

The Jury System and the Law's Delay

Judge George P. Letton, associate justice of the Nebraska supreme court, addressed the Nebraska Bar Association on the jury system and the law's delays. In the course of his address Judge Letton said:

In my remarks I do not propose to enter at length into historical or philosophical fields, nor to discuss causes, but will aim merely to point out what I think to be defects in our system in this state and to suggest remedies. I expect to arouse dissent, and will be satisfied if I stimulate thought and provoke discussion, for I long ago learned that by argument comes light.

Much of the prevailing criticism most indulged in by certain classes of newspapers and individuals is based upon an improper conception of the duties and obligations of courts under our system of government by written constitution.

There is good ground for complaint with regard to the facilities for delay in the trial courts of the state. In many, if not in the majority of our judicial districts, a jury term is only held twice in each year, and in some counties only once.

As to the charge that the jury system is defective and does not tend to produce correct results. It is often said that the verdicts of juries in civil cases are more often produced by sympathy than by reason, that where the plaintiff is a working man with a suit against a corporation for personal injuries, or is a widow with one against a life insurance company, the verdict which will be rendered is almost a foregone conclusion.

In such cases it is a common remark among lawyers, "if we can only get the case past the judge we are sure of a verdict," and we all know the rule "a good case to a judge, a bad case to a jury."

As to Special Verdicts

Perhaps the simplest change proposed and that most readily applied, would be to allow only special ver-

dicts whereby the jury would determine only the ultimate facts upon which the determination of the case must rest, leaving the court to apply the legal principles in accordance with the facts so found. It is known to us all that jurors sometimes assume a "Robin Hood" kind of virtue, and return verdicts more in accordance therewith, than with the actual legal liability of the defendant. As the law now stands, a judicious and discriminating use by the court of its right to submit special interrogatories or a special verdict to the jury may, in some cases, prevent serious injustice. Personally, I would never dispense with the system of trial by jury, but would rather see it fortified by judicious legislation, so that it may stand upon a higher plane. I would restore the jury trial of the common law where the experience and learning of the judge is so eliminated as under our American method.

To return to the general complaint in regard to trial by jury, and considering it alike with regard to civil cases and criminal prosecutions, the first matter which admits of amendment is the manner of selecting the jury. In the first place jury duty is distasteful to most men of intelligence and steady occupation, and excuses are often made, which if strictly inquired into often prove to be of no legal validity. The conditions surrounding the exercise of the duty are often uninviting to those cleanly tastes, and unsanitary as respects the place of service.

Criticises Jury System

It is true that we have relaxed the ancient formula whereby the sheriff was commanded to keep the jury "without bite or sup, fire or candle" until they had agreed, but even now it is often the case that juries are sent out to begin their deliberations late at night with no provision whatever for their comfort, condemned to spend the time until they agree, upon cheap and uncomfortable chairs in a poorly ventilated room, often

made vicious by the fumes of poor tobacco. In criminal cases of moment where the jurors are kept together while the trial is in progress, and are not allowed to communicate with others except through the medium or under the supervision of a bailiff or other officer of the court, and where they are confined in duration vile after the submission of the case until they are finally discharged, there must inevitably be inconvenience and annoyance, more or less, from the very necessities of the situation, but, even so, much may be done to ameliorate many of the unpleasant conditions which now attend jury service.

There is no more reason to require jurymen to serve all day and then pen them up all night without sleep than there would be to require the judge, the sheriff or any other officer of the court to work both day and night. In every court house there should be proper and convenient sanitary appliances for the jurors use, and either in connection with the court house itself, or by arrangement with other parties, there should be provided clean, neat and sanitary facilities for sleep, so that when the consideration of a case extends over night, the jurors may not be deprived of ordinary comforts.

Bad Enough at Best

The duty is irksome enough at the best, and there is much reason to ameliorate conditions, and no reason for keeping them as they are, save the matter of expense. As to this, I think that any community would find it much less expensive in the end to treat jurors properly, and thus remove to some extent the reluctance of good citizens to discharge their duty to their country by such service.

Since writing the above, I note that a Lancaster county juror has had the hardihood to give expression to like sentiments. His protest seems to be the only public one from a juror in my experience.

The problem of elimination to procure twelve impartial men is a difficult one. In these days of popular education the daily and weekly newspaper is in the hands of almost every person who can read the language of the country, and on that account it is practically impossible in criminal cases of any importance to find a man of ordinary intelligence who has not read newspaper accounts of the occurrence, and who has not formed more or less of an opinion or impression from his reading. If a judge is strong enough to hold his head in times of public clamor justice will seldom miscarry, either on the side of the accused or state, on account of the retention of a juror whom he believes to be disinterested and honest, even though the juror is frank enough to say he has formed an opinion from newspapers or from rumor.

In my judgment the state and society in general is severely handicapped as the law now stands regarding peremptory challenges in criminal cases. As a general rule better qualified jurors are to be found among the men selected by the county board and serving upon the regular panel than among talesmen called to fill the panel. I have often seen a jury panel made up of citizens of good standing peremptorily challenged out of the jury box by astute counsel for defense. I know no sound reason either in law or morals why the limitation of the state's peremptory challenge to three jurors and the defendant's to six would not as amply preserve the rights of the accused as the present disparity of giving the accused six, eight or sixteen peremptory challenges to the state's three or six. But if the powers of the

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