

## TRIAL BY JURY.

were withdrawn from so large a portion of its inhabitants. A jurymen indirectly gains invaluable knowledge from the duties that he is obliged to perform. He acquires a knowledge of men, manners and things; he learns to make a due discrimination between right and wrong, between truth and falsehood, and is imperceptibly taught to recognise the difference which there is between arbitrary power, and liberty and order. Then again, the distinction which there is between liberty and license is forced upon his notice. On the one hand, he feels himself called upon to shield his fellow-countrymen from wrong and oppression, whether from the government or individuals; on the other hand, he equally sees himself called upon to prevent persons setting order and just dealing at defiance. Hence the jurymen, with his mind thus disciplined, is better able to form sound opinions upon political and social matters, and to become a loyal, but free and order-loving member of the community. He instinctively respects the constitution and the laws of his country, because he is aware that he himself has often assisted to support the former and to administer the latter. He may be a reformer, but he has learnt from his past experience as a jurymen, that to adopt the legal means is the only proper method of carrying out his views.

In criminal trials especially, the jurymen is taught an instructive lesson which may well serve to make him a better man, in case he should need it. He sees the dire consequences of guilt in the miserable criminals brought before him, and a solemn warning is thus given to him, which he cannot reject, if he be a man of ordinary thoughtfulness, that "honesty is the best policy."

The intelligence and general knowledge of a jurymen are greatly increased by the nature of the proceedings in a court of justice. The judges and the lawyers are well educated men. The pleadings of the lawyers, and the summing up of the judge in a trial, must certainly convey instruction and teach a lesson on the right use of words, likely to improve an ordinary jurymen, and extend the narrower bounds of his thoughts and language.

III. The overwhelming disadvantage to suitors and prisoners, of having their cases tried by judges only, instead of tried by a jury, would be that both the facts of the case and the law would be in the same hands. The meaning of the famous legal maxim, "Fact for the jury, law for the judges," ought to be thoroughly understood by everybody. The office of the judge is to explain the law to the jury, and state his view of the case in his summing up, which must not contain his verdict; but since "all matter of law arises out of matter of fact," so till this point be settled by the jury there is no room for law.\* After the verdict has been given by the jury, the judge carries the verdict into effect accord-

ing to the law of the land, or in other words, pronounces the judgment which the law makes the consequence of the verdict.

The celebrated Blackstone gives the following reasons for the superiority of trial by jury over that by judges only:—

"If the administration by justice were entirely entrusted to the magistracy, a select body of men, and those generally chosen by the prince, or such as enjoy the highest offices in the state, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. \* \* In settling and adjusting a question of fact, when intrusted to any single magistrate, partiality and injustice have an ample field to range in either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder. Here, therefore, a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth and the surest guardians of public justice. \* \* \* Trial by jury, therefore, preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. It is therefore, a duty which every man owes to his country, his friends, his posterity, and himself, to maintain, to the utmost of his power, this valuable constitution in all its rights; to restore it to its ancient dignity, if at all impaired by the different value of property, or otherwise deviated from its first institution; to amend it wherever it is defective; and, above all, to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which, under a variety of plausible pretences, may in time imperceptibly undermine this best preservative of English liberty."

If this opinion, given by so eminent a man, does not convince the reader of the value of trial by jury, nothing else can. It may be added, that if a person is not satisfied with the decision of a jury of men whom he can challenge or object to within a reasonable limit before trial, he will not be contented with any legal process that human wisdom can devise. He can move for a new trial (in civil cases), and, if there be sufficient grounds for the proceeding, a new trial will be granted him. In conclusion, I will merely give the words of Lord Camden, as quoted by Earl Russell in his essay on the British Constitution.

"The discretion of a judge is the law of a tyrant; it is always unknown; it differs in different men; it is casual, and depends upon constitution, temper, passion. In the best, it is oftentimes caprice; in the worst, it is every vice and folly to which human nature is liable."

Nor must the security to life which a corner's jury affords against foul-play and murder be forgotten. Every suspicious case of sudden or of violent death is inquired into. In countries where there are no investigations made in this manner the number of deaths by violence and poisoning is, with few exceptions,

\* Chief Justice Vaughan—*Bushell's case*.