

TRIAL BY JURY.

In the September issue of the CANADIAN BAR REVIEW there appeared an article by D. W. Clapperton of Calgary, Alberta, under the heading "Thoughts on the Usefulness of Trial by Jury", to which it seems to me a reply should be made. He is unfavourable to continuing trials by jury and his principal reasons may be summarized as follows:—

1. The original selections for juries eliminate very many of those best qualified to serve.
2. The calling of a jury at the trial is done in haphazard fashion.
3. The ordinary jury lacks the intelligence, experience and education essential for the proper trial of cases.
4. As a result they often run into ridiculous blunders showing their unfitness.
5. It relieves the judge too much from responsibility.
6. There have been important cases where the jury has gone entirely wrong through failure to comprehend the issue.

After an experience extending over a number of years of trials, both civil and criminal, I am firmly convinced that the jury system is the very best in the public interest.

While there may be, as in every other institution, some defects, yet I find, all things considered, the plan of trial by jury, is working out satisfactorily.

In my opinion the administration of justice through a jury is the strongest bulwark we have, against Bolshevism and Communism. It is an instrumentality by which many hundreds of our citizens take their places in our judicial frame work, which gives them an interest and responsibility besides a considerable knowledge of law and justice, such as they could not, otherwise obtain. They are thus led to turn a deaf ear to the suggestion that the courts are carried on only in the interest of the capitalist and wealthy.

For example we have just had our first fall jury selection meeting for York County and Toronto City. The numbers of jurors de-

cided upon for 1928 is 2575. This means that 2575 citizens of Toronto and York, at four dollars each per day, will have the opportunity, of which all but a small fraction will avail themselves, of attending our courts, assizes and sessions and both civil and criminal, and so take an exceedingly active and important part in the administration of justice in this City and County. This occurs each year, always a different set of men except an odd one who may be called after having served not many years before. As a result besides the education received they go back to their homes in the city and county and, to use the present popular word "broadcast", the information that justice is administered here honestly and fairly with no prejudice against the poor or favour to the rich. In this way the good name of our courts is extended and there is an increase in the honour and respect with which they are so justly regarded.

I have frequently been told by individual jurymen, both grand and petit, how much they appreciated the opportunity afforded them and the great advantage they derived personally from being in attendance at the court and taking part in the various cases tried.

To consider Mr. Clapperton's objections in the order above specified:—

FIRST: ORIGINAL SELECTION.

I agree with him that some better plan of selecting the jury might be arrived at. This however, does not refer to the personnel and is no reason for doing away with juries. In at least some of the States of the neighbouring republic they have at different points a jury Commissioner whose duty it is to make out the panel. Each man in turn has to serve two weeks. If he cannot do so this month his name stands over until one of the following months. I believe we should have some such provision in our law. The class of men we do secure for juries are, taking them all in all, very good and do their work intelligently and satisfactorily. I am inclined to the belief that it is best for most, if not all, the eliminated classes to be omitted from the list.

SECOND: CALLING A JURY IN COURT AT HAPHAZARD.

Such is not my experience. Counsel for the Crown and other Counsel study the main panel carefully and I find them exceedingly cautious and the right of standing aside and challenge is freely and judiciously exercised and results as a rule in a very good jury and

enables counsel to get rid of the occasional crank who is on the main panel and quickly discovered.

THIRD: LACK OF INTELLIGENCE, EXPERIENCE AND EDUCATION.

Our jurymen here consist very largely of farmers and mechanics with a fair sprinkling of business and often professional men. I have never, when looking at a jury, felt that they lacked any of the above three qualities. There is one now and again who does not measure up to the standard but he is an exception for as a general rule they are a good class.

FOURTH: BLUNDERS OF JURIES.

In my experience the juries give very patient attention and careful consideration and usually render reasonable verdicts. They do not make any more, and perhaps not so many mistakes, as judges. I have never known of but one case where there was a suggestion of outside interference and I am not at all certain of it in that case. I find myself able, as a rule, to see their point of view and understand the reason of their verdict which seems sound and sensible.

The fact that at every considerable court sittings there are one or more disagreements indicates their individual independence of thought and action. I have, in some cases, where there has been deliberate perjury watched with interest to see what the jury would do and while not always agreeing with their conclusion, could understand the strong grounds they had for it.

FIFTH: AS A MEANS OF RELIEVING THE JUDGE FROM RESPONSIBILITY.

I disagree entirely with this proposition. One of the most important, delicate and difficult things a judge has to do nowadays is to correctly charge a jury.

There is no time for consideration. It is very easy to make a mistake. The counsel pounce upon it at once and place their objections to the charge on record. A little later the Court of Appeal expresses its regret that the learned judge misdirected the jury and orders a new trial.

This makes our responsibility very great. I would rather at any time try a case personally and give a considered judgment than have to charge a jury in an intricate and difficult case with all the serious consequences which may follow from it.

SIXTH: IMPORTANT CASES WHERE THE JURY HAS GONE WRONG, NOT COMPREHENDING THE ISSUE.

I will undertake to say that a Jury is not more frequently wrong than a Judge. Their duty is to decide questions of fact. The Judge deals with the law. There will always be verdicts which require wise correction in the Court of Appeal. There will also always be judgments, much more numerous, where the same wise correction will be essential. There are proportionately fewer Jury verdicts set aside than the judgments of Judges.

For a long time my firm conviction has been in favour of the maintenance of the Jury system and Trial by Jury. The more I have to do with Juries, usually from four to six months in each year, the greater is my appreciation of the important place they maintain in the administration of justice.

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