

Trial by jury—Delivery of verdict in hearing of some only of the jury—Affidavit by juror—New trial.

Ellis v. Deheer, 1922, 2 K.B. 113 (Court of Appeal). A jury, upon returning from the jury room to the Court, found the jury box occupied by a jury trying another case. Only the foreman and two or three of the jury were able to get into the body of the Court. The rest of the jury remained outside the body of the Court. The verdict was delivered and judgment entered. Upon a subsequent day, three jurors made affidavits that they did not hear what the foreman said, and that he did not deliver the true verdict of the jury. Upon an application for a new trial, it was held that although affidavits will not be received from jurymen as to the discussion which they may have had between themselves when considering their verdict, or as to the reasons for their decision, yet the affidavits filed in this case should be admitted because they dealt with something that happened after the return of the jury to Court. A new trial was ordered.

Settlement—Construction—Second marriage of wife—Ultimate trust for wife's statutory next of kin had she died intestate and "without having been married"—Claim of child of former marriage.

Boyce (appellant) and *Wasbrough and others* (respondents) (1922), 1 A.C. 425 (House of Lords). A wife, who had obtained a divorce from her first husband, by whom she had one son, by a settlement made in contemplation of a second marriage, settled a fund, upon the death of the survivor of herself and the intended husband, upon trusts for the issue of the intended marriage, and if there should be no child who should become entitled thereunder, a general power of appointment over the fund was reserved to her. In default of appointment the fund was to be held, in the event of her predeceasing her husband, in trust for such person or persons as under the Statutes of Distribution would have become entitled thereto at her death, had she died possessed thereof intestate, and "without having been married." There was no issue of the second marriage, and the wife predeceased her husband without having exercised her power of appointment. On the death of the husband the question arose whether the son by the former marriage was entitled to the fund as next of kin. It was held (Lord Buckmaster and Lord Parmoor dissenting) that the son was ex-