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## TRIAL BY JURY:

## THE DARK SIDE OF THE SYSTEM.

## a paper read before the literary INSTITUTION IN 1859.

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JOSEPH BROWN, munle traple.

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# TRIAL BY JURY: THE DARK SIDE OF. THE SYSTEM. 

Tanal by Jury is one of the many English inatitations incorporated in the judicial aystem of this country so far as criminal cases are concerned. How far this institution has successfully worked in this conntry is s questien so complicsted that jurists and lanyers alone can deal with it exhaustively. In the present times of unrest and polition excitement, the working of the jury eystem in sid of administration of criminal justioe in the Presidency High Courts has bulked largely in public view. Like all haman institutions that have reached over to high a stage of development, the institution of trial by jury bas in the past as very often in the present, given rise to strong animadversions, in that in practice, this institntion cannot claim to be a whelly ruccessful and satisfactory factor in the Administration of Justice. Professor Sidgwick in bis wellknown work "Elements of Politics," whilst discussing the merits of the jury system, refers to a rather out-of-date bat very weighty contribation to this question-" The Dark side of Trial by Sury," being a lecture delivered some time in 1859 at the Literary Institation. The discourse came to be delivered consequent on the rejection of Cord Campbell's very moderate messure of reform in trial by jury. Mr. Joseph Browne (of the Middle Temple) who delireved this discourse said "he was conscions of having expressed himself with rehemence on some points but the atrongholds of ancient prejudice were not to be breached by soft words." The text of Mr. Browno's discourse, we beliove, will greatly interest, noombers of the Bench and the Bar, and may induce criticism on Thataver drawbacks or disadvantages in the jury syatem in ladis by the light of Mr. Brownots argumenta:-

The trial by jary is a theme which has moved the tongues as vell as the pens of some of our ablest upeakers and writers. Volumen have been written and spoken on the subject, and yet it appeare to me that only one side of it-the bright side- has been 1-m:-4-1

I propnse to attempt "the dark side" of the picture--a view which I am toe sensible is not so agreable as the other-which may like a photographic portrait, shock our national vanity severely, but may also for that very reason be more useful.
The writere wha have bitherto treated this sabject and particularly the trampeters of the "glorious constitation," have flattered our pride by a strain of anlimited panegrric on this ancient and popular institation. Thus the commentator Blackstone who may serve as an example of the rest, has spent a dong chapter in explaining "the various machinery and sppendages of this institation" : like some enthnsisatio antiqnary exhibiting \$ precion retic of ancient art, he haa taken pains to put it in ithe best possible light, has pointed out all its beauties to notice, and has dwelt with raptare on overy minute charm imperceptible to the eye of any but s: connoissebr. Aftor samming up its numerous exuellenoies, he declares the trial by jury to be the palladinm of British liberty, the glory of the English Law, and the most transcendent privilege which any sabject can onjoy or wish for. (Boatr iii. 379.)

Snch is the language to which we have been long 'secustomed, and one feels guilty of impeaching the wisdom of our ancestors, affonting the sages of the I 3 w, and profaning the maysteriea of the constitation in renturing to question the excellence and erpose the weakness of an institution which has received the suffrages of so many great and venerable men, and has stood the revolutions of so many ages. It is Uzzah toaching the Ark.of the Covenant.

But the age bas no right to cast this reproach. It is an afg whose priscipal business hat been to pall down the institations of our forefathers, and build upbetter. It in an age of law reform-an age of naivereal chaug-the transition period of our history.
$\therefore$ At this present time, (a) by recent Acto of Parlisment the triul by jury in actually abolished in pasctice in binety-aine out of every bandred canses tried in the county courts, and it would appear as if the saitora had pronouncod against it sidce they have the option of adopting it in all casees and yet choose is ouly in one of a hundred. I trast therelore I may without offence renture apon this daring enquiry. It is a bighly nefal exercise, and ono sometimes preguant with anoxpectod discoveries, to forget for at time if posible that we are Englishmen, and tarn

[^0]as it were a atranger's ejo on those ational cautomir or institations which we have never heard spoken of exvept in the language of panegyric, and which therefore we have never anbjected to the ordeal of impartial investigation. It is by the exercise of this habit only, that the reflective man cas rise saperior to the prejudicea of hia age snd dation, and march with the van in that great career of hnowledge and improvement whioh distingaishes the present period. Aod after all, if the trial by jury be really deserving: of the praisea which have beon lavished upen it, it cean have nothing to faar from the fullest inveetigation, but will rather come out from the ordeal with renawed lastre and more oonvincing claima to our admiration, than when we took apon trust all that had been said in its favour.
The importance of the inquiry is too obvious to need illustration. Neither do I propose to enter. Inte the history of the anbject any further than may be auxiliary to the main purpose of my inqniries. which ane directed to ascertain' "how far this tribunali is suited to the wants of the present age," rather than the time and the manner in which it eprung ap and grew to its present shape (b).
Tte time has at length arrived when "the trial by jury" must "itself" be "ried." I arraign it at the bar of pubico opinion. I accuse it of incapacity of igoo* rance, of pariality of cumbersomenes, of barbariam. These ate the counts of the indictment which I am. about to open.

1. The firstand foremost ebarge is the "want of previous qualificstion " for their functions, under -bieb jarymen necessarily labour.
And here at the outset it becomes absolutely necessary to diatinguish between the "different sorts of juriea, ${ }^{n}$ in order to guard myeelf agaimet risapprohonsion.
The fertile womb of the law has brought forth such a litter of jories that their mother has not named for them all. Phey can only be compared to tho numberless tribes of dogs, all differing in coloar size and ahape but as tho naturaliste say, all of one species. There is the common jury and the apecial jary the grand jury and the petty jury, the eoroner's jary and the aheriffs jury, the compensation jury and the annoyance jary, the ward jury and the leet jury, the jury of matronsand the jury of aleconners, and nobody kowa bow many more besidea.
[^1]These juries as might be expected, diffor from one another as widely in point of education and intolligence an they do in or station, or in the importance of the matters they have to deal with. The observations which are perfectly true of a aheriff's jury may be wholly inapplicable to a grand jury. Some juries are composed of men as enlightened, as free from prejudice, as ased to debate, as sompetent to deal with a difficult question as these whom I have the honour to addres-as if this were always the case, fer of the objections which Iam abont to urge would have any application. The nearest approach perhaps in practice to the bean ides of 8 jury, is to be fourd in the special jurien of London. No testimony is needed to their great intelligence, knowledge of the world, and practioal asgacity; but unfortunately they try but a very amall minority of the causea which the courta bave to dispose of. "Speeial juriea" "indeed are entirely a modern innovation. Until the present century they were raraly heard of except in great mersantile causes ; and teren at the present day they are only adopted in caasea of some importance, as the ordinary cases will not bear the expense of a special jury (c).

The common jury therefore continues, and must of necessity continue, to be that which digpobes of nine-teatha of the trials civil and criminal, which occapy the courts of law ; and it is of this jury that I have chiefy to speak.
It has certainly always struek my mind that thero was a remarkable contrast between the mode of procedure adopted by oar countrymen in relation to their legal disputes, and that which they follow in the ordinary sfiairs of life, If a man wanta a pair of shoeas made, nobody shail setve him but one who has undergone a regular apprenticeship to the trade and has practised it for years. If a man breaks hia leg, he neret thinks of trusting his precions linab to the hande of any but an experienced surgeon, who has spent half a lifo in the exarcise of hie profession. If he happens to be involved in a difficult question of law, he will take the adrice of none but oue who has grown grey in the atudy of reporta and statuten ; and yet with all thit, if his property, hin repatation, his liberty, or his lifo is at atake on a dispated queation of fact, he will-may he manst intrust it to the voice of twelve men, not one of whom may have ever enterad a court before, not a creature of thom may have ever erparienced the arta of debate or the cabtititiee
(c) The oces of a apecial jary way very lately abzat E22, and of a common jury not above L2.
of counsel, nor have balanced the doubtful evidence of opposite witnesses, nor have been called to the decision of any dispute more important than the quarrels of his children, or the discussions of the potbouse. As Numa wat taken from the plough to the sceptre, so at the summons of the law our jurymen quit their shops for the courts of justice ; they march straight from the weighing of candles to the weighing of testimony : -from the measuring of tape to the measuring out of fate ;--from dealing in bacon and cheese to dealing with the lives, properties and liberties of men. Verily we are a wise people, whose Commonalty poseess by intoition the faculty which costa a lawyer many years to acquire,-many long years of laborious atudy and practice, - the facolty of bearing without being deluded by sophistry and eloquence, of catching and connecting as it flies the broken and dipjointed evidence of numerous and contradictory witnesses; of selecting what is material, and rejecting what is irrelevant, of eifting the wheat from the cbaff, the substantial from the seeming, and extracting the kernel of truth from the misshapen havk of errort in which it is enveloped. The Greeks fabled that the Goddess of Wisdom sprang fully armed and grown from the head of Zeus. The English seriously believe that judicial wisdom springs forth mature from every tradesman's head. This is a fit article of faith for a dation of shopkeepers.
But serionsly, how is this 7 Is it because it require long study and practice to make a boot, or to set 2 broken limb, or to solve a question of learning but none to trya cause. (d) No! The case admita of a much more rational aolution than this; and the whole proeeding bears the unmistakable feature of primitive simplicity and ancient rudeness. The time was when the tranaactions of men were imple, and their manners were the same-when the jury wore the neighbours of the parties and the witnesses of the facts, when their functions consisted in deciding the canse from their own personal knowledge of the litigants and the facts in dispute more than from any evidence offered to them, when fired and refined rules of law extending to every predicament had no existence, and when the jary pronounced no more than a sort of general opinion, that one party bad more right to hold than the other had to domand $a$ house of a field.
(d) A patent cause for exumple, with thirty Fibeeseas practical and scientific on each side. The last in which I was concervied ocoupied sir days, and the jury had the good sense to declare that they thought bomr better cuibunal cogtt to be provided to doil with srchecesea,

In times.like these the practice of summoning juries took its rise, and to such a state of things it might be well enough adapted. But now how different are our transactions, our laws, our manners and customs-everything, except our jaries! The barber no longer bleeds us, and the grocer has ceased to deal in physic, yet the bttcher and the baker continue to try our causes; and we consider this the periection of wisdom and policy!

One single circumstance without more, demonstrates as I conceive, an incurable incapacity in most common juries to perform their funotions in a proper manner. Is is shortly this:-they are not on a level with the advocates who address them. I do not mean in point of wealth or station in bociety, bat in point of edncation, intelleot, schooled habits of reasoning and forensic experience, It is of no avail to assert that there are very clever and well-informed men behind the connter, who might have made adrocates themeolves, We have to do with the rule and not with the exceptions. The leading advocates at Nisi Prius are picked men, eminent for their native talent, or for legal and general acquirements men whose natural abilitien have been proved and sharpened in a thousand contests, and whose powers are testifiod by their having fought their way to the front rank of that army of intellental gladia-tors-the Bar of England. And whom have they to deal with 1 I speak now of most common jaries. How often do they consist of men whose studies bave been confived to their order-booky and ledgers, whose minds have only been exercised in driving bargains and providing for thair payments, who have taken part in no debates but those of the slehouse and clab room, and whose discernment has been chiefly practised in finding out whetber Mr. Smith or Mr. Jonen was to be trusted 1 These are the "duodecim probos et legales homines," the "Judiees facti," the favourites of the Lav.

Here is ignorance met to jodge of learaing, inexperience to deal with consumate art, and very often rustic solidity to contend with the most refined talent. What msn is there I ask, who has been a suitor himself and has bad his ease tried by a comatry jury, what plaintiff or defendant is there who bai not trembled for his canse however jush, as be heard his evidence breaking dowa and bis caee charging Jites diseolving riew under the delasive address of the opposing connsel, and reflected on the quality of the mon by whose discerneoent he must stand or fill!

No this is exactly reversing the nataral, the dosirable order of things. Instead of the adrocate being saperior to the jadge, the jadge ought to be above the adrocsta. (e). Though this is the most obvious of truisms, yet it sounds like a discovery, because our practice is jast the contrary. When such a phenomenon occars on the Bench,-when the judge is anequal to copo with the superior facaltiea of a greast adrocate, the oril is felt and lamented by the whele profesion of the law. Bat any disproportion which may have over existed between a judge and an adrocate is a trifle to what perpetsally occurs between , the counsel and the jury; and the scene which happens at ev. ry coantry essize would only be paralleled by setting Col. Rawlinson and Dr. Hinckes to dispute the meaning of the cunciform inseriptions before the jodges of a ploughing-match.

A little experience of the coarts will be safficient to convince any impartial observer that even the want of acquaintances with the law and practice of the coarta which is attribatable to all jaries (the lawyers being exempt from serving), is a very frequent cause of the most serions mistakes. The dofendant's counsel omits to ask a witness as to a conversation, or to put in a particular lettor. The jury find against him for that reason, not being aware that the evidence wan inadmiasible by law. Many a canse has been lost by an injudiciena plea having been pat on the reeord, bat which the jury would hare attached no weight to, had they knowi anything of apecial pleading. Thare mas a case lately and the like has often oceurred, in which 2 jury dispoted for nearly twenty four hours about the amoant of their verdict, intending that it chould not carry coosts, and at last gave the plaintiff only a shilling damages with that intention, being ignorant all the while that damges to the amoant of a peany would entitle him to the whole costa of the motion.

The counsed for the partien are constantly obliged to explain the taw to the jury, in order to give them correct idess of the beasing and effect of the factan; bat the jury naturully diatrant the otatementes of counsel, and as the judge often umita to notico What every lowje takee for common learning, the unlestned jary make grievous errors where lav and tact are interroven in the verdict,
(e) The very name of "judge "inporta it. Whes we my such a percon ine judge of a thing, we srean thet to poseceice euperior knowledge, experienoe, and disouramelth.

The "glorious uncertainty of the law" has been the boast of many a lacky rogre who has slipped throngh the jailor's fingers ; but low have been eonscions how litule of it. was owing to the law itsell, and how much to the glorious igqorance and unoertainty of juries, Let a man only withbold a just claim from his creditor, encroach on the property of another, or do violence to his person, and he will soon discores to his cost that thete is very little ancertainty in the dealing* of the law with him: it is when the result of $:$ eanse depends on the uncontrolled diseretion of 2 jury that the reiga of chance beging, avd let the law be never so clear, it is often the tons of a die whether the plaintiff or defendant wins. The most trivial circumstance having the least possible connection with the morits of the case, the lacky chance of the defendant's connsel getting the last word, the plaintiffs being anpopular or bis attorney too sharp, the defendant's having an acquaintance on the jury, the miscondact of one witness or the omissson to call another, or twents other things of as little real weight may turn the sesle, and thus the verdict often belies the predictions of the most magacious lavjer.
We shall of cearse be told that though jaries of themselves would neither comprehend the law nor the facts of half the eases which come hefore them, jet with the sid of the judge they are perfeetly able to do so. The extent and value of the jadge's ascistance it is indeed impossible to overrate, and without it there can be no doubt that the trial by jary would have been wholly unendar able, and would long ago have shared the fate of trial by battle, the wager of law, and other barbarous contrivances: but what 1 mairtain is this, that the judge does a grest deal too mach for the jory to have the eredit of doing anything ; in point of fset, that they generally do little more than find a verdict which ho bas al:eeady suigested to them, and that when they do take upon themselvee to find cootrary to his opinion, the court will most commonly set aside the verdict, and order a new trial, with the axception indeed of certsin doabtfal or trifing actions in which it ir convidered a merey to the parties to atop farther bitigation. (a).
(a) It in a rale in the Consts not fograat new triale for the mistakes of the jurg, where the amoont of the verdict in ander $£ 20$ in the mperior Ccutth, or under es in the Sterif.'Coart

But if the aid of the judge be so necessary that the jury cannot move without him, and if the courts declare that they are not fit to go alone, that they go mrong the moment they presume. to differ from his opinion, and that a "perrerso rerdiet" as it is technically called cannot be allowed to atand, where is the ass of troubling the jary for their opinion 1

The strongest of all possible decisions that juries in general sre unqualified to digcbarge the functions nominally entrusted to them, is to be found in the fact that the courta will hardly suffer them to have an opinion of their own in opposition to that of the jadge. (b)
2. "Impartiality" has usually been reckoned among the distingnishing excellencies of juries of even an that particalar feature in which they exceiled every other tribanal ; and it is matisfactory to think that in most cases this praise it well desecred. Yet on the other hand it in cerrain that there are some claseen of casen to which this observation is wholly inapplicable, and wome in which the partiality of juriew constitutes their greatest merit. Such is the case, for instance, with the whole class of trials for political offences, in which the cardinal merit of jariea has consisted in their leaning to the popular bide. And until the lave of the land are anch in overy respect that all good cilizens mast wish to zee them enforced to the letter, I am far from wishing to do away with the protection that liberty baa derived from this caase ; bat what is to be seid in extonastion of the prejudice and partiality of juries in cesea where no poor man in to be protected againgt the oppression of the powerful, and no common rights aro to be vindicated againat prerogativo of
What chance hata defendant of fair play from a jury where national or religious prejudice envelopen the case ? Doen any one believe that the verdict in the prosecation of Dr. Achilli ggainst $\mathrm{Dr}_{r}$. Newmave would have been given by a jery of Roman Catholics 1 How long in it aince an lrish jary found a verdict of vilfal wurder against Lond John Knesell, becanse a poor men had fallen a rictim to a national lamine ; or refused to conviet the notorioun Pbornix conspiratori at Tralee 1 In many parts of Ireland, it is eext to im possible to get a conviction of the

[^2]assassins who execule the dark and bloody decrees of Whiteboys and Ribbonmen. On the other hand, when popular feeling is strongly excited against the acensed, the jary becomes a blind instrament of vengeance. Every one of the Jndicial marders and confiscations committed under Charles II., was committed by means of a jury. Look again at civil canses,-what chance has a railway company at this moment of defending successfnlly any claim which arises ont of an accident on their line ? (c) Certain classes of litigants are half-besten by their name and occupation before they come into court. Common juries and sheriffs, juries generally look apon an honest lawyer as quite a black swan. Their creed is that no attorney orght to go to law himself,-that apothecaries' bills must be taxed,-that candidates at election nust pay all demands that may be sent in to them, -that bill-discounters are rogues, and the tike.
All their partialities are sared up for brother chips, for carpenters, builders, tailors, shoemakery, and such like innocents, who are booked to win the moment they enter the course with a geatleman to contest the reasonableness of their bills or his liability to pay. I have very rarely seen an instance ci a geotleman successfully resisting the demand of a tradesman on the ground of exnrbitancy.

There are certain species of unpopular actions also in which the plaidiff stands so little chance of success, however plain his evidence may be, that the odds are three to one against him. Such for instance are all actions by common informers, proceed. iogs on the gyme laws, tithe canses, aetions fo: penalties, forfeitures and the like. (d) Neither can it be eaid that partiality is the sin of common juries ooly. There is a class of actions which are occasionally brought against country justices of the peace, for some of the eccentric freaks committed by
(a) Common jories seem anable to distingaish between the importanities of compassion and the demanils of justice. A poor min who runs againtt n cart, and ge's hia leg brokeo by his own negleat, nuually obtains a rerdict ag inst the owner, eapecially it he is weatthy. If the man is killed and bis midow sues, the defence is Jet more bopeless.
(d) Lord Kenyin once triel an astion for a penalty for thoosting gum withont a licence. The ease was cteir, and the defendant's conneel was bard pressed. At lenyt h, "Gentemea," said be, "it's trua thep hape iworn $t$ 'at my cliert fired at the bird, that it fell doad ard that ke buged it. It is of no use thdens that. But how does it appeat that thie bird wat killed br the ahor:" Wiat proof is there that it did at die of the frigh?" Tee jury were conviace 1 by th's intraiuws agment, ast found a ver lice for the deterumat.
them in their magisterial capacity. Wheneror any conatry justice is anlacky enough to tranggrest the law, or turn it into an engine of opprestion and wrong, and tome village attorney is found bold oncugh to incur his worahip's aternal wrath by taking np and vidicating the canse of the sufferer, the justics "par excellenee" bas only to wee that his canse is tried by aspecial jury in order to secure the most liberal measure of indulgence that a sinner conld wish. A country gentleman has grest bowela of mercy for the sins of a brother justice and aportsman, recollecting that himeelf is no Solomon perhapa, and may some day need a good turn of the bame kind. "Veniam damus petimusque viciasim," is their motto, and thas it bsppens that the victim of illegal proceedings who would obtain $£ 100$ damages frona a common jury will get a shilling or nothing from a special oue.
To take another instance which eomes neares home -who can read the reports of insurance csases, without astonishment. An action is bronght on a life pollicy against an insurance office. The defendanti plead that the policy was agreed to be void if they were deceived as to tha habitu of the insared, and that in trath be was an habitual drunkard, aflicted with delirium tremens, which fact was purposely concealed from them. They call a dozen witnesbes, obtained with the atmost difficulty out of the enamy'a camp, some of them friends and servants of the defunct, but all ooncurring in the fact in diaputo. The plaintiff calls a fer others who ewear that they did not seo the party habitually drunk, just as the shoep-stealer said he bad a dozen witnessea who would swear that they did notsee bim steal the sheep. It also appears that the man died of deliriam tremens a fer months after the date of the policy. The judge sums up ell in favour of the defencesad it seerns a gone cass, when to the astonishment of sll bat the lawyers, the jary $\mathrm{g}_{\mathrm{o}}$. through the form of a consaltation, sad then return s rerdict in favour of the claim. "Heaven and sarth, do I bear right ${ }^{\prime \prime}$ exclaime an unsophisticated atrangep. "Oh my good sir," says one in the uecrot, "you don't understand,--half the jury bave got policies on their own lives.
For my own part, I canaot read without diggust and indigastion the inuranoe trisle. By this time the offices have nearly learnt the loseon that juries have endearoured to teach them, that they maut neves content a policy which they have once effected, by whaterea fraud thoy may bavo been drawn into it.
3. What great and mysterious advantages are concealed in "the sacred number twelve"? "It seemth to me," says SirEdwardCoke, "that the law delighteth herself in the number of twelve, for there must not only be twelve jorors for the trial of matters of fact, but twelve judges of ancient time for trial of matter of law. Also for matters of state there were in ancint time twelve counsellors of state. And that number of twelve is much respected in holy writ, as twelve Apostles, twelve stones, twelve tribes," etc.

Yet the law has not been constant in its attachment to this favourite number, for a grand jury may consist of twenty-tbree, and no may a coroner's jury. In a grand assize the number was sixteen, in an attaint twenty-four, and the twelve judges have now increased to fiftean.

If the reason assigned by my Lord Coke be the true one which induced our ancestors to fix on this as the number of a jury, it sarours abundantly of the superstition and credulity of the times in which it had its birth, bat makes it so much the more doubtful whether it was ewer adapted to constitute the most satisfactory tribunal, or to meet the convenience of the people. Sapposing for a moment that a jury of three or five men would be just as competent to try a canse as one of twelve, the smaller number would be preferable to the larger, if it were only on account of the great inconvenience inflicted on men in business by the perpetual and vexations summonses of the Sheriff. In order to anpply the requisite number of jurymen the Sheriff is compelled by law to summon not twelve only, bat forty-eight at the least and of en seventy-two; and these although they have no earthly concern with the canses to be tried, are obliged under pain of a smart fine to attend the courtu for days and sometimes for weaks together, to the entire neglect of their business however urgent it may be, and without any species of compensation that deserves the name. I speak now of the common jury. Not a functionary in the court gives his services for nothing except the juryman. The jadge has a splendid walarp, the counsel an adequate fee, the attornay bas the costa of the trial. the witnesses have their expenses, the very crier of the court spends not his breath in bawling "silence" for nought: the juryman is the only one in the Whole company of performers who has no reward fis his services. No reward did I sayl-I bad almost oorrlooked the coin:if he is on a Sherifle jury be has no less than a great of good and lawful money of Great Pritain. And i! on a ommon jury he has actailly eightpance: The law wlues his services at the hire of a preter and gives bimenoagh
to get pot of beer or a glass of grog. And for this he must forsake his most argent affairs to give his time and atttention to the disputes of strangers ! What wonder that they should be on the fidget to get away to their shops and their farms. What wonder that they shnuld despatch the business of the verdict like a grace before dinner. What wonder that thoy will cut the knot rather than take the pains to untic it, and astonish the spectator by jumping to a conclusion in five minates apon evidence which Parke or a Tindal would take dzys to consider (c).

But to retura to the great number who are summoned: another evil is that in many counties it is impnssible to get a special jury together, as instead of twelve it generally happens that not more than four or five will attend, and sometimes none at all inasmuch as the apecial jurymen, for the sake of escaping the fatigues of the jury box can afford to despise the fined imposed by the judge. The con" seguence is, that causes of great magnitnde and importance are tried by tales-men, who are much better qualified to judge of the breed of a bull, or the weight of a prize pig, than of the arguments of counsel.

Dut these are not the only evila arising from Lord Coke's favourite number; a greator remains to be mentioned, namely, the destruction of all responsibulity for the verdict

If you have but one judge to decide a canse, he knewa that the shame of a blundering or a partial decision resta solely npon him, and the consciousness of this habitually exercises a salutary influence on his conduct. It restrains him from any gross carolessness or manifest partiality if it does no more, and is case on which public sttention is concentrated, it produces all that scrupulous impsrtiality and careful consideration Which may be witnessed every day on the beach. If you have eren three or four judgea the infiuence of the same motives is very sensible so long as each delivers - separate judgment and gives; publicly bis reasons for it. But the responsibility that is shared among twelve is diminished to nothing, above sll when their deliberations are secret, and the result only is published,

When a man enters a jury-box he knows there are eleven otber mon there who are bound to find a vordict as much an himself. Why should hecudgel his brains about the esse it be finds it beyond his sphere?

Perhaps his thoughts are in bis shop, where he nees the pleasing rision of his apprentices playing at cards ; or he is contriving how to take up Mr. Jones's bill ; or wondering whetber Sanders means to pay: pertaps he is simply unable to understand the case ; the witnesses are so contradictory, the case so dall and the oridence so long and tiresome; Sergeant Wiles is so deep, and Connsellor Bellow so fierce, that he gives it up as a bad job, and leavea it to the others to find a way out of the maze, for he in completely obfuscated. Imagine each of the chosen twelve to be relying in this way on the others, and you may conceive how a troublesonie or dificult case will be disposed of, when every man of them knows that his shirking will be a secret to all the world but his brother jirors, sad very often even to them-in short, that he has only to say ditto to the opinion of the majority in order to pass muster. All these evils arising from the present number required to form a jary, would obriously be much diminished by reducing it to five or three. The time of our merchants and traders would be assed, canses would not go off for want of special jurors, and every jaror would be urged by increased responsibility to give increased attention to the evidence and the verdich.
"Responsibility" I said, but the word is an empty sonad as applied to a jury. There is no practical responsibility impending over them, however gross their misconduct may be. I am, aware that in legal theory a joryman might be fined for gross misconduct, such as spinning a tee-totum for the verdict-bat nobody over heard of a jurymana being called to account since the days of Charlee II., when it was decided to be unlawful to fine a jury for a perverse verdict. This is a wide departure from the practice of our ancestors, the eame who invented this trial. They bad provided a most formidable engine to terrify the weak or distoneet jaror from departiog from the line of his duty. "Attincta," nays wy lord Coke, "is a writ that lieth when a false verdict is given; for if the petty jory be attainted of a false oath, they aro atained with perjury, and become infamons for ever ; for the jodzment of the common lav in the attaint, importech eight great and grievous panishments. I. Qood amittant liberam legem in perpetuam ; that is, he shall be so infamuas as be shall never beroceired to be a witness or of any jury. 2. Qaod terro et tenementa in manua dumini regis capiantar. 4. Qpod uxores et liberi extra domus scas ejicerentar. 5 Quod domns saie prostrentur. B. Qaod arbores sumextirpmator. 7. Quod prata suie arentar. It 8. Qaod corpora sua carceri mancipentur, So culivas
is perjury in this case in the eye of the common law; and the eeveity of this punishment is to this end: ut "prena" ad paucos., "metus" ad omnes perveniet, for there is misericordia paniens, and there is crudelitas parcens. And seeing all tryalls of reall personall and mixt actions depend apon the oath of twelve men, prudent satiquity inflicted a strange and aevere panisbment upon them if they were attainted of perjury."
Really there is something quite refreshing in this passag. It has the genuine salt and savour of the olden time. It exhibits a true picture of the people who founded the jury syatem. This formidable contrivance for keeping jurore in order having beea long obsolete and lately abolished, they may now do just as they please without fear of consequencen or erea of exposare, for it is their own fault if any body knows the secrets of the jurybox, or is able to fix a charge on any individual juror. If the judge were to pay no attention to the caase, he would expose bimself before the counsel and the parties; if he were to exhibit any grosa or unfair leaning to one side, he would be cried down by the newspapers ; if he tossed up st shilling for bis decision, he would be dismissed from his office: but all these things "may be done," "have been" done, are practised "at this day" by juries, with the most perfect impunity. "Such" ia their reeponsibility and such it will continue while they are constityted, as at present.
4. The "unanimity" exacted from jarymen is one of the most obrious of all objections to out present system, and though it be the easiest to remove, no attempt to do so is made, buch is the invincible force of custom. Yet one would suppose that the ebjections arged against it were mach too plain snd too weighty to be either gainssid or resisted.
In the frist place it has not oven the sanction of antiquity. In the time of Etheired, the law was that in a jury of twelve the verdict of eight should prevsil, as Lambard showe in his Eirenarcta. And it appears from Bracton and Fleta, two of the most ancient of our lav books, (a) that in the tixe of Henry III. when the jury could not agree, the practice was lor the judye to order others to bo added to them until twelve out of the entire number conld be got to concur in a verdict. But in the reign of Edward I. the judge exercised the option of doing this, of of compeling the original twaive to sgree by starring them into it. And Darrington

[^3](20) observes that as it was probably found that when new jururs were added, there was the tronble of trying the causo over s second time at last for the greater despatch of business they insisted in all cases on the unanimity of the original jary. And Mr. Evelyn has shown in his notes ( 1 ) to Lord Hale's Pleas of the Crown that one time when the jury differed in opinion, the verdict of the majority was followed. Even our modern law is not consistent in this respect for in grand juries and coroner's juries a majority of roices decides the question provided the majority to not less than twelre in number. In Scotland, criminals are tried by a jury of fifteen according to an ancient custom and a majority of one voice is enough to hang a man. If a difference of opinion arises among the judges, a bare najority determines the indgment; and a balance of one or two voices in the Exchequer Chamber and the House of Lords has disposed of not a fer lives and estates. A majarity of twentythree to six aquitted Warren Hastings, and a majority of only one voice liberated the Liberator from prison.

If we try the practice of requiring ubanimity from a jury by reason and exper:ence, it will appear not less repugoant to theee than to the most ancient usages of other nations and of our own.
It needs littlo observation to discover that the minds of men are as ratious as their laces, and that this variety whether it arises from nature or education or both, is as certain to prodnce s diference in their views of the same subject, as if every man saw it through a differently coloured pair of spectacles. Nothing is more common than to find men differing upon the mere objects of the senses. But when we come to things which are visible only to the mindivere, and are not to be determined by a foot rule or a bushel measure; when we bave to deal with motives and intentions, with the credibility of testimony, with conflicting probabilities, and inferences from evidence we tave bid farewell to all unison of opinion, we bave arrived in the very regions of doabt and disagreement.

Nuw the questions which juries have to dispose of are the most donbeful dificult and complirited, which can arise fr:m the refinement and complexity of men's tranasctions in an advanced stage of unciety. They are ridules which wonld have poriled G.dipus and the Sphinxtco. And as if they were not ufficiently knots of themelvea, the mictake, suppressiuns and misfcpresenticions of wineaer
(i) Vil. ii. p. : 97, a. c,
combine to reoder them still more intricate and perplexing
In these circumstances it would be contrary to all experience, if a real unanimity of opinion existed in the vast number of cases in which juries pretend to find ananimous verdicts,-it would be a lie against nature, and nothing short of a miracle. Our ancestora who contrived this scheme for solving the riddles of the law knew well enough for experience soon taught them, that to take the free and unforced opinions of each of the jury and expect them to the unsnimous, would be childiah folly,--hence they found a contrivance exsetly suited to the genius of the age for extorting that agreement which they were determined to have. If the head of a juror was impenetrable his stomach was made of softer atuff. The ancients indeed or come of them, conceived that organ to be the seat of reason, but I never heard of any people who made so direct and forcible an appeal to it as our forefathers. Those were the days of ananimity and uniformity. If a man ventured to dissent from his fellow-catholics he was burned,-it he wonld not agrees with his brother jurors, they were all ptarred together, consenters and dissenters. The old writ "de heretico comburendo" bas been long obsolete, but the starving of jurors still astonishes the nineteenth centary and raisen the laughter of Earope. It is true it is never carried to the point of actually killing a jurs man outright. The judgo has a discretion by the modern practice of remitting the torture when it is approaching the killing poist.' As in the dungeons of the Inquisition a surgenn always stood by and telt the palse of the victim, when his agonised frame was breaking. to see that his anferings were not pasbed too far for nature to endure, no the judge in an Eoglish court of lav in the nineteenth century, 一" the jodge of that law Which boasts the attribute of mercy,"-plays the aurgeon to the unhappy jurymen who are gailty of the heineun crime of differing in opinion from their fellows, and only remits the torture of faming when a jurymas's life is in davger. It is a "degradation" to follow a system which clings to so insufferable a piece of barbarism, and which after having abolished the torture of prieoners and criminals, iofficts it on jurgmen. "Not one joy more revolting or absard would it be if the jurors were tied up to $\triangle$ post and flogred till they agreed." Yet monstrons as it in, it cannot be dispensed with so long as uns nimity is exceted. The one monstrosity begets the otber. Doamsy with atarying system and yor will no longer have nnanimous verdicts. Is this coneequence to alarming that any extremity is to be
endared frrst? Shall the most diffeult questions of property and liberty be decided by a cimple majorIty of the judges? Shall the questions of peace or war and the fandamental laws of the king. dom, be decided by majority of the Honse of Commons; and are you afraid to entrust questions of mere debta, trexpasses and slanders to the majority of a jury? Shall the principle of a tmajority be decisive in all assemblies of men, is your companies, your isstitutions, your public meettings, your elections, your vestries, your corporations, your courts, your parliaments,--verywhere bat in your juriesl. "Behold the amazing force of eustom ${ }^{\prime \prime}$ " Had this starved unanimity never existed in this country before, were it now to be introduced for the first time, all England would cry out sgainst it as piece of Gothic barbarisu, as a violation of nature, as a contradiction to sll our other institutiong, as a diggrace to the age. But beoanse it has been in use lot centaries, it is submitted to by all, defended by very many, and cried up by some as tho perfection of policy. After this I cease to wonder that the Chinese make their women's feet Into goat's hoofs, or that the wise Egyptains worshipped crocodiles. I bave no right to be setonished that the Spartans wbippod their children to deasth at the allar of Artemis, or that the old Romanc allowed the creditor to slay his debtor like a sheep; for "I see every day in our own courte, a spectacle oufficient to remind me that custom exerts a dominion " over mankind it every age and in every country, against "which reason in rain rebela, and hamsnity pleads in vain."
The truth is that "this starred unanimity of jories, is one of the unmistakable features of barbarismr Which betray the "barbarons age in which the jury eystem arose." The people who derised it had no books, and no notrupapers, no letters, no post-office, no coachee: they beat their wives and wold their children for llaves; they amased themselves by baittog balla and bears, and thrsahing hens at Shrovetide; they drowned old women as witches and massacred Jewr for their wealth; they were a people whose lasguage would be hardly intelligibla to us, Whose costume would be oatlandish snd whose msonert bratal. In everything bat blood, they were fat more foreigwera to an, than the present fahabitanta of Vienna or Moscow. Theee were the suthort of oux jary aystem.
I bave consamed so mach epace in exhibiting the canses which reader the verdicta of jorien unsatisfactory, that I can only take a rapid glance at the eril consequencen which nectesarily fow from them,

The first is that certain classes of men have ne confidence in the administration of jestice. They do not believe that they are fairly dealt by in the jury-box.

No insurer resisting a life policy, no great company resistivg a claim for an accident, ne lawyer or docter suing for his bill, no gentlemsn contesting the charges of a tradesman, no landlord aning for a forfeiture, no person who has rendered himself by any mesna unpopalar, ean safely depend on the impartiality of a jury. The fact in familiar to every laryer and calculated on beforehand. Nay, oven a merchant of London suing a trader of a country town is not gafe in a disputed case with as. jury of that town. In parts of Wales, a Welsh jury can hardly be got to de justice to an Eoglishmasi against a. Welshman. This is not an ahould be. The judges of the fact ought to be as moch abeve suspicion as the judges of the law.
Another consequence is the disgraceful seenes which constantly occur in the jury-room, and even in open courth .What can be more scandalous to the administration of justice than the disclosures which frequently take place of the secrets of the jury-room i It would be easy to produce a score of ceses out of the law reports, many of them recenth, in which it has been proved that the jary tosed up or drew lota for the verdict; and thero was a case at Peterborough in which they settled their dispute by balancing a poker, the fall of which to the right hand decided the gailt of the accused; and it has cometimes occurred that one obstinate fellow with a mule's hesd and a camel's stomach has atarred the other eleven into a verdict against their convietions and their oaths. Still more frequent are the cases in which the "mosp monstrons comepromises have been made between the conflicting opinions of the discordant twelve. To illustrate what I mean, take a late case in which a defendant was aned for pablishing sn anonymous letter containing the vilest charges against the plaintif. If the defendant was the anthor of it the case called fcr the severest damages, and the only dispute vas whether he wan the writer or not. The jary found for the plaintiff, bat astonished avarybody by giving odly a shilling damages. The secret was that some of them thought the deferdant was not the writer at all, and only consented to give way to the reet on condition that the damagee should be reduced to nothing. So conecions indeed are the judgen of the scandal that would result from the disclesare of what passer between the jory, that they have done all tbey can to prerent the curtain from being
drawn, and to shat out the public oye from the interior of the jury-room. When dew trials have been moved for and sapported by affidsvits of jurymen that they had tossed up for the verdict, the Court have laid down a rule that they will not hear such affidavita (a). Now as ne one is allowed to enter the jury room but the officer of the Court. and he only to ask if they are agreed, the effoct of this rule in that the Court will hear nothing of what passes within that sanctum. What does this amount to but a practical deelaration that the behaviour of juries when retired from the pablic eye will not bear the light 1 Nor is the ignorance or abeardity of naeducated juriss confined to their private room-but is frequently displayed in open court by the most farcical verdicta. (iot long since in the Sheniff's court when the usual question was put "For whom do you find $7^{\prime \prime}$ "the reply was "We are magnanimons for the plaintiff." And only the other day on a woman indieted for reeping a disorderly house, the verdict waa "Not guilty, but we hope she won't do it again." There is hardly an assize which would not furnish a ehapter for "Punch."

Another evil, and a very great one, is the exclusion by law of certain kinds of evidence, becanse, as the phrase is in our law books, it would have too much influence with a jury. Thos antil recently the tastimony of the parties and all persona who had any legal interest in the auccess or failure of the action was excluded. On the asme principle What is called "hearsay evidence" is with fevt exceptions rejected br our lat. "If it were to be assumed that one long inured to judicial habitg might be able to assign to harasy evidence just so much and no more credit than it deserved, yet upon the minds of the jury, anskilled in the natare of jadicial proofs, evidence of this kiod would frepuently make an erroneone impression. Deing accustomed in the common concorns of life to act on hoarsay sud reporth they wonld naturally be inclined to give nach credit when acting judicially ; they would be unable to reduce guch evidence to its proper standard when placed in compettion with more certain and satisfactory evidence ; they Would be apt to forget how little zeliance ought to be placed apon evidence which may be so easily and recarely fabricated (b)."
(a) *See obserrations of Berons Parke and Adersons in "Burgen V. Labgley," 1 Dowling $\pm$ Lownder, 23 ,
(b) Sarkie on " Eridence," p. 38, an

So when man is tried for felong who ham been before convicted of a similar crime, the lsw will not allow the jury to know of his former conviction antil they have found him guilty of the preeent charga ( $6 \& 7 \mathrm{~W} .4,0,111$ ), becange they would attach too much weight to it. This is the resson openly stated in the books. Now in exclading these and several other branches of eridence, the law juat shate ap so many ways of arriving at the trath; not because they would not be of the greatest asrvice in the hands of a thoroughly qualified and practived jodge, but because the raw and idexperienced dozen of farmers or petty tradesmen do not know how to deal with thom, In handreds of easen it thus bappona that the only avenues to the truth are closed. It is an every day aflair for the knowledge of a losn, or a eontract, or an essantial. fact in a cause, to be confined to a solitary witness sinco dead, but who has written an account of the t ansaction while fresh in his memory, 'ante litem motsm;' and who was open to no suspicion. Yet in no such case is the evidence admisible, though there be no other to be got. Even a reccipt for monoy by a witness since dead has been excluded.
Another evil, and of every day occurrence, is that causes involving long accounts or requiring a scrutiny into numerous matters of detail are utterly impracticable to be tried by a jury, snd are therefore obliged to be referrea to an arbitrstor who can patiently examino and note down the details 'seriatim. ${ }^{\text {. }}$ How conatsatly this occurs is well known to those in the babit of attending the coarts ; snd when it does happen, the expense and delay of the trial is thrown away. Orer and over sgain I have heard partiee, before they got into court, declare that they woald insist on having the case tried out, and would never conseat to refer it to arbitration ; but apon the attempt being made in court to go into the details in dispute, the judge, the jury, the conssel, and the parties, bave all bocome convincod of the impracticability of dealing with it there, and it has by universal consent been turned over to an arbitrator. This is the consequence of aetting twelve men to do what one could managg infinitely better.
The last evil I shall mention, and the greatest, is the aumber of erronsona rerdictu that are come to, and of new trials that are requisite to correct them. "Trial by jary ia civil cases,", said Lord Manstield, "could not subsist now withont a power comewhere to grant new trisls. There are numberleses causet of false verdicts, withont corruption or bad intention of the juron. They may have heard too much of the mator before the trial, and imbibed prejudices
withont knowing it. The cause may be intricate = the examination may bo so long as to distract and. confound their attontion.
"Most general verdicts include 'legal consequences,' as well as propositions of facts: in drawing these consequences the jury may mistake and infer directly conurary to lsw. The parties may be burprised by a case falsely made at the trial, which. they had no reason to expect, and therefore could not come prepared to answar. If unjuat verdicts, obtained under these and a thousand like circumstances, were to be conclusive for over, the determination of civil property in this method of trial would be very precarions and unsatisfactory. It is sbsolutely "necessary to justice," that there should upon many occasions be opportunitien of 'reconsi; dering the cause by ane trial' (c). That the power to rectify the mistakes of juries is requinite moons diputes; but new triala are a heary grievance to the parties. They double the delay, anxisty, and. expense of an action, and cometimes reteder it wholly abortive by protracting the proceedings until one of the parties dies or becomen insolpent, or leapea the conntry, or gets disgusted with the delay and abandons the suit, or gladly accepts an unprofitable compromise. But though a large part of the time of the currta is spent in motions, for new trials, it would be a great mistake to suppose that the number of new trials granted on account of the errors of tho jury represents the full extent of those errors. No: a crowd of cases must be added, in which the parties rather submit to mistaken verdict than incur the riak and exponse of appealing to the court,-another class in which the courts will not interfere with the discretion of the jary,--and a third, in which the courts refuse to send the case to a second jury on aceount of the. smalloess of the sum io disputa. In regard to this last description of cases, there ia no correction for the mistakes of the jury ; they bave it all their own wav.
This is in civil causes ; but how is it in criminal cases, where aem triala are never granted after an acquittal, and very rarely sfter a coaviotion,no that the errors of the jury $\mathrm{R}^{2}$ wholly uncorrected. Apply Lord Mansield's observationa to criminal trials, and what do they lead to 1 There is nat a semion or assize pases, bat we see notorions criminale escape in spite of convincing evidence, and to agpravate the evil, the law never allows a man to be tried again on the: same charge. It is thas that the whole herd of villians who live by plander come to look on the:
(c) Bright f. Eynon, 1 Burrows, 303.4.

Tave as a rotten old pet, full of holee throngh which anv slippery fish may escape.
I have now doos with the mischiefa arising from trial by jury, not because the catalogue is exhausted but because time and patience would fail me to detsil them all. And when I aurvey the namerons ovill flowing from the defecta of this tribunal, I cannot belp thinking they will before long force on the public the consideration of the question, whether the time has not arrived when the wants of the age londly call for an improved mode of trial, and when the jury must experience the rame fate so fart as its general application is concerned which the ordeal, the battle, and the law-wager have in turn undergone.
. Some of the defects indeed which have been exposed are capable of an easy remedy whenever men sball coase to regard tho jary system at an art too sacred to be touched by the hand of innovation. The useless and excessive number which now oemposes a jury may be redueed, a majority may take place of unanimity, and the jury-room masy cease to be the only place in which the law famishes innocent men ; but how shall we get rid of the want of previour qualification, the ruatic ignorance, the partiality, the prejudice, the rude buste, the want of publicity and responsibility, which are the most glaring evils of jarias? These are defects which seem ioherent is the aystem, and ineeparable from it ; they are organic "disesee" which esin only be cared by "deash". Though I should stend alone in this eonviction, I vill avow it After long refiection on the numerous and heavy grievances which flow from the unlimited application of this form of trial, I for one am convinced that it is not sdapted to the refinement of the age we live in, that it has had its day and mast soon be thrown aside into the huge heap of antique legal lamber, or limited in its application to a very confined class of cases.
Nocone pretonds to deny that it has served important usee in times past; that when it first arose sid usurped the place of the ordesl and the battle, it was great atride in the path of juatice and civilisation; that it has often sinos then shielded the sabject from the power of the erown, and the poor from the oppression of the rich ; that it hes tended to temper the rigid rules of lav by the eternal principles of common renee and justice, and to harmonise the administration of an antignated snd technical - erstem of lave with the pablio feeling and opinion of the time being, -though even in thit ius merits have leen over-rated. Neiber is it nocessary while
introducing asettor system, to deprite liberty of any security which it derives from the trial by jury. Retain it by all means if you will, in all prosecutiona for pelitical offences, and in every case wherein public liberty may be concerned or wherein the judge may possibly have aise. But let all ordinary cases be heard by a man of saparior discarnment and practised skill, whose natural powers have heen aharpened by a life apent in foransic contesta, who cannot be essily deceived by a witaess, because he is conversant with overy lind of testimony; nor by an advocate, because he has been an adrocate himself; whn is fit to hear and to estimale at its true value every species of evidence hitherto excluded, which may open an avenue to the truth; Whose attention is not to be exhaused by the length, nor his comprebeasion distracted by the complexity of the evidence: give the unitor 1 say, man with these qualities, who performs his functions under the publie eya, who is in no harry to get away to his shop or his farra, whose very trade and business it is to weigh, investigate and decide on questionn of donbt and difficulty: in a word, let the facts be decided by the same oxperienced judgen as the low. and the whole body of the law will feel renewed and invigorsted by the change. A great part of its supposed uncertainty will vaniah, new light will pour in from sourcen of evidence now shat up, the scales of justioe will be held with oven haads, the heary grievance of new trials will be vartly diminished, the ouitur will obtain bir rights with greater apeed, economy and certainty, and the eriminal will no longer find refuge in the ' Eophistry of counsol or the weaknom of juries. (d).
(d) In oonclading thene pages, the writar cannots forbent a reflection on the felicity of the timen we live in, when we loel our libertien to mecare, an to expose Withoat appreheasion the infirmitioe of that aneient Inatitation which was in days gooe by the ouly refuge of liberty : A Prenchman or ftalian woald be apt to
 norint.*

# [Reqrinter from "The Dombay Gazette.'] 

## TRIAL BY JURY

## THE DARK SIDE OF THE SYSTEM

## 1 Paper neid lefore the literaliy ISSTYTUTION LN 1858.

BY
JOSEPII BRONW,
LIJLLE TEMILE.


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2003.

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## [Reprinted from "The Bombay Gazette.']

## TRIAL BY JURY:

## THE DARK SIDE OF THE SYSTEM.

> A PAPER READ bEFORE THE LITERARY INSTITUTION IN 1859.

B7<br>jOSEPH BROWN, MODLE TEXPLE.

## printed at the

 boybay gazette electio pbinting works.
# TRIAL BY JURY: THE DARK SIDE OF THE SYSTEM. 

Talal by Jury is one of the many English inatitations incorporated in the judicial aystem of this conntry so far as criminal cases are concerned. How far this inatitution has auccessfally worked in this conatry is a quastien so complicated that jurista and lawyers alone can deal with it exhaustively In the present times of unrest and politiesl excitement, the working of the jary system in aid of administration of criminal justioe in the Presidency High Courts has balked largely in public view. Liko all buman institutions that have reached over so high s stage of developnent, the institution of trial by jury has in the past as very often in the present, given rise to strong animadversions, in that in practice, this institution cannot claim to bo a wholly encoessful and satisfactory factor in the Administration of Justice. Professor Sidgwick in his wellknown work "Elements of Politics," whilst discussing the merits of the jury aystem, refers to a rather out-of-date but very weighty contribution to this question-"The Dark side of Trial by Jury," being a lecture delivered some time in 1859 at the Citerary Institation. The discourse came to be delivered consequent on the rejection of Lord Camphell's very moderate measure of reform in trial by jury. Mr. Joseph Browae (of the Middle Temple) who dalivered thin discourse said "he was conscious of having expressed himself with rehemence on some points but the atrongholda of ancient prejudice were not to bo breached by soft words." The text of Mr. Browne's discourse, wo believe, will greatly interest, members of the Eench and the Bar, and may induce criticism on Whatever drawbacks or disadvantages in the jury syatem in ladia by the light of Mr. Browne's argomente:-

The trial by jury is a theme which has moved the tongues as well as the pens of some of our ablest apeskers and writera Volumes havo been written and epoken on the subject, and yet it appears to me that only one side of it-lhe bright side- has been depicted

I propose to attempt "the dark side" of the picture-a view which I am ton sensible is not so agreable as the other-which may like a photo. graphic portrait, shock our national vanity severely, bat may also for that very reason be more useful.
The writers who have hitherto treated this sabject and particulariy the trumpeters of the "glorions constitution," have flattered our pride by a strain of anlimited panegyric on this ancient and popular institation. Thas the commentator Blackstone who may serve as an example of the rest, has spent a long chapter in explainiug "the various nachinery and appendages of this institution": like some enthusiastic antiquary exhibiting precions relio of ancient art, be has taken pains to put it in"the best possible light, has pointed out all ita beanties to notice, and tias dwelt with rapture on overy minute charm imperceptible to the eye of any but a oonnoisseos. After summing no its numerous excellencies, he declares the trial by jury to be the palladium of British liberty, the glory of the English Law, and the most transcendent privilego which ang sabject can enjoy or wish for. (Bools iii. 379.)

Sach is the language to which we have been long avonstomed, and one feels guilty of impeaching the wisdom of our ancestors, affronting the sages of the law, and profaning the mysteries of the constitution in renturing to question the excellence and expose the weakness of an institution which has received the saffrages of so many great and venerable men, and has stood the revolutions of so many ages. Is is Uzzah tonching the Ark of the Covenant.
But the ago has no right to east this reproach. It is an age whose principal business bas been to pull down the institutions of our forefathers, and build up better. It is an age of law reform-an age of nniversal chango-the transition period of our history.
At this present time, (a) by recent Acts of Parliament, the trial by jury is actually abolished in practice in sinety-nine out of overy haodred causes tried in the county conrta, and it would appear as if the soitors had prononoced againet it oince they have the option of adopting it in all cases and yet choose it only in one of a hurdred. I trust therefore I may withoat offence renture apon this daring enquiry. It is a highly meful exercise, and one sometimes pregnant with unexpected discoveries, to forget for a time if possible that we are Englishmen, and tarn
(a) This change been made since thin efsay wau firet writed.
as it were a atranger's eye on those national cristoms or insitutions which we have never heard spoken of ersept in the language of panegyric, and which therefore we have never subjected to the ordeal of impartisl investigation. It in by the exercise of this babit only, that the reflective mas can ripe superior to the prejudices of his age and nation, and march with the van in that great career of knowledge and improvement which diatiognishes the present period. And afier all, if the trisl by jury be really deserving. of the praisee whioh have been lavished opon it, it can have nothing to fear from the fullest investigstion, bat will rather come out from the ordeal with renewed lustre and more convincing claims to our admiration, than when wo took upon trust all that had been eaid in its favoor.
The importance of the inquiry is too obvious to need illustration. Neither do I propose to enter inte the history of the subject any further than may be auxiliary to the main purpose of my inquiries. which are directed to aseertain' 'bow far this tribunal is suited to the wants of the present age," rather than the time and the manner in which it sprung upand graw to its present shape (b).
The time has at length arrived when "the trial by jury" must "itself" be "tried," I straign it at the bar of publie opinion. I sccuse it of incapscity of ignorabes, of partiality of cumbersomeness, of barbariam. These are the conats of the indictment which I am about to open.

1. The first and foremost eharge ie the "want of previous qualification "for their functions, under which jurymen necessarily labour.
And here st the outset it becomes absolutely necessary 10 distinguish between the "different sorts of juries," in order to guard myself against misapprehension,

The fertile womb of the law has brought forth auch a litter of juries that their motber bat not names for them all. They can only be compared to the numberiess triben of dogs, sll differing in colonar nixe sod shape but as the naturaliatu say, all of one species. There is the common jury and the opecial jury the grand jary and the petty jurg, the coroner's jury and the sherifify jury, the compensation jury and tbe annoyance jury, the ward jury and the leet jury, the jory of matrons and the jury of sleconners, and nobody known họ many more beeidea,

[^4]These juries as might be expected, diffor from one another as widely in poiat of educatisa and intelligence as they do in or station, or in the importance of the matters they have to deal with. The observartions which are perfectly true of a sheriffa jury may be wholly inapplicable te a grand jury. Some juries are composed of men as enlightened, sa free from prejudice, as used to debate, as competent to deal with a difficult question as these whom I havo the hononr to addres-as if this were always the case, few of the objections which I am about to arge would have any application. Tho nearest approach perhaps in practice to the bean idea of a jury, is to be found in the special jurias of London. No testimony is needed to their great intelligence, knowledge of the world, and practical sagacity; but unfortunatelg they try but a very amall minority of the causes which the courts have to dispose of. "Speeial juries" indoed are entirely a modern innovation. Uatil the present century they were raroly heard of except in great mereantile canses ; and even at the present day they are only sdopted in causes of some importance, as the ordinary cases will not bear the expense of a apecial jury ( r .

The common jury therefore continues, and must of necessity continne, to ba that which disposes of nine-tenths of the trials civil and criminal, which occupy the courts of law ; and it is of this jury that I have chiefly to speak.

It has certainly al waya struek my mind that there was a remarkable contrast between the mode of procedare adopted by our countrymen in relation to their legal disputes, and that which they follow in the ordinary affairs of life, If a man wants a pair of shoes made, nobody shall serve him but one who bas undergonea regular apprenticeship to the trade and tas practised it for years. If a man breaks his leg, he never thinks of trasting his precioas limb to the hands of any but an experienced surgeon, who ham apent half a lifo in the exercise of his profasion. If he happens to be involved in a difficalt question of law, be will take the sdvice of none but one who ba grown gray in tho atudy of reports and statutes; and yet with all this, if his property, his repatation, bie liberty, or his life is at stake on a disputed question of fact, he will-may he mast intrast it to the roice of twelve men, not one of whom may have ever entered a court before, pot a creature of whom may have over experienced the arts of debate or the subtietion
(6) The eopat of a apecial jary whe rery hately abiut E22, and of a commoe jury not mbore ki.
of counsel, nor have balanced the doubfful evidence of opposite witnesses, nor have been called to the decision of any dispute more important than the quarrels of his children, or the discussions of the patbouse. As Nums was taken from the plough to the sceptre, so at the summoss of the law our jurymen quit their shops for the courts of justice ; they march straight from the weighing of candles to the weighing of testimony : -from the measaring of tape to the measuring out of fate ;-from dealing in bacon and cheose to dealing with the lives, properties and liberties of men, Verily we are a wise people, whose Commonalty possess by intoition the faculty which costs a lawyer many years to acquire,-many lopg years of laborinus study and practice,- the faculty of bearing without being deluded by sophistry and eloquence, of catching and conneoting as it flies the broken and digjointed evidence of namerous and contradictory witnesses; of selecting what is material, and rejecting what is irrelerant, of eifting the wheat from the chaff, the substantial from the peeming, and extracting the kernel of truth from the missbapen busk of errors in which it is enveloped. The Greeks fabled that the Goddess of Wisdon sprang fully armed and grown from the bead of Zeus. The English serionsly believe that judicial wisdom springs forth mature from every tradesman's head. This is a fit article of faith for a mation of shopkeepers.
But seriously, how is this? Is it because it require long etudy and practice to make a boot, or to set a broken limb, or to solve a question of learning, but none to try a canse. (d) No! The case admits of a much more rational solution than this; and the whole proeeeding bears the unmistakable feature of primitive simplicity and ancient rudeness. The time was when the traneactions of men were simple, and their manners were the same-when the jury were the neighbours of the parties and the witnesses "of the facts, when their functions consisted in deciding the cause from their own personal knowledge of the litigants and the facts in dispute more than from any evidence offered to them, when fixed and refined rulee of law extending to overy predicament had no existence, and when the jury pronounced no wore than a soot of general opinion, that one party had more right to hold than the other bad to demand a touse or a feild.
(d) A pachen ceuse for example, with thirty wilnesses prectical and ecientific on each side. The lisest in which IFanconcerded ocopied six daya, and the jury had the good cense to declare that they thought mom better tribunal cught to be prorided to ceil with srelu (bos.

In times like these the practice of summoning jaries took its rise, and to such a state of things it might be well enoagh adapted. But now how different are our transactions, our laws, our manners and customs-everything, except our juries! The barber no longer bleeds us, and the grocer has ceased to deal in physic, jet the butcher and the baker continue to try our causes ; and we consider this the perfection of wisdom and policy!
Ope single circumstance without more, demonstrates as I conceive, an incurable ineapacity in most common juries to perform their functions in a proper manner. It is shortly this:--they are not on a level with the advocates who address them. I do not mean in point of wealth or station in society, but in point of education, inteilect, schooled habits of reasoning and forensic experience. It is of no avail to assert that there are rery clever and woll-informed men behind the connter; who might bave made adrocates themselves. We have to do with the rule and not with the exceptions. The leading advocates at Nisi Prius are picked men, eminent for their native talent, or for legal and general acquirements men whose natural abilities have been proved and sharpened in a thoussand contests, and whose powers are testifled by their having fought their way to the front rank of that army of inteliestaal gladia-tors-the Bar of Eugland. And whore bave they to deal with 1 I speak now of most common juries. How often do they consist of men whose studies have been confined to their order-books and ledgers, whose minds have only been exercised in driving bargains and providing for their parments, who have taken part in no debates but those of the alehoase and clab room, and whose discernment has been chiefy proctised in finding out wbether Mr. Smith or Mr. Jones was to be trusted 1 These are the "duodecim probos et legales homines," the "Judiess facti," the favourites of the Lav.

Here is ignorsace set to judge of learning, inerperience to deal with coosumate art, and very often rastic solidity to contend vith the mont refined talent. What maso is there $I$ ark, wha kes been a suitor himselfand bas bad his casse tried by a country jury, what plaintiff or defendant is there who has not trembled for his cause however just, as he heard his evidence lreaking down and his cave chabging like s dissolving view ander the delosive addreess of the opposing counsel, and refiected on the quality of the wuta by whise discernwent be must saad or fill

Now this is exactly reversing the natural, the desirBle order of things. Instead of the adrucate boing superior to the judge, the jadge ought to be sbove the sdrocate. (e). Though this is the most obvions of truisms, yet it mounds like a discovery, becanse our practice is just the contary. When such on phenomenon occurs on the Bench, - When the judge is unequal to cope with the superior facalties of a great advocste, the evil is felt and lamented by the whale profession of the law. Bat any disproportion which may have ever existod between a judge and an adrocate is a trifle to what perpetaally occurs between the counsel and the jury; and the ecene whieh happens at erery country assize would only be paraileled by setting Col. Rowlingon and Dr. Hincles to dispute the meaning of the cuneiform inseriptions before the judges of a ploughing-matoh.
A little experience of the courta will be safficient to convince any impartial observer that even the want of acquaintance with the lav and practice of the courts which is attributable to sll juries (the lawyen being exempt from serving), is a very. frequent cause of the most serions mistakes The defendant's connsel omits to ask a witness as to o conversation, or to put in a particular letter. The jury find agsinst bim for that reason, not being aware that the eridence was inadmissible by law. Many a cause has been lost by an injudicious plea having been pat on the record, but which the jury would bave attsebed no weight to, had they known anything of apecial pleading. There was a cass lately and the like bas ofton ocesured, in which a jury diaputed for nearly twenty four hours about the amosat of their verdich intending that it should not carry costs, and at last gave the plsintiff only a shilling damages with that intention, being fgnorant sill the while that damages to the amount of a penny would entitle him to the whole. costa of tho action.

The counsel for the partiee are constantly obliged to explain the law to the jury, in order to give them correct idese of the bearing and effect of the factas; but the jary naturally distrast the statements of counseh, and as the judge often umitu to notice What every lawjor takes for common learning, the unlesned jury make grierous errors where law and fact are interwoves in the perdict.
(f) The very name of " judge "importe it. When we wy auch a personis judge of a thing, we mest that he possemen superior knowledger, erperience, and dicospmank.

The "glorious uncertainty of the law" has been the boast of many a lacky rogae who has alipped throngh the jailor's fingers; but fer have been conscions how lintle of it was owing to the law itself, and bow mach to the glorious lgoorance and ancertainty of jariea, Let a man only withbold a just claim from his creditor, encroach on the property of another, or do violence to his persan, and he will soon discover to his cost that there is very little uncertainty in the dealings of the law with him : it is when the result of a cause depends on the uncontrolled discretion of a jury that the reign of chance begins, and let the lav be nevor so clear, it is often the toss of a die whether the plaintiff or defendant wins. The wost trivial circumstance having the least possible oonnection Fith the merits of the ease, the lucky chance of the defendant's conosel getting the last word, the plaintiffs being nopopular or hia attorney too sharpr the defendant's having an acquaintance on the jury, the misconduct of one witness or the omissson to call another, or twenty other things of as litule real weight may tura the seale, and thas the verdict often belies the predictions of the most ugacious lawjer.

We shall of course be told that though juries of themselves would neither comprehend the law nor the facts of half the caseg which come before them, yet with the sid of tho judge they are perfectly able to do so. The extent and valae of the jndge's sasistance it is indeed impossible to overrate, and without it there can be no doubt that the trial by jury would have been wholly anendurable, and would long ago have shared tho fate of trial by battle, the wager of law, and other'barbarocs contrivances : but what I maintain is thif, that the judge does a great deal too much for the jury to have the credit of doing snything ; In point of fact. that they generally do little more than fod a rerdict which be has al:eady stagested to them, and that when they do take upon them. selves to find conirary to his opinion, the conrt will most commonly set aside the verdict, and order an trial, with the exception indeed of certain doubtfal or trifling actions in which it is considered a merey to the parties to atop farther litigation. (u).
(a) It ia a rale in the Courts not to rrant ane trialy for the mistakes of the jury, where the amount of the viedict is uader f:0 in the sapetior Ccurth, of ander LS in the BLer. IN' Court,

- But it the aid of the jadge be so necessary that the jury cannot move withont him, and if the courts declare that they are not fit to go alone, that they go wrong the moment they presume to differ from bir opinion, and that a "perveree verdiet" as it io techaically called cannot be allowed to atand, where is the use of tronbling the jury for their opinion ?
The strongest of all possible decisions that juriet in gensral are uncualifed to dizecharge the functions nominally entrusted to them, is to be found in the fact that the courte will hardly suffier them to have an opinion of their own in opposition to that of the jndge. (b)

2. "Impartislity" has usually been reckoned among the distingaiahing exellencies' of juries or even as that particalar feature in which they excelled every other tribanal ; and it is satisfactory to think that in most cases thin praise is well deserved. Yet on the other hand it is certain that there are some claseen of cases to Which - this observation is wholly inapplicable, and some in which the partiality of juries constitutes their greatest merit. Such is the esse, for instance, with the whole class of triale for political offences, in which the eardinal merit of juriees han consisted in their leanivg to the popular side. And until the lawe of the land are auch in every reapect that ell pood citizens mast vish to see them enforced to the letter, I am far from wishing to do away with the protection that liberty has derived from this canso ; but what is to be said in ertenation of the prejudice and partiality of juries in cases where no poor man is to be protected against the oppression of the powerful, snd no common rights ase to be vindicated against prerogative?
What chance basa defendant of fair play from a jury where national or religious prejudice envelopea the casel Does any one believe that the rerdict in the prosection of Dr. Achilli against Dr. Newman. would have been piren by a jury of Roman Catholica! How long is it since an Irish jury found a verdict of wilfol murder sgainst Lord John Russell, because a poor man had fallen a victim to a nationsl famine ; or refused to convict the notoriona Pboenix conspiratore at Tralee 1 Ia many parte of Ireland, it it next to impossible to get a conviction of the

[^5]a ksasing who excente the dark and bloody deerees of Whiteboys and Ribbonmen. On the other band, when popular feeling is strongly excited agsinst the accused, the jary becomes a blind instrament of vengeance. Eivery one of the Judicial murders and confiscations committed under Charles II., was committed by means of a jury. Look sgain at civil causes,-what chance has a railway company at this moment of defending guccessfally any claim Which arises ont of an accident on their line ? (c) Certain classes of litigants are half-beaten by their name and occupation before they come into court. Common juries and sheriff's, juries generally look apon an honest lawjer as quite a black swan. Their creed is that no attorney ocght to go to law himself,-that apothecaries' bills must be taxed,-that candidates at elertion must pay all demands that may be seat in to them,-that bill-diseonaters are rogues, and the like.
All their partialities are saved up for brother chips, for carpenters, builders, tailors, aboemakers, sad such like innocents, who are bocked to win the moment they enter the conrse with a gentleman to eontest the reasonableness of their bills or his liability to pay. I have very rarely seen an instance cf a gentleman successfally resisting the demand of a tradesman on the ground of exorbitancy.
There are certain species of unpppular actions also in which the plaintiff stands so little chance of success, however plain bis evidence may be, that the odds are thres to one against him. Such for instance are all actions by common informers, proceedings on the gome laws, tithe canses, aetions for penalties, forfeitures and the like. (d) Neither can it be eaid that partiality is the sin of common jories only. There is a class of actions which are eccasionally brought against country jnstices of the peace, for some of the eccentrio freaks committed by
(c) Common juries soem nabible to distingulsb between the importunities of compassion and the demanda of justice. A poor min who rans againet a catt, and gels his leg broken by his own neglect, nsually obtaina a verdict ag,inst the owner, especially it be ia wealt by. If the man is hilled and bia wilow sues, the defence is $j$ et more bopeleses.
(d) Lord Eegon onse tried an action for a penalty for ahooting gims without a licence. The ease was clear, and the defendant's connmel was bard preased. $\Delta t$ lengt b , "Oentlemea," waid he, "it's trae thoy bave aworn tiat my client ficed at the bird, that it fell dead sod that he bigged it. It is of no use to deny that. But how dee it appear tbat the bird was killed by the thot? What proot is there that it did not die of the fright?" The jary were convinced hy th's ingeaioult asgument, and lound a ver liot for the detendand.

## 11

them in their magisterial capacity. Whenever any country justice is unlucky enough to tranagrees the lav, or turn it into an engine of oppression and wrong, and some village attorney is found bold encugh to ineur his worship's oternal wrath by taking up and vindicatiog the canse of the eufferer, the jastice "par excellence" has only to aee that his cause is tried by a apecial jary in order to secure the most liberal measure of indu!gence that a sinuer could wish. A country gentleman has grest bowels of morcy for the sins of a brother justice and eportaman, recollectiog that bimeself is no Solomon perbaps, snd may some day need a good tarn of the aame kind. "Venism damui petimnaque vicissim," is their motto, and thas it bappens that the victim of illegal proceedings who would obtain $£ 100$ damages from a common jury will get a shilling or nothing from a epecial one.
To take anotber instance which comes nearer home -who can read the reports of insurance ceabee, without astonishmeot. An sction is brought on a life policy against an insarance office. The defendants plesd that the policy was agreed to be void if they were deceived as to the habits of the insured, and that in truth he was an habitual drunkard, afticted with delirium tremens, which fact was parposely concealed from them. They call a dozen witnesses, obtsined with the ntmost diffcalty out of the enem y's camp, some of them friends sund servants of the defunct, bat all concurring in the fact in dispate. The plaintiff calls a few others who swear that they did not tee the party habitually druok, just as the aheep-stealer eaid he had a dozen witnesses who would uwear that they did not see him steal the sheep. It also appeare that the man died of delirium tremens a fem month after the date of the policy. The judge sams up all in farour of the defence and it seems a gone case, when to the atonishment of all tut the lawyers, the jary go through the form of a consaltation, and then return a rerdict in favour of the claim. "Heaven and earth, do I hesr right ${ }^{\prime \prime}$ exclaims an unsophisticated stranger. "Oh my good sir," bsya one in the secrot, "you don't understand,- halif the jury bave got policies on their own liver.
For my own part, I cannot read withont diegust and indignation the inourance trials. Ey thistime the offiven hare nearly learnt the lesson that juries have endesvorred to casch them, that they mast neres contest a policy which they have once effected, ty whateref fraud they may hare beon drawn into it.
3. What great and mysterious advantages are concealed in "the sacred number twelve"] "It seemth to me," says SirEdwardCoke, "that the law delighteth herself in the number of twelve, for there must not only be twelre jurors for the trial of matters of fact, but twelre judges of ancient time for trial of matter of law. Also for matters of state there were in ancint time twelve counsellors of state. And that number of twelve is much respected in holy writ, as twelve Apostles, twelve stones, twelve tribes," ete.
Yet the law has not been constant in its attachment to this favourite number, for a grand jury may consist of twenty-tbree, and so may a coroner's jory. In a grand assize the number was sixteen, in an attaint teenty-foar, and the twelve judges have now incressed to fifteen.

If the reason assigned by my Lord Coke be the true one which induced our ancestors to fix on this as the namber of a jury, it savours abundantly of the superstition and credulity of the times in which it had its birth, but makes it so much the more doubtful whether it was erer adapted to constitute tho most satisfactory tribunal, of to meet the convenience of the people. Supposing for a moment that a jury of three or fire nien would be just as competent to try a cause as one of twelve, the smaller number would be preferable to the larger, if it were only on account of the great inconvenience intlicted on men in business by the perpetual and vexations sumuronses of the Sheriff. In order to supply theo requisite number of jurymen the Sheriff is compelled by law to summon not twelve only, but forty-eight at the least and often seventy-two; and these alihough they have no earthly concern with the causes to the tried, are obliged under pain of a smart fige to attend the courts for dass and sometimes for weeks together, to the entire neglect of their business however urgent it may be, and without any species of compensation that deserves the name. I speak now of the common jury. Not a functionary in the court gives his services for nothing except the juryman. The judre has a splendid salary, the counsel an adejuate fee, the attorney lias the coots of the trial. the witnesses have their erperses, the very crier of the cuart spends not his breath in bawling "silen: 6 " for nou;ht: the jnryman is the only one in the whole company of performers who has in reward for his services. No reward did I say? - I bad almost crerboked the coinif he is on a Steritfa jury be has molesthina great of good and lawful mineg of Gitast Eritain. And i! on a comonon jury he hias actually e.ghtrence: The law values his sethicyst the hire of a proter and gires Lim enon: h
to get a pot of beer or a glass of grog. And for: this he mast forsake his most urgent afiairs to give his time and atttention to the dispates of strangers ! What wonder that they should be on the fidget to get sway to their shops and their farms. What wonder that they should despatch the basiness of the verdict like a grace before dinner. What wonder that they will cut the knot rather than take the pains to untie it, and astonish the spectator by jumping to a conclasion in five minates upon ovidenee which a Parke or a Tindal would take daya to consider (e).
Eut to return to the grest number who are sum. moned: another evil is that in many counties it is impnssible to get a special jury together, as instead of twelve it generally happens that not more than four or five will attend, and sometimes none at all inasmuch as the special jurymen, for the sake of escaping the fatigues of the jury box can afford to despise the fines imposed by the judge. The consequence is, that causeg of great magnitude and importance are tried by tales-men, who are much bettor qualified to juige of the breed of a ball, or the weight of a prize pig, than of the argaments of counsel.
But these are not the only evils arising from Lord Coke's favourite number; a greater remains to be mentioned, namely, the destraction of all responsibility for the verdict.
If you have but one judge to decide a canse; he knews that the shame of a blundering or a partial decision rests solely upon him, and the conscionsness of this habitually exercises a salutary influence on his conduct. It restraine him from any gross carelesseses or manifest partiality if it does no more, and in a cass on which public sttention is concentrated, it producess all that scrupulous impartiality and careful consideration which may be witnessed overy day on the bench. If you have even three or four judges the infiuence of the aame motives is very sensible so long as each delivers a separate judgment and gives; pablicly bis reasons for it. Bat the responsibility that is shared smong twelve is diminished to nothing, above sll when their deliberations ane secret, and the result only is pablished.
When a man entera a jury-bor he knows there are eleven other men there who are bound to find a verdict 23 much an hixself. Why sbould he codgel hie brisins sbout the ease if he finds it beyond his sphere?
(d) There is a proverbamong the lawyerg, that an opiuive Fithotit ife it worth_nothing.

Perhaps his thoughts are in his shop, where he sees the pleasing vision of his apprentices playing at cards; or he is contriving how to take up Mr. Jones's bill ; or woudering whether Sanders means to pay: perbaps be is simply unable to understand the case; the witnesses are so contradictory, the case so dull and the eridence so long and tiresome: Serceant Wiles is so deep, and Conasellor Bellow so fierce, that he gives it up as a bad job, sud leaves it to the others to find a way out of the maze, for he is completely obfuscated. Imagine each of the chosen twelse to be relying in this way on the others, and you may conceive how a tronblesome or difficult case will be disposed of, when every man of them knows that his shirking will be a secret to all the world but his brother jurors, and very offen even to them-in short, that he bas only to say ditto to the opinion of the majority in order to pass muster. All these evils arising from the present number required to form a jury, would obviously be much diminished by reducing it to five or three. The time of our meiechants and traders would be sared, causes would not go off for want of special jurors, and every juror would be urged by increased responsibility to give increased attention to the evidence and the verdict.
"Responsibility" I said, bat the word is an empty sound as applied to a jury. There is no practical responsibility impending over them, bowever groas their misconduct may be. I am, awars that in legal theory a joryman might be fined for gross misconduct, such as spinning a tee-totum for the verdict-but nobody. ever heard of a jurymana being called to account since the days of Charles IL., when it was decided to be unlawful to fine a jury fors ferrerse rerdict. This is a wide departure from the practice of our ancestore, the same who invented this trisl. They bad provided a most formidable enging to terrify the wesk op distonest juror from departion from the live of his daty. "Attincta," "ayys my lord Coke, "is a writ that lieth when a false verdiet is given ; for if the petty jury be attainted of a falie oath, they are stained with perjury, and become infamons for ever ; for the judgrent of the commion law in the attaint, importech eight grest and grievous punishments. 1. Qaod amittant liberam legrm in perpetaum ; that is, he shall te so infmous as te shall never bereceived to be a witness or of any jury. 2. (youd terre et tenements in manus domini regis capiantur. 4. Nuod uxrese et liberi extra domus scias ejicerentur. ${ }^{5}$ Quod domus sare prostrentur. 6. Chod artiorea suex extirpeotur. T. Yinod prata sur arentur. fits. Yaod cores ra sua carceri mancipentur. So odions
is perjary in this case in the eye of the common law; and the eeverity of this punishment is to this end: at "perna" ad pancos., "metus" ad ompees perveniet, for there is misericordia paniens, and there is crudelitas parcena. And seeing all tryalle of reall personall and mixt actions depend unon the oath of twelve men, prudent matiquity inflicted a strange and severe ponishment apon them if they were attainted of perjury."
Really there is something quite refreshing in this passage. It has the genaine salt and savour of the olden time. It exhibits a true picture of the people who fonoded the jury eystem. This formidable contrivance for keeping jurora in order having been long obsolete and lately abolished, they may now do just as they please without fear of conseqnences or even of exposure, for it is their own faill if any body knows the secrets of the jurybox, or is able to fis a charge on any individual juror. If the judge were to pay no attention to the canse, he would expase himself before the counsel and the parties; if he were to exhibit any gross or unfair leaning to one side, he would be cried down by the newspapers; if he tossed up a shilling for his decision, he would be dismissed from his office: bat all these things "may be done," "have been" done, are practised "at this day "by jaries, with the most perfect impunity. "Such" is their reepponsibility and such it will continue while they are constituted, as at present.
4. The "onsanimity" exacted from jurymen is one of the most obrious of all objections to one present system, and thongh it be the easiest to remove, no attempt to do so is made, such is the invincible force of custom. Yet one wonld suppose that the objections arged against it were mach too plain and too weighty to be either gainssid or resisted.
In the first place it has not even the sanction of atiquity. In the time of Etherred, the law was that in a jury of twelve the verdict of eight should prevail, as Lambard shows in his Eirenarcha. And it appeara frem Bracton and Fleta, two of the most ancient of our law books, (a) that in the tien of Henry III. when the jary could not agree, the practice was lor the judge to order others to bo added to them until twelve out of the entire pumber conld be got to concur in a verdict. But in the reigo of Edward I. the judge exercised the option of doing this, or of compelling the original twelve to agree by starving them into it And Barrington
(a) Bractud, lib, iv, o.19, Ileta Lib, iv, c. 9.
(20) observes that as it was probably found that when new jurors were added, there was the trouble of trying the causo over a second time at last for the greater despatch of business they insisted in all cases on the unanimity of the original jury. And Mr. Evelyn has shown in his notes (i) to Lord Hale's Pleas of the Crown that one time When the jury differed in opinion, the verdict of the majority was followed. Even our modern law is not consistent in this respect for in grand juries and coroner's jaries a majority of voices decides the question provided the majority be not less than twelve in namber. In Scotland, criminals are tried by a jury of ffteen according to an ancient custom and a majority of one voice is enough to hang a man. If a difference of opinion arises among the judges, a bare majority determines the judgment; and a balance of oue or two voices in the Exchequer Cbamber and the House of Lords has disposed of not a few lives and "eatates. A majority of twentythree to six aquitted Warren Hastings, and a majority of only one voice liberated the Liberator from prison.

If we try the practice of requiring unaniunity from s jury by reason and experience, it will appear not less repugnant to these than to the most ancient usages of other Dations and of our own.

It needs little observation to discover that the minds of mon are as vacions as their faces, and that this variety whether it arises from nature or education or both, is as certain to produce a difference in their views of the samo subject, as it erery man saw it through a differently-colcured pair of spectacles. Nothing is more common than to find men differing apon the neere objects of the senses. But when we coluo to things which are visible only to the mind'y eye, and are not to be determined by a foot rule or a bushel measure; when we have to deal with motives and intentions, with the credibility of teatimony, with conficting probabilities, and inferences from evidence we have bid fare well to all unison of opinion, we have arrived in the very reqions of doabt and disarreement.

Nuw the questions which juries bave to diapose of are the most donhtiful difficult and complicated, which can arise from the refinement and complexity of men's transactions in an adranced stage of society. They are ridules which would have purrled Elipus and the Sphinx too. And as if they were not sufficiently knotty of themselven, the mistake, suppressions and misrepresentations of witnewes
(1) Vol. ii. p. 207, n. c.
combine to render them still more intricate and perplexing.

In these circumstanoes it would be contrary to all experience, if real unanimity of opinion existed in the vast number of cases in which juries pretend to find unanimous verdicta,-it would be a lie against nature, and nothing short of a miracle. Our ancestorn who eontrived this acheme for wolving the riddlen of the law linew well enaugh for experience soon tanght them, that to take the free sond unforced opiniona of each of the jury and expect them to the unanimous, would be childish folly,--hence they found a contrivance exsctly enited to the genins of the age for extorting that agreement which they were determined to hava. If the head of a jaror was impenetrable his atomach Wes made of softer stuff. The ancients indeed or some of them, eonceived that organ to be the meat of remon, bat I never heard of any people who made so direct and forcible an appeal to it ma our forefathers. Thone were tho days of unanimity and uniformity. If a man ventured to dissent from hia fellow-catholies he wio burned,--if he woold not sgree with hia brother jurorn they were all marved together, consentert and diseenters. The old writ "do horetico combarendo" has been long obsolete, bat the ctarring of juroris still astonishes the nineteenth century and raises the langhter of Earope. It in true it is never carried to the point of actually killing a jaryman outright. The jadge has a discretion by the modern practice of remitting, the tortare when it in approaching the killing poinh' As in the dungeons of the Inquisition a sargeon almaye atood by and felt the palee of the victim, when his agonised frame war breaking, to tee that his sulterings were not pasbod too far for asture to endure, so the judge in an English conrt of low in the nineteenth centory, - ${ }^{4}$ the jadge of that law Which boasta the attribute of mercy,"-playe the onrgeon to the anbappy jorymen who are guilty of the heinous erime of differing in opiaion from their fellown, and only remits the torture of famine when a jaryman't life is in dagger. It is a "degradation" to follow a syatem which clings to mo insufierable a piece of barbariem, and which attee haring abolished the torture of prisonern and eriminals, inficta it on jurymen. "Not one jay more revoling oz absurd mould it be if the juron wers tied up to a port and logked till they agreed." Yet monstrous an it is, it cannot be dispeneed with no long an ananimity io pxacted. The one moastrotity begues tho other. Do aray with ataring eytem and joa will no longer have unanimous vedicta. Is this cono sequence to alarming that any eitremity in to be
endured first? Shall the most difficalt questions of property and liberty be decided by a aimple najority of the judges 1 Shall the questions of peace or war and the fandamental laws of the kingdom, be decided by a majority of the Honse of Commons; and are jou sfraid to ontrust questions of mere debts, treapasses and slanders to the majority of a jury? Shall the principle of a majority be decisive in all assemblies of men, in your companies, your inatitutions, your public meettings, your elections, your vestrios, your corporstions, your courts, your parlisments,-overywhere but in your jaries? "Behold the amazing force of sustom?" Had this starved unsnimity never existed in this country before, were it now to be introduced for the first time, all England would cry out agsinst it as piece of Gothic barbarism, as a viola. tion of nature, as a contradiotion to all our other institutions, as a disgrace to the age. But because it has been in use for centuries, it in aubmitted to by all, defended by very many, and cried op by some as the perfection of policy. After this I cease to wonder that the Chinese make their women's feet into gost's boofs, or that the wise Egyptains worshipped crocodilos. I have no right to be astonish. od that the Spartans whipped their children to death at the altar of Artemis, or that the old Romans allowed the creditor to slay his debtor like s sheep; for " I see every day in our own coorts, a apectacle sufficient to remind me that chatom exerts dominion "over mankind in every age and in every conntry, against "whieh reason in vain rebels, and. humanity pleads in vain."
The truth is that "this started unanimity of juries, is one of the nomistakable features of barbarism which betray the "barbarous age in which the jary syatem arose." The people who devised it had no books, and no newrpapers, no lettert, no poet-office, no coaches: they beat their wive and sold their chuldren for alaves; they amused themselves by baitfon bulle and bears, and thrashing hens at Shrowetide; they drowned old women as witcbes snd matsacred Jews for their wealth; they were a people whose langrage would be hardly intelligible to us, Whose costume woald be outlandish and whone manners bratal. In everything bat blood, they were far more foreignors to us , than the preaent inhabitants of Tienna or Mloscow. These were the anthors of our jory system.

I have consumed so mach space in oxhibiting the cavses which render the verdicts of jurien an. astiefactory, that I can only take s rapid glance at the eril conseguence which necessarily flow from them.

The first is that certain classes of men bave no confdence in the administration of jastice. They do not believe that they are fairly dealt by in the jury-box.
No insurer resisting a life policy, no great compsny reaisting a claim for an accident, ne lawyer or docter suing for his bill, no gentleman contessing the chargen of a tradesmann, no landlord sning for a forfeiture, no person who hat rendered himself by any meane unpopular, ean safely depend on the impartiality of a jury. The fact is familiar to every lawyer and calculated on beforehand. Nay, even a merchant of London saing a trader of a country town is dot affe in s disputed case with a jury of tbat town. In parts of Wsles, a Wolsh jury can hardly be got to de justice to an Englishmas agaipst - Welshman. This is not as should be. The judges of the fact ought to bo as mach abere suspicion as the judges of the law.
Another consequence is the disgracefal scenes Which constantly oecar in the jury-room, and oven in open court. What can be more scandalous to the administration of justice than the disclosures which frequently take place of the aecrets of the jury-room i It rould be easy to produce a score of cases out of the law reports, many of them recent, in which it has been proved that the jury toseed up or drew lots for the verdict; and there was a case at Peterborough in which they setuled their dispute by balancing a poker, the fall of which to the right hand decided the guilt of the accused; and it has nometimes occurred that one obstinate fellow with a mule'b head and a camel'घ stomach has atarv*" ed the other eleven into a verdict against their convictions and their osths. Still more frequent are the cases in which the "most monstrons com. promises bave been made between the conflicting opinions of the discordant twelve. To illustrate what I mean, takta a late ease in which a defendant was sued for publishing pn suonymous letter containing the vilest charges against the plaintifl. If the defendant was the author of it the case called fer the severest damages, and the only diaputo was whether he walk the writer or not. The jury found for the plaintiff, but astonished overybody by giving only a shilling damages. The aecret was that some of them thought the defendatt was not the writer at all, and oniy consented to give way to the rest on condition that the damagea ahould be reduced to nothing. So conscioos indeed are the judges of the ecsadal that would reanalt from the dieclosure of -hat pssses between the jury, that they have done all they can to prevent the curtain from being
drawn, and to shat out the pablic eje from the interior of the jury-room. When new trials bave been moved for and supported by affidavits of jurymen that they had tossed up for the verdict, the Court have laid dowa a rule that they will not hesr such affidavits (a). Now as no one is allowed to enter the jury room but the officer of the Court, and he only to ask if they are agreed, the effect of this rule is that the Court will hear nothing of what passes within that sanctum. What does this amonnt to but practical declaration that the behaviour of juries when retired from the public eye will not bear the light? Nor is the ignorance or absardity of uneducated jaries confined to their private room-bat is frequently displaved in open coart by the moat farcical verdicts. Not long since in the Sheriff's court when the asual question was put "For whom do you find $?$ "一the reply was "We are magnsaimoas for the plaintiff." And only the other day on a woman indicted for leeping s disorderly house, the verdiet was "Not guilty, but we hope she won't do it again. ${ }^{\text {² }}$ There is hardly an assize which would not furnish a ehapter for " Punch."

Another evil, and a very great one, is the exclusion by law of certain kinds of evidence, because, as the phrase is in our law books, it would have too much influence with a jueg. Thus until recently the testimony of the parties and all persons who had any legal interest in the nuccess or failure of the action was excluded. On the same principle what is called "hearsay evidence" is with few exceptions rejected by our law. "If it were to be assumed that one long inured to judicial habita might be able to assign to hearsay evidence jast so much and no more credit than it deserved, yet upon the minds of the jury, aoskilled in the nature of judicial proofs, evidence of this kind would frequently make an erroneons impression. Being accastomed in the common concerns of life to aut on hearsay and report, they would naturally bo inclined to give such credit when aoting judicially; they would be anable to redace auch evidence to its proper standard when placed in competition with pore certain and satisfactory evidence; they would be apt to forget how little reliance ought to be placed upon eridence which may be so easily and wecrely fabricated ( $b$ ). "
(a) *See observatiods of Barona Parke and Aldersca in "Burgens v. Langley," 1 Dowling \& Lowndea, 23.
(b) Starkie od "Evidence," p. 38., n.

So when a man is triod los felony whe hat boen before convicted of a similar crime, the law will not allow the jurs to know of his former conviction until they have found him guilty of the preesent cbarge ( $6 \$ 7$ W. 4, $c, 111$ ), becage they would attach too suuch weight to it. This is the reason openly stated in the bookg. Now in escluding these and several other branchee of evidence, the law just shats up wo many ways of acriving at the trath; not because they would not be of the greatest sorvice in the hande of a thoroughly qualified and practised judge, but becsuse the raw snd inesperienced dozen of farmers or petty tradesmed do not hrow how to desil with them. In hundreds of cases it thas bappeni that the only avenues to the truth are closed. It in an every day affair for the knowledge of a losn, or a eontract, or an essential fact in a esase, to bo confined to solitary witness since dead, but who has written an account of the t sussection while fresh in his memory, 'ante litem uotam;' and who was open to no auspicion. Yet in no such cses is the evidence admissible, though there be no other to be got. Even a receipt for nuney by a witnees since dead has been excluded.
Adother ovil, and of every day occurrence, is that esuses involving long accounts or requiring a. seratiny into numerous mattens of detail are utterly "impracticable to be tried by a jury, and are therefore obliged to be referrea to an arbitrator who can patiently examine and note dowa the details 'seriatim.' How constantly this occars is well known to those in the habit of attonding the courts; and when it does happen, the expense and delasy of the trial is thrown away. Over and over again I have heard parties, before they got into court, declare that they would insist on having the case tried out, and wonld uever consent to refer it to arbitration; bat apon the attempt being mado in court to go into the details in dispute, the jadge, the jury, the counsel, and the partiea, bava all become convinced of the impractiesbility of dealing with it there, and it has by univeraal concent been turned over ta an arbitrstor. This is the consequence of setting twelve men to do what one could manage infinitely better.
The last evil I absill mention, asd the greatest, is the number of erroneous rerdiets that are come to, and of new trisla that are requisite to eorrect them. "Trial by jury in civil cnsos," said Lord Manafield, "could not subsist now without a power somewhere to grant new triale. There are nomberless canses of faloe verdicte, withoot corruption or bad intention of the jurors. They may have heard toa mach of the mattoe before the trial, and imbibed prejudices
without knowing it. The chuse may be intrioate : the examination may be 30 long sa to distract and confonad their attention.
"Most general verdicts include ' legal consequences,' as well as propositions of facta : in drawing these consequences the jury may mistake and infer directly conurary to law. The parbies may be burprised by a case falsely made at the trial, which they had no reason to expect, sud therefore could not come prepared to answer. If unjust verdicts, obtained under these and a thousand like circumstances, were to be conclusive for ever, the determination of civil property in this mathod of trial would be very precarious and ansatisfactory. It is absolutely 'necesaary to justice," that there should upon many oceasions be opportunities of 'reconsidering the cause by a new trial' (c). That the power to rectify the mistakes of juries is requisite no. one diputes; but new trials are a heavy grievance to the parties. They double the delay, anxiety, snd. expense of an action, and sometimes render it wholly abortive by protracting the proceedings uatil one of the parties dies or becomes insolvent, of leaves the country, or gets disgusted with the delay and abandons the suit, or gladly accepts an unprofitable compromise. But though a large part of the time of the cuarts is spent in motions for new trials, it would be a great mistake to suppose that the number of new triala granted on aceount of the errors of the jury represents the full extent of those errors. No: a crowd of cases must be added, in which the parties rather submit to a mistaken verdict than incur the riok and exponse of appealing to the court, -mother class in which the courts will not interfere with the discretion of the jury,-and a third, in which the courts refuse to send the case to a second jury on acsount of the smallness of the sum in dispute. In regard to this last description of cases, there is no correction for the mistakes of the jury ; they have it all their own way.

This is in civil causes ; but how is it in criminal cases, where new trials are never granted after an acquittal, and very rarely after a conviation, so that the errors of the jary go wholly uncorrected. Apply Lord Mansfietd's observations to criminal trials, and what do they lead to? There is nct a session or assize passes, bat we see notorious criminals eacape in spite of convincing evidence, and to aggravate the evil, the law never allows a man to be tried again on the eamecharge. It is thus that the whole herd of villiabs who live by plunder come to look on the
(C) Bright \%. Egnon, 1 Burrows, 393.4.

Law an a rotten old net, full of holes through which any slippery fish may oscape.

I have now done with the mischiefs arising from trial by jury, not because the catalogna is exhausted but because time and patience wonld fail me to detail them all. And when I gurvey the pomerous ovila flowing from the defects of this tribunal, I cannot help thinking they will before long force on the public the consideration of the question, whethes the time has not arrived when the wants of the age londly cell for an improved mode of trial, and when the jory mast experience the same fate so far as its general applicstion is concerned which the ordeal, the battle, and the law-wager have in turn andergone.
Some of the defects indeed which bave been oxposed are capable of an oasy remedy whenever men shall cease to regard the jury egstem as an ark too sacred to be toucbed by the hand of innovation. The useless and excessive number which nuw composea a jury may be reduced, 4 majority may take plaoe of unanimity, and the jury-room may cease to bo the only place in which the law famishes innocent men ; but how shall we get rid of the want of previout qualification, the rustic igdorance, the partiality, the prejudice, the rade haste, the want of pablicity and responeibility, which are the most glaring evilu of jories 1 These are defects which seem iokerent in the aytem, add inseparable from it; ithey are organic "diesanes" wich esn only be cured by "death". Though I should atand alone in this conviction, I will arow it. After long reflection on the numeroas and heary grievances which flow from the unlimitod application of this form of trial, I for one am convicced that it is not adapted to the refinement of the ago we live in, that it has bad its day and must soon be thrown aside into the buge hesp of antique legal lamber, or limited in ita application to a rery confined class of cases.

- No one pretonds to deny that it bas served important uses in timed past ; that when it fras arose and asurped the place of the ordeal and the battla, it vas a great stride in the path of justice and civilisation; that it has often since then shielded the subject from the power of the erown, and the poor from the oppression of the rich ; that it bas tended to temper the rigid roles of law by the eternal principles of common sense and jastios, asd to harmonise the administration of an antiquated and technical system of law with the pablio feeling and opinion of the time being, -though even in this its merits tave teen overratod, Neither is it necessary while
introdacing a better system, to deprive liberty of any security which it derives from the trial by jury. Retain it by all means if you will, in all prosections for political offences, and in every case wherein public liberty may be concerned or wherein the. judge may possibly have a bias. Eat let all ordinary asaes be heard by a man of superior discernment and practised skill, whose natural powers have heen sharpened by a life spent in forensic contests, who cannot be easily deceived by a witness, because he is conversant with every kind of textimony; nor by an advocate, because he has been an adrocate himself; who is fit to hest and to estimate at its true value every species of evidence hitherto arcladed, which may open an avence to the treth; whose atteation is not to be exbansed by the length, nor his compreheosion distracted by the complexity of the evidence: give the scitor I say, 8 man with these qualities, who performs his functions under the pablic ege, who is in no harry to get away to his abop or his farm, whose very trade and business it is to weigh, investigate and decide on questions of donbt and diffeulty: in a word, let the facta be decided by the same oxperienced judges as the lam. and the whole body of the law will feel renawed and invigorated by the shange. $A$ grest part of its supposed uncertainty will vanish, new light will pour in from sources of evidace now shat ap, the essles of justice will be held with even hands, the besry grievance of new trials will be rastly diminished, the suitor will obtain his rights with greater speed, conomy and certainty, and the criminal will no longer fad refuge in the sophistry of counsel or the veakness of jaries. (d).
(d) In eonclading thens pages, the writer caunot forbear a reflection on the felicity of the times we live in, whea wo feel oar libertied macure, an to expone Withoat apprebension the iafirmition of that ancient Ingtitation which was in dayi goae by the only refuge of liberty ! A Frenchman or Italian wonld be apt to oxelsim of us, " 0 fortamator niminco. man mi boda norint.,"


## [henrinted from "The Bombay Gazette."]

## TRIAL BY JURY:

## TIIE DARK SIDE OF THE SYSTEM.

A PAPEL READ BEFORE THE LITERARY IASTITUTION IN 1859.

## JOSEPH BROWN,

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1603

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## TRIAL BY JURY:

## THE DARK SIDE OF THE SYSTEM.

A PAPER READ BEFORE THE LITERARY INSTITUTION IN 1859.

## TRIAL BY JURY:

## THE DARK SIDE OF THE SYSTEM.

Taus by Jury is one of the many English instisutions incorporated in the judicial syutem' of this conntry wo fares criminal ascen are consernod. How for this inatitation has auccessfully worked in this conntry is a quentien eo complicated that jurists and lavjert alone can deal with it exhanstively In the present timen of unrest and politioal excite-: ment, the working of the jury aystem in sid of administration of eriminal juatice in the Preaidency Eigh Courts has balked largely in public viov. Lika all haman iactitations that have reached ever to high a atape of doveloparent, the institution of trial by jury hat in the past as vary ofton in the presents given rise to ntrong animsdivenions, in that in praction, this inatitution cannot claim to bot wholly ruccuofal and atiofactory fetor is the Adminisleation of Juation. Profestor Sidguick in hin well Enoven work "Elementa of Politien", whilat diseutio fog the merits of the jary syatem, refers to a rather out-of-date but very veighty contribation to this question-" The Durk side of Trial by Jury, beigg - lecture dolivered come time in 1859 at tho literary Institation. The disoourse came to be delivered consequeat on the rejection of Cond Camphell's very moderate mesare of reform in trial by jury. Mr. Jomeph Browse (of the Midde Temple) who delirered this discoums mid "he was conscions of having expremed himself with vibemence on come points but the atrongholds of sucioat prejudies were not te be brewhed by woft vord. "The text of Mr. Browne't discoares, we belisve, will greatly ibterest, membars of tho Beach and the Bar, and may indace criticise on Thateree drawbacke or dimdrantages in the jurg ayatere in ladia by the light of Mr, Browao'r argmenta :-

The trial by jury in a theme which han moved the tongoen at wall an the poas of nome of onf ableat opeakers and writers. Volumes have been - Tritten and apolien on the tubjeet, sad yet it appears to me that only one aide of it-the bright sido- An bees depictod.

1 proposs to attempt "the dark side " of the picture-a view which I am too sensible is not so agreesble as the other-which may like a photo. grsphic portrait, shock our national vanity severely, but mas also for that rery reason be more nseful.
The writers who have hitherto trested this sabjest and particalarly the trampeters of the "glorions constitution," have flattered our pride by a atrain of anlimited panegyric on this ancient and popalar institution. Thus the commentator Blackstone who may serve as an example of the rest, las apent a long chapter in explainiug "the varions machinery snd appendages of this institution": like some enthasiastic antiquary exhibitiog a precions retic of ancient art, be has takea pains to pat it in the best possible light, has pointed out all its beanties to notice, and thas dweit with rapture on every minate charm imperceptible to the eye of any bat $s$ sonnoissear. After samming ap its numarous exoellencies, he declares the trisl by jary to be the palladium of British liberty, the glory of the English Law, and the most trangcendent privilege which any subject can anjoy or wish for. (Boak iii. 379 .)

Sach is the language to which we have been long aceastomed, and one feels guilty of impeaching the wisdom of our ancestors, affronting the sages of the law, and profaning the mysteries of the constitation in zenturing to question the excellence and expose the weakness of an izstitution which has received the suffrages of so many great and venerable men, and has atood the revolutions of so many ages. It is Uuzsh toachiog the Ark of the Covenant.
But the age bas no right to cast this reproach. It is an afe whose priacipal business bas been to pall down the institutions of our forefathers, and baild up betier. It is an age of la reform-an ago of univertal chang-the trsasition period of our bistory.
At this present time, (a) by recent Acto of Parliament, the trial by jury is actaally a bolisbed in pasctice in ninety-nine out of every handred canses tried in the county courts, and it would appear as if the saitors had pronounced againat it nince they have the option of adopting it in all casee and yet choose it ouly in one of a handred. I trast therefore I may witbout offence ventare apon this dariog enquiry. It is a highly aseful exercise, and one sometimes pregasat with anexpected discoveries, to forget for - time if possible that we are Englishmen, and turn

[^6]at it were a strangerin eye on those national catome or institutions which we have neves heard apoken of exeept in the lagguage of panegric, and which therefore ve have never aubjected to the ordeal of impartial in renigation. It is by the exercise of this habit only, that the reflective man can rise anperior to the prejudicee of his age and pation, and mareh with the ran in that great carree of knowledge and imprevement which distioguishen the present period. And after all, if the trial by jary be reslly deserving of the praisea which have been brished apon it, it can have nothing to fear from the fulleet inveatigation, bat will rather come ont from the ordeal with renewed lastre and more convincing clainas to our admiration, tban when we took upos trat all that had teen asid in its favour.
The importance of the inquiry is toe obvious to peed illuatration. Neither do 1 propose to entar into tho history of the sabject any further than may be euxilisry to the main purpose of my inquirise, which are directed to ascertain' 'bow far this tribanal in suited to the wants of the present age," rather than the time and the mannef in which it eprong ap and grew to ita present shapo (b).
The tiaue han at length arrived when "the trial by jury" must "itself" be "tried." I arraign it at the bar of pablic opinion. I sccase it of incapacity of ignopanoe; of partiality of cumbersomeness, of barbarism. These are the counts of the indictment which I am about to open.

1. The first and foremost charge is 'the " want of previona qualification ${ }^{\text { }}$ for their functions, ander which jurymen nocessarily fabour.
And here at the outset it becomes aboolutely Decessary to distinguish between the "different worts of juries," in order to guard myself against misappreheseios.
The fertile momb of the law hat brought forth such a litter of juries that. their mother han net names for them all. They asan only be compared to the numberless tribes of doge att differing in colour size and shape bat en the naturalista may, all of one apecies There is the common jary: and the apecial jury the grand jory and the petty jary, the coroser't jnry snd the sheriffy jory, the compensation jary and the ananoyance jory, the ward jury and the leet jory, the jory of matrons and the jury of aleconner, and nobody trowt how many more besides.
(b) The hintory and antiquities of the jury eyptems ore vory fally treated is the eleboreto work of $\mathrm{Mr}_{\mathrm{F}}$. Forayth os "Trial by Jary," printed at Cambridge in 1852, whick collecte all that German and Eaglich reamed tas coatributed torande the eobject,

These jaries as might bexpected, differ from one another as widely in point of education and intelligence as they do in or station, or in the importance of the nasters they have to deal with. The obeservations which are perfectly troe of a sheriff's jary may be wholly inapplicsble to a grand jury. Some juries are composed of men as onlightened, as free from prejudice, as ased to debate, as competent to deal with a difficult question as those whom I have the honour to addres-as if this were always the ease, few of the objections which I an about to urge woald have any application. The nearest approach perhaps in practice to the beau ides of a jury, is to be found in the special juries of London. No testimony is needed to their great intelligence, knowledge of the world, and practical sagacity; but unfortunately they try but a very small minority of the caases which the courta have to dispose of. "Speeial juries " indeed are entirely a modern innovation. Until the pressat century they were rasely heard of except in great mereantile eauses ; and even at the present day they are only adopted in causes of some importance, as the ordinary cases will not bear the expense of a special jury (c).
The common jary therefore continues, and musk of necessity enntinue, to be that which dispoess of nine-tenths of the trials civil snd criminal, which occapy the courts of law ; and it is of this jury that I have chiefly to speak.
It has certainly always struek my mind that there was a remarkable contrast between the mode of procedare adopted by our conntrymen in relation to their Jegal dispatem, and that which they follow in the ordinary sfidias of life, If a man wants a pair of shoes made, nobody shall serve him but one who has undergonea regular apprenticeship to the crade and bas practised it for years. If a man breaks his leg, bo never thinks of trasting his precious limb to the hands of any but an experienced surgeon, who has apent half a life in the exercise of his profession. If he happens to be involved in a difficult question of law, te will take the advice of none but one who bas grown grey in tho stady of reports and atatutes; and yet with all this, it his property, his reputation, his likerty, or his life is at stake on a dispuled quettion of fact, he will-may he mast intrust it to the voice of twelve men, not one of whom may have eref entered a conrs before, not a creature of whom may have erer experienced the arts of debate or the subuleties
(c) The coet of a special jary wan very lately mbiut 122, and of a commoa jury dot above 52.
of coonseh, nor have balanced the doubtrul evidence of opposite witnesses, nor. have been called to the decision of any dispute mors important than the quarrels of his children, of the discussions of the pothonse Ae Numa was taken from the plough to the sceptre, so at the summons of the law our jorymen quit their shops for the coarts of justice ; they march atraight from the weighimg of candles to the weighing of testimony: -from the mesarring of tape to the measuring out of fate ;-from dealing in bacon and cheese to dealing with the livet, properties and liberties of men. Verily we are a wise people, whose Commonalty possess by intuition the faculty which costa a lawyer many yesre to acguire,- wany long years of haborinos stady and practice,- the factily of hearing with we being deluded hy auphisiry ind eluquence, of catchiog and counetting as it flies the broken and digjointed evidence of numeroas and contradio tory witnesses ; of selecting what is materiah nod rejecting what is irtelevant, of sifting the wheas from the chaff, the substantisl from the reeming, and extracting the kernel of truth from the misshapen huak of errort in which it is enveloped. The Greeks fabled that the Goddeas of Wiedom eprang fully armed and grown from the besd of Zene. The English seriously believe that judicial viedom eprings forth mature from every tradesman's besd. This is s fit article of faith for a nation of shopkeepera.
Bat seriously, how is this 7 Is it becanee it require long stady and practice to make a boot, or to pet a broken limb, or to solve a queotion of learning, but none to try sanse. (d) No! The care admits of a much more rational solution than this; and the whole proeeeding bears the anmistakable feature of primitive simplicity and ancient radeness. The time was when the transactions of men were simple, and their manners were the ssme-when the jory were the neighbours of the parties and the witnesses of the facte, when their functions consisted in deciding the canse from their own personsl knowledge of the litigants and the facts in dispute more than from any evidence offered to them, when fixed and rofined rules of lave extending to every predicament had no existence, and when the jory pronounced no more than asort of general opinion, that one party bad more right to hold than the other had to domand a bouse or a feld.
(d) A pateut carme for erample with thirly witnoenes Fractical and acientifie co each side. The lsat in which Iwan concerned ocoppied six days, and tie jray had the good senee to declare that they thought eome better trimumal cught to be provided to de:l with cicluana

In times like these the practice of summoning juries took its rise, and to such a state of things it might be well enough adapted. But now how different are our transactions, our laws, our masners and customs-everything, except our juries! The barber no longer bleeds us, and the grocer has ceased to desl in physic, yet the butcher and the baker contioue to try our causes; and we consider this the periection of wisdon and policy!
One . Bingle sircamstanee withost swore. demonstrates as 1 conceive, an incurablo incapacity in most common juries to perform their functions in a proper mander. It is shortly this:-they are not on a level with tha advoostes who address them, I do not mean in point of wealth or station in mociety, but in point of education, intellect, schooled habits of reasoning and forensic experience. It is of no arail to assert that there are very clever sad well-informed wien behind the connter, who might have made adrocates themselves. We have to do with the rule and not with the exceptions. The leading advocates at Nisi Prius are picked men, eminent for their native talent, or for legal and general acquirements man whose natural abilitios have been. proved ard sharpened in a thourand contests, and whose powers are testified by their baving fought their way to the front rank of that army of intolleetual gladia-tors-the Bar of England. And whom bave they to deal with I speak now of taost common juries. How often do they consist of men whose atudies have been confived to their order-books and ledger, whose minds bave only been exercied in driving bargains and providing for their payments, who have taken part in no debates but those of the alehouse and clab room, and whose discernment has been chiefly practised in finding out whether Mr. Smith or Mr. Jones was to be trnsted? These are the "dandecim probos et leyales homines," the "Judiees facti," the favouritee of the Lar.

Here is ignoranee set to jadge of learning, inexperience to deal with consumate art, and very oftem rastic solidity to contend with the most refined talent. What man is there I asik, who bas been a nuitor bime elland has hall his ease tried by a country jury, what plaintiff or defendant is there who han not trembled for bis canse howeref jutt, as he heard biseridence breaking dow and this case chanking like 9 dissolring view under the delucire address of the opposing eranorl, and reffected on the yuality of the wen hy whane discerncent he must atand of fabs?

Xow this is exactly reversing the naturai, the desirable order of things. Instead of the adrucate being superior to the judge, the judge ought to be above the adrocata. (c). Though this is the most obrious of truisms, yet it sonnds like a diseovery, becanse our practice is just the contrary. When such a phenomenon occurs on the Dench,-when the jadge is anequal to cope with the superior facaltien of a great adrocate, the ovil is felt and lamented by the whele profession of the law. But any disproportion which may have ever existed between a judge and an adrocate is a trifie to what perpetaally occturs between the counsel and the jury; and the scene which happens at erery country ssaize would only be paralleled by setting Col. Rawlinaon and Dr. Hinckes to dispate the meaning of the cuneiform inseriptions before the judges of a ploughing-match.
A little experience of the conrts will be sufficient to convince any impartial observer that even the Want of aequaintance with the law and practice of the courta which is attributable to all jories (the lamyers being exempt from serving), is very frequent canse of the most seriona mistaksa Tho defendant's counsel omits to ask a vitness as to a conversation, or to put in a particular letter. The jury fiod against him for that reason, not being aware that the evidence was inadmissible by law. Many a canse has been lost by an injudicious plea having been put on the record, but which the jury would have stisched no weight to, had they known anything of epecisl pleading. There was a case lately and the like bas often orcurred, in which a jury disputed for nearly twenty four hours about the amount of their verdict, inteading that it should not earry costs, and at last gave the plaintiff only a shilling damages with that intention, being ignorant all the while that damages to the amount of a penny would entite tim to the whole costs of the aotion.

The counsel for the parties are constantly obliged to explain the lav to the jury, in order to give theme correct ideas of the bearing and effect of the facts ; bat the jury natarally distrust the statements of counsel, and as the jadge oflen umits to notice That every laryar takes for common learning, the unlestned jary make grievous errora where law and fact are interwoven in the verdict.
(l) The very name of " jadje " importa it. Whea we ay quch mperson is a jndge of a thing, we trean that he poseses a saperiar knowld dgr, experience, and diecernment

The "glorious encertainty of the law" has been the boast of many a lucky rogue who has slipped throngh the jailor's fingers; bat fow bave been eonscions how listle of it was owing to the law itself, and how much to the glorions ignorance and onoertainty of juriea, Let a man only withhold a just claim from his ereditor, eneroach on the property of another, of do violence to his person, and he will soon discover to his cost that there is very little uncertainty in the dealings of the lam with him: it is when the result of a canse depends on the ancontrolled discretion of a jury that the reigu of cbance begins, and let the law be never so clear, it is often the toss of a die whethen the plaiatie or defendant wins. The mont trivial sircumastanee having the lesst possible connection With the merita of the ease, the lucky chanse of the defendant's coadsel getting the last word, the plaintiffs boing unpopular or his attorney too aharp, the defondant's having an acquaintsace on the jury, the misconduct of one witness or the onissson to eall another, or twenty other thinge of as little real weight may turn the sesle, and thus the verdict often belies the predictions of the moat *agaciona lawyer.

We shall of course be told that though juries of themeelves would neither comprehend the law nor the facts of half the cases which come before them, yet with the aid of the judge they are perfectly able to do so. The extent and ralue of the judge's sssistance it is indeed impossible to overrate, and without it there can be no doubt that the trial by jary would have been wholly unendursble, and would long 'ago have shared the fate of trial by battle, the wages of law, and other barbarone contrivances:" but what I maintain is this, that the judge does s great deal too much for the jory to have the credit of doing anything : in point of fact, that they generally do little more than find a rerdict which he has already suggested to them, and that when thes do take npon themselvee to find contrary to his opinion, the court will most commonily set side the verdict and order a new trial, with the orception indeed of certain donbtfal or trifing actions in which it is connidered 1 merey to the parties to stop furthos litigation, (a).
(a) It is a rale in the Courta not to grant mew trimala for the mistakes of the jury, where the amount of the verdiet in nnder $\$ 20$ in the moperior Courth, of under ©5 in the Sbarifi' Conrt

Eut if the aid of the judge be so necessary that the jury cannot move without him, and if the courts declare that they are not fit to go alone, that they go wrong the moment they presume to differ from his opinion, and that a "perverce verdict" as it is technically called cannot be allowed to stand, where is the use of troubling the jary for their opinion?

The strongest of all possible decisions that juries in general are unqualifed to disecarge the functions nominally entrusted to them, is to be found in the fact that the courts will hardly suffer them to have an opinion of their own in opposition to that of the jadge. (b)
2. "Imprartiality". has usually been reckoned among the distingaishing excellencies of juries or even as that particular feature in which they excelled every other tribunal ; and it is astisfactory to think that in most cesses this praise is mell deserred. Yet on the other band it is certain that there are nome clases of cases to which this observation is wholly inspplicable, and nome in which the partiality of jaries constitutes their greatest merit. Such is the case, for instance, with the whole class of trisla for political offences, in which the candinal merit of juries has consisted in their leaning to the popular side Aod until the laws of the land are such in every respect that all good citizens mast wish to ree them enforced to the letter, I am far from wishing to do away with tho protection that liberty has derived from this cause ; bat what is to be said in extenation of tbe prejudice snd partiality of juries in cases where no poor man is to be protected sgainst the oppression of the powerful, and no common rights are to be vindicated againgt prerogative :
What chance hana defendant of fair play from a jury where national or religious prejudice envelopes tho case ? Does any one believe that the verdict in the prosecution of Dr. Achilli ggainst Dr. Newman, would have been given by a jury of Roman Cathulics 1 How long is it siace an Irish jury found a verdiot of wilful murder against Lord John Kussell, hecause a poor man had fallen a victim to a national lamine ; or refused to convict the notorious Phernix conspirators at Tralee 1 In many parts of Ireland, it is next to impossible to geta conviction of the

[^7]asssesins who execnto the dart and bloody decrees of Whiteboys and Ribbonmen. On the other hand, when popalar feeling is strongly excited against the accus* ed, the jury becomes a blind instrament of vengeance. Lvery one of the Jodicisl murders and confiscations committed onder Charles IL, was committed by mesus of a jury. Look again at civil canses,-what ehance has a railmay company at this moment of dofending successfally any claim which arises out of am accident on their line ? (c) Certain classes of litigants are half-besten by their vame and occapation before they come into court. Common juries and sherifle, jarios generally look upon an honest lawyer as quite a black swan. Their creed is that no attorney ought to go to law himself,-that apothecariee bills must be tared, -hat eandidates at election mast pay all demands that may be sent in to them,- that bill-diseonatere are rogues, and the like.
All their partialities sro saved up for brother chips, for earpenters, builders, tsilors, shoemakers, and such like innooents, who are booked to win the moment they enter the conrse with s gentleman to contest the rassonableness of their bills or his lisbility to pas. 1 bave very rarely seen an instance cf a genuleman ruccessfally reesisting the demand of a tradesman on the ground of ezorbitancy.
There are certain species of nupopular actions also in which the plaintiff stands so little chance of success, however plain bis eridence may be, that the odds are thee to one against him. Such for instance are all actions by common informers, proceedings on the gome laws, tithe causes, setions fos penallies, forfeitures and the like. (d) Neither can it be said that partiality is the sin of common juries ooly. There is a class of actions which are occasionally brought against country jastices of the peace, for some of the eccentric freake commitied by
(c) Common jariea beem nnable to distingaish between the importonitiee of compansion and the damands of jostice. A poor mun who runs gatints a cart, and gots his leg broken by his own Deflect, nasallity obemina a verdict ag inist the owner, especially it he la wealthy. If the man is tilled and hien widow saes, the defences io Jet more hopoleses.
(d) Lord Kenjoa onoe tried an action for a penalty for shooting game without a lioenca. The case wad clesr, and the defendant'川 conosel wal bard presed. At length, "Gentlemen," mid he, "it's true they bave oworn that my client fired at the bird, that it fell dead and that he bugged it. It is of no nee to deny that. But bow does is appear that the bird wes tilled by the nhot? What proof is there that it did not die of the fright? The jary were ocovince! by thla fagenious argoment, and found a verlict for the deferndant,
them in their magisterial capacity. Whenevor any country justice is nulucky enough to trangress the lav, or tara it into an engine of oppression and wrong, and some village attorney is found boid encugh to ineur his worship'a eternal wrath by taking ap and vindieating the cause of the eufferer, the jastice "par oxcelienco" has only to *ee that his canase is tried by a special jury in order to necure the most liberal measare of indalgence that a sinner could wish. A country gentleman han great bowels of mercy for the sins of a brother justice and aportaman, recollecting that himself is no Solomon perhapa, and may some day need a good tarn of the same kind. "Venism damus petimusque vicissim," is their motto, and thas it happens that the victim of illegal proceedings who wouid obtain f 100 damages from a common jury will get a shilling or nothing from a special one.
To tate another instance which comes zearer home -who can read the reports of insarance canses, without astonishment. An action is brought on a life policy against an insurance office. The defendants plead that the policy was agreed to be void if they were decived as to the habite of the insured, and that in treth he was an habitual drunkard, afficted with delirium tremens, which fact was parposely concealed from them. They call s dozen witnesser, obtained with the utmost diffecilty out of the enemy's camp, some of themf friends and servants of the defunct, bat all concurring in the fact in dispate. The plaintiff calls a fow others who swear that they did not sea the party habitually drunk, jast as the sbeep-stealer said he bad a dozen witnesses who would ewear that they did not see him steal the sheep. It also appears thet the man died of delirium tremens a few monthe after the date of the poticy. The judge sams up all in favone of the defencesand it seems a gone cass, when to the sstonishment of all tut the lawyers, the jury go throagh the form of a consaltation, and then retorn a verdict in favour of the claim. "Heaven and earth, do I hear right $1^{\mu}$ exclaime an unsophisticated stranger. "Oh wiy goodesir," ssys one in the secret, "you don't underetand,- -half the jary have got policies on their own lives.
For my own part, I cannot read without diegust and indignation the insurance triale. By this timo the offices have nearly learnt the lesson that juries bave endesroured to teach them, that they mast nerar contest s policy which they bave once effected, by whatereef fruad they may have been drawn into it.
3. What great and mysterious advantages are concealed in "the sacred number twelve" "It seemth to me," says SirEdwardCoke, "that the law delighteth herself in the number of twelve, for there must not only be twelve jurors for the trial of matters of fact, but twelve judges of ancient time for trial of matter of law. Also for matters of state there were in ancint time twelve counsellors of state. And that number of twelve is much respected in holy writ, as twelve Apostles, twelve stones, tweive tribes," ete.

Yet the law has not been constant in its attachment to this favourite number, for a grand jury may consist of twenty-three, and so may a coroner's jury. In a grand assize the number was sixteen, in an attaint twenty four, and the twelvo judges have now increased to fifteen.

If the reason assigned by my Lord Coke be the true one which induced our ancestors to ${ }^{\circ}$ fix on this as the number of a jury, it savours abundantly of the superstition and credulity of the times in which it bad its lirth, bat makes it so much the more doubtful whether it was ever adapted to constitute the most satisfactory tribunal, or to meet the convenience of the people. Supposing for a moment that a jury of three or fire men would be just as competent to try s canse as one of twelve, the smaller number would be preferable to the larger, if it were only on account of the gread inconvenience inflicted on men in basiness by the perpetual and vexatious summonses of the Sheriff. In order to supply the reguisite number of jurymen the Sheriff is compelled by law to summon not twelve only, but forty-eight at the least and often seventy-two; and these alchough they have no earthly concern with the causes to be tried, are obliged under pain of s smart fine to attend the courts for days and sometimes for weeks together, to the entire neglect of their business however nergent it may be, sad without any species of compensation that deserves the name. I speas now of the common jury. Not a functionary in the court gives his services for nothing except the juryman. The judge has a splendid salary, the connsel an sdecquate fee, the attorney bas the costs of the trial. the witoesies have their expenses, the very crier of the court apends not his breath in bawling "silence" for nought : the juryman is the only one in the whole company of performers who has no reward for his services. No rew rd did I say ? - I had almost overlooked the coin:if he is on a Sherifis jury he has no less than a great of good and lawful money of Great Pritain. And if on a commonjury the has actually eightpence: The law values his serrices at thetire of a proter and gives bita enonka
to get is pot of beer or a glass of grog. And for this he must forsake his most urgent affairs to give his time and alttention to the disputes of strangers ! What wonder that they should be on the fidget to get sway to their abops and their farms. What wouder that they should despatch the bosiness of the verdict like a grace before dinner. What wonder that they will cut the knot rather than talke the pains to untie it, and. astonish the spectator by jumping to a conclusion in five minates apon evidence which a Parke or a Tindal would take days to consider (e).
But to return to the great number who are sum. moned: snother evil is that in many counties it is impossible to get a special jary together, as instead of twelve it generally happens that not more than four or fire will attend, and nometimes none at all inasmach as the special jurymen, for the sake of escaping the fatiguess of the jury box can afford to despise the finea imposed by the judge. The consequence is, that causes of great magnitude and importance are tried by tales.men, who are much better qualified to judge of the breed of a bull, or the weight of a prize pig, than of the arguments of counsel.
But these are not the only evils arising from Lord Coke's favourite number; a greater remains to be mentioned, namely, the destraction of alt responsibility for the verdict.-
If you have but one judge to decide a canse, he knews that the shame of a blundering or a partial decision rests solely apon him, and the consciousness of this habitually exercises a salutary infuence on his conduct. It restraing him from sny gross carelessness or manifest partiality if . it does no more, and in a case on which public attention is concentrated, it produces all that scrupulous impartiality and carefal consideration which may be witnessed every day on the bench. Il you have even three or four judges the infiuence of the ame motives is very sensible so long as each delivers a separate judgment and givesi pablicly his reasons for it. But the responsibility that is shared among twelve is diminished to nothing, sbove all when their deliberationd are secret, and the result only is published.
When a man entera a jury-bor he knows there aro dieren other men there who are bound to find a verdict as much as himself. Why should he cadgel his brains about the eace if he finds it beyond his sphere?
(d) There is a proverb among the lawyers, that an ppiuivn nithoul a fee in worth_nothing.

Parhsps his thoughts are in bis shop, where he nees the pleasing vision of hil apprentices playing at cards; or he is contriving how to tske up Mr. Jones's bill; or wondering whether Sandera meana to pay: perhapt he is simply ansble to understand the case; the witnesses are no contradictory, the case go dall and the oridence so long and tiresome ; Sergeant Wiles is so deep, and Connaellor Bellow so fierce, that he gives it up as a bad job and leareas it to the others to find a way oat of the maze, for he in completely obfacisted. Imagine each of the chosen twelve to be relying in this way on the others, and you may coneeive how a troubleeome or difilicalt case will bo disposed of, when every man of them knows that his shirking will be a mecret to all the world but his brother jurors, and very often even to them-in ahort, that he has only to nay ditto to the opinion of the majority in order to pass master. All these evils arising from the present number required to form a jary, would obriously be mach diminished by reducing it to five or three. The time of our merchants snd traders would be saved, canses would not go off for want of special juross, and every juror would be urged by increased responsibility to give incteased attention to the evidence and the verdict.
"Responsibility" I redid, bat the word ia an empty sound as applied to a jory. There is no practical responsibility impending over them, however gross their misconduct masy be. I am, aware that in legal theory a juryman might be fined for gross misoonduch, such as apinning a tee-totum for the verdict-but nobody ever heard of a jurymas being called to accoont since the days of Cbastea II., when it was decided to be unlaviful to fine a jory for a perverse verdict. This is a wide departure from the practice of our ancestors, the eame who invented thistrial. They had provided a mott formidable engine to terrify the weak or dishonest jaror from departing from the line of bis duty. "Attincta, ${ }^{n}$ gsjs my lord Coke, "is a writ that lieth when a false rerdict is given; for if the petty jary be attainted of a false oath, they are ntained with perjury, and become infamous for ever: for the judpment of the common lav in the attaint, importoih eight great and grievous panistmenta. 1. Qnod amittant liberam legem in perpetanm ; that is, he shall be so infomona as be thall never bereceived to be a witness or of any jury. 2. Quod terre et tenementa in manas domini regis capiantur. 4. Quod ax ${ }^{\text {rete }}$ et liberi extra domun scas ejicerentur. B Quod domas naxe prostrentar. 6. Quod arboree sume extirpeatur. 7. Quod prata sumarentur. El 8, Quod corpora saa carceri mancipentar. So odions
is perjary in this case in the eye of the common lar; and the reverity of this punishment is to this end: ot "pœena" ad paucos., "metus" ad ompes perveniet, for there is misericordia puniens, and there is cradelitas parcens. And seeing all tryalls of reall personall and mixt actions depend opon the oath of twelvo men, pradent matiquity inflicted a strange and severe ponishment apon them if they were attainted of perjury."
Really there is momething quite refreshing in this pasaage. It has the gencine aalt and navoor of the olden time. It exbibits atrae picture of the people who founded the jury system. This formidable contrivance for leeping jarors in order having been long obsolete and lately abolished, they may now do just as they please without fear of conscquences or even of exposure, for it is their owa falt if sny body knows the secrets of the jurybox, or is able to fir a charge on any individual juror. If the judge were to pay no attention to the canse, he would expose bimself before the counsel and the partien; if he were to exbibit any gross or unfair leaning to one side, he would be cried down by the newspapers; if he tossed up ashilling for bia decision, he would be dismiesed from his office: but all these things "may be dong," "have been" done, are practised "at this dsy" by juries, with the most perfoct impunity. "Surh" is their reeponsibility and such it will continue while they are constitated, $2 s$ at present.
4. The "unsnimity" exacted from jurymen is one of the most obrions of all objections to oar present system, and though it be the easiest to romova, no attempt to do so is made, such is the invincible force of exstom. Yet one would suppose that the objections arged against it were mach too plain and too weighty to be either gainssid or resisted.
In the first place it has not even the manction of antiquity. In the time of Ethelred, the law was that in $a$ jury of twelve the verdict of eight should prevail, as Lambard ahowa in his Eirensrcha And it appears from Bracton and Fleta, two of the most ancient of our law bookn, (a) that in the time of Henry III. When the jary could not agree, the practice was for the judge to order others to be added to them untul twelve out of the entire namber could be got to concar in a verdict. But in the reign of Edward I. tho jodge exercised the option of doing this, of of compelling the original twelve to agree by starring them into it And Barrington
(a) Bracton, lib, iv. c.19. Yleta. Lib. ir, c. 9.
(20) observes that as it was probably found that when new jurors were added, there was the trouble of trying the causo over a second tims at last for the greater despatch of business they insisted in all cases on the unanimity of the original jary. And Mr. Evelyn has shown in his notes (b) to Lord Hale's Pleas of the Crown that one time when the jury differed in opinion, the verdict of the majority was followed. Even our modern law is not consistent in this respect for in grand juries and coroner's juries a majority of voices decides the question provided the majority be not less than twelve in number. In Scotland, criminals are tried by a jury of fifteen according to an ancient custom and a majority of one voice is enough to hang a man. If a difference of opinion arises among the judges, a bare majority determines the judgment; and a balance of one or two voices in the Exchequer Chamber and the House of Lords has disposed of not a fer lives and eatates. A majority of twentythree to six aquitted Warren Hastings and a majority of only one peice liberated the Liberator from prison.

If we try the practice of requiring unanimity from a jury by reason and experience, it will appeas not less repuguant to these than to the most ancient usages of other nations and of onr own.

It needs little observation to discover that the minds of men are as varions as their faces, and that this variety whethet it arises from natgre or education or both, is as certain to produce difference in their views of the same subject, as if every man saw it through a differenily-caloured pair of apectaclas. Nothing is more common than to find men differing upon the mere objects of the senses. Eat when we come to things which are visible only to the mind's eye, and are not to be determined by s foot role or a boshel measure; when we have to deal with motives and intentions, with the eredibility of teatimony, with conflicting probabilities, and inferences from evidence we have bid farewell to all unison of opinion, we have arrived in the very 'regions of doubt and disagreement.

Nuw the questions which juries have to dispore - of are the most donbtful difficult and complicated, which ean arise from the refinement and complexity of men's tranactions in as adranced ntage of socisty. They are riddlen which would have pazzled CEdipas and the Sphinx too. And as if they were not sufficiently knotty of themselves, the mistake, ©appressions and misrepresentation of witzesses
(b) Vol. ii. p. 297, n. c.
combine to render them still more intricate and perplexing.
In these circumstances it would be contrary to all experience, if a real manimity of opinion existed in the vast number of cases in which jaries pretend to find unsnimous verdicta,-it would be a lie against nature, and nothing sbort of \& miracle. Our ancestors who contrived this scheme for solving the riddles of the law knew well enough for experience soon tanght them that to take the free and unfored opinions of each of the jury and expect them to the unanimons, would be childish folly,--hence they found a contrivance exactly suited to the genias of the age for extorting that agreement which they wero determined to have. If the head of a juror waf impentrable his stomach was made of softer stoff. The anciente indeed or nome of them, conceived that organ to bo the seat of reason, but I never heard of any people who made so direct and forcible an appeal to it as our forefathers. Thase were the days of unanimity and uniformity. If a man ventured to dissent from his fellow-ostholies te was barned,-if he would not agree with his brother jurore, they were all starved together, consenters and dissenters. The old writ "de heretics comburendo" has been long obsolete, but the starving of jurora still astonishes the nineteenth centrry and raisee the laaghter of Europe. It is true it is never carried to the point of accually killing a jaryman outright. The jndgo has a discretion by the modern practice of remitting the torture when it is approsching the killing point.'. $A_{0}$ in the dangeons of the Inquiaition a margenn always stood by and lelt the palse of the victim, whea his agonised frame was breaking, to see that his sufferings were not pusbed too far for satare to eadure, so the judge in an English conet of law in the nineteenth century, "" the judge of that law Which boasts the attribute of mercy,"-plays the surgeon to the unhappy jurymen who are guilty of the heinoon crime of differing in opinion from their fellows, and only remits the torture of famise when a juryman's life is in danger. It in a "degradation" to followa aystem which clings to so insufferable a piece of barbarism, and which after having abolished the torture of prizoners and criminals, inflictu it on jurymen. "Not one joy more rovolting or absurd Tould it bo if the jarors were tied up to a post and logged till they agreed., Yet monstrona as it it, it cannot be dispensed with so long as unanimity is exacted, The one monstrosity begeta the other, Do amay with starving aystem and gen will no longer have sasnimous verdicta, Is this connequence so alarming that any extremity is to be
endured first! Shall the most difficult questions of property sud liberty be decided by a simple majority of the judges ! Shall the questions of peace or War and the fondamental laws of the kingdom, be decided by a majority of the House of Commons; and are you afraid to ontrust questions of mere debts, treepasses and slanders to the majority of a jury 1 Shall the prinoiple of a majority be decisive in all sasemblies of men, in your companies, your institutions, your pablic meettings, your elections, your vestries, your corporations, your courts, your parliaments, -every where but in your jaries? "Bebold the amazing force of eustoml" Had this staryed unanimity never existed in this country before, were it now to be introdused for the first time, all England would cry ont against it as piece of Gothic barbarism, as a viola. tion of nature, a contradiction to all our other institations, as a diagrace to the age. But because it has been in ase for centuries, it is submitted to by all, defended by very pany, and cried up by some as the perfection of policy. After this I cease to wonder that the Chinese make their women's feet into goat'a hoofs, or that the wise Egyptains worshipped crocodiles. I bave no right to be astonished thet the Spartans whipped their children to death at the altar of Artemis, or that the old Romang allowed the creditor to slay his debtor like s sheep; for "I see overy day in our own courts, a spectache sufficieat to remind me that cnstom exerts a dominion "over mankind in every age and in every. country, against "which reason in vain rebele, and" hamanity pleads in vain."
The truth is that "this starved unsoimity of juries, is one of the unmistakable'features of barbarism which betray the "barbarous age in which the jary eystem arose." The people who devieed it had no books, and no newspapers, no letters, no pout-office, no coachea: they beat their wiven and sold their chuldren for slaves; they amased themeelves by bairing bulle and bears, and thrashing hens at Shrovotida; they drowned old women as witchen and maysacred Jews for their wealth; they were people Whose language would be hardly intelligible to ax, whose costume would be outlandish and whose manners bratal. In overything bat blood, they were far more foreigoen to us, than the present inhabitants of Vienns or Moscow. These were the anthors of our jary systems.

I have coneumed so mach apace in oxhibiting the canses which render the verdicts of juries unmatisfactory, that I can only take a rapid plance as the evil consequencen which necessarily flow from them

The first is that certsin classes of men have no confidence in the administration of justice. They do not believe that they are fairly deall by in the jury-boz.

No insurer resisting a life policy, no preat company resisting a claim for an accident, no lawyer or docter sning for his bill, no gentleman contessing the charges of a tradesman, no landlord sning for a forfeitare, no person who bas rendered himself by any means nupopalar, can safely depend on the impartiolity of a jury. The fact is familiar to every lawyer and calculated on beforehand. Nay, even a merchant of London saing a trader of a ejuntry town is not gafe in a disputed case with a jory of that town. In parts of Wales, a Welish jury can bardy be got to do justice to an Eoglishman against a Welshman. This is not as should be. The jndges of the fact ought to be as much above suspicion as the judges of the law.
Anotber consequence is the disgraceful scenes which constantly occar in the jury-room, and even in open court. What can be more bcandalons to the idministration of justice than the diselosures Which frequently take place of the secrets of the jory-room ? It woald be easy to produce a score of cases out of the law reports, many of them recent, in which it has been proved that the jury tossed up or drew lote for the verdict; and there was a case at Yeterborough in which they settled their diapute by balancing a poker, the fall of which to the right hand decided the gailt of the accused; and it bas somatimes occurred that one obstinate fellow with a mule's hesd and a camel's stomach has staryed the other eleren into a verdict against their convietions and their oaths. Still more frequent are the cases in which the "most monstrons compromises have been made between the conflictivg opinions of the discordant twelve. To illustrate What I mean, take a late case in which a defendant was sued for pablishing an anonymous letter contsining the vilest eharges against the plaintiff If the defendant was the anthor of it the case called for tho severest damagea, and the only diepute was whether he was the writer or not. The jury found for the plaintiff, but astonished everybody by giving ooly a shilling damages. The sectet was that some of them thought the defendant was not the writer at sil, and only consented to give way to the rest on condition that the damages shonid be reduced to nothing. So conscioun indeed are the jadges of the candal that would resolt from the diselosara of what passes between the jury, that they bave done all they can to preerent the curtaia from being
drswn, and to shat out the public eye from the interior of the jury-room. When new trials have bean moved for and supported by aftidsvits of jurymen that they had tossed up for the verdict, the Court have laid down arule that they will not hear much affidavita (a). Now as ne one in allowed to enter the jury room bat the officer of the Court, and he only to ask if they are agreed, the effect of this rule is that the Court will bear mothing of what passes within that eanctum. What does this amount to but a practical declaration that the behaviour of juries when retired from the public eye will not bear the lighti Nor is the ignorance or absurdity of aneducated juries confined to their prirste room-bat is frequently displayed in open court by the most farcical verdicts. Wot long eince in the Sheriff's court when the usual quastion was pat "For whom do you find" ${ }^{\text {"-the }}$ reply was "We are magnanimous for the plaintifi." And only the other daj on a woman indicted for keeping a disorderly house, the verdiet was "Not guilty, but we hope she won't do it sgain." There is bardly an assize which would not furnish a chapter for "Punch."

Another evil, and a very great one, is the exclasion by law of certain kinds of evidence, because, as the phrase is in our law books, it would have too mach influence with s jury. Thus antil recently the testimony of the partien and sll persons who had any legal interest in the success or failare of the action was excluded. On the same principle What is called "hesras evidence" is with few exceptions rejected by our law. "If it were to be assumed that one long inured to judicial habita - might be able to assign to chesrsay evidence just 60 mach and no moro credit than it deserved, yet npon the minds of the jury, noskilled in the natare of judicial proots, evidence of this kind would frequently make an erroneous impreasion. Being acenstomed in the common conceras of life to act on hearsay and report, they would naturally be inclined to giva such credit when acting judicially: they would be nuable to reduce nach evidence to its proper standard when placed in competitios with more certain and satisfactory evidence; they Would be apt to forget bow little reliance ought to be placed upou eridence which may be so easily and securely fabricated (b)."
(a)*See obserrations of Bamona Parke and Aldersom in "Bargom v. Laogley," 1 Dowling \& Lowndes, 23.
(b) Starkio on" Eridence," p, 38., n.

So when a man is tried lor felony who has been before convicted of a similar crime, the lar will mot sillow the jury to know of his former conviction antil' they have loand him guilty of the preesent charge ( $6 \& 7$ W. 4, c, Ill), becaure they would attach too much weight to it. This is the reason openly stated in the booka. Now in axduding these and several othor branches of ovidence, the law just ahnta up so many ways of arriving at the trath; not becanae they would not be of the qreatest sorvice in the handu of a thorougbly qualified and practised judge; but becanae the raw and inexperienced dozen of Carmers or petty tradesmen do not know how to deal with them. In handreds of cases it thas happens that the ouly avenues to the truth are closed. It in an every day affair lor the knowledge of s loan, or s eontract, or an essestial fact in a canse, to bo confived to a solitary witness since dead, but who bas written an account of the $t$ sasaction while fresh in his memory, 'ante litem motam,' and who was open to no suspicion. Yet' in no such case is the evidence admissible; though there be no othar to be got. Even a reccipt for' uuney by a vithens since dend has been bxcloded.
Another evil, and of every day oceurrence, is that causee involving long accounts of requiring - meratiny into nameruni mattera of detail are utterly impracticable to be tried by a jary, and are therefore obliged to be referree to an arbitrator who can patiently examine and note down the detaile 'seriatim.' How conmantly thin occuns is well knowe to those in the habit of attending the courts; and when it does happen, the expense and delay of the trial in thrown: away. Over and over again I have heard parties, bofore they got into court, declare that they rould insiat on having the case tried out, and would never consent to refer it to arbitration; but upon the attempt being made ia court to go into the details in diepute, the judge, the jury, the coungel, and the parties, bave all become convinced of the imprac ${ }^{-}$ ticability of dealing with it there, and it has by univeral consent been turned over to an arbitrator. Thie is the consequence of settian twelve men to do what one coold manago infinitely better.
The last evil I shall mention, sad the greateot, is the oumber of erronoous verdicts that are come to, and of net trials that are reguisite to correct them. "Trial by jary in civil coses," eaid Lord Manafeld,' "could nol subsist now withont a power tomewhere to grat new triala There are numberteas canset of Galue verdicta, withoot corraption or bad intention of the jaron. They may hats heand ton much of the matiet befone the trish, and imbibed prejudicen
withoat knowing it. The canse may be intricate: the examination may be so long as to distract and confond their attention.
" Most general verdicta inclade 'legal consequences,' as well as propositions of facts: in drawing these consequences the jury may mistake snd infer directly contrary to law. The parties may be aurprised by a case falsely mado at the trial, whioh they had no reason to expect, and therefore could not come prepared to snawer. If unjust verdicts, obtained under these and a thousand like circum. stances, were to be conclusive for ever, the determination of civil property in this method of trial would be very precarious and nusatisfactory. It is absolutely 'necessary to justice," that there ahould upon many occasions be opportunitie of 'reconsidering the cause by a new trial' (c). That the power to rectify the mistakes of juries is requisite no one diputee; but nem triala are a heavy grievance to the parties. They double the delay, anriety, and expense of an action, snd sometimes render it wholly abortive, by protracting the proceedings uatil one of the parties dies or becomes ingolvent, or leaves the country, or gets diagusted with the delay and absodons the suit, or gladly accepts an unprofitable compromise. But though a large part of the time of the courts is spent in motions. Lur new trials, it would be great mistake to suppose that the aumber of new trials granted on account of the errore of the jury reprosents the fall extent of those errors. No: s crowd of casen mast be added, in which the parties rather anbmit to a. mistaken verdict than incur the risk and expenseof appealing to the court,-another class in which the coarts will not interfere with the discretion of the jury, 一and a third, in which the courts refase to send the case to a second jury on account of the mallinens of the sam io disprite. In regard to this last description of cases, thers is mo correction for the mistakes of the jury ; they have it all their own. wry.

This is in civil csuses ; but how is it in eriminal cased, where new trisla are never granted after an aoquittal, and very rarely after a convictiod, so that the errore of the jury go wholly ancorrected. Apply Lord. Manafield's obeervations to criminal triala, and what do they lead to 1 There is nct a bession or assize passes, bat we see notorious criminalin eacape in apite of convincing evidence, and to aggrevate the evil, the law nover allows aman to be tried again on the same charge. It is thus that the whole herd of villisas who live by plender come to look on the
(c) Bright 7, Eynon, 1 Burromb, 393-4.

Law an a rotten old net, full of holea through which any ulippery fish may ecespe.
I have now done with the mischiefs arising from trial by jary, not becanae the catalogue in exhausted but because time and patience would fail me to detail them sll. And when I surrey the pomerous orile flowing from the defects of this tribansl, I cannot help thinking they will before long force on the public the consideration of the question, Whether the time bas sot arrived when the wants of the age londly call for an improved mode of trial, and when the jary mast experience the amma fate so far as ita general application is concerped which the ordeal, the battle, and the law-wager have in turn undergone.
Some of the defecta indeed which have been exposed are capable of an easy rempdy whenever men shall cease to regard the jury aystem an an ark too nacred to be touched by the hand of innovation. The uselesa and excessive number which now composes a jury may be rediced, a majority may tale plane of naanimity, and the jury-room may cease to be the only place in which the law famisbes inaocent men ; but how shall we get rid of the want of previous qualificstion, the rastic ignorance, the partiality; the prejudice, the rado baste, the want of publicity and responsibility, which are the most glaxing ovila of jurien i These are defects which noem inherent in the apgtem, and inseparable from it ; they are organic "disessee" which ean only be cored by "desth". Though I shonid atand alone in thia conviction, I will avow it. After long reflection on the numerout and beary grieranoes which flow from the anlimited application of this form of trial, I for one am convinced that it is not adapted to the refinement of the sge we live in, that it has had its day and mast noon be thrown side into the hage heap of antique legal lumber, or limited in itu application to a very confined class of cases.
No one pretends to deny that it bas served im. portant neces in times past; that Then it first aroes and umarped the place of the ordesl aod the batile, it was agrest atride in the path of justice and civilisation ; that it bas often since then shielded the rubject from the powes of the arown, and the poor from the opprescion of the rich; thet it ha tended to lemper the rigid rulen of haw by the oternal principlet of common mence and jastice, and to barmoniso the administration of an antiquated and terhnical -ystom of lam with the poblic feeling add opinion of the time being.-though even in this its merits bare been ores-rated. Xeribes is it necessary whilo
introducing a better system, to deprive liberty of say security which it derives from the trial by jury. Retain it by all means if yon will, in all prosecations for pelitical offences, and in every case wherein pablic liberty may be concorned or Therein the judge may possibly have a bias. But lot all ordinary eases be beard by a man of saperior discernment and practised skill, whose natural powers have heen skarpened by a life spent in forensic contesta, who cannot be easily deceived by a witness, becauss he is conversant with every kind of teatimony; nor by an advocate, because he has been an adrocate himself; who in fit to bear and to estimate at its true value every species of evidence hitherto excladed, which may open an avenue to the trath; whose attention is not to be exbansed by the length, nor his comprehension distracted by the complexity of the evidence: give the suitor I nay, man with these qualities, who porforms his functions mader the publie eye, who is in no hurry to get away to his shop or his farm, whose very trade and business it is to weigh, investigate and decide on question of donbe and difficulty: in a word, let the facts be decided by the same experienced judges as the law, and the whole body of the law will feel renewed and invigorated by the change. A great part of its aupposed unctrtainty will ravish, new light will pour in from sourcen of evidence now shat up, the scales of justice will be beld with even hands, the beavy grievance of new e trials will be vastly diminished, the suitor will obtsin his rights with greater apeed, coconomy sud certainty, and the criminal will no lopger find refuge in the eophistry of eomasel or the weaknoss of juries. (d).
(d) In coaelading thewo pages, the Writer cannit forbear a rellection on the telicity of the timet we live in, whea we feel our libertiew so secure, at to expose withoat apprehenaien the lofirmitien of that ancieat Iontitation which was in daje pone by the only fuluge of liberty ! A Frenchman or thalian woald be apt to exelaina of un, " O fortamatom nimian, rus ai bu bie notint."

## THE LESSON FROM RUSSIA

A FEW NOTES ON THE EFFECT OF THERCSSIAN REVOLUTION ON THE PROBLEM OF HOME RULE EOR INDIA

## PREFACE

Wis 'isro pui'together in this short pamphlet some reflecticns on the saccessful Revolution in Russis as it touched and inspired in ip India. Thero were lig meetings held in Londor, reports of which are also included, and we draw pointed attention to 'Commander Wedgwood's reference to India.. Not.conly our educated ciasses but our masses also. should be made aware of the wark of the poor down. trödës luäsians. "That moral grit the stricken peassant of Bassia displeyed will bean inspiration to the equally if not more stricken peasast of India,

## CONTENTS



## THE LESSON FROM RUSSIA

Thr freedom of Rossia has sent a wave of enthusiasm through the world of Democracy. Ihose Denocrats who have been watchicg the inind of eponte tince the cutbreak-of War in dugut, 1014, were in a mood of despair, for the real issues of the atroggle were made obscare by the dost that nuilitarism bed raieet. The upholding of the rights of Netionality, the destracion of militarisca, the recbgnition of the ideal of freedom as surierior to that of benevcrent despatiom-ail these had sumehow got mired op with their opposites, and we were forced to sas witn regret that a moral triumph for Prossin was involved in the e.cthoin that caice to be adopted on the free soil of Englavi. Ti.e passing away of the Voluntary Systom, the treatuent u fed ont to conscientious objectors the alteration in Parliamantary procedure, the attack on the freedom of the Press, the treaterent of the Irish question, etc.-staelt of a spirit akiu to Prusianis:n. The ideat of Great Brithin for the independence of Beigians and Serbians and Rumanians lacked the great coprort of example which her fair and just handing of India and Eifspt cught to bave afforded. The Rossians were fighting fur freedon abroad while they were in chains at home. Thas the whele aspact was glowmy wise Nemeris delayed tho rictory, and trought alout tho miracle of the retroat of tio pa:ly days, the sorrender of Warsare, the maddle of (iallipoli, the fall of Kot. At length the mach tyramised-. ove* Russizas, perbmps belped by their religions fericur and intuition, saw that Prossianism could int ke brokeio on the betciefleld when Petregral hert Pciand and Finland in chai, e, ulen the Trar was a hind of Kaiser. They fought deaiust Prussianisw, and hape won the rrost important
 Ifasciu exibis"-b Russia diferent fruts the one that the worid fancied.

The rew Nation muaity extublided by tha Ressiata in their una lard will enablo then adequaly to introduce
reforms in international moraity. The ionrdations of that international morality are laid down in a dew pregiant words ing President Wizon: "Every peoploshnald la laft free to deternir: its own polity." On that principla the future of Irternationalism has to be shaped. On that principle, as a wothe it: the April Nineternil Century points out, "the Danes of Schleswig must be free to rejoin the Danes of the Kiugdum; tho Prussian Poles must be rennited with their bretliren in a united and autonomous loland; the people of Alsice and horrains must be allowed to chonse the flag ander which they live". It is that ideal of Liberty and Freetom for all, that has made :ar call this War a War of Ideals:

The dim apprehension of that fact has furnished the stimulan and the ingpiration to the free peoples who ane in league to day agaiust the Empires whose very existente is a denial of the principlo of liberty, a negation of the dectrine of Nationality. Is it imagimato that the freedom.loving sons of Canada, New Zealand, Anstralia umd Soath Africa would bave sprung to arms to secure a territurisl readjustment in the map of Europe, or even th curtail the dyazaio ambition of Hehenzolitrns er Hadsbargs f

The writer, Mr. J. A. R. Marriot, in both the above quetitions, forgeta India. If the Yoles and the Alatians and the Danes must be left free to determine their "own rolity;' then Iadia too must be so left free. And if Australia and Now Zealand, Canada and South Africa have "aprung to arms," so - has also India, as much as ahe wis allowed to spring forward by the shackles imposed by lee whort-sighted Covernment, whech did not see what the Indian leaders satr years befirthand, and in their couceit and high-handedness did not ait ap to the proffered advice.

At length the tide is taraing. The blow etrick by the Eussians is having its effect, and by a strange deating, the lloo - volution bronght forth these words in reference to froe England:

- Do not go heme wit houk sectining that in British prisuno some of the test goung men of this generation are imprisoned for civil and religious offences. Do not forgel that in Rasoiu the prions have been rpened.

Such were tho wurds uttered by M.. Gorge Larobury, who prosided at a hure meeting of Dicish Demucrats Dr. Nevin*un, who knows hascang woll, reculled the taches of herv:s "whe
mathed starey by etare from one dicary barrack io enother in thin ircen deeart of siberia," and he called upon the large. ander"e to ris. to its feet, "to show that we do not forget". Mr. Beilamy of tie Nat:ceal Unicu of Railwaymen, was there to chocirace Lio propie; there wes Dr. Lyach, the Irishman, who riond ip a:d derasuded "immediate amesty for political priwhers"; Mr. Zanguill "did not thank her, he congratuated her, and "joiced stat Ragein could at last look the world in the fuce".
d'laso Eritiel peopie will belp India. In then lies our hopo How 'wa wish thero could have kren an Indian present at the croat cuctering to spak on our belialf. Howeper there was one uciole Lequindaran wo spoke for our Motherland. He eaid:

Wo lave a dity alno to India. I know well enough that unless neadhre to tha old Eaglish priuciples of freedora fur all the people in tia Dritirh Limpine, unkss you ineut jour fellow-citizens as though they nere reasouable individuals, they will not beome reasonwie anividmals, and you will not end by glonifying the came of leviant but ty derrading us in the dirt. I want to eee as a result of tuis heaic struggle, in which the Indians have taken no small jart-l winh to gea an ackwowledgwent that men who are tit to stand side ty mide with us in the trenches are also tit to stand side by side with us in ifa gurerment of their own comptry.

Th.e can who er,cike these truthfa! words was Commander Wengwoud, M. P., chd we mast thank hien for thus championing Be cunve of Jnstica. Thas the iesson from Russia is supreme, find cur pecplicnast leara it as soon as as pusible, and most not fact to teach it to our wasses.

## BRITISH DEMOCRACY AWAKE

Tear hage Albert Hall was packed on March 31st by" a many of the English Democracy pas could get into it, "the Heralt crowd," as it was called, with the Herahl's Editor, gallaut Georgo Lansbury, in the chair. The Herald says:
"The noeting at the Albert Hall on Saturday uipht was a portent; a prophecy : it was in the literal sense epoch-making : it marked a turning-point in the mood, the spirit, the activities of our countrg. Over and over again during the speeches one note was atruck, and always it met with the most cutiauinstie re-sponse-the note of beginning. Here, one felt, was the first light of morning, the first fash of retarning liberty in the black skirs of loss and oppression and reacion. The great iudrastrial litiple Alliance, and all the more active elencots in the Sociahist and Radical movements, found representation in the mords and personalities of the speakers; and more imprestive even than the courage and eloquence of the speeches was the tlectric and indescribable spirit of the -audienco. Eviry geat in the vast hall was occopied. Peopla stood three doep in the gallery. Five thousand were turned away disappointed from the doors. Rassian, Yolish, and Jowish refugrees were there in great numbers, British working men and women in greater numbers still-all joined tegether, not merely to congratulat: Russia uponits Revolation, but to initiato a revoluturn in ti, e political, social, aud econcmic life of tho British Commonwea':h, The most passinate aplause of the eveniug was croked by two points, insisted on by several speakers-that the eolliers who

## Kaytsed to Shoot

their comrades in the streets of Petrograd have set an example for all the workers of the world to follow; and that when, and only when, the soldiers and workers of the world have lrith: th is lesson, wars will coase. Nobody wha was aming that norell a ten thousand cian any longer doult the siogn of the times. Thes capitalist Press has indulged over ihis neetirg in itsushadownelois
orgy of suppression and nisrepregentation. But to tell lies is not to alter fäcts. The meeting was out and out and through and through for Peace, for personal liberty of speech and action, for the ideals of Social Democracy and for

## The Red Thternamignal

-and more- the pettifogging legislation by which our bureanerats Gave tried to silence and cripple the democracy was smashed Into a thousand fragments. Free speech was not just preached on Satarday-it was practised. The speakers stood np to say What they believed, without fear or favour, Truth sbowed its Breatness and prevailed."

The great meeting passed the following resolution :
"Hhis meeting sends joyfal congratalations to the Democrats 5 of Rassia, and calls upon-the Government of Great Britain and of every country, reutral and belligerent alike, to follow the Wuscian example by establishing Industrial Freedom, Freedom tof Speech and the Press, the Abolition of Social, Religious, and Netional distinotions, an immediate Amnesty for Political and Roligious offences, and Universal Suffrage."

What will it be for our India when Great Britain follows in Russia's track, and frees her captive Nations, Ireland, Egypt, Incia?
ThtM. H. W. Nevinson described what Rnssia had paid for her freedom. He said;
"Mon and women, I have been put up to speak firsi after our Ohairman, simply because I happen to be one of the few Englishmen who were present during those glorious and terrible scenes of the Russian Revolution in S. Petersburg and Moscow twelve pears agos, and in consequence $I$ have had the privilege granted me of speaking to a theme which requires no eloquence, Fand for which the highest eloquence would be inadequate-for L am to spoal to the honone and memory of those men and Wromen, boysend girls, who have suffered and died for the oanse af Russian freedom, It is a long and glorious roll of honour, - Ind from that roll of honour I would not exclude any party or denomination or race in Russia which has contributed to the fitragele. I would include the people who were called Nihiliste, squa fite Social Demoorats of Russia, and the Social RevolationEries of Pusgia, and the victims who fell on Bloody Sunday,

January, 100\%, und those who died, as I saw them die, upun the burricades in Mostow, and those who died in that terrille repression of the Revolution under tho bang rupio that they called Stalspiu's necktie, and those who were betrayed by proyocative agents more infamons in ignominy even than the man Gordon, whom our Government has not disdained to use; and I would alao include those who have striven within the last ten years for the maintenance of the Duma, be they Social Democrats or Consitutional Democrata. I will not trouble abont a long list of names, but I taink hem we must mention the names of a few women, such as Suphio Perovsky, Fera Figuer, Vera Zassulitch, Marie Spiridonova, and Katherine Breslikovsky, the aged granduether, ws ste is called, of the Revolution, who now, to onr great joy, is returning from Siberia to the conntry she bas eerved. And here in England we are especially bound to mention the names of glorious Russian exiles, such as Stepniak, Felix Volkhoygky, Nicholas Tchaikorsky, and that great friend of us all, and of all men of good will, Peter Kropotkic. Those are great names, but what shall I say of that great cloud of witnesses, unnamed, unknown, unremembered, the men and women, the boys and girls, who speut years of hilleous monotony shat up in such fortresses as that of SS. Peter and Paul, where on one side you can see the marble domes of the Tsar's Dynasty, and on the other the glorious walls sanctified by the blood and tears of the martyrs of freedom? What shall I say of those men and women who were forced to march from atage to stage, and from one dreary barrack to another, on their way to the inhospitable and cold deserts into which they sank as into the oblivion of the tomb; or those I have seen hunted up and down the streets of S. Petersburg and Moscow by mounted Cossacks with heavy loaded whips of leather and lead; or those who were hunted to death by the secret police, who were betraged by provocative agents, who were handed over to the most terrible tortures that liendish ingenaity cart invent, or the haman frame can endare, in the tortare chambers of Riga and Warsaw? It is less than ten years ago that men and women, 2,100 of them, were langed within three years, ar. averago of about two a day, and that the Rassian prisons were crowded with 181,000 men and women, chiefly political prisoners, - and that 84,000 were sent to Siberiz. It is for us that those men and women enfered; in tears and sorrow they planted the seed, of which we now reap the barvest in juy. With

Aleir alripas we are healed. In 1855 the Amerima writer; Cieorec ke unan, in passing throngh Siberia, met Kathesitue finestoverif, then a yousceman of thirty or thirty-Eve, tud is the ${ }^{3}$ parted sho seid: ! We may dis in prisou and exite, our chideren may die in prison and exile our children'e ohidern may die in prisen and exile, but something nust cone of it in the end.' Sumething has come of it now, and I wioh we coud penctrate the darkaess into which those noble mon and wemen have passed, so that we could toll them that not all in rain has heen their bercie struggie. Men and wonen, there is - custom, in Rassia, at the beginning of meetings. like this, which, I think, we might imitate here to-night. It is tho custum; in menory of those who hape suffered and died for the Ferc!ution, fur ald the andience to rise and staod silent for as fee seconds, to show that thej and re do not forget what bas been dono for the Cause. I call upen the audience now to rise in memory of these who have uied and eufered for the Rassian Povoluticn, to show that we do cot forgat what they have done for nsal."

At these words the audience rose and stood milent for some saconds.

Commander Wedgwood, M. P., did not forget India. He said;
"The Rossians are free, but they hare given os the hope of frecuom, and when we rejsice with them, as we do to-night, with the Rossinis of to-day and the Russiaus of yesterday, let us remamber also all those rebels in other conntries, in Eugland and c!sewhere, who have gane ander in the struggle. (A roice: 'Lieklnecht', We march on. Rassia is free. What are we to dos. Every real freedom lover stands for the equality and freeden of all the races. If wo feel our responsibilities for the beliet that the democracy is international and irrespective of race or chour, then 1 say that it is our daty ererywhere to sapport those dentocracies when they are in trouble, and to reppert thena by every means in our power.

- "The nest thing ia this: it is our duty to look to our own wouro and to see that that frewom which we acclaim in cthers is axtended to tho bust of curatility, not only to our own peoplo here, Lot to cill poople in our great demceracies. I pass over the Irish yacelina, because it is an itapertivesce in an Jaglishman to deal with the injutices of Ireland. (Applanse.) I pass over,


## 8

 as the suffirage is concerned-(applause)-but the suffrage if nothing at ail. It is not a question of whether women arive going to rote, bat a question of custom and public opinion. We are dualing with n beeatiful Bill in Parliament 'for the bettex persecution of prostitutes,' and it has got a clause in it to sop fhat ary giel of eighteon can be ran in off the streets and put into a home anti! she is rivetem! It is in the interest of society! Fvery crmo agrinst freedom is promoted in the interest of society I I pass over these things because the point I want to make is, we have a dinty also to India. I know well enough that unless we adhere to the old English principles of freedom for all the people in the British Empire, unless you treat your fellow-citizens as though they were reasonable individuals, they will not become reasonable individuals, and you will not end by glorifying the name of England but by degrading us in the dirt. I want to see as a result of this heroic struggle, in which the Indians have taken no small part-I wish to see an acknowledgment that men whó are fit to stand side by side with us in the trenches are also fit to stand side by side with us in the government of their own country."

We thank Commander Wedgwood, Would that H. H. the Maharaja of Bikanir had been there to speak for his country. A King himself, he has the right to consort with Kings, but we would that he had come face to face with the English Democracy, to feal the heart of England, and learn where lies the hope of Indin's freedom.

## DAWN IN THE EAST

Rossia, by one of time's ironical revenges, has become the envy of less happy lands. Three great meetings, in the Albort Mall, ihe Queen's Hall, and the Kingsway Hall, last Saturday, acclaimed the Revolution, and in doing so tempered their joyful welcome to the new Rassia by strong protests against reaction at home. Comparisons between the present stato of Russia and of England were inevitable in a gathering like that at the Albert Hall, which was organised by the advanced wing of the democratic movement and addressed chiefly by leaders of the "rebel" movement. Serious inroads have been made upori the traditional liberties of the British people since the War began, and although ultra-patriotic people in the Albert Hall may have felt that England is hardly so black as she was painted, and that Liberty can hardly be called a lost canse in a country where it finds so many resolute and able defenders, the opportunity of bearing witnesa against reaction was too good to be lost. A magnificent demonstration of faith in democratic principles was the result. Many remarkablo meetings have been held in the Albert Hall, but none so tromendously enthueiastic, so sure of its ground, so convinced of the validity of the principles it was designed to support. Revolutionary Russia, in freeing herself, has set free a new hope for mankind, which funds its incarnntion in stach mage and unanimous assemblies, filling every corney of the vest amphitheatre and rising tier upon tier to the very roof. There one saw Democracy in its most exalted mood: its penerous ardours, its radiant hopefulness, its passionate idealism, its splendid faith in the redemptive force of freedom, gave to the gathering an almost Pentecostal quality.

> The Revolomonaify Ruli Cajl

It was an anforgettable experionce to share the enotions of this immense audience of demonats, over which Mr. George Lansbury presided. There was a veritable crisis of feeling when Madame Clara Butt stood forth upon the platform to sing,
to the tune of the Rassian National Anthem, the words of an old hymu invested with a new and poignant significance:

God the All Terrible! King, who ordainest
Great winde thy clarions, lightuiggs thy sword;
Show forth thy pity on bigh where thon reignest;
Give wo as peace in our time, O Lord:
Altemnte verses were taken up $k y$ the andience, and the appeal was poured forth on a wave of surging emotion which shook the foundabions of selfacourch. Madame Batt sang with glorious passion, suataining in the mose extraordinary way the tremendous pressure of the audience whioh carried it beyond itself. Deep called to deep, too, in that woment of strained silence when Mr. H. W. Nevinson, the first speaker after Mr. Lansbury, called the roll of the brave men and women who havestriven and suffer, for liberty in Russiz. No man had a better right to speak of the Pussian martyrs than Mr. Nevinson; he was one of the for Englishmen mesent during the terrible scenes of the Revolution in Petrugrad thad shocew twelve years ago. Beginaing yith the Decemorists of $1825, \mathrm{Mr}$. Nevinson recited the names of the Ressian martyrs, known and unknown-men, women, boys, and girls-who suffered and hied for freedom, who marched stage by stage from nee dreary barrack to another in the frozen desert of Siberis, in whioh thoy sank at last as into a tomb. IV told the. audience the $\begin{gathered}\text { t } \\ \text { is a ctietom in Rassia at such meetings as this to }\end{gathered}$ romember the herios and martyrs of Revolation, and he called upon the aurience to rise to its feet "to show that wo do not forges". With a single impalse ant with impressive dignity, the audionce rosponded to this suggontion and stood up in proud silence.

## Mre Lansdury ant Mr. Shilife

From the chair Mr. Cansbury read the resolation which sent joyful greetiogs to the democrats of Russia, tud called topn the Governments ef Great Britain and of every cuurtry, neabad and helligorent alike, to follow tibe Russian example by establishingmanemat fremon, fresdom of speech and the piess, the abolin
 neety for politicel ind peligious otwaces and universel suftrage. He said this was the nost reprecentative international assembly since the Intemational Soctalist Congress in this country. Ressim: freedon has been secured, he went on, becanse for the first tiw: in modern history working-class soldiers bape refused
to fire upon their brothers and sisters. A greet roar of chesring erphasised the statement, to which more than c.ne speakor later recarred. "Do not go home," Mr. Iansbury added, "withont rendioing that in British prisons some of the best young men of this genoration are imprisoned for civil and roligions offences. Do not forget that in Russia the prisons have been opened." Mr. Robert Smillie, the Miners ${ }^{2}$ President, said it was a splendid thing to be abla to speak freely about Revolution. . . in Russia, He hoped Russia was really free; but he was sure that the Nation of which we form a part is not a free Netion. Tis refererse to the conscientions objectors, like that of Mr. Lanslury's, was emphasised by a thunderous cheer. It is for the people of Great Britain, he said, to prove to the Russiar poople whother wo are worthy to send a message of congrat blation to thew.

> Mr. Roberir Williams ant Me. Tgart Zanowibi

Mr. Robert Williams, sleaking as the learter othe tranport workers, said that the rights of organisation arel wombination and civil and political liberty had been chellenged by the reactionary. clas es in this country. The Defence ot the Realm Regulations were calculated, in hisjudgwent, vather to detend the privileges of the profiteering classes than the safety of the sovereign realm. He declared that they were resolved to use the powers of the great Triple Alliance of railwaymea, minera, and tansport workers against industrial conscription, against "indentared white labour" as agsinst indentared coloured labour. We want to sond men like Robert Smillio to represent to the Russian democrats the true attitude of the industrial democracy of this country. Mr. Israel Langwill delivered a charming speech as a representative of the race which has suffered most from the old Russia. Many of his sentences had a cuttiag edge. We democrats, he sail, never derunncen haesia, but ofiy the Russian Government. We welooned the representatives of the Duma to our shores; it was only the Tsar vint ve refused to allow to land here. We have always reoognised that there was a holy Russia; hut it was yot the Rnesia of holy candles and ikons, but the Russia of the hots struggle for freem dom. Passing on to speak of the indaas upon British Inertios during the War, Mr. Zangwill becane very epigrammatic. Lloyd George, diluted by the Constitution (he said) is whll very well; bat unalloyed George is a National danger. Freedom, it is said; broadens slowly down from precedent to precedent, but our
freedom seems to be falling down from precipioe to precipice. For that great gesture with which Russia freed his peoplo Mr. Zangwill said he did not thank her, he congratulated her, and rejoiced that Russia could at last look the world in the feop; Le rejoiced that this burden is now lifted from the sonl of Ritsime as from the body of the Jews.

## Miss Rovorn and Comandier Wrdewood

Miss Maude Royden delivered what was, perhaps, the most generons and free-hearted speech of the evening. it bad been suggested more than once that English democrats, because they are in the grip of reaction, had little right to praise Russia, but at least (eaid Miss Royden) the spirits in prison may send a message to the spirits who are free. We can rejoice that Russia is free, with no grudging after-thoughts about ourselves. She dwelt upon the message of the Russian literature, with its insistence upon the principle that every human being counts for one, and none for more than one. "Why, where do you think the Russian people could have stopped when they were deciding who shuuld have political freedom, before deciding to give it to every man and women?" Commander Wedgwod, likewise, had the courage to speak counter to the prevailing sentiment of the sudience. [He is pro-War, Ew., N. I.] If we beliove that dewocracy is international, he said, it is our duty to support that democracy every where when it is in dunger aad tronbla by avery means in our power-an obvious reference to the part democrais like himself have played in fightirg against German aggression,

> Dr. Linef and Mr. Alrert Bellamy

One of the most interesting figures on the platform was Dr. Lynch, the Irish rebel, whose career is a romance. Ho has a wild lesh eye, and, watching him, one saw the very spirit of Revolution at work, ardent, high-spirited, and fundamentally reckless of consequences. He stood up when his time came, and demanded "an immediate amnesty for political prisoners and the establishment of the Republic ". Hic did not qualify this demand. Some one in the audience suggested that the Socialist Repoblic was wanted, bui Dr. Lyach said promptly that for the noment he would be content with any sori of Republic. Amidst all the falsity and hypocrisy of the War it hai become more and more apparent (he
said) that this isa Warin which on the one side we have militarism, Tsarism, autocracy, and the Trast of Kings; and on the other the Republic. Perhaps the course of events will be, first Russia, then Germany, will get a Republic, and theu England-for we have got so much from Germany. He would like to see, not Imperial Federation, thati Pecksniffian imitation of the German model, but a ring of British Republics; and he believed that this programme would be found to be the solution of the frish problem also. Mr. Albert Bellamy, of the National Union of Railwaymen, and Mr. W. C. Anderson, each in his own way, drove home the moral of the Revolution as they would have the British workers understand it.

## POLTMCAL SANDHYA-KALAM

"Ten happiest exen of ony generation is now trmophantly completed."

So says the Nobion, referring to the Russian Revolution. We cen well understand the signticance of such a statement, if We realise that the great event is not going to affect "the land of the "Tsar" that was, butall the countries or the world in the West and East alike. A thick, black, ngly cload obsirncted the shedding of the Light which the Sun of Democuary gives, and on Rassian soil the darkness of autocracy reigned supreme. A change has taken place, but it began some years ago.
.Oer a deade ago, when Russis made an andance with Franse and Great Britain, the first stop was taken. British Radicals often disapmoved of England joining hands with a combyy where hberal and democratio principles wore not duly honoured. On the obter hand Rassian Eiberals greeted tho Ahtree inith joy und hope, for they saw the signiacance of the event. A Netion, like a man, is known by the company it keeps; a Nation, ike a maz, is affeeted, for good or ill, by the code of mornls and hoonr of its friends, They believed that it would strengtheu their cause and not that of the antocracy, if Rasin stood on the side of Framoe and England, and against Germany and Austria.

Their hope is formed. Nor is the Revolution a blessing for thea only. Russia belongs to the West, but also axists in the Eest. Cius the whole worid is to be tonohed. Says the Natione:

We hage from these tremendons events something for ourselves wach ion Larope, evarytbing for Russia. Something is changed in fondon nod biaris-aye, and in hedin wiso-iecouse bopt bas roberset a yoome hat sat in dakness.

If Kerlin and London and even Republican Paris hope for something from the Revolution, how much more must Delhi and Simla hope? The New Statesman says:

For two continents the death-knell of absolutism is beifg sounded.

The Russian Revolution deals a dondly blow to Prussianism, which the Powers of Light wish to destroy. More than all her achievements on the Eastern Front, more than all her dash and push and victory in Turkey, the Rassians have helped the progress of Peace by freeing themselves from the tyranny of Prussianism at home.

It is the greatest event of the War against autgcracy, bureaucracy; absolntism everywhere. "The Russian leaven has worked at once on the Irish question," says the Nation. It has affected public feeling in India too, though the masses are yet to learn the inner meaning of the Revolution in Russia. The Christian Commonvealth describes it as the " Dawn in the East".

Who will explain to the Indian peasants what their brothers in Rassia have done? Who will make clear to our masses the inner meaning of this great action which has made a Nation free? Modern people talk of "psychological moments"; our ancient Knowers have taught us the religious significance of "Sandhya-Kalam"-periods, short or long, which join the old to the new, leading individuals and Nations from bondage to Freedom, from mortality to Immortality. Such an hour is this. The Sun of Liberty rose for the children of Nippon a few years ago ; it has been rising for waking China; it is now rising for the Russians. Our hour is approaching. India too shall be free: but the sons of [ndia must sacrifice as the sons of Japan did: they must andergo the change of heart that those who were slumberirg in the Celestial Kingdom passed through ; they must stand up for Right and Justice as the Russians did. Here in India sil these lessous are being learnt, and our long connection with Great Britain, who to-day champions the cause of Freedom, entitles us to hope and to stand expectant. We are worshipping in the small hours of the morning.

The Sun of Freedom will soon rise for us also.
Printed and Publiahod by Annie Besantat the Besant Press, 2nd Line Beach, Madraw.

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