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Layman Looks at the Law in Many Courts

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THE LAYMAN LOOKS AT THE LAW IN MANY COURTS

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Our inefficient criminal procedure in many states and in most cities of the United States of America releases into the homeland and garden of civilized society, human hornets, snakes and wolves that sting and bite and poison; that cheat and steal, kidnap and kill. An unwise, maudlin sympathy increases their number and is wasted on those who deserve no sympathy. Whether they are to blame for being what they are or not, these enemies of society should not be permitted to remain a menace to decent people. Law protects them; lawyers protect them; court procedure protects them; a prevalent public sentiment protects them; certain public journals protect them, and even sincere but uninformed preachers, professors and women's societies pet and encourage them and add to the difficulty of guarding society from this detestible menace.

The danger of convicting the innocent and the danger of letting the guilty go free are two subjects that do not in this land receive equal emphasis; the criminal is favored instead of his future innocent victims. Tomorrow murders will be committed because worthless criminals have escaped who should have been convicted, and tonight there will be burglaries and hold-ups because criminals are at large. Next week your child, or your husband, may be kidnaped because criminals go free.

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It is easy to understand why the jury as an instrument of justice is more effective in the smaller communities than in the larger cities where lawyers, jurors and judges are all strangers and where jurors will probably not meet again and, after leaving the courthouse, will neither be commended nor criticized for any action they may have taken there as jurors.

The conditions are very different in smaller places where verdicts

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may be discussed for a year and, in some degree, jurors feel that they must justify their action which, if erroneous, or ridiculous, or dishonest, may subject them to serious criticism by their neighbors. An unwarranted verdict in a small community may for years brand a man as a bad citizen. He is remembered as one who did a bad deed.

The original purpose of the jury is here carried out, and a juror who decides as to innocence or guilt or adjusts differences between quarrelling citizens is known to his fellow-citizens and a mental account is kept by some of his neighbors of what he did in the big courthouse. A juror does not melt away in the crowd not to be heard of again as he does in a big city. Jury reform should begin in the big cities where it is most needed.

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The book man says the time will come when the great mass of law reports, largely made up of unimportant discussions of the admission and rejection of evidence, will only be in museums, if anywhere, and will be gazed at as a curiosity that grew out of an unscientific and unenlightened past. Some of this matter is of great importance and permanent value, but most of it, this man says, is of a very inferior quality, hastily written by unskilled writers who cite and repeat over and over again unimportant discussions of unimportant matters in unimportant cases. Those most familiar with these reports look upon them with the least reverence and say without hesitation that nine-tenths of them should go into the junk heap. With courts in forty-eight states and the Federal Courts constantly grinding out this mass, it is an increasing problem to know what to do with it.

Unfortunately the state courts do not always agree with each other and often the Federal Courts do not agree with the states, so that much of this reference material is not authoritative but consists of a great conglomeration of conflicting matter from which either side of almost any contention can secure encouragement and assistance. Of course no student can become familiar with it all and no judge can be familiar with it, and with the constant overrulings and changes and new statutes the material more and more becomes, not only a source of delay, but a source of confusion and actual error. An important difficulty, this book man says, is that many writers of legal opinions are not logicians and not reasoners and especially have not learned the art of condensation but have de-

veloped the ability to expand a simple matter into a great amount of unimportant detail. As Samuel Butler says:

"He could distinguish and divide
A hair 'twixt south and southwest side."

* * *

Our best informed judges, lawyers and jurors, who dare to express themselves on the subject, are practically unanimous in the view that women jurors have weakened the administration of justice. It is generally admitted that the principal weakness of the jury system as it is administered is the inexperience and lack of qualifications of those called upon to decide important litigated questions. The addition of women to the jury panel has intensified these glaring faults and made the jury still less able to administer justice.

This weakness as jurors is not because these new additions are women but because of their lack of experience and their total unfamiliarity with most of the problems submitted to them. If jurors could be selected as a result of reliable information and proper tests for fitness, then there would be no objection to women, but, under the methods now followed in most states, women as jurors have made it more difficult to prove facts and repress crime and inefficient courts are made still more inefficient. Legal practitioners whose main business is the defeating of justice have welcomed the women; these men would like to have a jury of children. Their profit comes from preventing proof, and the new, inefficient additions to the jury panel have aided them.

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(Overheard at the tavern across from the courthouse while a claim case is in progress.)

"There is a game for big stakes going on over in the courthouse."

"What are the stakes?"

"One hundred and fifty thousand dollars."

"Who is betting?"

"The attorney for the claimant is betting his own fees and all the expenses incurred in preparing and trying the case."

"And what is he to get out of it?"

"He gets fifty thousand dollars if he wins, and he is betting that he wins."

"Does the law allow this kind of a trial?"

"Yes, in this country, but not in England or Canada or any other country."

"The attorney then is an active, interested party?"

"Yes, but this practice has now been going on for so long a time here that it is sanctioned by tradition."

"Does not this active participation of the trial attorney open the door for many abuses and temptations?"

"It certainly does, and many of those best qualified to speak on the subject say without hesitation that it has done more to prostitute and lower the tone of law practice than any other influence."

"If the attorney who is engaged on a contingeut basis loses, does he get nothing?"

"He not only gets nothing but loses all the expenses that have been incurred on his side of the case, all of which he has advanced."

"If his claim is rejected, do those who have been put to the trouble and expense of a defense have any basis for action against him for damages?"

"No, he takes no risk of being held for damages and he can sue anyone if his client has even a well-defined shadow of a claim."

"Is that the practice in other countries?"

"No, in England he or his client must pay not only the trial costs but the costs of the opposing party incurred in defeating his claim. He is compelled to give an approved bond in advance before the trial begins."

"Would not that practice greatly reduce the amount of litigation here?"

"It would probably at once reduce it by half, if not two-thirds."

"Are not the courts in this country much behind time in the trial of cases?"

"Yes, in some cities more than three years, and justice is denied, not so often by adverse rulings as by delay."

"Why, then, is not this rule regarding costs changed?"

"Because it would greatly reduce the amount and the profits of the law business."

"Does not the public have anything to say about it?"

"Practically nothing. The public in general does not know what is going on in the courthouses and the lawyers say that the public is not qualified to consider the subject."

"Were these the conditions in England before the reform there about eighty or ninety years ago?"

"Yes, although the conditions in England in some particulars were worse than the conditions are here now."

"How was the reform brought about in England?"

"The general public, led by Jeremy Bentham and Dickens, and a few other reformers, overcame the opposition of the legal profession and established the reform."

* * *

The thoughtful juror on last week's jury, whether he knows it or not, agrees with the ancient books that say that the greatest danger surrounding the legal profession is the danger of losing intellectual integrity. It is easy to see, these men say, why this is true. One who is not only tempted to take, but urged to take, either side of a controversy, who may be asked either to attack or defend, or to argue for the plaintiff or for the defendant, may strain, if not imperil, his own sense of right and wrong. He may become a signboard on a swivel that will, as desired, point in any direction. If, as Quintilian said so well long ago, the lawyer's eloquence is a safe harbor for every pirate ship, then that harbor is in danger of acquiring a bad name.

If, however, this tempted one is able to maintain his integrity, as can be done and is done, then by contrast this quality becomes all the more valuable. In every community there are these men who have passed through the fire and there is no smell of smoke about them; a case is half won when they accept it. That is a qualification of a lawyer even more valuable than a knowledge of the law. Our observing member says that there is an open missionary field in the law for able, honest and brave young men. It is well also to know that for these men, and not for the crooked lawyers, the highest rewards are waiting.

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If the good features in the legal practice of the various states and the Federal Courts could all be combined in any one state, reform in that state would be a long way toward consummation. With the appointive system of judges as in Massachusetts and New Jersey, with permission given the judge to assist the jury as in New Jersey and the Federal Courts, with small juries as in Colorado, Florida, Virginia and certain other states, without the requirement for unanimous verdicts as in Utah, California, and a few other jurisdictions, with the improvement by every possible means of the personnel of

the legal profession in qualifications and integrity, and the adoption of certain other commendable practices here and there, many of the delays and much of the shameful inefficiency of the courts would be ended.

If the subject of inquiry was chemistry, or engineering, or farming, or chiropody, the good points would be combined and immediate improvement would result, but not so it seems with the law. Of course, as soon as enough of the citizens of a progressive society know of these failings they will be ended, but it is a fact that but few know what goes on in the courthouses year after year.

One would think that lawyers and judges would hang their heads in shame for being part of a system so out of harmony with progress. A devoted small band of lawyers and judges are trying to bring about reform and some progress is being made, but these men get little help from the great mass of those who are in the law as a business and do not want their business to be disturbed.