

From the point of view of the present generation perhaps the most valuable of all his excellent qualities was his happy capacity for being able to describe the scenes and incidents which surrounded his life in a vivacious and humorous manner, and to hand down to us a vivid and accurate picture of the times in which he lived. His home at Bonaly was a unique centre of social and intellectual activity. He was known to and acquainted with all the leading personages of his day, and he kept open house even for his political foes. If there is any desire for an acquaintance with the social and political life of Scotland in the early half of the last century, the picture can best be acquired by a study of the memorials of this gifted Judge.

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WHAT IS WRONG WITH THE JURY SYSTEM?¹

America, no doubt, is more given to criticizing her institutions than any other country on the face of the globe. I presume every American thinks the freedom of speech which the Constitution guarantees is a duty thrust upon him to stir things up occasionally. Very few of us neglect this duty or deny ourselves this privilege. Everything comes in for it occasionally, but, when all else fails, the jury system is always a fruitful source for soulful reflection and destructive logic.

What is wrong with the jury system? Do you know? Has it ever occurred to you that you might be in some measure to blame for the miscarriage of justice for which our courts are daily blamed?

How many men do you know who are willing and, possibly, anxious to serve on juries, whom you consider qualified to be there? How many of these men would you be willing to trust with the settlement of your business affairs or with the determination of your personal guilt or innocence?

I had a case which attracted a good deal of local interest, because of the parties concerned. Both were Jews and both inclined to air their troubles to anyone who would listen to them. It became known as the case of Potash v. Perlmutter.

For three days we submitted evidence of the contract between this merchant and his manager. There was a certain fixed salary and a graduated scale of commissions on sales. Because of careful

¹ EDITOR'S NOTE.—Although Mr. McConnell's comments relate strictly to the jury system prevailing in the United States, their interest is not a remote one to Canadian readers at the present time.

training and coaching and a few threats, my client was fairly submissive. The other party to the suit, confident of his own ability and wishing to impress the jury, put on a show that would have gone big on a vaudeville circuit.

The verdict of the jury bore no relation to the contracts submitted, nor to any of the other evidence, which consisted of numerous books of accounts and yards of figures from the adding machine.

Puzzled to know the process of reasoning by which the verdict was reached, I questioned the foreman of the jury—himself a business man of more than ordinary ability.

“Oh, Hell!” he said, “I didn’t have time to go over all that stuff. I just figured Morris was worth a hundred and seventy-five dollars a month, and that’s what we gave him.”

A man acting as town marshal, shot down two men on the street. At the trial the evidence was strongly against him. The cause was submitted to the jury Saturday afternoon. At ten o’clock that night they returned a verdict of “not guilty.”

Presumably, one of the most intelligent men on the jury was the editor of a newspaper in an adjoining town. He said he believed the man was guilty, but that the only chance he saw of an agreement was to work for acquittal and he wanted to catch the 10.50 train so he would not be away from home over Sunday.

Then, there was the tomb-stone case. A little widow, in the first pangs of her grief, ordered a monument in memory of her departed husband. It was rather pretentious and, it seemed to me, was adequate to express the great loss sustained, when one took into consideration the size of the estate. But when the company attempted to collect, the widow denied responsibility, claiming the monument was not in accordance with the original specifications.

It became necessary to sue. The evidence was overwhelmingly to the effect that the memorial shaft was not at all according to contract. Imagine, then, the surprise when the jury brought in a verdict for the plaintiff.

Curious to know what had happened to bring about so unexpected a circumstance, I questioned a juror. This was his answer: “Well, when we first went in, they elected me foreman. I told them we would first vote to see whether that stone was according to the contract. We did and they all voted ‘no.’ ‘Well,’ I says, ‘let’s go in with our verdict. And one of the jurors says, ‘What verdict?’ ‘Why, for the defendant,’ I says. But he says, ‘Now hold on a minute. Let’s not be in too big a hurry. Let’s talk this thing over. I don’t care whether it’s like the agent

said it would be or not. I don't care what the contract called for. I've seen that grave stone and I think it's good enough for any Irishman, and I'm going to vote for the company.' Well, we talked it over and he seemed to know more about it than any of the witnesses and so we decided he was right."

These juries were not exceptional; they are typical. They represent the people you see around you every day. The average business man, when called upon to serve on a jury, makes every excuse he can think of that may be necessary to relieve him. He hasn't the time to give to the settlement of other peoples' disputes, even though he may be claiming this right at nearly every term of court. As citizens of the state and of the county, they are unwilling to give a few days' time to the discharge of its business.

I know a man who is looked upon as one of the best citizens of his community and he so considers himself. He has held some very responsible positions and has always discharged his duties conscientiously and well, but he won't serve on a jury. His pet dodge is that he is prejudiced and could not render a fair and impartial verdict. He is the kind of man who is needed as a juror, but he refuses to serve.

On the other hand, a man who shows a strong desire to sit on a jury is always looked upon with suspicion and his motives are questioned by the attorneys connected with the case.

What we need is good, honest citizens who are willing to give of their time and their talents for the furthering of the cause of justice among their neighbours and between the State and its citizens. Men who are willing to discharge these duties fearlessly and impartially. Men who have clear heads and are willing to use them independently to decide the matters placed before them in the same way as they decide the problems that confront them in their daily business life. Too often jurors have a feeling that when a matter gets into court that it assumes an entirely different aspect from what it presented as talked over on the street. The introduction of "whereas" and "wherefore" into the statement of facts does not change the vital issue. Law is common sense brought to bear upon matters in dispute to decide the rights, whether of property or liberty.

The judges cannot do it all, though they are charged with the principal responsibility. Recently I made a survey of the members of our local bar association, and asked each one how he felt about the jury system as compared with a system of judges. With one exception, they all said that if charged with a crime of which they were innocent, or for the settlement of a controversy, they would

more willingly submit to one fair minded judge, or, at most three, than to any twelve men, taken as most juries are drawn. They would feel more certain of receiving absolute justice. The judges understand the law and know how to apply it to the facts, and the result would be more satisfactory.

Many otherwise good jurors serve under protest and this lessens their efficiency because they are not interested in the matters submitted to them. Some are rather awed by the surroundings and think that something dramatic is expected of them. In trying to do what is expected of them they lay stress upon some of the less important matters, and by so doing defeat the ends of justice.

If electors were as keen to assume their responsibilities as they are to demand their rights and insist upon their privileges, justice would not be a travesty, a law suit could not be a farce and a juror might be an example of true Americanism.

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