would fail to realize the Supreme Court’s objective of uniform treatment of rail-
road collective-bargaining agreements, but the NRAB, too, is not beyond re-
proach in this respect. Outweighing this disadvantage is the desirability, if not 
necessity, of ensuring a fair hearing and equal justice to all employees.

Uniformity and fairness could both be achieved under the Slocum rule were 
the NRAB reconstituted as an impartial tribunal.\textsuperscript{108} It could combine the pro-
cedural and adjudicative advantages of a court with the specialized knowledge 
of an administrative agency. It could provide a hearing for third parties and 
accept inter-employee disputes without upsetting the balance of interests among 
its members. It could follow precedents and render consistent interpretations, 
and it could decide all the cases on their merits. It could dispense with the 
present time-consuming practice of rearguing deadlocked cases before referees. 
The carrier members have always favored such a tribunal, but the labor 
members are opposed.\textsuperscript{109} One reason for their opposition is clear—under the 
present set-up, the unions they represent enjoy important advantages over 
competing unions. But the interest of railway labor as a whole must lie with an 
impartial administration of collective bargaining agreements rather than with 
a system which operates to the advantage of vested union interests.\textsuperscript{110} In the 
absence of such a sweeping legislative reform, the Supreme Court in the Slocum 
case would seem to have done collective bargaining in the railroad industry a 
distinct disservice.

\textbf{SPECIAL FINDINGS AND GENERAL VERDICTS}

\textbf{THE RECONCILIATION DOCTRINE}

Legal philosophy has retreated from its former exaltation of trial by jury 
as the bulwark of Anglo-American jurisprudence\textsuperscript{1} to a new position, from

\textsuperscript{108} A system of labor courts has been proposed, but their jurisdiction was to include com-
pulsory arbitration of disputes over new contracts as well as enforcement of existing agree-
ments. See Vickery, Labor Relations Law: The Ferguson-Smith Bill to Create Labor Courts, 

\textsuperscript{109} Jones, op. cit. supra note 37, at 115.

\textsuperscript{110} For contrary views see authority cited note 40 supra, at 9; Collective Bargaining, 

The former authority suggests that effective majority rule may require that the interests 
of the majority govern the disposition of adjustments as well as the negotiation of new agree-
ments. On this theory the man at the head of the seniority list would not be entitled to com-
plain if removed, because his removal benefits all the employees below him on the list. It 
should be added that this authority also states the arguments against exclusive right in the 
bargaining agent to represent employees in adjustment proceedings, and makes no final 
the Supreme Court explicitly rejected the theory that the RLA conferred such an exclusive 
right on the elected bargaining agent.

\textsuperscript{1} Note in this connection, the classic statement of Blackstone: “When the jury have de-
levered in their verdict, and it is recorded in court, they are then discharged. And so ends the 
trial by jury; which ever has been, and I trust ever will be, looked upon as the glory of the 
which it views this institution far more critically. In particular, the value of the jury system in civil cases has been seriously questioned. For the practical businessman as well as the lawyer, the essence of the law lies in its predictability. Security of transactions is the modern watchword, a standard which leaves no room for jury verdicts rendered in unintelligent or capricious, and therefore unpredictable fashion.

It has long been recognized that the general verdict is, by its very nature, vulnerable to the caprice of the jury. From the time the judge tenders his instructions until the jury returns with its finding, its operations are almost completely hidden from view. The elements which have gone into the jury's verdict are inscrutable and unknowable, and the jury need not explain or defend its conclusions. In short, the general verdict system gives the jury almost unlimited power.

The special interrogatory, which evolved from the practice of early English common-law judges in quizzing the jurors on the grounds of their verdicts, has been considered by many to be an improvement on the general verdict. It has been claimed, with some justification, that the instructions of the court are little more than abstruse ritual. Driver, A More Extended Use of the Special Verdict, 9 F.R.D. 495 (1950); Green, A New Development in Jury Trial, 13 A.B.A.J. 715 (1927). Within a few moments, the jury must bite off, swallow, and assimilate whole chunks of complicated legal principles. In the oft-quoted words of Edson Sunderland, "Twelve men can misunderstand more law in a minute than the judge can explain in an hour." Verdicts, General and Special, 29 Yale L.J. 253 (1920). Mayor and Burgesses of Devizes v. Clark, 3 A. & E. 506 (K.B., 1855); Hawkins, Pleas of the Crown, Bk. 2, Ch. 22, § 22 (1824); Morgan, A Brief History of Special Verdicts and Special Interrogatories, 32 Yale L.J. 575 (1923).
is a technique devised to circumvent the alleged shortcomings of the general verdict system. Special interrogatories are questions submitted to the jury by the court, along with the general instructions, in order to ascertain what are termed the ‘ultimate and determinative’ facts. These so-called ‘special questions’ may be proposed to the jury at the discretion of the court or at the request of the parties, although submission is not mandatory in most jurisdictions.


11 “The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict....” Fed. Rules Civ. Proc. 49 (b).

12 Ipsen v. Ruess, 239 Iowa 1376, 41 N.W. 2d 658 (1950); Gearhart v. Columbus Ry., Power & Light Co., 65 Ohio App. 225, 29 N.E. 2d 661 (1940); Chicago & N.W. Ry. Co. v. Dunleavy, 129 Ill. 132, 22 N.E. 15 (1889); cf. Cherry v. Andrews, 237 N.C. 261, 56 S.E. 2d 703 (1950). “If the questionable word or phrase in the interrogatory calls upon the jury to use only the ‘common use’ or ‘dictionary’ definition to ascertain its meaning, the interrogatory asks for a finding of fact. However, if the word or phrase requires from the court an instruction as to its legal meaning, the interrogatory asks for a conclusion of mixed law and fact.” Tucker Freight Lines v. Gross, 109 Ind. App. 454, 459, 33 N.E. 2d 353, 355 (1941), following Dodge Mfg. Co. v. Kronewitter, 57 Ind. App. 190, 104 N.E. 99 (1914). The ultimate and determinative fact is that fact which has been reached by the process of logical reasoning from the detailed or probative fact. Since the conclusions of law are the next logical step in this process, the ultimate and determinative facts lie in a more or less indefinable zone in between. Oliver v. Coffman, 112 Ind. App. 597, 45 N.E. 2d 351 (1942).

13 In the federal courts submission is within the broad discretion of the trial judge, Fed. Rules Civ. Proc. 49 (b). The same is true in those states whose statutes are based on the Federal Rules. Ariz. Code Ann. (1939) §§ 21-1009, 21-1010; N.D. Rev. Code (1943) § 28-2503. In other jurisdictions the statutes expressly provide that submission is mandatory: Ill. Ann. Stat. (Smith-Hurd, 1948) c. 110, § 189; Iowa Rules Civ. Proc. (1943) 206; Ind. Stat. Ann. (Burns, 1933) § 2-2022. In the following cases, submission of properly framed interrogatories was held to be mandatory, though not expressly so provided in the statutes: Zucker v. Karpeles, 88 Mich. 473, 50 N.W. 372 (1891); Walker v. New Mexico & S.P. R. Co., 7 N.M. 282, 34 Pac. 43 (1893), aff'd 165 U.S. 593 (1897); Pecskv v. Millikin, 36 Ohio App. 543, 173 N.E. 626 (1930); Doyle v. Ralph, 49 R.I. 155, 141 Atl. 180 (1928). The following statutes declare that it is within the discretion of the trial judge, whether or not he will submit special inter-
The jury's answers to special interrogatories are not given in lieu of a general verdict. In theory, at least, they are intended to check the correctness of the general verdict. In practice, the use of special interrogatories could result in the shift of considerable power from the jury to the judge. When the judge has before him a general verdict and special findings, it is within his power to decide whether the two are consistent or in conflict. If he decides that they are in conflict and cannot reasonably be reconciled, then the special findings will control, and he may give judgment notwithstanding the general verdict. Thus, while special interrogatories do not directly check the correctness of the general verdict, they do provide the judge with a tool by means of which he may curb the jury's power.

The value of the special interrogatory thus hinges considerably on the amount of discretion which the courts allow themselves in dealing with the resolution of inconsistencies between special findings and general verdicts. This is highlighted by the decision of the Ohio supreme court in *McNees v. Cincinnati Street Ry. Co.*


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14 Anderson v. Johnson Co., 150 Ohio St. 160, 80 N.E. 2d 757 (1948); Long v. Shafer, 162 Kan. 21, 174 P. 2d 88 (1946). "The final conclusion of a jury is expressed in their general verdict, and special findings are permitted only for the purpose of ascertaining whether the jury have considered and found the elemental ingredients which should inhere in and support their general verdict." Neiswender v. Board of County Comm'rs, 153 Kan. 634, 638, 113 P. 2d 115, 119 (1941). Clementson described the special interrogatory as "a sort of exploratory opening" into the abdominal cavity of the general verdict... by which the court determines whether the organs are sound in and place and the proper treatment to be pursued." Special Verdicts and Special Findings by Juries 45, 46 (1905).

15 Statutes cited note 10 supra.

16 152 Ohio St. 269, 89 N.E. 2d 138 (1949).
pensable any injury received in the course of and arising out of, an injured party's employment. The jury entered a general verdict for defendant, while answering affirmatively the following interrogatory:

"Was the cause of Taylor McNees' death, the mental strain and excitement of the driving conditions which prevailed as he drove the trolley bus on the night of January 17, 1944?"\textsuperscript{17}

It was held on appeal, reversing the judgment of the trial court in granting plaintiff's motion for judgment notwithstanding the verdict, that the general verdict and the special finding, though apparently in conflict, were not irreconcilable; the special finding, while establishing a causal connection between plaintiff's employment and his injuries, did not establish a "proximate causal relationship between decedent's employment and either the mental strain and excitement, or the coronary thrombosis, or his death."\textsuperscript{18}

In reaching this decision, the Ohio court applied two intimately connected rules: (1) The answers of a jury to special interrogatories will not authorize a judgment different from that authorized by a general verdict, where such answers can be reconciled with the general verdict;\textsuperscript{19} and (2) the answers of a

\textsuperscript{17}Ibid., at 272 and 141.

\textsuperscript{18}Ibid., at 274 and 142.


Generally, however, the courts consider the special findings as a whole in determining whether or not conflict exists between them and the general verdict. This was exemplified in Republic Creosoting Co. v. Hiatt, 212 Ind. 432, 8 N.E. 2d 981 (1937), in which the court found it possible to reconcile the following special findings:

"Q. 1. Was the plaintiff working as an employee of the defendant on Jan. 31, 1929, in loading blocks? Ans. Yes."

"Q. 2. Were the injuries, of which he now complains caused by so working with creosoted blocks on Jan. 31, 1929? Ans. No."


"Q. 4. Were the injuries, of which he now complains caused by so working with creosoted blocks on Feb. 2, 1929? Ans. No."

"Q. 5. Did the injuries of which he now complains arise out of his work in loading blocks on Jan. 31, 1929. Ans. Yes."

"Q. 6. Did the injuries of which he now complains, arise out of his work in sacking blocks on Feb. 2, 1929? Ans. Yes."

The general verdict had been for the plaintiff. The court managed to reconcile these answers on the grounds that plaintiff was attempting to recover on the theory that his injuries were due to his being poisoned by fumes from the creosoted blocks, and since interrogatories five and six did not include the word creosoted, they were not in conflict with two and four. Compare Bickel, Judge and Jury—Inconsistent Verdicts in the Federal Courts, 63 Harv. L. Rev. 649 (1950). It is interesting to note that, in reconciling these special findings, the court overturned the general verdict.
jury to special interrogatories will not control the general verdict so as to au-
thorize judgment notwithstanding the verdict, unless the answers in them-
selves show that, as a matter of law, judgment could only be rendered for the
party against whom the general verdict has been found.20

As will be shown, the first rule expresses a complex of principles by which the
courts resolve inconsistencies between general verdicts and special findings. In
applying it, the courts presume everything which will support the for-
mer,21 and nothing which will support the latter.22 The general verdict is considered to
import a finding on all questions not inconsistent with the answers to the special
interrogatories.23 If under the issues presented, facts could have been found
which were not in conflict with the special findings, and which would support
the general verdict, the latter will prevail.24 Where the jury's answer to a spe-
cial interrogatory is open to two constructions, one harmonizing, the other con-
tricting with the general verdict, the court must apply the harmonizing con-
struction.25

In the ordinary course of events, the application of the reconciliation princi-
ple is sound. There is no valid reason why a general verdict should be over-
turned because of minor inconsistencies between it and the special findings.
However, the strong presumption in favor of the general verdict, reflected in
the McNees case, is not in accord with one of the principles underlying special
interrogatories. In theory, at least, it should be simpler for the jury to give cor-
rect and intelligent answers to concise questions of fact, than to render an all-
inclusive general verdict.26 Most important, when the courts apply this prin-

622, 41 A. 2d 771 (1945); Lowen v. Finnila, 102 P. 2d 520 (Cal., 1940); cf. Sohler v. Christen-
sen, 151 Neb. 843, 39 N.W. 2d 837 (1949).


22 It was held, however, in Harbin v. Beaumont, 146 S.W. 2d 297 (Tex. Civ. App., 1940),
that where a special finding conflicts with a general finding, the latter will be treated as a mere
legal conclusion, the effect of which is destroyed by an adverse special finding of controlling
fact upon which that conclusion rests.

23 Bolan v. Lehigh Valley R. Co., 167 F. 2d 934 (C.A. 2d, 1948); Giltn v. Stephens, 166

24 Theurer v. Holland Furnace Co., 124 F. 2d 494 (C.A. 10th, 1941); Jelf v. Cottonwood
App., 1949); Lowen v. Finnila, 102 P. 2d 520 (Cal., 1940).

25 Significant restrictions are placed upon the interrogatories which may be submitted to
the jury. They must be simple, direct, and should comprise only a single issue. Tucker Freight
Lines v. Gross, 109 Ind. App. 454, 33 N.E. 2d 353 (1941); Ipsen v. Russ, 239 Iowa 1376, 35
N.W. 2d 82 (1948). They should not ask for mixed conclusions of fact and law, but only for the
"ultimate and determinative" facts (see note 13 supra). Nor should they be phrased so as to
confuse and mislead the jury. Anderson v. Johnson Co., 150 Ohio St. 169, 80 N.E. 2d 757
principle, they derogate from the power given them by the special interrogatory system. By presuming in favor of the general verdict, and seeking every conceivable means to reconcile the special findings with it, the courts return to the jury most of its original power.

The second rule, like the first, is a reasonable one when taken at its face value. However, if strictly applied, it could lead to the submission of vast numbers of interrogatories. One court has held that, in the case of conflict, special findings will not control the general verdict unless they "cover every essential element of the case."

Furthermore, rule two has an intimate connection with rule one. In effect, it is little more than an extension of the presumption principle. The operation of these two rules can best be demonstrated by a closer analysis of the McNees case. The Ohio court had before it a general verdict for the defendant, and a special finding, which on its face at least, was in direct conflict with the verdict. Impliedly, though not avowedly using the presumption principle, the court attempted to reconcile the two.

With each party attempting to set forth all possible bases for recovery, the system can become unwieldy, as was the experience in the early use of the Texas special issue submission practice. Dooley, The Use of Special Issues Under the New State and Federal Rules, 20 Tex. L. Rev. 32 (1941). This is limited, however, by counsel's practical consideration of trial technique. One lawyer has said: "About the only thing the special interrogatories, submitted at the request of the plaintiff can do for him in the ordinary negligence case, is to upset a verdict in his favor, if it is found on appeal that they should not have been given." Thomas, The Use in State Court Practice of Special Findings of Fact, 20 Ohio Bar 421, 426 (1950).


Perhaps a better rule would be that judgment on the verdict is subject to reversal when it is apparent that the special findings which conflict with the general verdict determined that verdict. Compare Feldmann v. Connecticut Mutual Life Ins. Co., 142 F. 2d 628 (C.A. 8th, 1944).

The court admitted that there was "no statutory provision requiring a proximate causal relationship between a compensable injury and a death for which compensation is sought." 152 Ohio St. 269, 275, 89 N.E. 2d 138, 142 (1949). It then cited cases holding such a relationship was necessary, and others which did not refer expressly to such a necessity. The court then distinguished the latter cases on the ground that in none of them did the courts determine that such a relationship was not necessary. Assuming that this somewhat dubious argument is correct, and that it was necessary for plaintiff to establish a proximate relationship in order to
fer from the majority opinion, that had counsel for the plaintiff used the word "proximate" in his interrogatory, the court would have found the conflict between the jury's answer and its general verdict irreconcilable, and that, as a matter of law, plaintiff would have been entitled to judgment in his favor.

However, the question remains: would the jury have understood the concept of "proximate cause" (providing of course, that the court had not then held the interrogatory improper, as requiring a conclusion of mixed fact and law).31

The concept of proximate cause is not a simple one. According to Prosser, "there is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion."32 Furthermore, the trial court would not have been justified in helping the jury to answer this interrogatory by means of appropriate explanation.33 The same court which decided the McNees case held, in Bradley v. Mansfield Rapid Tran-

recover, the jury's special finding may most reasonably be read to establish just such a relationship. The dissenting judge declared, "it seems to me that when the jury found that 'the mental strain and excitement of the driving conditions which prevailed as he drove the trolley bus' caused McNees' death, it necessarily found that such 'mental strain and excitement of the driving conditions' were incidents and risks of ... [the] employment in which he was then engaged. ... From a common-experience rather than a metaphysical approach, this record discloses that these conditions would arise from no other source than his employment."152 Ohio St. 269, 283, 89 N.E. 2d 238, 146 (1950).

31 In City of Troy v. Brady, 67 Ohio St. 65, 65 N.E. 616 (1902), the court held that an interrogatory using the phrase "reasonably safe" was not improper. However, the following interrogatory was declared improper: "21. Could the driver of the automobile, John Challek, have seen the truck in time to have stopped the automobile, had he looked with reasonable care?" Tucker Freight Lines v. Gross, 199 Ind. App. 454, 33 N.E. 2d 353 (1941). The court followed Dodge Mfg. Co. v. Kronewitter, 57 Ind. App. 190, 104 N.E. 99, 102 (1917), declaring that the interrogatory would have been proper had counsel substituted for "reasonable care," "the care which an ordinarily prudent person would have used under the same or similar circumstance." In Chicago & N.W. Ry. Co. v. Dunleavy, 126 Ill. 132, 22 N.E. 15 (1889), the court, in submitting defendant's interrogatory, changed the form from "What precaution did the deceased take to inform himself of the approach of the train which caused the injury?" to "Was the deceased exercising reasonable care for his own safety at the time he was killed?" Held, modification was proper, since the original question sought to obtain a finding as to probative or evidentiary, instead of material facts. The court in the Dodge case held that jurors should not be required to answer questions of mixed law and fact, because they "are presumed not to know the standard; and if they should answer such a question, the court could not know whether they applied the correct legal standard in reaching their conclusion, or whether they reached it by applying some standard of their own, not in accordance with the standard fixed by law." Although the reasonable man is undoubtedly an entity created by law, it is doubtful whether or not the common-sense, common-experience view which a jury would take when faced with this concept is far different from the legal standard. The jury need have done no more than apply the "common use" or "dictionary" sense of the word reasonable, to have arrived at a justifiable decision. Note 12 supra.

32 Prosser, Torts 311 et seq. (1941); Gregory, Proximate Cause in Negligence—A Retreat from Rationalization, 6 Univ. Chi. L. Rev. 36 (1938).

33 A trial judge has no authority to require the jury to revise or reframe its answer to an interrogatory, when the intention of the jury may be obtained from the answer given, nor can the court indicate to the jury the answer to be returned. Elio v. Akron Transportation Co., 147 Ohio St. 365, 71 N.E. 2d 707 (1947). Contra: Fed. Rules Civ. Proc. 49 (b); Tex. Rules Civ. Proc. (Vernon, 1941) 279.
that a trial judge could not properly explain the meaning of "direct cause," a term which the court equated with "proximate cause," to the jury.\textsuperscript{35}

However, even had the jury completely understood the concept of proximate cause, and had the plaintiff so worded his interrogatory, it is doubtful whether this would have made any difference in the jury's answer. Under common-sense principles, one cannot attribute to the jury a subtlety of thought which would distinguish between remote and proximate cause.\textsuperscript{36} When the jury answered plaintiff's interrogatory, it almost assuredly did so with regard to what it considered not "a" cause, but "the" cause.

Thus, in applying the rules of interpretation outlined above, the Ohio court twisted the jury's special finding into a form completely alien to its plain and simple meaning. So long as the courts carry the reconciliation doctrine to the lengths it was carried in the \textit{McNees} case, the value of the special interrogatory as a check on the power of the jury in rendering a general verdict will be greatly reduced, if not completely subverted.

\textbf{STATE REGULATION OF NONRESIDENT ALIEN INHERITANCE—AN ANOMALY IN FOREIGN POLICY}

Any discussion of the right of nonresident aliens to inherit American property elicits several conflicting considerations. Everyone agrees that, with some exceptions, a testator should be permitted to dispose of his possessions in any way he chooses, and that the interest of a beneficiary should be protected.\textsuperscript{1} However, a feeling persists that devises and bequests should not be permitted to enrich

\textsuperscript{34} 154 Ohio St. 154, 93 N.E. 2d 672 (1950).

\textsuperscript{35} The trial court had submitted the following interrogatories:

"No. 1—Do you find the driver of the bus was negligent?"

"No. 2—If the answer to interrogatory No. 1 is 'yes,' of what did his negligence consist?"

"No. 5—Do you find that the plaintiff, Charles Daniel Brady was negligent in any respect which was the direct cause of his injuries?"

"No. 6—If the answer to interrogatory No. 5 is 'yes,' of what did his negligence consist?"

The jury answered No. 1, "Yes." The answer to No. 2 was, "negligence on the part of the defendant that door of bus was accidentally opened." No. 5 was answered "Yes," and No. 6, "We find plaintiff was negligent to a lesser degree than defendant, due to his position in the bus." The trial judge then informed the jury that there was no apportionment of negligence in Ohio, and also explained the concept of direct cause. He requested that the jury reconsider and revise its answer to the sixth interrogatory. The foreman asked for interrogatory five as well, stating: "We didn't understand interrogatory No. 5 about the direct cause." The jury then returned with a negative answer to five, making it unnecessary to answer the sixth question. The supreme court held that the judge's explanations were improper and granted a new trial.

\textsuperscript{36} The statement of the dissenting judge is instructive here. Note 30 supra.

\textsuperscript{1} See McMurray, Liberty of Testation and Some Modern Limitations Thereon, 14 Ill. L. Rev. 536 (1919).