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PRACTICAL OPERATION OF THE JURY LAW

S. D. ROUSE*

Trial by jury is as old as the common law. From King John at Runnymede the Barons exacted the right—which thus became a part of the English Constitution. The Constitution of the United States guarantees trial by jury to all the people—and the Constitution of each state, in turn, embodies the principle as a part of the organized law, and an open attack upon this bulwark of the people's liberties would and should call forth the most vigorous defense of all those who care for life and liberty, or who believe in the protection of property.

With the origin of this system and its history, however, we are not now concerned. That it is the best system of trial where human rights are concerned it may be assumed, there is no question, especially among English speaking people, but its practical application is another question.

Theoretically the individuals drawn from the mass of citizens for jury service, are supposed to be housekeepers, sober and discreet—without reference to avocation or education. In this way, upon the theory of averages, a jury panel represents the average integrity, intelligence and experience of the community, county or district, and the method prescribed by law, for weeding out those individuals who, for one reason or another such as natural bias, association, personal dislike, political or social affiliation, are not desirable jurors to one litigant or the other, should result, as far as is possible, in selecting twelve men who will coolly and dispassionately arrive at a fair averaged verdict—representing the concrete judgment of the jury.

This is the ideal result of trial by jury and conforms in the highest degree to the theory of the system—but practically the jury is not made up in this way, and the verdict is not the averaged result of the intelligence, integrity and experience of the body of the community, and herein lies the menace to the very administration of the law, and in this failure is presented a grave danger to the protection of liberty and property, which, if the courts are to function at all, must be met and dealt with in an effective manner.

The trouble does not lie with the courts, though they are not entirely guiltless, but it lies with the ordinary citizen's in-

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difference to his public duty, and his indisposition to perform that duty.

In the industrial centers, especially in the cities and in the counties where are located manufacturing interests or other activities bringing about congestion of population, the conditions are more pronounced than in the agricultural communities, though here, too, the same general defection exists. The shopkeeper, the merchant, the manufacturer, in fact every man whose time is worth more per day than a juror's pay, avoids and evades jury service. If he can get excused by the ordinary methods of evasion, he will not hesitate to do so. If he cannot, he generally resorts to more effective, though less truthful means. The result often is that the jury panel when finally made up, consists of those out of employment, those who never had any employment, those who do not want employment, none of them employers of men, none of them with any experience in business, ne'er-do-wells, those who, in conversation abuse capital and employer, are failures themselves and bitter against all who are not like themselves, driftwood in the current of life.

Take for illustration the case of the owner of a machine tool factory who has been sued by a walking delegate of a labor union for assault in throwing the latter out of his place of business where he was engaged in inciting discontent among the workmen. When the case comes on for trial, the panel from which the jury to try the case is to be selected consists of five striking machine tool makers; three men without employment, two of them never having "done anything in particular," and the third a street cleaner who had been out of employment for seven months; two ex-saloon keepers, not employed at anything; two railroad machine shop men; one journeyman painter; a grocer; a real estate dealer and three bystanders who without any feeling of responsibility as citizens got on the panel by having solicited the service. This situation is a strange commentary on the justice of trial by jury. The jurors on voir dire, each swore that he had no feeling of bias or prejudice and could and would try the case fairly. The result of the trial necessarily throws upon the circuit judge the necessity of setting aside the verdict for excessiveness, or else necessitates an appeal and the burdening of the Court of Appeals with considering the record, in the hope on the part of the defendant's counsel that some way may be found to protect the defendant from the re-

sult of the verdict of a jury, the natural inclination of every member of which was against everything the defendant stood for.

This is not an extreme case but the average panel is made up of the same general character of jurors, and as a further commentary it may be added that the indignant and outraged defendant admitted in conversation with his counsel that he had not served on a jury for fifteen years, though he had been regularly summoned for jury service once or twice each year in all that time and possibly a dozen or more men of the same general standing in the Commonwealth had evaded jury service in the very panel from which was drawn the jury which tried his case.

This condition results not occasionally but certainly is an absolute miscarriage of justice. The result is that attorneys trying cases knowing full well that there has been no error on the part of the trial court nevertheless are forced to prosecute an appeal involving delay and expense, to throw the burden of considering a bulky record on the already overworked Court of Appeals, in the hope that the obvious injustice of the action of an ignorant or prejudiced jury will so strongly appeal to the upper court as to in some way bring about a reversal. This happens not occasionally but in dozens of cases. The evil is growing worse. The courts, under our system are helpless—not only is the system of trial by jury growing in ill repute but the very class, men of property and of business affairs who are responsible, are the greatest sufferers. There is but one remedy—every citizen, housekeeper, great or small, is theoretically subject to jury service. The proportion of such citizens whose time is worth more than two dollars per day who actually perform this greatest of public duties is disgracefully small. Something must be done if we are to preserve the integrity of the courts. The business man and the intelligent mechanic as well as the farmer must be made to give up to the public service, two weeks each year, if called upon for that purpose, for jury service. If there is actual emergency, serious illness, a sudden and imperative condition confronting a summoned juror making service an actual calamity to him, then it is perfectly proper for him to ask and for the court to grant him a release; but where there is one case of this kind there are a hundred cases where

the request for release is unnecessary and ought not to be granted.

A number of judges who have been interviewed have stated that strong appeals on patriotic grounds to the jurors summoned have invariably failed. Then the one thing left is a strengthening of the jury law, making jury service mandatory.

There is one proposition that requires no argument to establish its truth—and that is if twelve employers sit as a jury in a case between employer and employee, the latter does not get the just hearing to which he is entitled; reverse the case and the employer does not get a fair trial. Twelve reputable citizens, property owners and taxpayers, naturally have a feeling of responsibility in deciding men's rights, where men without these qualifications do not have.

The industrious and successful do not receive a just verdict from the idle, profligate and ignorant, and unless these conditions are averaged, the system in its operation is found to be out of balance and unjust.

Now for the remedy—good citizenship is sadly lacking when it comes to jury service. It seems utterly hopeless to try to awaken the public conscience, therefore performance of public duty must be enforced by means sufficiently drastic to get results.

In courts of continuous session where a juror pleads a business emergency making it an extreme hardship to require jury service of him at that particular time, and the judge before whom he makes his excuse is convinced of the good faith of the juror in presenting his application, let his name be placed on the next, succeeding list for service two weeks later; his private business is not of more importance than his public duty. Inability to serve because of temporary illness of himself or of a member of his family, can be provided for in the same way.

For courts of limited sessions, the difficulty, of course, is greater, and should be overcome by the presiding judges in rigidly enforcing service by those summoned, excusing only those who in good faith present an extreme emergency.

There is a grave condition to meet. Is it possible to correct it? If not, then the courts have lost every claim to the respect and regard which they must have to be of any value as the tribunals wherein the rights of the people are protected. If there is a remedy, it is high time that remedy should be applied.