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Some Hints on Defects in the Jury System

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I. SOME HINTS ON DEFECTS IN THE JURY SYSTEM.

The occasional freaks of juries have now and then led some members of the bar to speculate on the policy of doing without them entirely, and some persons no doubt think that they have strong convictions that the jury system has become useless. It is safe to say that these extreme views are altogether speculative, and not based on any careful comparison of results. Most persons who have looked into their own experience with courts and juries are ready to agree that where there is no dispute about main facts, so that the chief dispute is one of law, there is no reason why the judge should not handle the whole case. But where there are motives to be looked into, and uncertain elements to be determined, although juries sometimes make strange work, they make on the average quite as sound decisions on facts as judges. Any one who will take the trouble to investigate will find that upon questions of fact, involving any close knowledge of human nature, judges differ as much as juries, and sometimes reach remarkable results. Experience has shown (and perhaps no volumes contain sadder proofs of it than the state trials of all countries) that the pressure of public passions and prejudices, whether general or local, is often quite as visible in the rulings as in the verdict. It often happens, too, that a vigorous legal intellect is found in company with curious hobbies and freaks of judgment, which may make a very austere man apply extreme notions

of criminality to venial or minor offences, or hold, on the other hand, serious wrongs to be mere harmless vagaries. The legal biographies contain some amusing illustrations of this, and the annals of criminal jurisprudence are not lacking in tragic examples of it.

Aside from its value as a teaching process, the jury system, with all its defects, is the only one which can ever succeed in practically holding all classes of citizens responsible for their actions under the law as they understand it. The maxim that every one is bound to know the law must rest upon the basis that every one *can* learn it; and unless this were substantially true there would be very little justice in legal proceedings. The fact that they are generally acquiesced in shows that they are generally right. The cases which do not command public acquiescence show why the rest are usually satisfactory. Every one knows that both in England and in the United States, in spite of able and just judges, a prejudice has always existed against those courts which have no juries. It has been held in common by learned and unlearned, on right reasons and on wrong reasons, and has not always, if it has generally, been consciously laid to the want of juries. There is now and then a chancellor, or an admiralty judge, who gets such a reputation for blundering that no one cites his opinions with confidence, and suitors are all afraid of him. Such men are not distrusted for supposed dishonesty, but for a lack of plain sense and sagacity in applying legal principles to existing facts. It is difficult for any man of logical training to avoid sufficiently the habit of generalizing on facts, and forming for himself a system of what may perhaps be called rules of fact, which take too little note of what are regarded as small circumstances, and which attribute to human nature much more uniformity of action than they should. In cases, for example, where *fraud* is alleged, the statutes passed to correct this very error, and make fraud in most cases a pure question of fact, are daily ignored by courts of equity in many places, and the *dicta* of old chancellors as to the circumstances which create it are dwelt upon and ap-

plied with Procrustean severity to transactions which neither party intended or imagined to be blameworthy. Men of high principle and scrupulous honor find themselves condemned for their honest efforts to preserve the interests committed to their charge. There is hardly a merchant or banker in the country who is not occasionally startled at finding dealings which follow established commercial usage stigmatized as improper and unlawful. And grey-headed seamen who are proverbial among their brethren for skill and caution are censured for doing rightly, or for not doing impossible or ridiculous things, on some emergency, upon the testimony of standing witnesses who are expert in nothing but swearing, but who from the frequency of their appearing in admiralty cases, instead of suspicion, actually obtain in some places a favorable standing. Every one feels that when justice becomes so squeamish as to demand in court what no sensible man would think of asking out of court, it ceases to be justice and becomes oppression And it is none the less so because its mandates are issued by conscientious men.

There is another point on which judges sitting on matters of fact are often at fault. This is in not filling up the apparent gaps in testimony by resorting to the knowledge of every-day affairs which in daily life is taken for granted, and which is omitted from proofs because supposed, and justly supposed, to be already implied. It will not do to look continually at the precedents to learn what should be judicially noticed. Every community has some ways of its own which are so familiar that all persons act upon them instinctively, and a decision which ignores them, proved or unproved, receives and deserves no respect.

In all these particulars there are advantages in juries which can hardly be overrated. No matter in what learned or obscure phrases the judge expounds the law, the jury apply it as they understand it to be laid down, and soften its rigors and smooth out its asperities so as to bring it into harmony with the common understanding. They can generally have no common hobby unless it is one which all the community

ride, and which carries the bench also. They judge men and conduct by every-day standards, and not by abstruse and technical rules, which are not known to be accepted in society. In short, an honest panel of jurymen will usually aim at doing as they would expect others to do by them under like circumstances, so far as the instructions given to them will permit; and in doing so they commend the administration of the law to general approval much more effectually, and obtain for it more sincere respect, than would be done otherwise. No wise judge sets aside verdicts as contrary to the law and the evidence when they do substantial justice; and appellate courts, which generally have no adequate means of determining this with certainty, are often compelled against their will to reverse proceedings for legal slips, when they would be very glad to sustain them. The new English judiciary acts seem to have relieved the upper tribunals to a great extent from this difficulty, and enlarged their discretionary powers advantageously in dealing with alleged errors in trials.

It is not to be denied, however, that our jury systems do not work as well as they ought to; and it is only from the experience and observation of those who have had opportunities to know something about the defects that any means of reform can be devised. Without attempting any exhaustive treatment, it is the purpose of this article to make some suggestions on this subject.

The first and perhaps the worst defect is in the material of juries.

The system first grew into shape during periods when the population was, however varying in social position, uniformly acquainted with the same familiar system of law and usage. Until commercial law began to assume importance, it would have been difficult to find in any county a jury of English freeholders who could not be reasonably expected to decide fairly enough such controversies as were brought before them. And in the incorporated boroughs and cities the freemen eligible to serve were in like manner personally familiar with all the local as well as general customs and regulations

which they were called on to apply. It is well recognized in the decisions that the property and other qualifications of jurors were required chiefly, if not entirely, for the purpose of securing such intelligence as would make their verdicts trustworthy. And accordingly, when mercantile controversies of any nicety arose, it became very common to order juries of merchants to try them. Upon similar principles the admiralty judges have been accustomed to call in to their aid the practical knowledge of the Trinity masters. Every one can see that if such discrimination could now be had, in summoning juries for peculiar classes of controversies, such trials would be more fairly carried through, and the unfamiliarity of a judge with such subjects (which sometimes appears) would also be less perilous to the litigants.

For most purposes general intelligence is sufficient. For some purposes a more specific knowledge of business would be desirable. Any one who has seen the ridiculous humbugs who come to the surface as experts, in patent cases and other similar controversies, must appreciate how much mischief would be prevented by having on the jury intelligent mechanics, who know enough about mechanical principles to detect at least the grosser blunders of these pretenders, and who, not setting up as experts themselves, are capable of looking at all sides of a controversy and deciding it impartially.

Most of our courts have no power to secure such juries as they ought to have. And this difficulty has arisen from the misapplication of certain political truths about equality of rights, which no sane man questions, but which certainly do not require any such mischiefs to be perpetuated.

In England the choice of jurors was chiefly if not entirely left to the sheriff, who, as an important officer of justice, was not placed under the temptation to pay for his election by extending favors to his constituents at the expense of suitors and the public. Any partiality was sufficient ground of challenge to the array, and any misconduct in persistently summoning bad panels was readily corrected. But such misconduct was very rare, and while in modern as in former

times no doubt there has been occasionally a corrupt or stupid jury, it does not come altogether from the same causes which are at work here. And we, on the other hand, seldom see a jury made up of men whose class prejudices will affect one case more than another.

By the early practice in the older states the sheriffs had a wide discretion in selecting juries, and the jurors were generally either freeholders or otherwise qualified so as to secure reasonable intelligence. The population was chiefly native to the region, or from places having similar usages. They had been educated under a jury system, and imbibed that unconscious knowledge of law and legal procedure which is one of the elements unfortunately wanting in some parts of this country now, and without which no system can work well.

For some reason not very manifest, but possibly due to supposed abuses under the large increase of elective officers, it has become customary in many, if not in most, of the states to leave no discretion to any one in the selection of juries, but to provide for drawing by lot a panel for each term of court from a large list of names furnished (or supposed to be furnished) annually by the town officers. In many places no positive qualifications are required beyond citizenship, but in a very vague and general way the town officers are directed to select suitable persons. Sometimes these directions are more precise, and if properly carried out would be entirely satisfactory. Thus, no one could complain if the persons reported, in compliance with law, are all "assessed on the assessment-roll, * * * in possession of their natural faculties, and not infirm or decrepit, of good character, of approved integrity, of sound judgment, and well-informed, and conversant with the English language, and free from all legal exceptions, and who have not made, and in whose behalf there has not been made, to the officers * * * any application to be selected and returned as jurors."

But while theoretically all juries are composed of such material, and summoned entirely by lot, without the inter-

vention of any choice by sheriff or other person, it is in some places very remarkable how uniformly the lot falls on the same class and the same individuals, and how often they are not such jurors as represent the average intelligence or worth of the people. It is perfectly well known that while there are townships and counties where good juries are the rule, there are also those where good juries are no more common than poor ones. The law is good enough if honestly carried out, and many of the difficulties could be removed by vigilance. If a committee of the bar would make it a point to be present at every drawing of a panel, to see that it is really drawn as it should be, and use some pains to induce town officers, who are usually honest, to be particular in their reports, there would seldom be much trouble in having respectable juries. But at present, in many places, it is not to be denied that the quality of juries is not what it should be.

It is not just, however, to lay all the deficiencies at the door of the juries. Some of the responsibility certainly must be shared by others.

No small part of the mischief arises from the way in which cases are tried. And for this both bench and bar are more or less responsible.

Theoretically a jury case, on a common-law issue, involves few, and generally single, issues, on which, when the testimony is in, and the facts fairly presented, the decision can be made speedily when the jury are informed of the law. It is safe to say that there are few cases that cannot be tried adequately in a very few hours. It is equally safe to say that every very long trial is almost sure to be determined upon a vague notion of the general equities, or a guess at what the judge thinks of it, rather than upon a clear view of the facts. And long trials generally result from allowing prolix interlocutory arguments which ought not to be allowed, and from a very censurable practice of trying experiments, and endeavoring to entrap the court into rulings upon which error will lie. This last abuse would be effectually dealt with by introducing the improve-

ment in practice, before referred to, of using some discretion in not allowing new trials for technical errors that have done no harm. Another source of evil is in the practice concerning requests to charge.

It is an unfortunate custom in some courts to allow a lawyer to talk on any subject as long and as often as he chooses. And it is likewise unfortunate that some men, occasionally from superabundant caution, and sometimes from ugliness or stupidity, deem it proper to object to nearly every question propounded to a witness by their adversaries, and to make what they imagine is an argument upon it. It is needless to say that on a multitude of such questions there is no room for anything but pettifogging. These interruptions have the necessary effect of interpolating into the course of the testimony so many extraneous things that when a witness leaves the stand no one is quite certain what he has sworn to, and the most tenacious memory will be at fault. This mischief is rather aggravated than lessened by a course which has now become general of trusting to stenographers to keep all the minutes. Courts that will listen by the hour to twaddle on clear questions of evidence are impatient of any delay of counsel in making their own minutes, and judges entirely dispense with taking down anything. Whenever a controversy arises as to what has occurred, recourse must be had to the short-hand writer, who may or may not be able to answer queries that involve some professional skill. Counsel, whenever in doubt, will put a question which may already have been put and answered repeatedly, and thus add to the confusion.

It is the experience of most lawyers that, except on some vital question on which main issues depend, the argument of the admissibility of testimony may be wisely omitted during a trial. Except on very important issues, less harm is done by allowing doubtful but possibly irrelevant questions to be answered than by spending time in discussing them, and thus leading the jury to imagine they are of consequence And most judges discover that, upon a majority of the questions of evidence raised on a trial, they can trust as well to their

sagacity and good sense on a first impression as to a long argument. Of course no universal rule can be applied; but wrong rulings and wrong verdicts are much more frequent where judges open the door wide to useless discussions than where they discourage such needless interruptions as tend to confound the testimony and obscure the issues before the jury. And many an unfortunate defendant has rued the day when his counsel, instead of bringing an action for damages to as speedy and quiet an *exit* as possible, has been ambitious to make a *cause célèbre* out of a. controversy that never should have been provoked, and has led the jury to make him pay roundly for the glory.

Not the least difficulty, both before juries and appellate courts, is in the way in which the law is laid before the jury. In an average case the matter is usually in a narrow compass, and instructions, if clear and confined to the enquiries properly involved, need not be prolix. But many counsel deem it proper to prepare long lists of requests to charge, ringing numerous changes on the same idea, and very frequently clothing that idea in such shreds and patches of technical language that, whether granted or denied, the jury would be none the wiser. It is worse than useless to discourse to a jury in the language of the law-books. Even learned lawyers will dispute concerning the force of legal maxims and phrases. The purpose of associating a judge with a jury is to enable him to teach them in plain English what rules of law belong to the controversy. But if he at his own instance, or on the request of counsel, discourses to them in phrases which do not belong to the common knowledge, he can only fail to mislead them by leaving them hopelessly confounded. In such a case, if they trust to their own sense of justice, they may, and generally will, render a righteous verdict. But such chances are not, after all, a very safe reliance.

Having referred to some of the difficulties in the way of making jury trials what they ought to be, the question how these difficulties can be dealt with practically is a serious and troublesome one, more easily put than answered. It is

one, however, which it will do no harm to consider in an imperfect way. Law reforms are never the result of single schemes, and are never very wise unless maturely considered in many lights.

To begin at the proceedings by which redress is sought against wrong judgments, we shall see at once that most of the improvements we can hope for must be confined to affairs in the trial court. But this is not altogether so.

The jury system would be of no use whatever if any court could so review the verdict as to change its effect without granting a new trial. When a case is tried by jury the verdict must in all cases determine the final rights of the parties. The Constitution of the United States has expressly forbidden the courts of the Union from reviewing verdicts on the facts. And this principle underlies the jury system everywhere. Our legal polity, however, does provide for setting aside wrong verdicts, when found by the trial-court to be against the law and the evidence. The powers of those courts in this regard are quite as great as they ought to be, and are probably as well guarded as is reasonably practicable. It would not be desirable to allow resort to courts which have not seen either jury or witnesses, to review the conduct of the panel, because nothing can reproduce on paper the whole surroundings of the case; and the written report of the best short-hand writer could not enable any one to see the manner of the witnesses, their age and constitution, to hear their tones and mark their hesitations and delays, their cunning or simplicity, their pertness or gravity, their little outbursts of temper or the provocation thereto, equally unseen, from counsel whose manner, whether civil or uncivil, is never delineated. But sometimes even in our day the *verbatim* report of a civil or criminal trial will show, as plainly as we see in the faithful pages of the great state trials, an atmosphere, almost visible, of public excitement which has evidently driven judge, jury, and counsel into the place of vindictive pursuers, and turned a legal proceeding into a bitter persecution. When such an epidemic prevails, the victim, whether guilty or innocent, can only be grateful

that lynch law has taken a course which may possibly give him good grounds of error; for justice does generally so far vindicate herself as to make it difficult for any official to commit a moral wrong without committing a palpable blunder in law. It cannot justly be said that there is much of this sort of sinning in American courts, but it is far from being unknown. And it is very certain that no legislation can be devised which will remedy such exceptional evils. Only cooling time can restore judicial and popular equilibrium.

Some very able jurists have urged the propriety of allowing courts of appeal to grant new trials on the facts for errors of the jury. It would certainly be a very great innovation, and one which, according to the general experience, would be extremely dangerous.

But there is great force in the suggestion often made that just verdicts are often compelled by law to be set aside on error, merely because of some rulings on testimony or the law of the case, which probably made no change whatever in the inevitable result. As already suggested, the new English practice seems to put the appellate court as far as possible in the same position for hearing the points in the cause as the court below would have occupied on a motion for a new trial. This, indeed, has led also to considering the correctness of the verdict on the weight of evidence. Purnell v. Great Western Ry. Co., Law Rep. 1 Q. B. D. 636; Hunt v. The City of London Real Property Co., Law Rep. 3 Q. B. D. 19. But upon the review of law questions the power of exercising a wider discretion is worth considering.

On a common-law writ of error the general practice has been to reverse when error has been clearly made out, unless it is apparent no harm was done by the erroneous ruling. If any mischief was reasonably conceivable, there was a reversal unless the case plainly negatived it.

Probably this as a general rule is not a bad one. But, unfortunately, in considering what harm has been done, the action by and before the jury is mostly ignored. The case may show so plainly the moral justice of the verdict, and the appellate judges, as men of sense, may be so completely

convinced that no good will come of a reversal, that they cannot help feeling there is some hardship in undoing what they believe to be well done. It is worthy of reflection whether their discretion ought not to be enlarged in this matter, so as at any rate to save the necessity of doing manifest injustice.

It is all very well to lay down legal laws and presumptions, and to adhere to them with reasonable closeness. No court has a right to arbitrarily forsake the ancient ways of the law until the legislature has opened the gates. But the ancient ways are not perfect. And it is always prudent to seek amendments when a doctrine as laid down is felt to be delusive. While we are bound to presume that jurors are intelligent and sensible, it is not desirable to make that presumption so absolute as to give no relief when they are otherwise in fact in a particular case. And on the other hand, when the facts seem to lead to only one fair conclusion, and the jury have agreed upon that conclusion, it is rather hard on justice to set aside that just judgment because the court has wrongly admitted or excluded some testimony which would not have changed the result, or given some wrong ruling which the jury have manifestly disregarded. While legally an appellate court cannot say how the jury would have acted if correctly instructed, the record often furnishes means of giving a safe guess at it.

Lawyers and judges, when not acting professionally, know quite as well as other men know that jurors, as a matter of fact, are frequently more anxious to find out what the judge thinks of the merits than solicitous to follow him in his legal teachings; and that their decisions of fact are seldom governed by any rulings that are not plain and simple, nor always by those. And they know quite as well that many judges and laymen of sound sense and wisdom will reach safe conclusions, and perhaps lay down safe general directions, when the reasons which they give, and much of their line of argument, will not bear investigation. When such a judge (whose value most communities perfectly appreciate) instructs a jury in his own possibly illogical, but never-

theless practically effective, way, and the case comes to a righteous conclusion thereby, it is desirable that the judgment should stand. And when attempts are made by legislation to reach valuable results by correcting what has turned out to be injurious, there is no wisdom in professing to act on pretended and not really believed assumptions. It is of very little use to go through the form of an attempt to conceal what is generally known, or to frame plans on theories that no one has faith in. A little more liberty to act upon the facts of human nature as they exist would not only enable courts to avoid clumsy fictions in their attempts to do justice, but would also secure more complete justice where now no fiction can save it.

Those mischiefs which spring from a failure in the jury system to reach correct verdicts are by no means hopeless. But here, again, relief can only be had by acknowledging the truth. If we persist in applying in the court-room the hustings theory that reading and writing, with all wisdom, come by nature, and that every man whom in our reckless generosity we allow to dispose of our common interests at the ballot-box can be trusted to manage our private interests in the jury-box, we must take the consequences. In many places the statutes assume no such thing, and if faithfully carried out would give us very good juries. There are, however, real difficulties in obtaining this result. Some of these deserve attention, and their causes may perhaps be partially determined.

One of the prime difficulties is found in the dislike which our best citizens have of serving on juries. This is found in large cities and in populous counties more than elsewhere. From this it may be inferred that one objection arises from the amount of time demanded of our jurymen. It is an unjust and heavy burden. Compelling the same panel to serve through a long term of court interferes oppressively with private business. Men who would not object to doing their share cannot submit to this large exaction without doing more than their share. And inasmuch as in every community there are some very good men to whom at times the

small pittance of compensation is welcome, and some men not so good who also care for the pay, it somehow happens that a large proportion of the names drawn consists of these two classes, the last and most undesirable sometimes predominating. There is no great difficulty in procuring excellent men as grand jurors. Here the service is shorter, the business conducted more independently of restraint and court-room annoyances, and the office is for some reason considered more respectable, though why is not apparent.

It would seem, then, that something might be done by making the position of petit jurors more pleasant and desirable. Policy and justice both require that no one should be allowed to serve as a juror who is not both intelligent and familiar with the jury system, and it is not impossible to measurably secure this. A decided advantage would be found in a more frequent resort to special juries in important cases. Men would cheerfully serve on single cases, and could be selected for their peculiar fitness. Selected juries rarely disagree, and are generally reasonable. Counsel can try cases before them much more comfortably. It is not necessary, and probably would not be wise, to have the whole power of selection vested in the summoning officer. There would usually be no difficulty in getting an agreement upon a list of names from which the panel may be taken, and the convenience of particular persons could thus be consulted. While this practice may not be possible in all cases, it is sufficiently so for those where it is most essential to have well-qualified jurors. On the score of economy there could be no great difference.

By special juries it is not meant to suggest that anomalous tribunal which some persons have advocated — a board of permanent experts. If there is any one element of the jury system more important than the rest, it is that jurors are not permanent officers, and are free from the habit which besets all permanent tribunals, of disposing of facts in classes, and not on their individual merits. They are expected to come to a trial free from any such fixed notions as would decide the merits, or any part of them, in one way rather than

another. A specialist who is not one-sided, and pugnaciously so, is rare.

But among business men, and those engaged in various callings giving them a diversified experience, the mind becomes familiar with business usages and with human conduct, in such a way as to lead to a more just judgment than can be expected of narrower men. They do not need the explanation of conduct or dealings that to others may be incomprehensible. And when testimony is given upon subjects of business they have no trouble in following or applying it. Most counsel, in the course of their practice, have occasionally known juries to disagree, or to bring in a preposterous verdict astonishing both parties, which has come from the assumption all round that they understood what they have not understood at all. Men are not rare who know nothing about negotiable paper, or the respective liabilities of parties under it, and go into the jury-room uninformed, because court and counsel have not understood that what was simple to them could possibly be anything else to others. Juries will sometimes figure up the value of land or other property by assuming that year in and year out it will produce its maximum, and that the products will sell at present maximum prices. They will imagine that ships at sea, in calm or storm, run in lines as fixed as iron rails on land, and that responsibility for collisions and wrecks is governed by as rigid rules as if every movement were coolly foreseen and calculated. This is less to be wondered at when able jurists get completely at sea in such controversies, and take in with implicit faith the testimony of witnesses who narrate impossibilities with perfect impunity.

There are not many subjects on which intelligent merchants and mechanics cannot be safely trusted to deal with testimony on any kind of business controversies; and in cases requiring more special knowledge, the ordinary practical man interested in such pursuits is usually safer than the more scientific person who is less familiar with their every-day workings.

But when we see, as we do too often, jurymen who are

dead failures in all departments of life — not from misfortune, but from stupidity — and, like all other fools, having a great conceit of their own sagacity; when we find that testimony given by witnesses of one nationality has made no impression on jurors of another; that commercial and mechanical problems are given to be worked out by men who can hardly sign their names, or who do not comprehend the mechanical principles of a beetle and wedge or a grindstone, and slander suits submitted to those who indulge in the grossest speech and think nothing of it, we cannot avoid feeling that there is rather too much chance, and too little care, in filling jury lists and summoning panels.

But the difficulty remains that jury service is generally unwilling service when rendered by the most competent jurors; and while this continues to be so it will be very hard to get them in. As already suggested, the laws are better than their enforcement; and when there are persons anxious to serve, and others anxious to avoid serving, some method is usually found to gratify both, without detection. When the service itself becomes more satisfactory, public spirit will be far more likely to overcome this reluctance.

A great deal of the prejudice against serving arises out of the unsatisfactory company into which men are thrown. More of it comes from the weariness of sitting day after day in cases protracted by so many useless objections and harangues that the jury is only now and then called upon to listen to testimony in detached morsels, and with answers separated at great intervals. The remedy for this is largely in the hands of the courts. They can refuse to indulge long-winded nonsense upon plain questions, and keep within bounds prolixity and impertinent digressions. They can effectually discountenance many abuses in the examination and cross-examination of witnesses. They can make the conduct of a jury trial quiet and respectable. When a case is fairly tried by counsel who have the qualities of lawyers and gentlemen, and the capacity to say what has to be said with reasonable conciseness, no one ever hears jurymen complain of weariness, or is mortified by nodding listeners. But

it is not in human nature to bear contentedly such inflictions as all of us have sometimes witnessed. If it were not for the bad eminence of the two Tichborne trials, in which every possible abuse seems to have been multiplied, it might have been supposed that much of the mischief complained of grew out of our free and easy American carelessness. But after those unseemly performances, which were never equalled in this country, and it is to be hoped can never be excelled anywhere, we may rest assured that jury trials here, as elsewhere, may be made very much what court and bar choose to have them.

It is a mistake to suppose that there is no interest to a juryman in listening to a cause tried as it should be, before an intelligent panel. In such cases it is an agreeable variety in a business man's life. It is only when too great drafts are made upon his valuable time, and when he feels that the trial itself is unprofitably tedious, that he grudges this citizen's service. To some men there is great fascination in it. A man must, however, be very well balanced to have counsel willing to see him continuously sitting in their cases. There are some such men who are always well regarded. But the stock-juror, even where he is not personally objectionable, is quite apt to get his prejudices and preferences among counsel, and to form his conclusions without much regard to the evidence. It is better for everybody that no one should serve too often.

It is also a mistake to suppose that public opinion demands any radical change of the jury system. It is doubtful whether, even at its worst, it is responsible for as much mischief as it prevents. But it is important to trace abuses to their real causes, and find out who and what may justly be blamed for their existence. Most of our social troubles are largely due to our laxity in not compelling attention to fitness for duties that require something more than human nature and legal majority to perform them. But not a little of the trouble in regard to juries comes from the habit of wasting time in courts. Thirty or forty years ago, when business was small and time not so precious, a lawyer some-

times got great popular reputation by his capacity to use up two or three days in a single speech. Yet even then it was not common in any court to spend hours in discussing questions of testimony, and many closely-written pages in obscuring legal propositions to be laid before juries. Every court may listen profitably to what is instructive. But a majority of legal questions can be presented briefly as effectively as by much repetition and hair-splitting. Few good lawyers care to waste their words. Prolixity is usually (though not always) emptiness. Even cross-road pettifoggers are usually too wary to keep justice and jury beyond a single sundown. We may be sure that until jury trials are shortened it will be very difficult to improve them.

The subject is altogether too extensive for one article. There are peculiar difficulties in criminal cases, differing from those in civil cases. There are peculiarities in the trial of different classes of cases, as well as local peculiarities. If it were possible for the same person to observe in different places long enough to be well informed, some curious and useful knowledge would be gained by it.

But there is one consideration too often overlooked. The cases wrongly decided, although naturally attracting attention, are very few in number compared with those rightly decided. The causes of mischief in those cases may be correctly inferred, but the operation of the defects has been unduly magnified. And it is certainly gratifying that there is so much intelligence and sense of justice in bodies of men who in some localities are not chosen with any special care or enquiry into their fitness. The average juror is infinitely better fitted for his particular duties than the average incumbent of many public functions is for those which he has assumed. But that is no reason why there should be no improvement sought.

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