

to be regulated, and principles can only be recorded and adhered to by men who make the study of them the chief business of their lives.

Trial by jury always has been popular with the people, and in spite of all that has been said against it of late years, and in spite of its gross abuse in many instances, it has not only held its ground, but the people have placed it beyond the law-making authority to tamper with it, by embedding it in the constitution of each state. And Judge Cooley, in an article published in the December number of the *American Law Register*, entitled "Some New Aspects of the Right of Trial by Jury," calls attention to the fact that, in several of the states, the legislature has gone beyond the constitution in giving importance to the jury by diminishing the functions of the judge; taking from him entirely the right of assisting and guiding the action of the jury in sifting and weighing evidence, which was an important part of his duty at the common law. The judge is required in these states to confine his charge strictly to a written presentation of the law, and is inhibited from commenting on the facts. This is the case in Missouri. Judge Cooley says: "It does not seem to have occurred to any one to raise the question whether, in preserving the historical right of jury trial, the constitution has not guaranteed the functions of the judge, as well as those of the jury; and whether it was admissible to change the system radically in one particular more than another. * * *

It is surely a matter of some importance to know whether a judge may be made a cipher in this time-honored tribunal, and whether the agreement of twelve men in a certain conclusion on the facts, however accomplished, is all the constitution aims at." This whole article is well worthy the careful consideration of every lawyer.

While we deprecate encroachment upon, or diminution of, the functions of the judge, rightly understood, as they existed at the common law, we are firm believers in the system of trial by jury in both criminal and civil cases. That it might be modified in some particulars so as to increase its efficiency without in the least impairing the system, we also believe. But it is not the purpose of this paper to discuss this matter. We believe the system the best yet devised by man for the administration of justice.

Taking all things into consideration, it is, as a rule, the best for suitors, the best for the people, the best for judges, and for the profession of the law. Much weight is to be given to the deliberate judgment of a great, brave, thoughtful, intelligent, and progressive people in favor of this system, which they have long tried, which has become more popular the more intelligent and great they have become, which they have found efficient in the administration of justice, and which they declare to be the *palladium* of their liberties. It is only eminent and exalted nations that can thus believe in trial by jury. Where the mental capacity of a nation is mean, or the standard of public morality low, and the obligation of an oath is lightly felt, no worse system could be devised.

For protecting the innocent, the jury system is most effectual. It is very rare that an innocent man is convicted. To say such a catastrophe never happens would be to deny recorded facts. But, before it can happen, the accused has many opportunities to prove himself not guilty. The examining and committing magistrate, the grand jury and petit jury, and the presiding judge must all, in different degrees, have concurred in the result. And this is not all, for the court of appeals, to which the convicted may appeal, stands ready to correct any error that may have been committed in the steps leading to the conviction.

But it cannot with equal truth be asserted, as pointed out by Mr. Forsyth, that juries never acquit in ordinary cases where they ought to condemn. "This is, no doubt, the vulnerable point of the system: that feelings of compassion for the prisoner, or of repugnance to the punishment which the law awards, are sometimes allowed to overpower their sense of duty. They usurp, in such cases, the prerogative of mercy, forgetting that they have sworn to give a true verdict according to the evidence. But it is an error at which humanity need not blush; it springs from one of the purest instincts of our nature, and is a symptom of kindness of heart which, as a national characteristic, is an honour."

That our judges in this country and England are held in higher estimation and honor than in other countries is due, in great part, to the jury system. In deciding upon facts, opinions will necessarily vary, and judges, like other