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Open Court

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OPEN COURT

A Week on the Jury

The following letter appeared in the *Greensboro Daily News* on November 15, 1926. It has an evident bearing on the value of having a jury in civil cases.

Editor of *The Daily News:*

I enclose herewith check for $15.00 which represents money earned by the sweat of my brow serving as a juror in the Superior Court during the past week.

First I wish through your columns to thank my fellow citizens for this magnificent reward for a week's time devoted to their interests. I feel however that having received this money out of the public treasury I ought to give the taxpayers of the county some account of just what I did to earn it. And in the second place I am going to ask your aid and advice as to what to do with it now that it has been so laboriously earned.

Addressing myself to the first issue, as some of the lawyers up there were accustomed to say, I sat on just three cases. I made no extra charge for the time I sat around in between cases, or waiting for the calendar to be called, or listening to lawyers wrangling about postponing trials, or arguing what they called motions but which sounded more like stagnations.

The first case I sat on was an undefended divorce suit. A gentleman testified that another gentleman went automobiling with a lady friend and asked him to come along. He did not say why he asked him to come along. Maybe it was to act as a chaperone, maybe just to be a witness in the case. Nobody asked and nobody told us. Just as the evidence was about to get interesting the plaintiff's lawyer stopped asking questions and as neither the defendant nor his lawyer was there nobody else asked any questions except I believe the judge did ask what date that was. We gave the plaintiff her divorce so I take it that the law of this state is that a married lady is entitled to a divorce if her husband goes automobiling with another lady regardless of whom, what or why.

Now don't blame me if I gave a wrong verdict. If the defendant wasn't there to defend himself I couldn't very well defend him. And what would the other jurors have thought of me if I had tried. They

might have turned around and divorced me and I don't think my wife would have liked that at all.

The next case was about a cow and thereby hangs a tale.

It was a contested case and when the two lawyers (both of whom have previously sued me and gotten verdicts against me, that is to say the mills out here) let me sit on that jury I knew that they must both be pretty cock sure they were right.

They were.

The fellow who bought the cow alleged there was a warranty. The fellow who sold the cow admitted the warranty. So the judge submitted the first issue: was there a warranty? But he told us to answer that issue yes. So we went out in the jury room and began to argue whether there was a warranty or not. Personally I don't think there was any warranty because it was a public auction and the catalogue said no warranty except title of the owner. But both parties said there was and the judge said to say yes so I didn't want to be in contempt.

The second issue was whether the warranty was breached. I didn't see how a warranty could be breached if there wasn't any, and there were two other intelligent men on the jury, but the other nine outvoted us, excuse me, I mean over persuaded us.

The third and last issue was damages and there were 12 different opinions about that so we knocked off about one-third of the price of the cow which I thought was doing pretty well, considering.

After we had that all fixed up and answered the three issues and were about to take them in to the judge, some fellow raised a question about interest on the damages. There wasn't any issue submitted about interest so we proceeded to argue and discuss that issue, but as there was no place on the paper to answer it we had to stick it in the damages.

There was only a difference of about a hundred dollars about the cow, and it took the judge, the court clerks, the sheriff, the court stenographer, two lawyers, 12 jurors besides those that were excused or kept waiting, and about 20 witnesses including some of the busiest dairy men in Greensboro a whole day to try that case. It reminded me of the time I spent a whole day going around for the community chest and got only $85 and I told my partner I would rather have added $85 to my own contribution than listen to some of the things some of those prospects told us. (But you might think I am almost as poor a solicitor as juror.)

The third case I sat on was about a fellow who bought an automobile on the instalment plan and as usual didn't pay for it. He also forgot to come into court and give a reason for not paying for it—or couldn't think of any or hire a lawyer to think of one, so much to our sorrow we had to answer the issue "yes."

A jury before us on a similar undefended case had come back for further instructions and asked whether there wasn't some insurance company in the deal that ought to pay for it but the judge said that didn't have anything to do with the case. So as our jury couldn't find any insurance company to make pay for the automobile the defendant had bought, we let him pay for it himself. At least we hope he will.

The last case I sat on I didn't sit on. It was a suit for personal injuries. This must have been a very important case because the counsel on both sides were very careful about the selection of a jury and didn't want anybody on there like me who wasn't fully qualified to pass on the issue. Some of the questions they asked showed wonderful sagacity about the qualifications of us jurors, especially whether we had paid our taxes. It seems that a man who doesn't know enough to pay his taxes doesn't know enough to sit on an accident case. I have learned a dandy good way to keep off the jury next year, but that isn't the reason the plaintiff's counsel challenged me off that jury. The only question he asked me was whether I was connected with the mills out here and then he challenged me and I began to wonder what the matter was with the mills. I used to think we had nice mills but it seems if you are connected with cotton mills you are not fit to sit on a jury.

The cow traders and divorce lawyer forgot to ask me that question. Maybe next time they will know better.

Now, Mr. Editor, the last issue is this: Did the county get value received for the $15 they paid me. I don't know how much they paid the judge and the clerk and the sheriff and the court stenographer and the janitor and for heat, light and water and interest on the courthouse bonds.

I am quite sure the judge could have decided all the cases that came before him this week just as well or better without us jurors and in just about one-tenth of the time.

I will not say anything about the time lost from my own business or the agony, excuse me, I mean inconvenience, I suffered. My main regret is that after I was generous enough to give a whole week of

my time (pursuant to summons duly served on me) to the county that said county made such poor use of it.

From the above you will appreciate my reluctance to accept the generous honorarium with which the clerk of the court has rewarded me. I would feel like I had cheated somebody if I kept it. Indeed I looked all around as I left the courthouse to see if there wasn't some poor devil or deviless hanging around that deserved it more than I did but no such lucky body was hanging around.

So I am sending you the money, Mr. Editor, as a sort of conscience fund. I can't on good conscience keep it. I didn't earn it. I don't want to cheat my fellow taxpayers out of it. So I am passing the buck to you, Mr. Editor. I am leaving it to you to consider the case and dispose of this conscience fund as you think the facts warrant.

Please weigh the evidence carefully and render your verdict accordingly. Take the case.

BERNARD M. CONE.

Greensboro.

REFORM IN CIVIL JURY PROCEDURE

Mr. Cone expresses the layman's idea of the jury system in civil cases. The following is by a lawyer, Fred H. Peterson of the Seattle Bar, who has been in the practice for forty years, and who is ready to see the jury shelved in civil cases. It is quoted from the latter part of Mr. Peterson's article in *Law Notes* for January, 1926, reprinted in the October, 1926, issue of the *Journal of the American Judicature Society,* under the title of "Reform Needed in Civil Jury Procedure."

"In England in civil cases not one in a thousand is submitted to a jury.[1] Louisiana has practically dispensed with jury trials. New Hampshire by constitutional amendments excluded jury trials when the amount is less than a hundred dollars. So it can be seen that the boasted right of trial by jury in civil cases has practically become obsolete in Great Britain, where it originated.

The books are full of reversals because of erroneous instructions and improper admission of evidence, which, in all probability, did not influence the jury a particle. A very intelligent member of the

[1] The author evidently intends to limit this statement to contract cases. Tort actions are ordinarily tried to a jury in England.—Editor.

bar happened to be drawn for service, and to get actual experience how a jury disposes of a case he served during the whole of last month. His statement about considering evidence and reaching conclusions coincides with mine; for I was one of a jury in a murder trial in Milwaukee before admission to the bar. My friend who was on duty last month relates that most ridiculous reasons were offered for deciding a case. One lady juror insisted that she never would give plaintiff a verdict because his lawyer was rattling a bunch of keys which had made her very nervous. Another would not consent to a verdict for defendant because his eyes were too close together, and she knew from experience that such men never told the truth.

Everything considered, trial by jury is often a waste of time, useless expense to litigants and delay of justice. Its good points are more than offset by these disadvantages. No wonder merchants' associations and arbitration boards are favored in many cities, and are becoming more popular as tribunals to end business controversies.

One of the favorable points urged for trial by jury is that a juror gains larger vision concerning the difficulties courts encounter in administering justice, and that its effective administration rests with the people. Also that the arrogant breach of a contract or the defiance of civil obligations may be submitted to a jury for their disapproval as shown by their verdict. But why should private litigants bear the expense of educating jurors in civics?

Jurors are generally honest and intent to do justice. It is their lack of training and want of qualifications for such important duties that cause a jury to be almost worthless as a part of the court in determining the facts in cases arising out of the complexities of modern life. The fact that leading men of affairs, accustomed to promptness, usually escape jury service, makes trial by jury lag behind like a stagecoach of old following up-to-date auto transportation.

An attorney often takes over an hour to examine jurors on their voir dire, and then argues about challenges, hoping to get some intelligent person on the panel; and the other party does the same, hoping to replace a gleam of intelligence by some ignoramus whose sympathies and prejudices may be readily aroused.

However, the American people will not consent to forego their fundamental right of trial by jury in criminal cases; although glaring attempts have been made to circumvent that right by providing for injuction or contempt proceedings. Also a jury may acquit where

a judge, following law strictly, would have to convict, as in prosecutions under the eighteenth amendment, where a person may be convicted for having a bottle of liquor in his possession under the Federal law, also the state statute and then a city ordinance. Nor is this all—he may be prosecuted for resisting an officer, and fifthly, he may draw a long term of imprisonment and a heavy fine for conspiracy to violate the law. Even the U. S. Supreme Court justices have frowned upon the latter as savoring of persecution. A fair-minded jury in such cases will hardly ever convict a second time for an offense for which the defendant has once suffered punishment.

Is there any remedy to meet modern conditions? Trial by wager of battle, by ordeal of fire and water, and benefit of clergy have been cast into the "scrap heap" of the law, and I believe trial by jury as now practiced in civil cases will follow in due course. I have witnessed trials in foreign countries and particularly in the State of Hamburg. There commercial cases are tried before a law judge and two laymen engaged in business. The judge decides all questions of law, the lay members of the court may determine the facts, ignoring the views of the judge. In this way a trial is expeditious and before intelligent men. This appeared to be a very satisfactory way of deciding the law and adjudicating upon the facts; for a case that would have required at least two days to try in this country was disposed of in less than two hours. Of course there was no opportunity for oratory; counsel had to stick to the actual facts, as the lay judges were asking numerous questions bearing on the point at issue.

One more remark and my over-extended, and perhaps useless, dissertation ends. For many years I have inquired of my clients and acquaintances who were on a jury, as follows: "Suppose you had a lawsuit, would you prefer to leave it to a judge or a jury for decision?" The answer has been invariably: "I would prefer to leave my case to a judge for decision." Some would add this: "provided I had a good case, but if I had a rotten case, or wanted to put something over on the other fellow, then I would call for a jury to help me do it."

I am not in the "uplift" business, nor do I want to pose as a reformer, but I have stated my view concerning trial by jury. It is a time-honored institution and should not be lightly superseded by a fanciful scheme of administering theoretical justice. We are learning slowly and no doubt will evolve a system for deciding issues of

fact that will meet approval and be more in harmony with modern requirements—where intelligence and not ignorance will be regarded as the essential qualification for triers of fact."

FOUND WANTING

In the case of *Dunn v. Jones* (1926) 192 N. C. 251, 134 S. E. 487, the plaintiff's tax title was held invalid. The opinion of the court follows:

PER CURIAM. The plaintiff in his brief says:

"When the rich young ruler went to Christ and asked what he should do to inherit eternal life, the Great Teacher told him how he could do so, and the young ruler told Christ that he had done all of the things enumerated, and asked the Master, 'What lacketh I now?' And the Great Teacher told him what he should do in addition to what he had done. I most respectfully contend that I have done what is laid down in the statutes in cases of this kind, and I most respectfully ask this court, 'What lacketh I now?' "

In the first place, the plaintiff "lacks" an accurate reference to the rich young ruler as will appear from an examination of the record. Mark, 10:17-23; Luke, 18:18-23. The biblical record discloses that the rich young ruler lacked only one thing, while, on the other hand, the title of plaintiff lacks several essentials to a valid tax title:

[1, 2] First, there is no notice to the mortgagee, Banton, or Holloway Murphy & Co. as required by statute. The assignment of the mortgage, not purporting to act upon the land, does not pass the estate of the mortgagee in the land. C. S. § 8028; *Williams v. Teachey,* 85 N. C. 402; *Weil v. Davis,* 168 N. C. 298, 84 S. E. 395; *First Nat. Bank v. Sauls,* 183 N. C. 165, 110 S. E. 865; *Citizens' Sav. Bank & Trust Co. v. White,* 189 N. C. 281, 126 S. E. 745; *Collins v. Dunn,* 191 N. C. 429, 131 S. E. 764; *Price v. Slagel,* 189 N. C. 757, 128 S. E. 161.

[3] Second, the certificate of the city tax collector contained no sufficient description of the land as required by statute. *Collins v. Dunn,* 191 N. C. 429, 131 S. E. 764.

[4] Third, the affidavit of the plaintiff does not sufficiently describe the land as required by law, the only description of the land in the affidavit being, "land of Fred I. Jones." *Collins v. Dunn,* 191 N. C. 429, 131 S. E. 764; *Price v. Slagel,* 189 N. C. 757, 128 S. E. 161.