

DESERET NEWS:

WEEKLY.

TRUTH AND LIBERTY.

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JURIES.

TRIAL by jury has been called "a royal benefit conferred upon the people." It has from the earliest times been considered the great bulwark of civil and political liberty. This right was a fundamental article of Magna Charta—no man was to be arrested, imprisoned, banished, deprived of life, etc., except by the judgment of his peers, or the law of the land, which judgment of his peers was trial by a jury, the peers of the accused, that is, men of the same country and of like conditions and equality in the state with the accused. The common law required the trial of all crimes to take place in the county where the crimes were committed, and even required that the jury should come from the same vicinage. These two requirements have been statutorily modified, still the idea is that a jury shall be composed of a man's neighbors, equals, fellow-citizens of the community, a fair representation of the citizens of the district.

The early settlers of the colonies brought with them from Western Europe this method of trial by a jury of their peers, as their undisputed birthright and indefeasible inheritance, the palladium of their liberties.

The uses of a jury are to insure justice and to act as a barrier to the accused, equally from the tyranny and vindictiveness of the rulers, the judiciary included, and of the people. In order that the accused shall have every reasonable chance of justice and not be lightly condemned, unanimity in the petit jury has been the rule from the earliest times, both in this country and in England, although in late years efforts have been made with a view to the obtaining of a law providing that in certain cases the agreement of a majority or two-thirds of a jury shall be sufficient to a verdict.

It is also the rule for the jury to be the judges of the fact or the evidence, and the judge of the law. In civil cases it is almost if not quite the universal rule for the judge to determine what is law in the case, but in criminal cases particularly this rule is not universal, the jury sometimes not leaving the determination of the law altogether to the judge, but acting upon their own judgment as to the law as well as the facts or evidence.

There is a fair show of reason for this. As a rule where the law is plain and definite, or the judge's construction is manifestly fair and evidently reasonable, the rule is good enough that his statement of the law should be accepted by the jury. But where the judge is strongly prejudiced, and his construction is indubitably strained, there being no plain law in the case, it does not seem so reasonable that the jury should implicitly and entirely accept his statement of the law, because both good lawyers and good judges will differ upon construction of law, and consequently in such cases there is good reason for doubt, which fact the jury may be expected to take cognizance of and permit to affect their verdict. Besides, the jury may be often as good judges of the intent of the law as the judge is.

A judge may dictate to a jury to render such and such a verdict, but the jury are not bound to accept his dictation in that regard. An English writer says—

"There cannot be a greater fallacy than to suppose that a jury is bound by the private views of the judge, in a trial for murder, or indeed for any other offence. The judge is, in fact, the servant of the jury, to explain and sum up the evidence, and give his views of the law of the case, but most assuredly the jury are not bound by that view, or by anything save their

oath, which is to give a true verdict according to the evidence."

Sir Matthew Hale says—

"It would be a most unhappy case for the judge himself if the prisoner's fate depended upon his directions—unhappy, also, for the prisoner; for, if the judge's opinion must rule the verdict, the trial by jury would be useless."

Blackstone says—

"As all judges enjoy the highest office in the state, their decisions, in spite of their own integrity, will have frequently an involuntary bias towards those of their own rank, and it is not to be expected from human nature that the few should be always attentive to the interests of the many."

The judge is all-powerful in his court in some things, but not in all. In court the judge must be honored and in many things obeyed. He may be a good, just, honorable judge, or he may be the contrary; he may be eminently impartial and fair, or he may be eminently unfair, prejudiced, partial. But partial or impartial, fair or unfair, just or unjust, prejudiced or unprejudiced, courteous or discourteous, suave or abusive, he must be honored on the bench. He may be most unjust, he may be blindly prejudiced, he may be a most unfit man to wear the ermine, he may be a greater rascal than the criminal whom he condemns, still the judge must be honored in court, and his rulings and decisions must be respected.

The primary and proper object of a jury is justice. The primary and proper intent of the law is justice. The essence of crime is the intent. These things the jury should keep in their minds. The court decides what evidence is admissible, but the jury decide upon the credibility of the witnesses, and the weight and value of their evidence. The judge is the sole judge of the nature of the evidence that shall be admitted, and the jury are the sole judges of its worth when admitted. Thus both judge and jury are omnipotent, but the omnipotence of the one does not of right infringe upon that of the other.

In court the judge may do a great many things. One of the great differences between the prerogatives of the judge and those of the jury is, the judge may say what he pleases and when he pleases and to whom he pleases, but the jury may not. He is the sole judge of who may speak, and what they may say in many respects. The jury have no right to speak in court, only on his permission, express or implied. A judge can talk to a jury without their permission, but they cannot to him. The judge may not only address a jury on his option, but in any manner he pleases. He may compliment or he may upbraid them. He may treat them respectfully or he may treat them disrespectfully, he may be courteous to them, or he may be discourteous to them. He may positively abuse them, abuse them in the most outrageous manner, with words, and the jury are as helpless as the prisoner at the bar. They must be dumb under the infliction. They may be justly indignant at the judge, they may feel utter contempt for him inwardly, but they must not give expression to their contempt in words, nor unguardedly in act. Before an abusive judge the greatest effort of the jury is likely to be to hold their tongues and bottle up their indignation and contempt, but that they must do, while they are in court. Dumb they must keep, unless he asks them a question, or manifestly desires or allows them to speak. They may keep their ears wide open, but they must keep their mouths shut, while he may be insulting or abusing them. They cannot be stern with him as he may be with them. They cannot lecture him as he may them. They cannot dictate to him as he may to them. They cannot abuse him as he may them. They cannot say anything which he may consider disrespectful or insulting or impertinent to him, or hardly irrelevant if he is a testy judge. All this because of his supreme power in the matter of contempt, both as to construction and punishment, for what he may consider an offence to him in court. The jury can only talk to the judge when he allows them, and in such manner as he may please to permit.

But though subject, absolutely sub-

ject, to the judge in many things, the jury are not the slaves of the judge. They are free citizens as he is, a constitutional and legal part of the court as he is. In some things, even in court, they are as untrammelled, as independent, as deliberative, as optional as he is, and as authoritative and supreme in their decisions as he is. Jurymen have no cause to be afraid of the judge. Some things which he says they may ignore. They may virtually defy him in regard to some of their duties in court.

There is one grand thing wherein the jury are all-powerful, and the judge is as weak as water. It is the supreme prerogative of the jury to return such verdict as in their judgment is right. It may displease the judge, it may anger him to a degree, and he may vent his anger and spleen on the jury, he may storm at, insult, and abuse them, but he cannot compel them to render a verdict to please him, he cannot compel them to render any verdict at all, he cannot compel them to agree on any verdict, though he may take extraordinary, unreasonable, and cruel means to do it. In the matter of returning a verdict the jury have all power, if they know it, and it is their right and duty to know it. In this the jury are a check upon the possible injustice and tyranny of the judge, upon the encroachments and usurpations of the judicial power. The jury may not heed the judge's wishes as to a verdict, they may treat them as nothing, they may even actually, not verbally, scorn his threats, if he indulges in any, and defy his power. They may regard his private views as no more than any other man's, but they must not tell him so.

It is their duty to bring in a verdict in accordance with the law and the evidence, the spirit and intent of the law, and the real value of the evidence, and in the interest of justice, so far as the plain law will allow. Where there is a doubt, it is right to give justice the benefit of the doubt, and sometimes mercy, but justice mainly, and especially when that would favor the accused, notwithstanding any evidently unfair judicial construction.

Out of court, and especially out of court time, the judge is no more than any other man, he is as weak and insignificant as any other citizen. He can be met on his merits, and respected or held in contempt as he may deserve. He can be held in honor for his upright course, or he can be held in dishonor for his injustice. He can be remembered for good or for evil, by jurors, witnesses, and the general public, for his conduct in court, as well as in private life, according as it may have been worthy or unworthy, just or unjust, impartial or one-sided, prejudiced or unprejudiced, noted for fair constructions, rulings, and decisions, or for unfair ones. In short a judge is but a man, sometimes a poor specimen of a man. In this country especially there are judges, not a few, who are not worthy of any more respect or honor than that which the law enforces in court, nor indeed of that. But that they must have.

ADMISSION AS A STATE.

Now that Congress is again assembled, the question of new States is broached once more. First Colorado, being a favorite Territory with many, in fact rather popular, is presented for discussion. There seems to be a sanguine feeling in Colorado among the friends of admission in regard to their success the present session of Congress. Then may come New Mexico again, which has a large population and many other claims which should secure her a respectful hearing and favorable action in Congress.

We see no valid objection to the admission of either of the above Territories as States in the Union, if the people thereof respectively desire it. After all, that is the great and most important question. The condition of a Territory is a condition of tutelage, of undeniable and undeserved civil inferiority. Citizens of Territories are not full citizens of the Union, while they remain in the Territory. Their position is an anomalous one. In

many respects they are deprived of the right of suffrage, of the right of voiceful representation, and consequently of the distinctive American right of local self-government. The most intelligent, admirably endowed, and thoroughly cultivated Caucasian in the Territories has not equal rights and privileges with the most ignorant and brutal negro in the States. This is really of the nature of an outrage. The Caucasian in the Territories is in many instances arbitrarily ruled over by arbitrarily appointed Federal officers, like officers to which in the State the ignorant negro is federally protected in choosing for himself. This is a glaring anomaly which ought no longer to be permitted to disgrace the American internal polity, and the only way which is at present provided for escape from this anomaly is the admission of Territories as States in the Union.

Our voice is, if Colorado wants to enter the Union, let her go in; if New Mexico wants to enter the Union, let her go in. Do not churlishly and dog-in-the-mangerily keep them out. Do not keep ill-naturedly sparring them away from the doors of the Union. Do not keep them perforce outside the pale of the Union. If they seek entrance, admit them cheerfully. If they greatly desire to go in, bid them hearty welcome. Why should they be kept everlastingly and against their will in a condition of semi-alienage? What good policy is there in that? Let them have the full benefits of union and citizenship, that they may be perfectly one with the rest of the Union, and not feel that their position is one of disparagement, and depreciation. Don't let them longer have cause to feel that the worst negroes in the States have superior rights and privileges to the best white people in the Territories.

THE MASONS OPPOSED.

Now the ancient Order of Masons is in a bad way, that is, it is made the object of a good deal of opposition once more. The head of the order in England has recently gone over to the Church of Rome, that church is fulminating anew against the order, and extra rigid Protestants are equally opposed to what they term secret societies. So that "the brethren of the mystic tie" are opposed on more than one side, and are placed, at best, between two fires, and those directed largely by religious bigots. The order however, has sustained many severe attacks, and still thrives.

RELIGION AND MORALITY.—Dr. J. G. Holland talks in the following severe fashion of rigid religionists and morality—

"If any one will take up the early colonial records of New England he will be surprised and shocked at the amount of gross immorality which he will find recorded there. Rigidity of doctrine, the fulmination of the most terrific punishment in the future life, the passage and the execution of the most searching and definitive laws against every form of social vice, go hand in hand with every form of vice. There was adultery in high places and adultery in low. Slander held high carnival. Common scolds were almost too common to be noteworthy. In brief, it seems that a religion which makes most of its orthodoxy, or most of its frames or emotions of mind is a religion most divorced from morality. A man who is told that the genuineness of his religion depends mainly upon the orthodoxy of his faith, or mainly upon the raptures of his mental experience, is either partly demoralized by his reception of the statement, or specially unfitted to meet the temptations of his life."

That reminds us that the party in Utah which does so much mouthing about "executing the laws" is composed of the most lawless characters in the country. Set a rogue to catch an honest man.

SALE OF THE SACRAMENTO "UNION."—The Sacramento Union, one of the best and most ably conducted newspapers in California, is advertised for sale by private contract, or, if not so disposed of, it

will be sold by public auction Dec. 28, in consequence of the retirement of one of the proprietors. The S. F. Chronicle gives a version of the cause of the sale, to the effect that Mr. Larkin, junior member of the firm and owner of a one-third interest in the paper, wished to transfer the paper to San Francisco. His partners were unwilling, so Mr. Larkin determined to sell out. He wanted \$60,000 for his interest, Messrs. Morrill and Anthony would not pay more than \$40,000. Larkin maintained his resolution to sell out, and then the possibility of him selling to some one who might not act harmoniously with them induced Messrs. Morrill and Anthony to determine to sell out also. So here is a promising chance for the newspaper ambitious.

SOCIAL PARTIES.

It is usual in this country to make the Winter, and especially the time about Christmas and New Year, a time for much social reunion. Dancing and other parties, but principally dancing parties, abound at this festive season of the year, when ordinary labor is comparatively scarce, and when the season is not very favorable to many kinds of labor.

Social parties and social assemblings of many kinds are desirable. They have their uses, and among those uses are the amelioration of asperities of various kinds between persons, families, and social or business circles, and the formation and cultivation of acquaintances and friendships. It will consequently be seen at once that these social parties are matters of great importance in the life of the community, and should receive the careful attention of parents and guardians, and the prudent supervision and active direction of the best people in the community. This has been customary here, but it is much more necessary now than it was years ago, though really always desirable. It is more desirable and necessary now because the community is more mixed now, much more so, than formerly, and some elements of the mixture are of a very undesirable character, and therefore should be especially guarded against. There are persons in the community now, not a few either, whom no prudent parent nor guardian would wish, or allow if he could help it, to associate on any terms with those over whom he has the oversight, and especially the young and inexperienced, who are much more susceptible to influences that may lead to objectionable results than elder and more experienced persons are. This is a matter worthy of consideration in all our cities and settlements.

CHRISTMAS COMING.

CHRISTMAS and New Year are coming. In fact they always are, but they are now very near, and, as with approaching objects in the physical world, the nearer they come the faster they appear to advance. In two weeks Christmas will be here, and in three weeks New Year. This causes everybody to be busy with preparation for the usual enjoyments of the holiday season. We say everybody, but are we not too liberal in the use of that word in this connection? It may be recollected that, although other communities have fared worse than this the passing year, it has not been so prosperous a time here as some former ones, that the demand for labor has not been great, that many mechanics and other people who depend upon their daily labor for their sustenance have not been by any means fully employed, that many have been without work for weeks and months, consequently that all or nearly all such cannot be in a situation to have much available means, if any at all, to make merry with during the holidays at hand. Those whom Providence has favored with more of the means of this world may