

The Legal News.

VOL. II.

APRIL 5, 1879.

No. 14.

TRIAL BY JURY.

Mr. Percy Greg, in his able work, the "Devil's Advocate," makes one of his debaters say: "I am not a representative Tory. But, speaking for myself alone, the idiocy of verdicts has taught me a profound contempt for that palladium of English liberty—trial by jury." This remark, although of course couched in flippant and extravagant terms, represents the opinion of a not inconsiderate class of laymen on the value of verdicts, and the policy of retaining trial by jury. But, like all sweeping condemnations, it has the supreme defect of a general conclusion drawn from partial knowledge and partial observation. The mere conjunction of the expression "palladium of English liberty" with "idiocy of verdicts" at once betrays ignorance or want of recognition of the diverse character and object of trial by jury. When this mode of reaching a judicial decision is belauded as the palladium of English liberty, trial by jury in a limited class of criminal prosecutions, and possibly one class of civil actions, is really regarded. Thus, in trials for treason, sedition, seditious or blasphemous libels, ordinary libels, *scandalum magnatum*, and in cases under the Foreign Enlistment Act—in short, where the Crown is not only in name but in substance the prosecutor, and perhaps, also, in civil libels—trial by jury may fairly be spoken of as a palladium of liberty. So that, in order to justify the debater's opinion, it must be shown that juries display idiocy in the very limited class of cases above named. But this is manifestly not so; for the instances in which juries are called upon to act in this class are very rare indeed; and, possibly, the only fault to be found with their verdict in modern times has been their bias against the Crown. If in any other cases juries have shown idiocy, then those have been cases in which trial by jury has been in no sense the palladium of liberty.

But, apart from criticism of Mr. Greg's debater, there is to be found in the present day a scepticism, and perhaps a growing scepticism, as

to the expediency of retaining trial by jury. In order to appraise this disbelief at its proper value, we must endeavor to distinguish between the various kinds of trial by jury; for otherwise we shall be doing exactly what we have already said ought not to be done—that is to say, we should be indulging in sweeping condemnation through partial observation. Roughly speaking, there are four classes of juries, or rather jurors, in this country. We have the special jurors and the common jurors of agricultural districts, and the special jurors and the common jurors of the metropolis and of large cities. Now for dealing with the class of cases coming before them, such as rights to and in land, and disputes involving character, the special jurors of the agricultural districts are most competent, and we should think that no one would call their verdicts idiotic; and no suitor, having a genuine belief in his cause, would desire any other tribunal. So, also, before the amendment of the Jury Acts, special jurors in the metropolis formed admirable tribunals. They were men of great intelligence, great experience, and great integrity. At Guildhall the experience was "commercial," and at Westminster it was "civil and social." In both places the special juries commanded the unfeigned respect of judges, counsel, and suitors; and there is no reason to suppose but that in Liverpool, Manchester, Leeds, Bristol, and other great cities and towns, the faith in special jurors was equally general and well founded.

So also in the metropolis, and large cities and towns, the common jurors exhibit sagacity and fair knowledge of business of the inferior class; but the fault of them was, and is, that they are apt to be swayed by prejudice, local, personal, and commercial; that their knowledge of social life is too narrow; and that their conception of human motives and tendencies is incomplete. The mischief which might have arisen from the imperfect education and limited observation of the common jurors of cities and towns was obviated, for the most part, by the use of special jurors in all cases where danger might have been apprehended from the employment of common jurors.

There remain the common jurors of the agricultural districts; and these are the persons whose bewilderments and inconsequential ver-