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*THE VALUE OF TRIAL BY JURY.*

Mr. Justice Stephen, in his new History of the Criminal Law, enters into a comparison of French and English criminal procedure. His lordship then makes some observations on "the lordship then makes some observations on "the positive value of trial by jury as practised and understood in England." He says:—

"It is perhaps the most popular of all our institutions, and has certainly been made the subject of a kind and degree of eulogy which no institution can possibly deserve. All exaggeration apart, what is its true value?

"It may be regarded in several different lights.

"The first question is, Are juries just? The second, Are they intelligent enough for the duties they have to perform? The third, What are the collateral advantages of the institution? Upon each of these points it is necessary to compare juries to judges sitting without juries, for the choice lies between these two tribunals. Our experience of trials by judges without juries, in criminal as well as in civil cases, has, in the last two generations become very extensive. In the first place, the judges of the Chancery Division of the High Court are continually called upon to determine questions of fact which in many instances are exactly like those that are determined in criminal cases; as, for instance, where fraud is alleged as a ground for setting a transaction aside. The same is true of the county court judges and of the courts of summary jurisdiction, which have extensive powers of fine and imprisonment. Applications to the judges of the Queen's Bench Division sometimes involve the determination of similar questions. I have, for instance, known a case in which the decision of the question whether a father should be deprived of the custody of his child depended upon the question whether he had committed a crime, which question was tried and determined by a judge without a jury. The trial of civil cases without juries has also become a matter of everyday occurrence. Finally, in British India, trial by a judge alone is in all criminal cases the rule, and trial by jury the rare exception.

"There is a considerable difference in the manner in which cases are tried by judges sitting alone. In cases tried without a jury by a judge of the High Court, notes are taken just as if the case was tried by a jury; and in the case of an appeal, they are forwarded to the Court of Appeal for their information. If serious criminal cases were to be tried by judges without juries, I think that notes should be taken both by the judge, and, in capital cases, by a shorthand writer as well; and I think the judge should give his reasons for his decision, and that if he did not give them in writing they should be taken down by a shorthand writer, and read and corrected by the judge. In such cases I think there should be an appeal both on the law and on the facts to the Court for Crown Cases Reserved, or whatever Court might be substituted for it. In comparing trial by jury with trial by a judge without a jury, I assume the establishment of such a form of trial as this.

"First, then, as to the comparative justice to be expected of trials by jury and trials by a judge without a jury. Trial by a judge without a jury may, I think, be made, practically speaking, completely just in almost every case. At all events, the securities which can be taken for justice in the case of a trial by a judge without a jury are infinitely greater than those which can be taken for trial by a judge and jury.

"1. The judge is one known man, holding a conspicuous position before the public, and open to censure and, in extreme cases, to punishment if he does wrong: the jury are twelve unknown men. Whilst the trial is proceeding they form a group just large enough to destroy even the appearance of individual responsibility. When the trial is over they sink back into the crowd from whence they came, and cannot be distinguished from it. The most unjust verdict throws no discredit on any person who joined in it, for as soon as it is pronounced he returns to obscurity.

"2. Juries give no reasons, but judges do in some cases, and ought to be made to do so formally in all cases if juries were dispensed with. This in itself is a security of the highest value for the justice of a decision. An unskilled person may no doubt give bad reasons for a sound conclusion, but it is nearly impossible for the most highly skilled person to give good reasons for a bad conclusion; and the attempt to do so