THE JURY LAWS AND THEIR AMENDMENT

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BY

T. W. ERLE,

ONE OF THE MASTERS OF THE SUPREME COURT.

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PREFACE.

THE accompanying Bill for the amendment and consolidation of the law relating to juries was drawn for Lord Coleridge when Attorney-General. It is now reprinted with additional notes and explanations, but almost entirely in its original form; the only material difference being that the proposals for the reduction of the number of the jury, and for the adoption of "composite" juries, as they were termed, are omitted. As to the first of these two points, there is much, no doubt, which might be urged in its favour; for to quote the words of a leading article in the *Times** on one of the numerous occasions when the Bill was under discussion in Parliament, "The balance of opinion, and also, it would seem, of experience, is in favour of some such reduction, but there are decided opinions on the other side, and the question ought to be carefully considered." The proposal, therefore, for the reduction in question, made, as it was, for the purpose of ascertaining public opinion on the subject, stands not only completely justified, but was in fact clearly demanded. For if it be true that "the balance of opinion is in its favour," or if, at any rate, this can be contended; and if, also, it is a step which, while relieving the busy part of the community from some material part of the burden of

* Of April 23rd, 1874.

service on juries, would at the same time render it possible to improve the pay of jurors in civil cases without levying any increased tax on suitors, a case existed on which it was right that the verdict of the public should be taken. But if there is much decided opinion against the change, it is immaterial whether this opinion be that of a minority or not, or whether it may, perhaps, be rooted in sentiment rather than in any firmer ground. For it is not usually expedient to make an alteration, even for the better, in the form of a time-honoured and favourite institution, unless the step be taken either under necessity, or with something like general unanimity.

The provision as to composite juries has also been omitted, for if the proposal should find favour hereafter, it can be embodied in a single line, without otherwise disturbing the framework of the Bill as it now stands; but if it were to be introduced in the first instance, and afterwards cut out, this would render many further alterations necessary. The present constitution of a common jury is beyond all possible doubt the result of innovations first made between fifty and sixty years ago, which is but a late and recent date in the long history of trial by jury. If a common jury were required to be what is called "composite," it would then bear a favourable resemblance to its old and proper self, a "good" jury. Still, there is another consideration which has to be reckoned with, although it lies outside the question of the merits of this or that tribunal, namely, that the degenerate form of jury has now prevailed for just so long, that people to-day, knowing of nothing better, mistake it for what it essentially is not, that is to say, the jury approved and

adopted by our forefathers, which was an assemblage of *selected* men, of a substantial condition, such as that of special jurors of the present date. Through this mistake, any scheme for raising common juries to a higher standard than that with which we are familiar, is viewed and denounced as revolutionary. Under the state of things which, though improperly brought about and maintained, exists, the reformation of common juries in the manner proposed would be, no doubt, an experiment; and if, as such, it is disliked or mistrusted by a considerable number of people, any renewed advocacy of composite juries must wait for better times.

In addressing himself to the work which is represented by the following pages, the author has ventured to hope that a careful observation of our system of trial by jury, made under exceptional advantages, might possibly enable him to do a trifling service to the community by throwing a little light on some of the incidents of that system which are not generally well understood, and by offering the best practical suggestions which he could devise for its improvement. The subject is of much interest and importance; but it has been put beyond the reach of popular understanding by the chaotic state of the laws affecting it, and by its own complexity. The very few persons who have made anything like a real and honest attempt to acquaint themselves with the confused mass of Statutes, Rights, Customs, and practices, on which our jury system rests, or who have endeavoured to unravel the tangle which is caused by interlacing jurisdictions, have found to their astonishment and their cost, how laborious and difficult, far beyond all

previous conception, has been the task on which they have adventured.

The present writer is, of course, well acquainted with the recommendation lately made by a Committee of the highest authority that in the civil courts trial by jury shall be restricted to particular cases, and that any verdict which fails to commend itself to the acceptance of the presiding judge shall have even less stability than it would now possess. But the abolition of this form of trial is not suggested, nor can it be thought that we are within a measurable distance of any such proposal; at least certainly not as regards the criminal courts. For what is said by De Lolme appears to be true, namely, that "Trial by jury is that point of their liberty to which the people of England are most thoroughly and universally wedded." Since, therefore, trial by jury must hold its place among the most important institutions of the country, and must exercise a material effect for better or worse on the public welfare and convenience for some indefinite time to come, it would seem to be worth while to put the arrangements for it into as satisfactory a form as they can be made to take.

It may be proper to express some acknowledgment of the very kind and cordial encouragement received from the Lord Chief Justice on his being consulted as to the expediency of preparing a new edition of the Juries Bill. Without this, the work would not have been proceeded with.

January, 1882.

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