THE EXPERIENCES OF A JURYMAN

The readers of The Commoner may be interested in some comments upon the jury system from a juror fresh from the service of his country. For five days of last week I served as a juror on the regular pannel of the district court of Lancaster county, and I may add, incidentally, will draw from the county $10.00 for my services and 30 cents mileage (being five cents for each full mile to and from the farm). I was called on three juries, and having neither formed nor expressed an opinion upon the merits of the cases, was each time accepted.

A word as to the method of selection. The law in Nebraska provides that each side shall be allowed three peremptory challenges. In some places the attorneys are required to make their peremptory challenges from among the twelve men who are not subject to challenge for cause, and then new men are called to take their places in the box. In the district court of Lancaster county, however, the judges have adopted a plan of calling eighteen jurors instead of twelve. If one is challenged for cause his place is filled and when at last eighteen have been passed for cause each side strikes off three, alternating in the striking, leaving twelve jurors to try the case. This has an advantage over the method sometimes employed in that the peremptory challenges are made after all have been passed for cause, and thus each side can strike off the three least acceptable. If all the peremptory challenges are exercised and then the places filled, it may be that the new jurors, though not subject to challenge for cause, may be less acceptable than men already challenged. In other words, the method now in vogue in Lancaster county seems most likely to secure a fair and impartial jury.

The first case tried before our jury was a suit against an insurance company, but as the case turned upon the construction of the policy it was taken out of the hands of the jury and a verdict given for the defendant in pursuance of specific instructions from the court.

The second case considered by the jury upon which I served was an action brought against the county by a person who had suffered injury due, as he alleged, to the negligence of the county in the care of a public highway. The evidence showed that the injury sustained was small. The doctor's bill was $5.00, the horse was lame for a few days and the buggy damaged, but not rendered useless. There were three questions involved. First, was the road properly cared for and sufficiently safe for travelers exercising reasonable care; second, was the plaintiff guilty of any act of negligence that "approximately," as the court instructed, contributed to the accident; and, third, what was the amount of the damage. As soon as the jury reached the consultation room and a foreman was selected (it happened in this case, as in the others, that I was selected as foreman), a vote was taken first upon the proposition, "Shall the verdict be for the plaintiff or defendant." Upon this ballot it was found that a majority favored a verdict for the defendant. Then followed a discussion of the merits of the case, each juror giving his reason for voting as he did, and this discussion was exceedingly interesting because it showed the various points of view from which twelve unbiased men could look at the testimony. It soon developed that some of those who voted for the defendant believed that the road was not properly cared for, but that the injury was so small that the plaintiff should have no considerable award, and as no one felt that the injury was sufficient to justify more than nominal damages, the jury finally agreed to a verdict of $5. This was a compromise verdict and was accepted by all as doing substantial justice both to the county and the plaintiff. While the decision of a case in the district court is not considered as establishing a legal precedent binding upon other courts it may be worth while to say that the negligence complained of consisted in the county's maintaining a road only thirty-two feet in width, (the usual width is sixty-six feet), around the bank of a creek (a deviation from the section line) with nothing to protect travelers from falling over the bank and into the creek bottom some eight feet below. The plaintiff having occasion to pass there on a dark night went over the bank and suffered the injuries complained of.

The third case was a replevin suit, appealed from the justice court, and involved the title and right to possession of about four tons of wild hay. In this case the evidence showed that the plaintiff obtained a lease to 80 acres of land which included about 7 acres of hay land, the land belonging to a young woman whose mother was in the habit of attending to the business for her. The mother made a verbal agreement in regard to the renting of the land with the expectation that a lease would afterwards be drawn up and signed. After the plaintiff had gone into possession under this verbal agreement the lease was presented by the defendant in the case, the brother of the young lady who owned the land. When the tenant read over the lease he noticed that the hay land was not specifically mentioned and wanted to insert a clause in the lease, but the defendant objected, and upon this point there was a difference in the testimony, the plaintiff testifying that the defendant said that the hay land was included and that there would be no trouble about it, and the defendant denying the statement. The evidence showed, however, that the plaintiff obtained a mower from the defendant and mowed a part of the hay, but that owing to the wet season the hay was spoiled. The defendant afterwards went in and cut the remainder of the hay claiming that he did so to protect his sister's rights and that he did so with her acquiescence, although he testified that she had not expressly authorized him to cut it. He also admitted that his mother, in the presence of his sister, told him he had better not cut it. As soon as the jury entered the consultation room a vote was taken and a majority of the jurors expressed themselves in favor of the plaintiff. In the discussion that followed it became apparent that all the jury desired substantially the same thing, namely, that the plaintiff should be declared entitled to the hay, but that as the defendant was acting, as he believed, in the interest of his sister, the judgment should carry as little cost as possible. The jury returned a verdict for plaintiff and fixed the damages at $12, but as the parties and nearly all the witnesses were related either by blood or marriage, the foreman, at the request of the jury, submitted two recommendations, and asked that, if possible, they be made a part of the judgment of the court. The recommendations were, first, that as the plaintiff, if entitled to recover, would owe one-half the value of the hay to the owner of the land, the sister of the defendant, the defendant be permitted to satisfy one-half of the judgment with a receipt from his sister for her share of the hay; and, second, that each party pay the fees of the witnesses called by him. While the judgment was not made contingent upon the acceptance of these conditions, the plaintiff's attorney signified his willingness to have them made a part of the judgment. And thus my service as a juror came to an end.

Having had some experience in trying to convince others, it was a refreshing change to sit in the jury box and listen to the arguments of the attorneys. Having heard the evidence and having measured it, as one must as the case proceeds, it was instructive to note the manner in which each attorney made clear and emphatic the points that strengthened his client's case. I have so often taxed the patience of hearers that I could not well ask that a limit be placed upon those who talked to us. In the jury room the merits of the lawyers was at times discussed. In one case two prominent young lawyers were opposed to each other, and each had made a gallant fight for his client. One juror, speaking of the lawyer for the plaintiff, said that he was especially eloquent and convincing. "But," replied another juror, "who couldn't make a good speech on that side? The facts were on his side and that made his speech necessarily convincing; but look at the defendant's attorney—see how skillfully he presented a bad side." It reminded me of the conversation between two men as to which was entitled to the more credit, the sun or the moon. The advocate of the sun thought he had his case won when the moon's defender overwhelmed his antagonist with the assertion that the sun only gave his light by day when it was not necessary, while the moon gave her light by night when the light was badly needed.

A fact clearly brought out by jury service was that the opinion of the judge had great weight with the juror even aside from the instructions given. The manner in which he admitted or excluded testimony and any suggestion which he made that bore even remotely upon the merits of the case had its influence. This was complimentary to the judge before whom the case was tried because it showed the confidence the jurors had in his integrity.

Five days of jury service before the court and in the jury room deepened, if possible, my confidence in the jury system. It is not only good for what it does, but also for what it prevents. Our judges are better because either party can summon a jury in a case at law. If all cases were necessarily tried before a jury the great corporate interests which have grown up in the country would be even more tempted than now to use their influence in the selection of judges friendly to them before nomination, or who could be obligated to them during the campaign. There is much more latitude in the decision of a question of fact than in a decision which rests upon a question of law, and the judges themselves may feel grateful that the jury not only relieves them of much labor, but also shields them from a pressure that might be difficult to bear.

The judge before whom the hay case was tried, in dismissing the jury for the term, took occasion, not only to commend the jurors for the manner in which they had discharged their duty, but to testify to his increasing love for the jury system as a part of the court of justice.

That Ex-Slave Pension Bill.

Mr. Hanna may not appreciate the defense, but The Commoner insists that the senator from Ohio was inveigled into introducing the ex-slave pension bill. It, or a similar bill, was introduced "by request" about 1889 by a republican member of congress from the Omaha district. About 1895 it was again introduced "by request" by a republican senator from Nebraska. Mr. Hanna was doubtless persuaded to introduce this bill of fourteen years' standing without thinking that the "by request" would be dropped and the bill attributed to him. He cannot say that he is against the bill because that might anger some of the colored people who favor it, but he might, now that he is in it, use the argument that was advanced in 1890, namely, that the bill was really a measure for the (indirect) aid of agriculture. The gentleman who suggested this insisted that as the colored people were fond of watermelons an appropriation for their benefit would soon find its way back to the farmer.