

would imply a determination to be unjust which would be most uncommon.

"3. From the nature of the case there can be no appeal in cases of trial by jury, though there may be a new trial. There can be an appeal where the trial is by a single judge.

"This may not, at first sight, be obvious, but it is a consequence of the circumstance that a jury cannot give their reasons. An appeal, properly so called, implies a judgment on the part of the Court appealed from and an argument to show that it decided wrongly, which cannot be unless the reasons of the decision are known. If an appeal proper lay from the decision of a jury, and if it took the form of a re-hearing before a court of judges, trial by jury might as well be abolished.

"4. Experience has proved that the decisions of single judges are usually recognized as just. There are very few complaints of the decisions either of magistrates or county court judges on the ground of injustice. I never heard of a complaint of injustice in a trial by a judge of the High Court without a jury. Arbitrations, in which the arbitrator gives no reason and is subject to no appeal, are not only common but are on the increase. This would scarcely be the case if confidence were not felt in the justice of arbitrators.

"As to juries, experience no doubt has shown, and does continually show, that their verdicts also are just in the very great majority of instances, but I am bound to say I think that the exceptions are more numerous than in the case of trials by judges without juries.

"In cases of strong prejudice juries are frequently unjust, and are capable of erring on the side either of undue convictions or of undue acquittals. They are also capable of being intimidated, as the experience of Ireland has abundantly shown. Intimidation has never been systematically practised in England in modern times, but I believe it would be just as easy and just as effective here as it has been shown to be in Ireland. Under the Plantagenets, and down to the establishment of the Court of Star Chamber, trial by jury was so weak in England as to cause something like a general paralysis of the administration of justice. Under Charles II. it was a blind and cruel system. During part of the reign of George III. it was, to say the least, quite as severe as the severest judge without a

jury could have been. The revolutionary tribunal during the Reign of Terror tried by a jury.

"There are no doubt some things to be set against this. It is often said in delicate terms that some degree of injustice is a good thing. The phrases in which this sentiment is conveyed are to the effect that it may sometimes be desirable that the strict execution of the law should be mitigated by popular sentiment, of which juries are considered to be the representatives. Whether it is a greater evil that a bad law should be executed strictly or capriciously is perhaps disputable, but it admits of no doubt that laws unfit to be strictly executed ought to be repealed or modified. Parts of the criminal law were no doubt formerly cruel and otherwise objectionable. I can understand, though I do not share, the sentiment which admires juries who perjured themselves by affirming a five pound note to be worth less than forty shillings in order to avoid a capital conviction, or who refused to give effect to the old law of libel; but these are things of the past. I know of no part of our existing law which requires to be put in force capriciously. I see, for instance, no advantage in acquittals in the face of clear evidence for bribery, or for sending ships to sea in a dangerous condition, or for libels on private persons who happen to be disreputable and unpopular, or for frauds committed upon moneylenders, or for crimes committed by pretty women under affecting circumstances. * * *

"The next point to consider is the comparative wisdom or intelligence of judges and juries. I think that a judge ought to be, and that he usually is, a man of far greater intelligence, better education, and more force of mind, than any individual member of the juries which he has to charge, but it must be remembered that there is a great difference between jury and jury. The force and effect of evidence can hardly be tested better than by the impression which it makes on a group of persons large enough to secure its being looked at from many different points of view and by people of different habits of mind. But this advantage is obtained only when all the jurors listen to the whole of the evidence; and it continually happens that several of them are half asleep, or listen mechanically, or think about something else, and that when the verdict is considered they follow the lead of any member of