

**IS TRIAL BY JURY
WORTH KEEPING?**

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Is Trial by Jury Worth Keeping? by Graham Willmore

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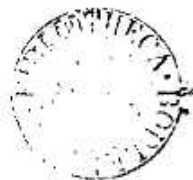
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BY

GRAHAM WILLMORE, ESQ., M.A.,

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IS TRIAL BY JURY WORTH KEEPING ?

THERE is a remarkable tendency in man to forget that all human institutions necessarily contain some portion of evil, and that the utmost which political sagacity can achieve is to establish and maintain those which involve the lesser portion. Most men are affected chiefly by the present; the past they never knew or have forgotten; the future they cannot discern or anticipate. Accordingly, after an institution has existed some length of time, many people, influenced only by the evils which they see and feel, unacquainted with those which it was created to remedy, and which will recur upon its abolition, become restless, and desire a change. At such a time it seems to be the duty of those who honestly believe that things should remain as they are, to state the grounds of their belief, in order, if possible, to prevent others from rushing blindly upon ills which they know not of. It is true that the English, being a sensible and thinking people, not so easily convinced as some other nations, that what is a change is therefore an improvement, do not readily or often alter their habits or institutions. Nevertheless, this disease is so inherent in the minds of men, that even we are

not wholly free from it. The symptoms are different in different persons, but the malady is the same in all ; and hence it is that some persons so afflicted are now to be found going about, announcing, in an oracular manner, that the system of Trial by Jury is not suited to the present age—is too cumbrous, tedious, uncertain, and, above all, too expensive ; and they, therefore, propose, as the only alternative, to put it down, and to introduce a summary jurisdiction in its stead. It has also, by some, been proposed to do away with Grand Juries ; certainly in London, probably elsewhere. These sentiments are not now confined to speculative philosophers or debating societies ; they appear to have been adopted, partially at least, by such very practical persons as the Attorney and Solicitor-General, and by them have been brought before the Legislature. It is true that the whole measure of the Abolition of Trial by Jury has not been introduced at once : it may have been thought more discreet to administer it in small portions. Accordingly, in 1847, a Bill was brought in to subject to the summary jurisdiction of one paid, or two unpaid magistrates, all persons under the age of fourteen years charged with theft ; and as this Bill seemed, on the face of it, not to be unreasonable, it passed without opposition, and became the law of the land.

Very late in the Session of 1849, in the month of July, another Bill was introduced, extending the

provisions of the former one to very many other persons, insomuch, that if that Bill had passed, between one-half and two-thirds of the prisoners over whose offences the Quarter Sessions still retain jurisdiction, would have been deprived of Trial by Jury, and handed over to a summary tribunal. This Bill, from some cause, was withdrawn. The Attorney-General, however, announced his intention to carry the measure, if possible, in the ensuing Session ; so that, if he succeeds, and if the same proportion of prisoners is withdrawn, at equal intervals, from Trial by Jury, we may expect that, within eight or ten years at farthest, this ancient institution will be thoroughly extirpated.

It, therefore, becomes necessary for the public to know that this question, "*Is Trial by Jury worth keeping ?*" has now to be answered. What the answer shall be, it is, of course, for the Legislature alone to say ; but upon a question of such great importance, of so universal and vital an interest, every man of practical experience may venture respectfully to offer suggestions for the consideration of the Legislature, and to furnish materials which may assist Parliament in coming to a sound decision. It is, therefore, proposed, in the following pages, to consider,—*first*, the question of abolishing Grand Juries ; and, *secondly*, to give to the measure of the Attorney-General a full and fair examination.

First, then — as to Grand Juries.

It has been urged that it is desirable to abolish them generally, and especially at the Central Criminal Court, on the following grounds:—because they are a useless expense, since, whenever stipendiary magistrates commit, there ought to be a trial;—because some witnesses in attendance are hustled and corrupted, and the testimony of others is liable to be suppressed or perverted;—because gentlemen in the City begrudge an absence from their business;—and, because some persons indict others for the mere purpose of extorting money from them. These reasons apply almost exclusively to the metropolis, yet they seem to be the principal grounds for this vast change in the criminal procedure of the whole country at large; and even these reasons appear to have undue weight assigned to them. For as to the inconveniences and mischiefs which London witnesses personally suffer, these arise, in great measure, from the execrably insufficient accommodation in the City Courts, and therefore seem to prove nothing but the necessity for improving those Courts, a matter which is both easy and obvious, and cannot be seriously expensive.

And, further, it seems difficult to understand how the suppression and perversion of testimony before the Grand Jury could not be prevented, by the attendance of an intelligent officer, entrusted with the depositions, as effectually as they can be now prevented before the Court itself.

With respect to the time employed (it cannot be

called lost) by men of business, that is only what their fellow citizens have a right to expect from them. No class can fairly claim to be wholly released from the duties of a citizen. A shopkeeper's time is as valuable to a shopkeeper as a merchant's to a merchant; and were the latter class released from attending as Grand Jurymen to inquire, there can be no reason why they should not be compelled to attend as Petty Jurymen to try—an occupation quite as tedious, and probably quite as distasteful.

The last of the above reasons is, that the Grand Jury is used as an engine to extort money. Of this, the instances given seem to consist almost wholly of cases where parties are charged with keeping gambling or disorderly houses. Where such parties are really innocent, a Petty Jury in the Civil Courts will give ample compensation in damages. Where they are guilty, perhaps the Legislature may be of opinion that the disputes between gamblers, keepers of houses of ill-fame, and speculative informers, need not be set at rest by the abolition of the Grand Jury, an institution which Lord Somers has entitled the security of Englishmen's lives, and which, in fearful emergencies, has done the nation incalculable service. But even were the London Grand Juries admitted to be objectionable and needless, the institution, as actually working in the counties of England, demands a wholly different consideration. In the counties there are no stipendiary magistrates, no

complaints from the jurors of the labour and expense of attendance, nor of bills of indictment being used as engines of extortion—no allegation as to discomfort or corruption of witnesses.

In order, therefore, to understand rightly the real nature and value of the institution in a legal and national point of view, it will be well to consider it apart from these accidental hindrances which seem to embarrass its beneficial working in London.

By the summoning of the Grand Jury to meet the Judges at the Assizes,* there are called together twice a year in each county, the men who are chief in station and influence, men to whom the administration of the law as magistrates, and much of the local taxation is entrusted, who, from those causes, must have most power to work good or evil to the land in which they live. The mere circumstance of all these persons being brought into contact with each other for several days, twice every year, for common public purposes of such importance, without any reference to its effects upon their own social intercourse as individuals, is an inestimable good. Prejudices and false impressions are corrected, the exigencies and improvements of all parts of the county communicated; projects for amendment discussed; intelligence extended. If the knowledge of any local good exists, it may be diffused; if any great public evil presses, means

* What is said of the Grand Jury at the Assizes applies, *mutatis mutandis*, to the Grand Jury at the Quarter Sessions.