

LANGFORD v. STATE.

Opinion delivered March 20, 1911.

JURY—COMPETENCY OF JUSTICE OF THE PEACE.—Kirby's Digest, § 4537, providing that "whenever any juryman shall be presented for examination in impaneling any jury it shall be a ground of peremptory challenge that said juryman is a postmaster, justice of the peace or county officer," means that it shall be ground for challenge that one presented for examination as to his qualifications as juror fills either one of the positions mentioned.

Appeal from Pope Circuit Court; *J. H. Basham*, Judge; reversed.

J. T. Bullock, Brooks, Hays & Martin and *Bullock & Davis*, for appellant.

The juror Hanks, being a justice of the peace, was not subject to jury duty; the court therefore erred in overruling appellant's challenge of him for cause, and in requiring appellant to exhaust one of his peremptory challenges on him. Kirby's Dig. § 4537; 69 Ark. 449; *Id.* 323.

Hal L. Norwood, Attorney General, and *William H. Rector*, assistant, for appellee.

Appellee confesses error as to retention of the juror Hanks and requiring appellant to exhaust a peremptory challenge upon him.

MCCULLOCH, C. J. Ed Langford was convicted of the crime of manslaughter, and appeals to this court.

One of the assignments of error relates to the ruling of the court in overruling appellant's challenge of juror Hanks who was a justice of the peace at the time he was impaneled. The Attorney General confesses error on this assignment.

When the fact was disclosed, on the examination of this juror, that he was a justice of the peace, appellant challenged him for cause, and the court overruled the challenge. Appellant then peremptorily challenged the juror, and thereafter, in impaneling the jury, exhausted all of his peremptory challenges.

The statute provides that "whenever any juryman shall be presented for examination in impaneling any jury, it shall be a ground of peremptory challenge that said juryman is a postmaster, justice of the peace or county officer." Kirby's Dig. § 4537.

This court, in construing the statute, said: "We construe this to mean that the fact that a justice of the peace is a juror is cause for challenge. Of course, any juror can be peremptorily challenged; and unless the statute means that the fact that a juror is a justice of the peace is a disqualification if the defendant desires to avail himself of the fact, then it is meaningless nonsense." *Terrell v. State*, 69 Ark. 449.

There are other assignments of error relating to alleged disqualification of other jurors and to improper argument of counsel for the State; but as the error indicated above calls for a reversal, and the other matter may not occur at another trial, it is unnecessary to pass on them.

Reversed and remanded.
