

jury? Trial by jury with us ought to mean just what it means in England—that a party shall have the right to have controverted questions of fact passed upon in the trial Court by a jury. It ought not to hamper the power of appellate Courts here to do justice any more than it does there. The verdict of a jury is a means and not an end, but with us it has become a final goal—and all our endeavour is directed to obtaining a verdict free from evidence which might possibly prejudice and from law which might possibly mislead. I shall never forget the remark of the most distinguished jurist that this state has ever produced; and one of the most distinguished jurists of this country, the late Judge Mitchell—on this subject of jury trials. He said to me once, when discussing it, "The English have had the good sense to keep trial by jury on earth as an instrument for doing justice between man and man here in this world; whereas we in America have worked it up into the thin air of presumption and metaphysics." The jury, like every other instrumentality for the trial of causes, exists for the purpose of justly settling controversies between man and man, and when the controversy has been settled justly, the litigation should end.

I remember reading recently a decision of the Court of Appeals of New York in a murder case in which an Italian was upon trial for a most cold-blooded murder of his wife. The Court of Appeals reviewed the evidence carefully, step by step, demonstrating its absolutely conclusive force, but upon the trial the defence of insanity had been interposed, and one of the errors assigned related to a hypothetical question that had been asked of a physician. This question was not in proper form. It was the last error examined by the Court. They sustained the error and reversed the cause and wound up the opinion with that apology with which we are so familiar, "We regret exceedingly to reverse this cause, for the record leave not the slightest room for doubt of the defendant's guilt, but the defendant was entitled to a trial by jury, and there is no telling what the jury would have done if this evidence had not been admitted." Well, while the Court was in the business of presumption, presuming prejudice from error, why not just presume that the jury would