

Persons Erroneously Convicted

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Banks and Insurance, whenever in the opinion of the trustees it is no longer required. Under the same conditions a special insurance guarantee fund, its purpose being to guarantee losses or obligations arising from the insurance business, must be created consisting of not less than \$20,000 in amount.³⁴ As a further safeguard there shall be a body corporate known as the General Insurance Guarantee Fund. The Superintendent of Insurance, with the consent of the Governor, shall appoint four trustees for specified terms to act as the board of directors and the Deputy Superintendent of Insurance in charge of savings bank life insurance shall automatically be a trustee of said corporation.³⁵ Each month the insurance banks must pay four per cent of all amounts paid to it as premiums on policies or in the purchase of annuities during the preceding month.³⁶ This fund is designed as a safeguard for the insured in cases where the insurance reserve of a bank is impaired.³⁷

It is submitted, in view of the success of insurance banks in Massachusetts, that this Act will be a distinct benefit to the small wage earner by giving him access to a lower-priced and more secure form of insurance which will be tendered to the public on its merits.

HENRY G. VOGEL.

PERSONS ERRONEOUSLY CONVICTED.—Legislation having indemnity for errors in the administration of criminal justice as its purpose has been found to have firm support in well-rooted legal doctrines.¹ At one time, European legislators were seriously hampered in enacting such laws by disagreement among legal theorists as to whether compensation could be upheld as an act of grace on the part of the state or a legal duty.² Beyond doubt, if we indemnify the taking of property, we should indemnify injustices to human beings. It is con-

³⁴ N. Y. Laws 1938, c. 471, § 311.

³⁵ *Id.* § 321. The following quotation is an excerpt from a communication received from the Superintendent of Insurance: "In Massachusetts there has never been any call on the General Insurance Guarantee Fund to pay death losses. In fact no bank has ever had to call upon its own \$20,000 special insurance guarantee fund except in one instance where one bank dipped in to the extent of four or five hundred dollars."

³⁶ *Id.* § 326.

³⁷ See N. Y. Laws 1938, c. 471, § 336. (If an insurance bank violates the provisions of this Act or any other law, the Superintendent of Insurance may bring an action to have it dissolved.)

¹ MERKEL, JURISTISCHE ENZYKLOPADIE (3d ed. 1904) § 708 (supported on same theory as eminent domain); BORCHARD, CONVICTING THE INNOCENT (1932) 392 (considered on the same theory as compulsory social insurance).

² See MERKEL, JURISTISCHE ENZYKLOPADIE (1st ed. 1885) § 63 (before enacting laws sound in economic theory, the European legislator demands the support of recognized legal theory).

ceded that the conviction of innocent persons may occur even where state officers have acted in entire good faith and with diligence. Perjured or mistaken witnesses,³ and the poverty or ignorance of the defendant, sometimes produce verdicts of guilty where the state legal machinery has operated honestly. Where an unjust verdict is rendered due to the misfeasance⁴ of the police, prosecuting attorney, or judge, there is no doubt that the state has an obligation to compensate the hapless victim. However, even in instances where the mistake was made in good faith, it is unjust to release the victim without public vindication of his character, admission of error, and whatever else is necessary to give him a fair start.

Perhaps the widespread indifference to the plight of the victim of an unjust conviction is attributable to the notion that occurrences of this kind are too few to justify public concern. That such wrongs are not a great rarity, even in our courts, is amply illustrated by a well known work on the subject.⁵ In the United States we keep no systematic files⁶ of these cases and therefore the magnitude of the problem can only be guessed at with the aid of newspaper accounts of the release of innocent men and the expressed opinions of prison wardens to guide us.

The victim's remedies, in the absence of a statute allowing him to proceed against the state, are limited indeed.⁷ He may attack the complaining witness or officer in a suit for damages for false imprisonment, or malicious prosecution without probable cause, but such remedies are seldom invoked since they are for the most part futile. The general rule is that even where a judge is guilty of malice or corruption, to the end that the individual is injured, he is immune from civil suit.⁸

There is ample precedent,⁹ foreign and domestic, for compensating innocent persons who have suffered the torture of an actual conviction of crime. Within the last half century, European countries have made vast strides in this field. The Scandinavian countries¹⁰ are particularly progressive in this respect, with Denmark in the lead.

³ MUNSTERBERG, "ON THE WITNESS STAND" (1927).

⁴ THROOP, PUBLIC OFFICERS (1892) § 713.

⁵ BORCHARD, CONVICTING THE INNOCENT (1932).

⁶ MILLSPAUGH, CRIME CONTROL BY THE NATIONAL GOVERNMENT (1937).

⁷ REPORT ON CRIMINAL PROCEDURE, No. 8, NATIONAL COMMISSION ON LAW OBSERVANCE (June 9, 1931) 44. In most states the appellate courts can reverse a conviction only for errors of law no matter how incorrect the conclusion may be. The victim often has to rely on a petition of executive clemency in such cases.

⁸ *Bradley v. Fisher*, 13 Wall. 335, 351 (U. S. 1871); *Hughes v. McCoy*, 11 Colo. 591, 19 Pac. 674 (1888); MECHEM, PUBLIC OFFICES AND OFFICERS (1st ed. 1890) §§ 628, 629.

⁹ BORCHARD, CONVICTING THE INNOCENT, at 380.

¹⁰ SEN. DOC. No. 974, 62d Cong., 3d Sess. (1912) 11 (the Swedish law is distinguished as the most conservative one in operation in the Scandinavian countries).

The French law¹¹ provides for compensation only to innocent persons convicted, whereas in Hungary¹² indemnity is also given to persons arrested erroneously. In 1913, California¹³ and Wisconsin¹⁴ adopted general laws for the indemnification of victims of unjust convictions and in 1917 North Dakota¹⁵ adopted an act similar to the Wisconsin statute. There is a tendency to reduce the efficacy of the state laws by strict interpretation.¹⁶ All the state statutes restrict indemnity to cases where the claimant has not by gross negligence or intention caused his own arrest and conviction. The California statute expressly provides for payment for pecuniary injustice only. In a Wisconsin claim,¹⁷ an applicant was denied relief on the grounds that the defendant contributed to his wrongful conviction by pleading guilty although, admittedly, the plea was induced by third degree methods.

It is true that Congress may, in any particular case, pass a special act authorizing compensation to a victim of erroneous conviction. This procedure is lengthy and the remedy it affords a claimant is haphazard and inadequate.¹⁸ A movement was begun¹⁹ in the latter part of 1912 for a general law giving indemnification to victims of unjust convictions in the federal courts. However, it was not until May 24, 1938 that a bill²⁰ giving compensation in such instances was signed by the President.

¹¹ SEN. DOC. NO. 974, 62d Cong., 3d Sess. (1912) 8, 9 (the French law is explained and its theoretical background discussed).

¹² SEN. DOC. NO. 974, 62d Cong., 3d Sess. (1912) 27 (the Hungarian law is translated and reprinted).

¹³ CAL. GEN. LAWS (Deering, 1937) 1615.

¹⁴ WIS. STAT. (1935) § 285.05.

¹⁵ N. D. COMP. LAWS ANN. (Supp. 1925) § 112696.

¹⁶ See note 17, *infra*.

¹⁷ Wisconsin Board for the Compensation of Innocent Persons Who Are Imprisoned, Record in the claim of John A. Johnson (1922).

¹⁸ H. R. REP. NO. 2299, 75th Cong., 3d Sess. (1938).

¹⁹ 49 CONG. REC. 356 (1912) (Mr. Justice Sutherland introduced the 1912 bill for relief of persons erroneously convicted and it was through his efforts that editorial comments on the subject by Borchart and Wigmore were printed in the form of a Senate Document).

²⁰ PUB. L. NO. 539, 75th Cong., 3d Sess. (May 24, 1938), 52 STAT. 438, 18 U. S. C. A. § 729 (Supp. 1938): "Erroneous conviction; authorization of suit against United States. Any person who, having been convicted of any crime or offense against the United States and having been sentenced to imprisonment and having served all or any part of his sentence, shall hereafter, on appeal or on a new trial or rehearing, be found not guilty of the crime of which he was convicted or shall hereafter receive a pardon on the ground of innocence, if it shall appear that such person did not commit any of the acts with which he was charged or that his conduct in connection with such charge did not constitute a crime or offense against the United States or any State, Territory, or possession of the United States or the District of Columbia, in which the offense or acts are alleged to have been committed, and that he has not, either intentionally, or by willful misconduct, or negligence, contributed to bring about his arrest or conviction, may, subject to the limitations and conditions hereinafter stated, and in accordance with the provisions of the Judicial Code, maintain suit against the

The new law ²¹ is applicable to those who have actually been imprisoned under a judgment of conviction and whose innocence has been later established by pardon or by decree of a judicial tribunal.²² The relief is not limited to pecuniary injury, specifically. The act awaits judicial interpretation as to whether it includes compensation for mental suffering. Indemnity is given only in the event that the accused's conduct constituted no punishable offense ²³ against the United States, a state, a territory, or a possession of the United States. Thus, if a claimant committed a larceny on a certain occasion and was never tried as to that crime but was convicted of an assault, which allegedly occurred at the same time as the larceny, but which assault he did not actually commit, the claimant may not recover for the wrongful conviction. Preliminary to a consideration of the demand, the court or pardoning authority must try the facts and certify as to the innocence of the claimant and his freedom from commission of any other crime in connection with all the circumstances.²⁴ In practice the President grants pardons only after full hearings by the Department of Justice. The pardon or court certificate is conclusive on the issue of innocence.²⁵ The Court of Claims merely hears evidence on the question of damages.²⁶

The document under which the victim claims must declare that the conviction and arrest were not brought about through the claimant's contributory negligence or wilful misconduct.²⁷ Therefore, it would seem that if a defendant refuses to aid in his own defense and is consequently convicted, he may not later claim compensation. However, on occasion, false confessions have been exacted from innocent persons, and innocent defendants have been known to swear to false alibis or maintain damaging silence.²⁸ Where such conduct is excusable, due to surrounding circumstances, it should not bar indemnity

United States in the Court of Claims for damages sustained by him as a result of such conviction and imprisonment."

⁸¹ CONG. REC. 220 (1937) (the present bill was introduced by Sen. Maloney in the Senate on Jan. 14, 1936 and was referred to the Committee on the Judiciary).

²¹ 83 CONG. REC. 6925 (1938) (the present bill arose in the Senate and was passed after three House amendments, one of which eliminated the original provision that pecuniary damages only be compensated, another of which made imprisonment as well as conviction prerequisite to recovery, and yet another of which provided that the only evidence on the issue of plaintiff's innocence should be a stipulated court certificate or pardon).

²² 52 STAT. 438, 18 U. S. C. A. § 730 (Supp. 1938).

²³ PUB. L. No. 539, 75th Cong., 3d Sess. (May 24, 1938) § 2(b).

²⁴ H. R. REP. No. 2299, 75th Cong., 3d Sess. (1938) (the reason for the provision is indicated briefly).

²⁵ 83 CONG. REC. 6925 (1938).

²⁶ *Ibid.*

²⁷ 52 STAT. 438, 18 U. S. C. A. § 730c (Supp. 1938).

²⁸ *Shellenberger v. State*, 97 Neb. 498, 150 N. W. 643 (1914) (a mania to confess crimes); *Boorn's case*, Vt. (1819) cited in GREENLEAF, EVIDENCE (15th ed. 1892) n.214 (confession of murder was made on the advice of friends in the hope of recommendation to mercy).

though it contributed to conviction. The word "wilful" qualifying "misconduct" would seem to imply that the legislature had such situations in mind,²⁹ and intended to give the victim a remedy in those instances. If the accused bases his claim on an executive pardon, relief will not be granted unless the pardon recites that the applicant exhausted all opportunities for securing freedom through the normal medium of the courts and that their jurisdiction expired before the pardon was granted.³⁰

In anticipation of the fact that the applicant is not likely to be able to pay for legal proceedings, the statute provides that the court may permit the claimant to prosecute an action *informa pauperis*.³¹ The amount of compensation in any particular case is discretionary, but in no case shall it exceed \$5,000.³²

While under the various state laws claims are presented to a special compensation board,³³ suits under the federal statute are to be brought in accordance with the Judicial Code.³⁴ The Court of Claims has been given jurisdiction over these suits for indemnity in preference to the trial court.³⁵ This seems to be in the interest of conformity with general procedure since the Court of Claims has jurisdiction in other instances of demands against the United States Government.³⁶

The statute is silent on a few salient points. For example, we can not determine from a reading of the law whether its scope will extend to include persons who merely serve time pending appeal. Also, nothing is said concerning a case wherein the accused has a right of action against a third person for damages resulting from his wrongful conviction, but chooses to ignore that right and sue the United States Government instead. It would seem that the accused should have the duty of exhausting his remedies as to such third persons and that the Court of Claims should be authorized to deduct the pecuniary value of those remedies in computing the amount which will indemnify the claimant, whether the claimant decides to pursue those remedies or not.

²⁹ 52 STAT. 438, 18 U. S. C. A. § 730c (Supp. 1938).

³⁰ *Id.* § 731.

³¹ PUB. L. No. 539, 75th Cong., 3d Sess. (May 24, 1938) § 4.

³² CAL. GEN. LAWS (Deering, 1937) 1615, 5, WIS. STAT. (1935) 285.05, 4, N. D. COMP. LAWS ANN. (Supp. 1935) 112696, s.4. (The compensation provided for by the California act is limited to \$5,000. The North Dakota and Wisconsin statutes provide that compensation shall not exceed \$1,500 a year. The maximum award in North Dakota is \$2,000 and in Wisconsin \$5,000. There is a provision in both states for recommendation by the compensation board for the payment of a greater amount in any particular case.)

³³ CAL. GEN. LAWS (Deering, 1937) 1615, § 2 (refers the claimant to a special board of control); WIS. STAT. (1935) § 285.05, 2 (refers claimant to a special board of control); WIS. STAT. (1935) § 285.05, 2 (refers claimant to a special board of control).

³⁴ H. R. REP. No. 2299, 75th Cong., 3d Sess. (1938) 2.

³⁵ 52 STAT. 438, 18 U. S. C. A. § 731 (Supp. 1938).

³⁶ HOPKINS, THE ANNOTATED FEDERAL JUDICIAL CODE AND JUDICIARY (3d ed. 1926) §§ 145-151.

The most glaring cases of unjust convictions are given relief by the new federal law. Its passage fulfills the cherished hopes of one of our foremost jurists³⁷ who has long agitated for some such law. The intensely human outlook of the new statute is a tribute to the social conscience. It is submitted that New York might profit by adopting a similar statute.

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³⁷ SEN. DOC. No. 974, 62d Cong., 3d Sess. (1912) 3 (in an editorial included herein, Wigmore stresses the need for indemnity in cases of unjust conviction).