

TRIAL BY JURY.

PART II.

The time for the careful consideration of the wisdom of trial by jury, in civil proceedings, has now been reached. In criminal cases, the jurors have but one question to decide, viz: The guilt or innocence of the accused, and, it is possible, that the employment of juries, for this purpose, may, at present, be the most desirable method of reaching a conclusion. The questions involved, in the majority of civil cases, are far more intricate and technical.

The jury system exists, chiefly, in the United States, Great Britain, and countries under British control. Instead of being the usual method of determining matters of fact, among the enlightened nations of the world, it is the exceptional method. It has not been adopted by the nations of continental Europe, although such countries as Germany, France and Switzerland, have attained a high degree of civilization, and are engaged in most of the numerous industries of the age, both commercial and agricultural. As a result, the controversies in their courts, are as varied, and as complicated, as are those of the English-speaking world, where trial by jury is the almost universal custom; and as they are apt to arouse the same passions, as well as to excite the same prejudices, they demand an equal knowledge of the practical affairs of life. Continental Europe, however, appears to have found no need for the jury system, in spite of its operation for centuries in the neighboring country of Great Britain, and for fully a century in the United States. Moreover, it is undeniable that nearly all the nations of continental Europe, which have adopted the process of trial by jury in criminal cases, have rejected the characteristic of unanimity, which is considered of paramount importance in the Great Republic, and in the British Isles. This condition shows that trial by jury is not essential to the decision of important questions of fact, and it also furnishes some evidence that it is not the best method, otherwise, it would, in all probability, have been incorporated in the judicial systems of all nations.

Incompetency of the Jury.

The absence of experience, in the functions of a legal tribunal, under which the majority of juries necessarily labor, is of itself a complete disqualification for dealing with cases of an involved character, such as those which occupy a great part of the time of the courts. Any case, which contains a complication of facts, with contradictory evidence on both sides, and requires both natural sagacity, and the habit of weighing and comparing conflicting arguments, and rejecting plausible fallacies, is beyond the capacity of men of mediocre education, who, in a vast

number of instances, never decided a case before, and who, as might be expected, are often unable to agree upon a verdict. Upon the other hand, it not infrequently happens, that when they have succeeded in coming to an agreement, they have drawn wrong conclusions from the evidence, and the injured party is compelled to incur the expense and delay of asking the courts to order a new trial.

The judge, seeing the bewilderment of the jury, occasionally indicates what the verdict ought to be, but most judges are very reluctant to do this, lest they be charged with usurping functions, reserved for the twelve "good men and true." But, if decisions of juries are to be, in reality, the decision of the judge, or, if they are to be revised, when erroneous, by an appeal to a higher court, what object can there be in putting litigants to the trouble, delay and expense of a jury trial?

The law proclaims its distrust of juries by denying them the right belonging to every other judicial body—of deciding their differences by a majority, and by exacting a unanimous decision. In effect, it says, that the verdict of a jury, unlearned in the law, must be valueless, unless all twelve jurors agree, while the decision of a majority of judges, who are trained lawyers, is sufficient to determine the most complicated questions that reach the courts.

Verdict Should be Result of Reason.

The assertion, so often heard, that jurors are better fitted than judges, to decide all matters of fact, is not correct. A verdict is supposed to be the result of reasoning. The power to reason accurately is not possessed in a higher degree by farmers, by merchants, or by storekeepers, than by judges, who are usually men of ability and learning, whose previous education and training peculiarly fits them for the task. There may be some cases, in which, owing to rules of trade, or other unusual circumstances, more within the knowledge of the laymen than lawyers, the decision of the former would be, of the two, the more correct. But, what is needed, in these cases, is not twelve men utterly ignorant of the technical questions before the court, but one skilled assessor, to aid the judges. Even if a jury be considered essential in such a case, as the one described, that is not a valid argument in favor of trial by jury, in all cases.

Jurors are not required merely to decide the disputed facts; they are required to decide them according to the law and the evidence. It is an error to suppose, that all that is necessary, in order to do this, is to listen to the testimony, and to receive the propositions of law from the court, with such assistance, as may be derived from the argument of the lawyers, who, in this state, (New

York) are usually permitted to tell the jury anything they choose, whether it is in the evidence or not. When the jurors have listened to the speeches of counsel, and the charge of the judge, they have only commenced their work; their most difficult duties are yet to be performed. They are now expected to weigh all the testimony, which they have heard, and thoroughly analyze it. To do so, properly, and profitably, conflicting testimony must be reconciled, where reconciliation is possible, and where it is impossible, a wise discrimination must be exercised, in selecting from this testimony, whatever seems most worthy of credence.

Necessity of Mental Training.

From the mass of evidence—often from a maze of contradictions—the facts which establish, or most strongly tend to establish, the truth must be extracted; and to accomplish this successfully, there ought to be a clear understanding of the points at issue. If these various steps are executed in a thorough manner, a demand is made upon the reasoning faculties to a greater degree than the intellect of the average man is accustomed to; and while it may not absolutely necessitate mental training and discipline in similar work, yet, such training will be of great assistance, in arriving at correct conclusions. It is obvious that the man who has had a wide experience of trials in court; who, as a part of his profession, has been compelled to listen to the testimony of witnesses, and to carefully consider, not only their testimony, but their demeanor, while on the witness stand; whose mind, both by education and experience, has become trained to logical processes of thought, and to the ready detection of fallacies in the arguments that are addressed to him, upon the testimony, is far better able to arrive at an accurate determination of the issues involved, than is the man who has no such experience, and no such training.

But the jurors duties are not yet concluded. When he has weighed and sifted the evidence respecting the truth of the matters of fact involved, a function of paramount importance and serious difficulty remains to be exercised. He must now apply the law, as given him by the judge, to the facts. To do this, intelligently, often requires much clear-thinking and a more-than-ordinary exercise of the reasoning faculties, for the instructions of the court are often numerous, as well as lengthy; some of them, in addition, are likely to involve more than one proposition. Moreover, however lucid the judge's charge may be, it is very difficult for minds, unfamiliar with legal principles, to apply the law to facts. In a vast number of instances, instructions are not mere directions to the jury, that if they find the facts to be so and so, to give a verdict