in the statutes regulating the drawing of jurors and the summons issued for their appearance. To make such a challenge the law required that the facts constituting the challenge must be in writing, and that the grounds on which the challenge be plainly made and presented before the jury; against whom the challenge was made, was sworn by the court. Such challenge was open to either party. If the challenge against the panel was allowed by the court, then the panel was dismissed and the trial postponed until another jury was provided. If the challenge was disallowed by the court, the jury was impanelled and the trial proceeded in the regular order.79

A challenge to an individual juror was designated as either peremptory or for cause, and could be made either before or after the juror was sworn by the court. If made after the juror was sworn for service, the court was sole judge of the challenge and he could allow the challenge or not at his discretion, whether such challenge be peremptory or for cause.80
The law further declared that in cases in which there were several defendants in the same action, challenges could not be made by each defendant as though in separate trials, but must be made as one party.\textsuperscript{81}

The number of peremptory challenges allowed the defendant was also changed, giving the defendant four peremptory challenges, instead of two as before, in cases in which the offence was less than a felony.

A peremptory challenge was defined as a challenge or objection to a juror for which no reason need be given. Challenges for cause were designated as general and particular. If a juror was discharged on account of a general cause he was disqualified from serving in any case; but if discharged on a particular cause he was disqualified only from serving as a juror at the trial in which he was challenged. Challenges for cause in general were allowed upon any one of the following three counts: conviction of a felony, want of any of the qualifications prescribed by statute to render a person a competent juror, and unsoundness of mind or such defects in the faculties of the mind or the organs of the body as to render the person in question incapable of performing the duties of a juror. Particular causes of challenge were of two kinds, and were allowed for either of the following charges:
first, for such a bias as in the judgment of the law and "the existence of the fact ascertained" disqualifies the juror (known as implied bias), and secondly, for the existence of a state of mind on the part of the juror in reference to the case at hand which, in the exercise of a sound discretion, leads to the inference that such person would not act with entire impartiality (known as actual bias).

A challenge for implied bias was accepted for all or any one of the following causes, and for no others: (1) consanguinity or affinity within the ninth degree to the person alleged to be injured by the offence charged, or upon whose complaint the prosecution was instituted, or the defendant; (2) standing in the 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 charged, or on whose complaint the prosecution was instituted, or in his employment in wages; (3) being a party adverse to the defendant in a civil action, or having complained against him, or having been accused by him in a criminal action; (4) having served on the grand jury which found the indictment, or on the coroner's jury which inquired into the death of a person whose death was the subject of the
indictment; (5) having served on a trial jury which has tried another defendant 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 in the offence; (8) having formed or expressed an unqualified opinion or belief as to the guilt or innocence of the prisoner; or (9) if the offence charged was punishable with death, the entertaining of such conscientious opinions as would preclude such juror from finding the accused guilty — in such case the juror was not permitted nor compelled to serve.

In determining the validity of any challenge whatsoever, the juror against whom the challenge was directed could be compelled to testify under oath as to the facts concerning the challenge, and was required to answer to the best of his ability all questions put to him pertaining to such challenge.83

The number of peremptory challenges allowed each party to a suit involving felony, except a capital offence, was reduced to five — the law of 1839 allowed each party
to make six peremptory challenges. The law provided that the plaintiff should make the first challenge, the defendant the second, and alternately thereafter until each had exhausted the number allowed by law.

The above provisions remained in force until 1860 when a radical change was made in the number of challenges allowed each party to a suit -- which greatly favored the defendant. Not only was the defendant given the privilege of making a greater number of challenges than the plaintiff, but he was permitted to make such challenges after the plaintiff had completed his right. In view of the fact that the prosecuting attorney often eliminated jurors who would have been challenged by the defendant, the privilege of making the final challenges was by no means a minor advantage to the defendant in securing a jury to his liking.

The regulations as found in the Revision of 1860, provided that if the offence charged in the indictment was punishable with death, or imprisonment in the penitentiary for life (or may be so punishable in the discretion of the court) the prosecution was entitled to eight peremptory challenges and the defendant twenty. If for any other felony the State was given six peremptory challenges and the defendant sixteen. If the offence charged was a misdemeanor, the prosecuting
attorney had the privilege of making two peremptory challenges, while the defendant was entitled to six.

The order of challenge was also changed, the provision of 1860 requiring the State to first exhaust its peremptory challenges, or waive the same at the discretion of the prosecuting attorney, giving to the defendant the privilege of making the final challenges.

A further provision was made whereby either party could waive the requirements of making all of the challenges at one time and make them separately in the following order: to the panel; to an individual juror for general cause; to an individual juror for implied bias; to an individual juror for actual bias; to an individual juror for peremptory challenge. After each challenge that was sustained by the court, the law required that the vacancy be filled before any further challenge be made, if demanded by the opposite party. Any juror brought in to fill the vacancy was subject to challenge for cause, and if the peremptory challenges had not been exhausted, the juror might also be challenged peremptorily.

According to the provision in the Revision of 1860, no juror could be sworn as an active juror until twelve jurors had been examined and accepted for the trial at hand.
Dissatisfied with the provisions of the law of 1860 which gave to the defendant an effective advantage over the prosecution in the matter of challenging jurors, the General Assembly of 1862 modified the former provision and adopted a plan very similar to the provisions as found in the Code of 1851. Under the law of 1862 each party was given the privilege of challenging peremptorily five jurors and no more, in cases which involved felonious crimes, and excepting capital crimes. The modification further required that the challenges be made alternately, commencing with the prosecuting attorney, who had the privilege of first challenging one juror for cause, or waiving his right of challenge, and followed by the defendant in like manner. After the challenges for cause had been completed by both parties, peremptory challenges were then in order and were made in the same manner, commencing with the prosecuting attorney and alternately thereafter until the number allowed by law had been exhausted.

Additional causes of challenge were added in the years 1870 and 1873, when laws were passed which permitted challenges for the following causes: (1) two term's service as juror during the same year, and (2) signing bail for the defendant. The law of 1873 further stated that any person who came under the
laws of exemption could not be challenged on the grounds of exemption as an exemption was a privilege to be exercised by the person himself. The number of challenges allowed the defendant was again reduced in 1873, and at the same time the number allowed the prosecution was increased. The law provided that if the offence charged in the indictment was punishable by imprisonment in the penitentiary for life, or so punishable in the discretion of the court, the State was entitled to ten challenges (formerly the State was allowed but eight) and the defendant was given the privilege of making twenty challenges. If the indictment charged any other felony the State could make six challenges, and the defendant twelve -- whereas the previous law allowed the defendant sixteen challenges. In cases of misdemeanors, the State was entitled to three challenges and the defendant to six. Under this law the defendant was given the privilege of making twice as many challenges as the State. The order of making the challenges was not changed, the prosecuting attorney making the first challenge or waiving his right, and followed by the defendant who made two challenges, and alternately thereafter until the number allowed by law had been exhausted.
The laws regulating the number of challenges allowed in a suit favored the defendant until the year 1888, when an amendment was passed relating to peremptory challenges which entitled the prosecution to the same number to which the defendant was entitled. This amendment declared that "if the offense in the indictment is or may be punishable with death, or imprisonment for life, the state and defendant are each entitled to ten peremptory challenges; if any other felony to six each; and if a misdemeanor to three each." The order of making the challenges was the same as provided in former laws, namely, the prosecution first, challenging one juror, and the defendant second, and alternately thereafter.

The Duties of Jurors.—The early provisions concerning the duties of the jury were uncertain and incomplete, and the development of the present laws relating to the duties of the jury has been varied and irregular. The principle duties required of the jury have been the determination of the guilt or innocence of the defendant and the consideration of facts in civil cases. The fixing of punishment for any offence has usually been placed in the hands of the court, although the first laws of the Territory conferred this power upon the jury. The assessment of damages
in suits for the recovery of claims has been left with
the jury in most cases, although the earlier provi-
sions placed this function within the jurisdiction
of the court.

One of the early laws of the Territory, enacted
in 1839, declared that in all cases of trial by jury
in which any latitude was left as to the amount of
punishment for any offence the jury before whom the
trial was presented should fix such punishment.91
Later legislation gradually fixed the amount of punish-
ment for offences, and arranged a definite schedule
of punishment for certain classes of offences, thereby
reducing the latitude previously allowed and removing
the necessity of requiring the jury to prescribe the
same. Much difficulty was experienced by the jury in
reaching a unanimous verdict both as to the facts of
the case and as to the amount of punishment to be admin-
istered. The present laws of Iowa place this power
in the hands of the court on the grounds that he is
more familiar with the rules of punishment and is more
capable of rendering a just sentence, and also because
of the apparent impossibility of a jury of twelve men
reaching an agreement upon the amount of punishment
which should be enforced.

The Code of 1851 required that in all indictments
for libel the court could direct the jury to determine both the law and the fact, and they were bound to comply with such instruction.\textsuperscript{92}

Since the legislation of 1839, it has always been a privilege, or perhaps a duty, of the jury to take with them when they retired for the consideration of a verdict all papers and articles which had been used as evidence during the trial.\textsuperscript{93}

A further duty was required in 1851 when the court was empowered by law to order the jury to view the localities or property connected with the suit at hand, and to make such examination as the court deems necessary. In carrying out the orders of the court on such mission, the jurors were placed in charge of the bailiff or other officers selected by the judge, and were carefully guarded in order that they might not be improperly influenced in any way. No person whatsoever was allowed to speak to any juror while making the inspection, except in a public manner and in the presence of the officer in charge, and for the purpose of pointing out or explaining facts pertinent to the case.\textsuperscript{94}

The Code of 1851 also provides that in actions for the recovery of money, it shall be the duty of the jury to assess the amount to which the plaintiff is entitled, if damages are awarded by their verdict.\textsuperscript{95} This law
has remained in force continuously and without material change down to the present time.

The Attendance of Jurors.— The principle method of enforcing the attendance of jurors has been a system of fines for non-attendance. The first provisions of the Territory, made in 1839, declared that if any juror shall fail to report for jury service when properly summoned by law, it was the duty of the clerk to issue a summons against him requiring that he show cause at the next succeeding term of court why he should not be fined for contempt. In presenting his cause of delinquency he was compelled to testify under oath, and evidence thus given was received at all times as competent evidence. If his testimony did not show sufficient cause for his failure to attend as juror, he was subject to a fine by the court not to exceed twenty dollars.\(^96\)

This provision was made more definite in the year 1894 when the court was directed by law to impose a fine of twenty-five dollars upon any juror who failed to report for service, if properly summoned, and who was unable to present a reasonable cause for such failure.\(^97\) All excuses were presented to the court for consideration, who accepted or rejected them at his discretion.
The Conduct of Jurors.—Since the legislation of 1839 strict regulations have been enforced governing the conduct of jurors while on duty. The early law allowed the jury to separate during the trial for the purpose of obtaining sleep and refreshment, if done under the direction of the court. Before being permitted to separate they were charged by the judge to refrain from any conversation relative to the pending trial, and to avoid all outside evidence thereto.38

In 1842 the law was made more rigid, and it was declared that in trials for misdemeanors the court might at his discretion permit the jury to separate for food and rest, but in trials for felonies the jury could not separate until discharged by the judge after the rendition of a verdict or in case of disagreement. It was the duty of the court to furnish the jurors with suitable food and refreshment during the trial.99

The former provisions concerning the conduct of jurors were revised, to a limited extent, by the Code of 1851, but the essentials of the law were practically unchanged. The Code gave the jury the privilege of preparing a verdict in court, or of retiring for deliberation. If they wished to consider the evidence outside of the court room, they were placed in the custody of sworn officers, selected by the court, and were
conducted to some private and convenient place, where they were not allowed to separate until they reached a verdict, or until they were discharged by the judge because of disagreement. It was the duty of the officers in charge to prevent any person from speaking to the jurors while in deliberation, and indeed to refrain from speaking to them altogether except to ask whether they had reached a verdict.100

The conduct of jurors was still further restricted in 1873 when the law stated that in case the jury was allowed to separate, they were to refrain from speaking to any person, or to any of their fellow jurors, on any subject connected with the trial then pending, and to avoid as far as possible the forming of any opinion as to the verdict until the final submission of the cause to them.101

Privilege from Arrest.— At the first meeting of the Territorial Legislature of Iowa, a law was passed which prevented the arrest of jurors in all cases except for breach of the peace, treason, felony, and other criminal offences, while said jurors were in attendance at court, or going to, or returning from, the same.102 This law has not been altered by any subsequent legislation and remains in force at the present time.
Bribery and Corruption.-- As early as 1839 laws were enacted guarding against possible corruption and attempts at bribery. The early laws were nearly as stringent in the punishment of bribery as the present legislation. Persons who attempted to influence a jury in a corrupt and unlawful manner were penalized almost as severe as jurors who accepted a bribe or acted corruptly in the rendition of a verdict. The first law passed by the legislature of the Territory of Iowa provided that if any person "shall procure any juror to take money, gain, or profit or shall corruptly influence him by persuasion, promises, entreaties, or by any other improper means, or shall threaten or menace, any juror for the purpose of influencing him corruptly" to render a verdict in a partial manner, such person shall be subject to a fine not to exceed five hundred dollars and imprisonment not to exceed two years. The law further provided that any juror convicted of receiving money, gain, or profit, or who allowed himself to be corruptly influenced, was subject to the same punishment, and in addition he was forever disqualified to act as a juror in the Territory.

The Territorial laws concerning the punishment of corruption in connection with the jury were somewhat modified by the Code of 1851 which provided that
if"any person drawn, summoned, or sworn as juror, make any promise or agreement to give a verdict for or against any person in any civil or criminal case, or corruptly receive any papers, evidence, or information from any one in relation to any matter or cause for which he is sworn, without the authority of the court or officer before whom such cause or matter is then pending, he shall be punished by a fine not exceeding two hundred dollars or imprisoned in the county jail not exceeding three months."105

The Code of 1897 increased the punishment of persons who corruptly influence or attempt to unlawfully influence jurors while on duty, prescribing the punishment for conviction of such unlawful conduct as five years imprisonment in the penitentiary or less, or a fine not exceeding one thousand dollars and imprisonment in the county jail not to exceed one year.106 The law as found in the Code of 1897 constitutes the law at present.

**Instructions to the Jury.**—Very little legislation has been enacted concerning the instructions of the court to the jury. In the early period of Iowa history, the court was given large discretionary powers in the matter of giving instructions to the jury, and from these early rulings has arisen the common law rules governing the court's instructions. The instructions of the court to the jury are a very important feature of the jury system, for a large part of the appeal cases
are based upon exceptions taken to instructions rendered by the court to the jury. For the most part, the instructions consist of a concise statement of the law which affects the verdict to be rendered by the jury in the case at hand, and directions for the jurors to follow in considering the evidence before them.

The first legislation with respect to the instructions of the court to the jury was enacted in 1849. The law required the judge of the district court to instruct the jury in writing, if instructions were given, both in criminal and civil cases. Such instructions were taken by the jury when they retired for deliberation, and returned to the court when they rendered their verdict. The Thirty-fifth General Assembly repealed the former law and provided that either party may request instructions to the jury upon any points of law relative to the pending cause, but such request may be given or refused at the discretion of the court. If, however, the request is granted by the court, the instructions so given must be in writing and presented to counsel on both sides, each of whom shall have a reasonable time in which to examine the same.

Should counsel for either party to the suit desire to make any objections to the instructions they must do so before the reading of the instructions by the
judge to the jury. The objections must point out
the grounds of exceptions with reasonable exactness
and clearness. An exception is made to the above
rule in that "upon a showing in a motion for a new
trial that an error in such instructions was not dis-
covered by the party claiming the error at the time
of trial, such objections or exceptions may be made
in the same manner in such motion for a new trial and
no other objection or exception to the instructions
shall be considered by the supreme court on appeal,
except those made as above provided." As in the
previous case the objections must point out specifically
the exact grounds upon which such objections are made,
and no other grounds or exceptions can be considered
by the trial court upon a motion for a new trial, or
by the Supreme Court in case of appeal.109 Moreover,
all requests for instructions to the jury must be pre-
sented to the court before the argument to the jury is
commenced, and before the judge reads his charge to the
jury.110

The Verdict of the Jury.—The laws of Iowa have
always required a unanimous verdict in all cases. One
dissenting vote among the twelve jurors results in the
dismissal of the jury and the granting of a new trial.
This provision has been the subject of criticism by
persons who advocate the rendition of a verdict by a two-thirds vote. However, the unanimous verdict is in harmony with the policy of giving to the defendant the best possible protection from an unjust sentence.

The form and manner of presenting a verdict was first prescribed by the Revision of 1860 which required that all verdicts rendered in court by the jury must be in writing and signed by the foreman of the jury. The law further provided that as soon as the verdict was prepared and ready for presentation, the bailiff should conduct the jurors into the court room, where the clerk called the roll and read the verdict as presented to him by the foreman. The jurors were then questioned by the clerk as to whether such verdict was their decision, and if any juror announced that he disagreed with the provisions of the verdict as read, the jury was ordered to reconsider the evidence and return a unanimous verdict, or if in the opinion of the court the jury was not likely to reach an agreement, the jury was discharged. At the time the verdict was announced either party had a right to demand that the jury be polled, requiring the judge or clerk of the court to ask each juror if such verdict as read was his verdict.

The Revision of 1860 also required that the verdicts should be general or special. A general verdict was
defined as one in which the jury pronounce generally for the plaintiff or defendant upon all or any of the issues of the case. A special verdict was one in which the jury find facts only, and presenting the ultimate facts as established by the evidence, and not the evidence to prove them. In other words, a special verdict as defined in the law, was based upon facts actually proved, and not upon facts which were made out by argument or inference. It was optional with the jury as to which of these verdicts they would render. The court, however, might require the jury to find specially upon particular questions of fact as brought out in the case and include the same in the verdict.112

When the special findings were inconsistent with the general verdict, the general verdict prevailed. The law further required that in all cases in which the party bringing the suit was entitled to receive damages, the verdicts must state the amount to be awarded.

The verdict was considered to be sufficient in form if it expressed the intention of the jury. In the interpretation of verdicts the intent of the jury rather than the literal construction is held to be valid.113 Further regulations concerning the verdict were made in 1897, and are set forth in a subsequent topic.
The Fees of Jurors.-- The fees of jurors for jury service have been gradually increased from the first law in 1839 which allowed petit jurors $1.50 per day, in all cases, and eight cents per mile in travelling to and from court, to the present allowance of $2.50 per day. The Code of 1851, however, reduced the pay of jurors to $1.00 for each day's service, and five cents mileage in travelling to and from the place of holding Court.

The Sixth General Assembly enacted a law whereby jurors were to receive a fee of $2.00 per day for each day's service in all cases, and five cents per mile in going to and returning from Court.

Fees of jurors were again reduced by the Ninth General Assembly to $1.50 per day, but the mileage fee remained the same as heretofore. Talesmen jurors were allowed fifty cents per day for each jury trial, but no mileage fees. But in case such talesmen jurors were detained more than one day, they were to receive the same fee as the regularly summoned jurors.

In 1864 the fees of petit jurors were increased to $2.00 per day for jury service, with the regular mileage fee of five cents per mile each way.

In 1904 fees were extended to include jurors who were summoned on special venire, and in 1909 a law
was passed which gives jurors $2.50 per day for each day's service or attendance in all courts of record, including jurors summoned on special venire, and allows ten cents per mile for travel from residence to place of trial. 120

The Striking of Jurors.— According to a provision of the law as found in the Code of 1851 either party to a suit could demand a struck jury; and if the adverse party agreed thereto, it was the duty of the court to furnish such jury. When a struck jury was to be im-panelled for the trial of a cause, eighteen jurors were called into the jury box, whereupon the plaintiff first excused one, and then the defendant, until each had eliminated six jurors. The remaining six jurors were then sworn in to try the cause at issue. A struck jury was allowed only in civil cases. 121

These provisions have not been changed and are in force at the present time. 122

The Justice Court Jury.— The Territorial laws of Iowa provided for a trial by jury for cases coming within the jurisdiction of a justice of the peace. According to the first laws of the Territory either party to a suit could demand a jury trial, and in compliance with such demand the justice before whom the trial was pending was in duty bound to furnish six qualified jurors
who constituted a justice jury. By agreement of both parties, a number less than six might compose the jury and render a verdict. Jurors were summoned by the constable under the direction of the justice, and the process of convening jurors for justice courts was similar to the method used in summoning jurors in district courts. Justices of the peace had jurisdiction of cases in which the amount in controversy did not exceed fifty dollars, and cases involving breach of the peace, but their jurisdiction did not extend to the "trial or punishment of any case of riot or unlawful assembly, nor to any assault with an intent to maim, nor an assault with intent to commit a rape, nor an assault with intent to commit robbery, nor an assault with intent to kill; nor shall it embrace the offences of shooting at or stabbing, but all such offences shall be punishable by indictment."

A special provision in the laws gave justices of the peace jurisdiction over offences of disturbing any congregation assembled for the purpose of worshipping Almighty God, or of attempting to sell or disposing of liquors, or any article which tended to disturb any worshipping congregation within two miles of such place of worship, unless such persons have a legal license to sell liquors, and shall sell the same at their regular
place of business as specified in the license. Under this special provision, the accused had the privilege of demanding a jury of six or twelve men, and such jury was required to assess the amount of the fine to be imposed upon the defendants, if any fine was imposed.¹²⁶

The law further required that jurors serving in courts of the justices of the peace must have the qualifications demanded of regular jurors of the district court. The constable was required to summon such jurors in person, giving them a personal notice; and any juror thus summoned who failed to report for service without a reasonable excuse was subject to a fine not to exceed ten dollars.¹²⁷

The jurisdiction of the justices of the peace was limited by the Code of 1851 to cases in which the amount in controversy did not exceed two hundred dollars, or the punishment did not exceed six months imprisonment in the county jail, or both.¹²⁸

The fees of jurors who served in cases before a justice of the peace were increased by the Sixth General Assembly, allowing jurors one dollar for each day's service.¹²⁹

According to a provision in the Code of 1873, each party to a suit in a justice court was given three peremptory challenges, while theretofore no peremptory
challenges were considered. The law further provided that the verdict must be general, that is, the jury must pronounce generally for the plaintiff or defendant upon all or upon any of the issues of the case.\textsuperscript{130}

Beginning with the provisions of the Code of 1897, additional legislation has been enacted concerning the juries of justice courts. These provisions constitute the present law and are treated under a separate topic showing the present status of justice of the peace juries.
The present status of the petit jury in Iowa presents a system well defined and comparatively efficient. A concise and systematic presentation of the provisions relative to the petit jury as now found in the laws of the State is the purpose of this topic.

**Eligibility.**— Under the present laws of Iowa all qualified electors of the State are eligible to serve as petit jurors if they are of good moral character and sound judgment, have no defects in the senses of sight and hearing, and can speak, read, and write the English language. Qualified electors of Iowa are male citizens of the United States, twenty-one years of age, who have resided within the State for six months and within the county sixty days next preceding an election.

**Exemptions from Jury Service.**— In Iowa exemption laws are extremely liberal, thus precluding the possibility of making jury service a burden to individuals and to the public. Under the present laws the following persons are exempt from jury service: all persons holding office under the laws of the United States or of this State; all practicing physicians and attorneys; registered pharmacists; clergymen; all acting pro-
fessors or teachers of any college, school, or other institution of learning; all persons disabled by bodily infirmity; all persons over sixty-five years of age; all active members of any fire company; any person who is opposed to acting as a juror because of his religious faith;\textsuperscript{133} all officers and soldiers of the guard,\textsuperscript{134} Sabattarians, or those persons whose religious faith requires the keeping of the seventh day;\textsuperscript{135} and dentists.\textsuperscript{136}

In addition to these exemptions the law provides that all persons whose names have been drawn on the jury lists may be excused from jury service when it is evident that their own interests or those of the public will be materially injured by such service, or when attendance would impair the health of the individual. A juror may also be excused by reason of the death or severe illness of a member of his family. To prevent the presentation of false excuses the law provides that if any person knowingly makes a false statement relative thereto, he shall be subject to a fine not to exceed one hundred dollars, or imprisonment in the county jail not exceeding thirty days; or the court may order the guilty person punished for contempt of court.\textsuperscript{137} A person found guilty of contempt may be punished by a fine of not more than fifty dollars,
or imprisonment in the county jail for not more than one
day, or both.138

The Convening of the Jury.— The selection of
names for petit jury and talesmen lists is made biennial-
ly, and the apportionment of jurors is distributed among
the various counties according to population. A list
of names equal to one-fourth of the whole number of
qualified electors in the county who voted in the last
preceding general election, as shown by the poll books,
is made up from which to select petit jurors. The
number of talesmen selected is equal to thirty percent
of the whole number of qualified electors of the county
who voted at the last preceding general election in
the city or town in which the district court is held
and in the township or townships in which said city or
town is located. In no case, however, can the list
of talesmen exceed six hundred names. The talesmen
list is not made up of persons from the county at
large, as is the case in the selection of petit jurors,
but the list is made up of the names of persons who
reside in the city or town in which the district court
is held and in the township or townships in which the
city or town is located. In counties where court is
held in more than one place, the selections are made
from the qualified electors of the separate divisions
of the county, giving to each division the number of petit jurors and talemen to which it would be entitled if it were a separate county. 139

A statement of the apportionment for jurors is prepared by the county auditor who must present the statement to the judges of election of the county at the time of furnishing them with the poll books as required by law. The judges of election then make the requisite selection and return the list to the county auditor who places it on file.

Should the judges of election fail to make a selection in accordance with the apportionment, the law requires the board of supervisors to select the lists for such delinquent district. The board of supervisors may also be compelled to prepare the jury lists by order of the court whenever in his opinion a proper jury cannot be obtained by drawing from the names furnished by the election officials. When so ordering it is the duty of the judge of the district court to notify the board as to the requirements, and to fix the time of meeting of the board for the purpose of making the selection in accordance with the order of the court. A special provision in the law directs the board of supervisors to carry out the mandates of the court with respect to the selection of jurors, and
gives to the board the power to perform such duties. In making out the list of names of persons from which petit jurors are to be drawn, the law requires that the names of all persons shall be omitted who make the request that they be selected as jurors, whether such request be made directly or indirectly. The names of persons who have served as judge or clerk of the general elections in the year in which the jury list is prepared are also eliminated from the lists.

In making up the different lists of jurors the law requires the judges of election or the board of supervisors, as the case may be, to make separate and distinct lists of petit jurors, grand jurors, and talesmen.

On or before the first Monday in December of each year the county auditor and clerk of the district court are directed by law to prepare separate ballots, on each of which shall appear the name and residence of a juror whose name is on the regular list as filed in the office of the county auditor. The ballots must be plainly marked, folded, and placed in boxes especially made for the purpose. The ballots containing the names of petit jurors are deposited in one box, those containing the names of grand jurors in a second
box, and those containing the names of talesmen in a third box. The boxes are then sealed and deposited with the clerk of the district court.\(^{142}\)

At least twenty days prior to the first day of each term for which a petit jury is to be selected, the county auditor, clerk of the district court, and the county recorder are required to meet at the court-house to draw out the requisite number of ballots. After thoroughly mixing the ballots by shaking the box containing the names of petit jurors, the seal is broken in the presence of the three officers, and the ballots are drawn out as follows: one of the three officers draws out one ballot and without looking at the name passes it to one of the other officers who then opens the ballot and reads the name thereon so that it may be recorded. This process is repeated until the desired number of names is obtained, whereupon the boxes are re-sealed and again deposited with the clerk of the district court.

The next step in the convening of jurors is the issue of a precept by the county clerk to the sheriff of the county commanding him to summon the persons whose names have thus been drawn, and directing them to appear at the court-house at the time specified in the
precept. If, however, the court determines that the drawing was illegal, he may order the precept set aside and require another drawing to be made at such time as he may deem necessary. 143

The jurors are required to appear at the court-house at ten o'clock in the forenoon on the second day of the term, unless otherwise ordered by the court. At this time all excuses of jurors who do not desire to serve are considered and determined by the judge. Should any person who has been properly summoned, fail to appear at the court-house at the appointed time without sending a sufficient excuse, the court may compel him to appear and show cause for his non-attendance. Unless the said juror then presents a satisfactory excuse for his failure to report for duty he may be punished according to the provisions of the law which prescribes the punishment for contempt, that is to say, he may be punished by a fine not to exceed fifty dollars, or imprisonment in the county jail not more than one day, or both. 144

The names of jurors who do not serve when their names are drawn, except in cases of permanent disability, are returned to the ballot box from which they were drawn and are subject to additional drawings, but the ballots containing the names of jurors who serve for
any term are destroyed as such persons are not compelled to serve a second time.\textsuperscript{145}

In order to insure prompt service in the selection of jurors the statutes of Iowa make it a misdemeanor for any officer, to fail intentionally to perform such duties as are required by law, or who shall act corruptly while performing such duties. Any officer who is convicted under this statute is subject to imprisonment for a period of time not less than six months nor more than one year.\textsuperscript{146}

The law further provides that at each term of court a new panel of petit jurors must be drawn from the regular list of names selected by the judges of election, or the board of supervisors.\textsuperscript{147} Should the panel which was summoned fail to appear, or be excused for cause, a new panel is drawn in the same manner as the original panel, and the jurors making up such panel are entitled to the same privileges of excuse as the jurors of the original panel.\textsuperscript{148}

In filling a panel for jury service at any term of court, the judge may at any time order as many additional jurors as he deems necessary,\textsuperscript{149} and, on the other hand, he may discharge a part of the jurors if in his judgment the business of the court does not demand the attendance of the entire number summoned. Jurors
thus discharged may be re-summoned afterwards by the court if their service is needed. 150

When an action is to be tried by a jury, it is the duty of the clerk of the district court to select by lot twelve jurors from the regular panel. 151 If a juror is absent when his name is drawn, or is excused from serving at that particular trial, the ballot containing his name is returned to the box from which the ballots were drawn. 152 Before the drawing of a jury by the clerk of the district court, either party may demand that the names of all jurors in the panel be called, and that an attachment be issued against any jurors who may happen to be absent. The judge may or may not, at his discretion, wait for the return of the attachment. 153

It is further provided by law that after the jury has been sworn in for service, the names of such jurors must not be mixed with the other ballots until the said jury has been discharged, whereupon the names are then returned to the ballot box from which they were drawn. This process is repeated at each trial. 154

In addition to the regular terms of court, jurors may also be summoned for a special term, when so ordered by the judge of the district court. 155
If talesmen are needed to complete the jury for any cause, the court may order the clerk of the district court to draw the requisite number from the talesmen box. In drawing such names the clerk is directed by law to reject the names of persons known to be absent from the territory from which drawn, or who are otherwise unable to serve. The talesmen are summoned by the sheriff and must appear as directed by the court. When both parties to the cause agree to waive the drawing of talesmen as above provided, the court may direct the sheriff to issue a summons to such talesmen as are required from the body of the county.156

In all cases in which a city or town is a party to a suit, talesmen cannot be drawn therefrom, but a special venire must be ordered by the court, or if so ordered by the judge of the district court the talesmen may be selected from the petit jury ballots.157

The Challenge of Jurors in Civil Suits.— In suits of a civil nature, challenge to jurors is of two kinds, namely, to the panel or to the individual juror.158 A challenge to the panel can be made only when the rules and regulations prescribed by law with respect to the drawing and return of the jury has been violated.159 The challenge must be in writing
and presented before the juror is sworn. A challenge to the panel may be made by either party; and any jury so challenged may be examined as witnesses to prove or disprove the facts of the challenge. If the challenge is sustained by the court, the jury is discharged and disqualified from service in the pending trial.

A challenge to an individual juror is either peremptory or for cause, and must be made at the time the juror appears for examination and before he is sworn. If necessary, the juror who is challenged may be sworn as a witness and examined under oath as to the facts concerning the challenge.

Each party to a civil suit is allowed five peremptory challenges. A peremptory challenge is an objection to a juror for which no reason need be given, but when made by either party it is the duty of the court to exclude him. In making peremptory challenges the plaintiff is required to make the first challenge. He challenges one juror or waives his right. Then follows a challenge by the defendant, and alternately thereafter until each party has exhausted the number of challenges allowed by law. Challenges for cause, however, must be made before any peremptory challenges are made, and in the same order.
A challenge for cause may be made by either party on the following grounds: (1) previous conviction of a felony; (2) want of any of the qualifications prescribed by statute to render a person a competent juror; (3) such defects in the faculties of the mind or organs of the body which would render a person incapable of performing the duties of a juror; (4) consanguinity or affinity within the ninth degree to the adverse party; (5) standing in the relation of guardian and ward, or the client of any attorney engaged in the cause, or in the relation of master and servant, landlord and tenant, or being a member of the family or in the employment of the adverse party; (6) being a party adverse to the challenging party in a civil action, or having complained against or been accused by him in a criminal prosecution; (7) having already sat upon the trial of the same issues; (8) having served as a grand or trial juror in a criminal case based upon the same transaction; (9) when it appears that the juror has found or expressed an unqualified opinion on the merits of the controversy, or shows such a state of mind as will preclude him from rendering a just verdict; and (10) being interested in a like question with the issue to be tried.
It is the duty of the court to determine both the law and the fact in all challenges, and to sustain or reject the same.\textsuperscript{166} The law further requires that when a challenge to a juror is sustained, the vacancy caused thereby must be filled before further challenges are made, but any juror brought in to fill the vacancy is subject to the same challenges as other jurors.\textsuperscript{167}

When there are several parties to a suit acting jointly therein, they can not sever their relations with respect to challenges and thereby increase the number allotted to either side, but they must act in unison and exercise the right of challenge as one party.\textsuperscript{168}

The Challenge of Jurors in Criminal Suits.— The statutes of Iowa treat the subjects of criminal and civil suits separately, specifying the rules of procedure under each subject — although for the most part they nearly correspond in every particular. The rules of procedure and the provisions concerning the petit jury under the criminal statutes differ from the laws in civil cases only in the number of challenges allowed each party and in the nature of the challenges for cause.

In criminal suits, if the offence charged in the indictment is or may be punishable with death or imprisonment for life, the prosecution and defendant are each entitled to ten peremptory challenges; if for any
other felony, each party is entitled to six challenges; and if the offence is a misdemeanor, three challenges are allowed each party. The challenges of either party need not all be taken at once, but may be made separately and in the following order: to the panel, to an individual juror, and peremptory. 

Challenges for cause in criminal suits may be made on any one of the following grounds: (1) previous conviction of a felony; (2) deficiency in qualifications of jurors as prescribed by law; (3) unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render such juror incapable of performing the duties required of a juror; (4) affinity or consanguinity within the ninth degree to the person alleged to be injured by the offence charged, or upon whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant; (5) standing in the 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 the person alleged to be injured by the offence charged, or upon whose preliminary information, or at whose instance, the prosecution was instituted, or who is in his employ on wages; (6) being a party adverse to the defendant in a civil or criminal action; (7) 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 pending; (8) having served on a trial 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; (9) having served as a juror in a civil action brought against the defendant; (10) having formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent such juror from rendering a true verdict upon the evidence submitted on the trial; (11) having signed bail for the defendant; (12) being a defendant in a similar indictment or complaint, or private prosecutor against the defendant or any other person indicted for a similar offence; (13) being engaged or interested, at present or within a year, in carrying on any business, calling, or employment in violation of law where the defendant is indicted for a like offence; and (15) having been a witness either for or against the defendant on the preliminary trial or before the grand jury. The method of determining the validity of challenges for cause in criminal actions is the same as in civil suits.

The Compensation of Jurors.—Petit jurors are paid $2.50 for each day's service or attendance in courts of
record, including jurors summoned on special venire, and are allowed ten cents per mile for each mile traveled in going to the place of trial. Jurors who serve before a justice of the peace are entitled to one dollar per day for their service, but are not entitled to mileage fees. Talesmen are also excluded by law from the privileges of mileage fees. 172

The Duties of Jurors.— The duties of petit jurors may be summed up in general as follows:—

In damage suits it is the duty of the jury to assess the value of the property and the damages thereto, and to determine the right of possession if the question is disputed during the trial. 173

Upon the trial of an indictment for murder the jury must determine the degree of murder, if they find the defendant guilty. If, however, the defendant pleads guilty to the charge of murder and is convicted on that plea, then it is the duty of the court to determine the degree instead. 174 In case the jury should return a verdict finding the defendant guilty of murder in the first degree it is their duty to declare whether punishment shall be death or imprisonment for life at hard labor in the penitentiary. But if the defendant is found guilty of murder in the first degree on a plea of guilty it is the duty of the judge to fix the punishment
either to that of death or to imprisonment in the penitentiary for life at hard labor. \textsuperscript{175}

The law also requires that upon any trial when the "indictment refers to former convictions of the defendant, if the defendant is convicted on a plea of guilty, must also find and determine specially whether the defendant had previously been convicted of either of the crimes referred to in the indictment and the number of times so convicted."\textsuperscript{176}

The jury is also empowered by law to determine, at their discretion, both the law and the fact in all prosecutions for libel, if made under the directions of the court and in accordance with the law as provided by statute.\textsuperscript{177}

The principle duty of juries in all cases is the determination of facts as brought out during the course of the trial and in accordance with the law.

During the course of any trial it is the duty of the jury to view the real property or premises directly concerned with the subject of the controversy, or the place in which any material fact occurred which would tend to make the evidence in the case clearer to the jury, if in the opinion of the court such a course would be proper and necessary. In carrying out this mission the jurors are placed under the custody of an officer
who conducts them to the place designated by the court for the purposes of investigation. No juror is permitted to converse with any person other than the officer in charge upon any subject connected with the trial while on such errand.178

It is the legal duty of any juror on duty who has personal knowledge of any facts in the controversy at issue, to declare the same in open court during the progress of the trial. If, after the jury has retired for deliberation, it becomes known that one of the jurors possesses additional information to that already presented during the trial, the law requires the jury to return in to court; whereupon the aforesaid juror must be sworn as a witness and examined in the presence of both parties to the suit with respect to his knowledge of the facts. However, the evidence produced by such juror must be admissible according to the law regulating the kind of testimony to be received for the determination of a verdict.179

The jury may take with it, upon retiring for deliberation, all books of accounts and all papers produced as evidence in the case, except depositions, for further examination and investigation. Depositions may be taken, however, upon condition that all of the testimony is in writing and has not been ordered struck out by the court.180 While in deliberation upon the evidence of
the case, the jury may at any time return to the court room to receive further instructions on any point of law arising in the case. Such instructions, if given, must be in writing and delivered to the jury in the presence of both parties to the suit, or after notice has been given to said parties or their attorneys.\textsuperscript{181}

\textbf{The Conduct of Jurors.---} Jurors who are on duty for the trial of any cause are carefully guarded by the officials in charge and are required by law to avoid all undue influence and to conduct themselves in such manner as to preclude all suspicion of misconduct. The law imposes penalties upon all jurors who do not conduct themselves in accordance with the rules of conduct required of jurors.

A juror may be punished for contempt if he is found guilty of improperly conversing with any person concerning the merits of the case in which he is serving, or if he fails to report immediately to the court any communication sent to him relating to the case in hand. The law further declares that any person who bribes or attempts to bribe a juror, or who improperly influences or makes any attempt to illegally influence a juror in rendering a verdict, may be punished for contempt.\textsuperscript{182}

When a case is finally submitted to the jury for
consideration, they may render a decision in court or they may retire for deliberation. The latter is the more common rule. Upon retiring for deliberation the jury is placed in the custody of an officer, usually the bailiff, and are not permitted to separate until they render a decision or are discharged by the court. No person is allowed to communicate with the jurors while they are in deliberation, except the officer in charge, who is required to ask the jury from time to time whether they have reached a verdict. The officer in charge is also forbidden by law to communicate with any person concerning the deliberations of the jurors, or of the verdict agreed upon, before the verdict is rendered by the jury in court.

It is the duty of the sheriff, under the direction of the court, to provide necessary food and lodging for the jury. The expenses of such provisions are paid from the county treasury.

During the progress of a trial the court may permit the jury to separate for purposes of refreshment or for other good causes, but in so doing the jurors are forbidden by law from conversing with any person on the subjects connected with the trial.

Should a juror become sick during the trial of any cause so that he can not continue as a juror, the
court may discharge him. In such case a new juror may be sworn and the trial begun anew, or the entire jury may be discharged and a new jury impanelled, or if both parties consent and the court approves, the trial may proceed with the remaining jurors and the verdict so rendered by them shall be as binding as though rendered by the full number.

The court may also discharge the jury if some accident or calamity makes it necessary, or upon the agreement and consent of both parties, or when it appears that there is no probability of the jury reaching an agreement as to the verdict to be rendered.

In all cases in which the jury has been discharged during the progress of the trial, or after the evidence has been submitted to them for consideration, the law provides that the controversy must be re-tried immediately, or at some future time designated by the court.

In furtherance of justice the court may at any time order an adjournment within that term of court, making such regulations as to time and costs as he may deem proper.

Bribery and Corruption.— The laws of Iowa prescribing the punishment of bribery which affects or attempts to affect the service of jurors are very
stringent. Penalties are imposed upon any juror who receives or attempts to receive a bribe, and upon any person who is found guilty of bribing or attempting in any way to bribe jurors who are actively engaged in jury service.

The statutes declare that if any person give, offer, or promise any valuable consideration or gratuity to any juror who has been summoned to service or sworn on the panel he shall be imprisoned in the penitentiary not more than five years, or be fined not to exceed one thousand dollars and imprisoned in the county jail not more than one year. If any juror take or receive any such consideration he is subject to the same penalty. 191

Persons who attempt to improperly influence a juror in any civil or criminal action are punished by a fine of not more than five hundred dollars and imprisoned in the county jail not more than six months. The law further provides that if any juror "make any promise or agreement to give a verdict for or against any person in a civil or criminal action, or corruptly receive any paper, evidence, or information from any one in relation to any matter or cause for the trial of which he is sworn, without the authority of the
court, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months."

The Instructions to the Jury.— One of the most important proceedings of a trial is the instructions to the jury, given by the court, before the jury retire for deliberation. A judge in presenting his instructions has ample opportunity of influencing a jury one way or another in the rendition of a verdict. When a case has been closely contested and the verdict is difficult to determine, the jurors carefully weigh every word of the court's instructions, hoping to detect the opinion of the judge, thereby aiding them in their decision. Consequently, the instructions of the court are carefully noted by the attorneys of both parties, and exceptions are made whenever an opportunity is presented. Inasmuch as these instructions include the law involved in the case, it is not surprising that a large part of the appeal cases are the result of exceptions made to the instructions which are given to the jury by the court.

Either party to a suit may request instructions to the jury on points of law, which the court may give or refuse at his discretion. All requests for instructions must be presented to the court before he
reads his charge to the jury and before the arguments of counsel are commenced. If the court grants the request for instructions he must present them in writing, and each party is allowed a reasonable amount of time in which to examine the same. All objections to the instructions must be made before the instructions are read to the jury, and must be specific and exact. In a motion for a new trial if it can be proved that an error in such instructions was not discovered by the party claiming the error the objection can be made and on appeal the law requires the Supreme Court to consider this objection and none except those as mentioned heretofore.

Previous to 1913 the instructions to the jury were based largely on the common law rather than upon legislation. The main object of the court's instructions is to make clear to the jury their duties and jurisdiction in the case.

The Verdict of the Jury.— The law requires that the verdict as rendered by the jury must be in writing and signed by the foreman of the jury, who is selected by the jurors while in deliberation. As soon as a verdict has been agreed upon, the jurors are conducted into the court room by the bailiff or officer in charge,
where their names are called and the verdict which
they have prepared is read by the clerk of the district
court. The jury is then asked whether the verdict as
read is their verdict, and if any juror takes exceptions
to the verdict, the jury is dismissed and required to
return for further deliberation, but if there are no
exceptions made and neither party requires the jury to
be polled, the verdict is final and the jury may be
discharged. 194

Either party may require the jury to be polled
when the verdict is read by the clerk; whereupon the
court or clerk asks each juror if the verdict as read
is his verdict. Should any juror declare that the
verdict was not his decision, the jurors are again
returned for further deliberation in an attempt to
reach an unanimous decision. If however, the judge
is of the opinion that an agreement can not be reached
it is his duty to immediately discharge the jury. 195

A sealed verdict may be rendered by the jury
if the court and both parties to the suit give their
consent to such verdict, and in this case the jury can
not be polled unless special agreement has been made
thereto. 196
The law provides that the verdict to be rendered must be general or special. A general verdict is one in which the jury pronounce generally for the plaintiff or for the defendant upon all or upon any of the issues of the controversy. A special verdict is one in which the jury "finds facts only; it must present the ultimate facts as established by the evidence, and not the evidence to prove them, so that nothing remains to the court but to draw from them its conclusions of the law."197 But, the judge of the district court has the power to require, at the request of the plaintiff or defendant, that the jury find specially upon any particular questions of fact brought out in the evidence, and that such particular facts be included in the verdict which they render.198 If the special findings of the jury are inconsistent or conflict with the general verdict which they render, the general verdict supersedes the special verdict and is final.199

In cases in which there are several plaintiffs or defendants, it is the duty of the jury to render a verdict which will meet the exigencies of the case at hand, whether the pleading be joint or several; and in case of an indictment against several persons, the law provides that if the jury can not agree upon a
verdict as to all of the parties in the suit, a verdict may be rendered as to those parties upon whom an agreement has been reached. Those persons not included in the said verdict may be tried by another jury.

In preparing verdicts to be rendered in court juries oftentimes have much difficulty in drawing up a clear and concise statement, but the law recognizes a verdict if it expresses the "intention" of the jury beyond a reasonable doubt. The judge is required by law to revise such verdicts and write them in suitable form; whereupon they are filed with the clerk of the district court and recorded as a part of the records of the district court.

In criminal causes, if the defendant is indicted for felony, the defendant is required to be present when the verdict is rendered; but if the indictment is for a misdemeanor his presence is not required.

The laws of this State permit a jury to render a verdict on Sunday and also to receive instructions from the court on that day while deliberating on a case. Juries may also be discharged on Sunday in the same manner and for the same reasons as on week days.

While the law of Iowa, in general, has always required juries to agree unanimously upon all verdicts which they render as final, it is provided specially
that in cases under trial and abatement, both parties
may, before the cause is finally submitted to the jury,
agree to take the verdict of the majority. Such an
agreement is binding upon both parties and a verdict
thus rendered and signed by seven or more jurors is final.

Provision is also made for struck juries when
both parties demand such. In the preparation of
struck juries eighteen jurors are called into the
court room; whereupon the plaintiff first, and then
the defendant "shall strike out one juror in turn
until each has struck six." The remaining six
jurors constitute the jury for the trial of the cause.

Trial by jury may be waived upon the following
grounds: (1) by suffering default, or by failing
to appear at the trial; (2) by written consent filed
with the clerk of the district court; (3) by oral
consent in open court; and (4) "where is there no
evidence on behalf of a party having the burden of proof
as to the issue, or where essential or integral elements
of his cause of action or defense are wholly without
proof, the court may properly refuse to let the case go
to the jury, or it may direct the jury as to the verdict
to be returned."  

The Police Court Jury.— Jurors for police court
trials are provided for by ordinance as to their selection,
summons, and impanelling. Otherwise they must have
the same qualifications as jurors who serve in the
district court. "While exercising the powers and
jurisdiction of justices of the peace, juries may be
necessary; but in the trial of offenses against an
ordinance of the city the defendant has no right to
a trial by jury." 207

The Superior Court Jury.-- The Thirty-fourth
General Assembly of Iowa enacted a law which provides
for trial by jury in all cities having a population
of twenty-five thousand or more which are not county
seats and which now have superior courts or may here-
after establish such courts. Trials in superior
courts by juries consisting of twelve jurors each
must be provided for without any additional expense
to either party. In securing jurors for such courts
the law provides that the names of thirty persons shall
be drawn by the county auditor, county recorder, and
clerk of the district court, and the persons whose
names are drawn shall constitute the jury panel for the
two months of court, commencing with the first day of
the month succeeding the drawing. The judge of the
superior court may order at any time such additional
jurors as he deems necessary. 208 Drawings for the
regular terms of the superior court are made by the
county recorder, county auditor, and clerk of the
district court in each city in which a superior court
is located, on the third Monday in February, April,
June, August, October and December of each year.
The clerk of the district court in which such city
is located is required to send to the clerk or recorder
of the city having a superior court a list of the
drawing made. Five days previous to the first day of
each term of court a precept is issued and jurors are
summoned in a similar manner to like cases in the
district court. The qualifications of jurors who serve
in superior court trials are the same as the regular
jurors of the district court. 209

Provision is also made for superior courts in
cities having a population of four thousand or over,
and in such cities a jury of six qualified persons is
sufficient to constitute a jury unless a demand is
made for a jury of twelve men. The party making the
request for a jury of twelve men is required to deposit
with the clerk the entire additional expense incurred
by the addition of six jurors, which sum is fixed
by the court and paid to the clerk at the time of making
the demand. In cities of twenty-five thousand popula-
tion or more it is unnecessary to make a request for a
jury of twelve jurors as the law provides for such number without additional expense. In the smaller cities having superior courts, the county auditor, county recorder, and clerk are required to select but fifteen names, instead of thirty, from which to draw a panel; otherwise the rules with respect to the jury are the same in both classes of cities.

There are seven cities in Iowa which have established superior courts, namely Council Bluffs, Cedar Rapids, Grinnell, Keokuk, Oelwein, Perry, and Shenandoah. Cities in which the county seat is located are not permitted to establish a superior court. The general purpose of the superior courts is to take the place of the police court in that city.

The Justice Court Jury.—Justice of peace courts have jurisdiction in criminal cases of all offenses less than felony in which the punishment does not exceed a fine of one hundred dollars, or imprisonment in the county jail for more than thirty days. In civil cases the jurisdiction extends to all cases where the amount in controversy does not exceed one hundred dollars, but with the consent of both parties the jurisdiction may be extended to cases involving three hundred dollars or less. A justice court has
no jurisdiction in cases in chancery and in cases where the title to real estate is the question at issue.214

Either party to a suit coming before a justice of the peace may demand a jury trial, and upon receiving such request it is the duty of the justice of the peace to direct some peace officer of the county to make out a list of eighteen inhabitants of the county having the qualifications of jurors in the district court from which list the prosecution and defendant may each strike out three names.215 The remaining twelve jurors are then summoned under the direction of the justice of the peace, and are ordered to appear at the place of trial at the time designated in the summons. The names of the twelve jurors are prepared in ballot form and placed in a ballot box where they are thoroughly mixed, and at the time of trial the justice draws out six names and the jurors thus designated constitute the jury. The jurors are, however, subject to the same challenges as in a trial of an indictment for a misdemeanor, but no challenges to the panel are allowed. If any of the jurors do not appear for duty, or are challenged so that a sufficient number can not be obtained, the justice may direct the officer of the peace to summon any bystanders or others who
may be competent to serve as jurors and against whom no sufficient cause of challenge exists, to make up the deficiency. Jurors who serve on cases coming before a justice of the peace are subject to the same rules and regulations with respect to their conduct as are jurors of the district court, and are penalized for corrupt or illegal service. By agreement of both parties a jury of less than six persons may be legalized to try the cause at issue.
NOTES AND REFERENCES

7. Code of 1897, Section 5365, p. 2047.


29. Laws of the Territory of Wisconsin, 1836-1838, pp. 110, 111.


34. Laws of the Territory of Wisconsin, 1836-1838, p. 256.


38. Laws of the Territory of Wisconsin, 1836-1838, p. 149.


40. Laws of the Territory of Iowa (extra session) 1840, Section 1, Chapter 29.

41. Laws of the Territory of Iowa, 1838-1839, p. 111.

42. Laws of the Territory of Iowa, 1838-1839, p. 188.

43. Laws of Iowa, 25 G.A., p. 73.

44. Laws of the Territory of Iowa, 1838-1839, p. 277.

45. Laws of the Territory of Iowa, 1838-1839, p. 278.


47. Revision of 1860, p. 705.


49. Laws of Iowa, 1896, p. 62

50. Laws of Iowa, 1894, p. 77.
52. Laws of Iowa, 1896, p. 62.
53. Laws of Iowa, 1896, p. 64.
54. Laws of Iowa, 1909, p. 23.
55. Laws of the Territory of Iowa, 1838-1839, pp. 279, 112.
56. Laws of the Territory of Iowa, 1838-1839, p. 280.
57. Laws of the Territory of Iowa, 1843, p. 45.
58. Laws of the Territory of Iowa, 1843, p. 46.
59. Laws of the Territory of Iowa, 1844, p. 8.
60. Laws of Iowa, 1846, p. 25.
62. Laws of Iowa, 1870, p. 207.
63. Laws of Iowa, 1886, p. 44.
64. Laws of Iowa, 1894, p. 73.
65. Laws of Iowa, 1894, p. 74.
66. Laws of Iowa, 1894, p. 75.
68. Laws of Iowa, 1896, p. 62.
70. Laws of Iowa, 1896, pp. 64, 65, 66.
71. Laws of Iowa, 1907, p. 10.
72. Laws of Iowa, 1907, p. 11.
73. Laws of Iowa, 1909, p. 21.
74. Laws of Iowa, 1911, p. 11.
75. Code of 1851, p. 258.
78. Laws of the Territory of Iowa, 1838-1839, p. 374.
82. Code of 1851, p. 412.
83. Code of 1851, p. 413.
84. Code of 1851, p. 257.
85. Revision of 1860, p. 811.
86. Laws of Iowa, 1862, p. 229.
87. Laws of Iowa, 1870, p. 207.
90. Laws of Iowa, 1888, p. 60.
91. Laws of the Territory of Iowa, 1838-1839, p. 119.
95. Code of 1851, p. 259.
96. Laws of the Territory of Iowa, 1838-1839, p. 280.
97. Laws of Iowa, 1894, p. 74.
98. Laws of the Territory of Iowa, 1838-1839, p. 119.
100. Code of 1851, p. 417.
103. Laws of the Territory of Iowa, 1838-1839, p. 160.
108. Laws of Iowa, 1913, p. 300.
110. Laws of Iowa, 1913, p. 300.
111. Revision of 1860, p. 568.
112. Revision of 1860, p. 569.
113. Revision of 1860, p. 570.
114. Laws of the Territory of Iowa, 1838-1839, p. 84.
116. Revision of 1860, p. 713.
119. Laws of Iowa, 1904, p. 15.
120. Laws of Iowa, 1909, p. 23.
121. Code of 1851, p. 257.
122. Code of 1897, Section 3699, p. 1419.
125. Laws of the Territory of Iowa, 1838-1839, pp. 334, 335, 302, 303.
126. Laws of the Territory of Iowa, 1838-1839, pp. 513, 514.
129. Revision of 1860, p. 713.
130. Code of 1873, p. 556.
131. Code of 1897, Section 332, p. 201.
132. Constitution of Iowa Article II, Section 1.
133. Code of 1897, Section 333, p. 201.
134. Code of 1897, Section 2209, p. 777.
135. Code of 1897, Section 3691, p. 1418.
137. Code of 1897, Section 334, p. 201.
139. Laws of Iowa, 1909, p. 11.
140. Supplement of 1907, Section 337, 337-a, 337-b, 337-c, pp. 78,79.
141. Laws of Iowa, 1909, p. 22.
142. Code of 1897, Section 358, p. 203.
143. Code of 1897, Section 342, p. 204.
144. Code of 1897, Section 345, p. 205.
146. Code of 1897, Section 352, p. 206.
147. Code of 1897, Section 341, p. 204.
149. Code of 1897, Section 347, p. 205.
150. Code of 1897, Section 348, p. 205.
151. Code of 1897, Section 3676, p. 1415.
152. Code of 1897, Section 3696, p. 1418.
153. Code of 1897, Section 3693, p. 1418.
154. Code of 1897, Section 3697, p. 1418.
155. Code of 1897, Section 233, p. 163.
156. Code of 1897, Section 349, p. 206.
158. Code of 1897, Section 3677, p. 1415.
159. Code of 1897, Section 3679, p. 1415.
162. Code of 1897, Section 3682, p. 1416.
164. Code of 1897, Sections 3685, 3686, p. 1416.
165. Code of 1897, Section 3688, p. 1417.
166. Code of 1897, Section 3690, p. 1418.
169. Code of 1897, Section 5365, p. 2047.
170. Code of 1897, Section 5367, p. 2047.
171. Code of 1897, Section 5360, p. 2044.
175. Code of 1897, Section 4731, p. 1884.
176. Supplement of 1907, Section 4871-d, p. 1071.
182. Code of 1897, Section 4461, p. 1799.
183. Code of 1897, Section 3711, p. 1444.
185. Code of 1897, Section 3712, p. 1444.
186. Code of 1897, Section 5388, p. 2065.
188. Code of 1897, Section 3714, p. 1445.
189. Code of 1897, Section 3715, p. 1445.
190. Code of 1897, Section 3716, p. 1445.
193. Laws of Iowa, 1913, pp. 300, 301.
194. Code of 1897, Section 3722, p. 1447.
196. Code of 1897, Section 3724, p. 1452.
199. Code of 1897, Section 3728, p. 1457.
201. Code of 1897, Sections 3731, 3732, p. 1458.
204. Code of 1897, Section 3699, p. 1419.
205. Code of 1897, Section 3733, p. 1458.
207. Code of 1897, Section 690, p. 294.
208. Laws of Iowa, 1911, p. 8.
211. Iowa Official Register, 1913-14, p. 235.
212. Supplement of 1907, Section 255, p. 62.
213. Constitution of Iowa, Article I, Section II.
214. Constitution of Iowa, Article XI, Section I.
217. Code of 1897, Section 4518, p. 1813.