

# TRIAL BY JURY.

## The System Defended.

### Professor Phillipson's Views.

Professor Coleman Phillipson, who enjoys world-wide reputation as an authority on international law, strongly supported the system of trial by jury, in a lecture before the quarterly meeting of the Justices' Association, at the Windsor Cafe, on Thursday night. Ald. Isaacs (President of the Association) occupied the chair. The lecturer's experience is extensive, for he has appeared as counsel in all kinds of Courts—from the Police Court up to the Privy Council.

Professor Phillipson said that in approaching the question of the jury system they must realize that it was one of the most important and ancient institutions of the British people. For nearly a thousand years it had played a great part among them; on many notable occasions it had played a glorious part in the protection of the poor and defenceless against wealth and might, and in the protection of the just and righteous against presumption, officialdom, and tyranny. For centuries the institution had been valued and revered as a notable device of sound Government, and tributes to English genius had been paid by nearly all the people of the world by their imitation of the jury system in their own countries. Certainly it had been recently attacked, but the assailants were few. Every great and good thing had at some time or other been attacked. But there was no doubt that this famous institution, which had become part and parcel of their national life, would survive the attacks and sneers that had rather carelessly been levelled against it. It was well to remind themselves of the origin of the system, its objects, purport and functions, and the objections and criticisms urged by its few modern opponents.

#### Origin of Jury System.

The origin of trial by jury was obscure. The few historical and legal writers who had discussed it varied in their views. Among most primitive communities there were modes of trial resembling more or less the jury trial. There was little doubt that some counterpart was found in England by the Normans after the conquest, and thanks to their use of sworn inquests, the jury system proper eventually came into being. In the 12th century Henry II. expanded and consolidated it; in his reign it became a regular part of judicial administration, and a right of suitors and accused persons, instead of an exceptional favour granted to rich purchasers. The other modes of trial then in existence were compurgation, trial by battle, and the superstitious trial by ordeal. Owing to the influence of the Church and the Roman law these modes were ousted by the newer method of trial by a varying number, early fixed at 12, of "good and lawful" men. One who elected to be tried by jury was said "to put himself on his country;" his country meant his locality or country. At first the jurors were neighbours who already knew the facts; that was, they were witnesses to a very large extent. By about the 17th century they became what they were now—judges of facts. Unanimity of rule in regard to verdicts was definitely adopted in the 14th century, but litigants could always, if they agreed, have a majority verdict. The institution had often been described as the "paradise of our liberties."

#### Merits and Defects.

Recent objectors had urged against trial by jury that it was antiquated and out of date. This was nothing more than a vague assertion without proof. Perhaps they said antiquated when they meant ancient; and the fact that a thing—belief, culture, or institution—was ancient was not an argument against it, but rather for it. It showed inherent vitality, and commanded inveterate respect and acceptance. To talk of a jury which signified the intervention of the community in the interests of peace, order, and justice, as being out of date, in view of the evolution of democracy, was a strange contradiction, especially in the case of those who were against autocracy and absolutism. Again, it was said that jurors had made mistakes. But no one ever imagined that jurors, who were human beings, were infallible. No human institution worked without mak-

ing mistakes. Judges, even the most learned and eminent, made mistakes, as they knew from the great number of judgments reversed. Their Parliamentary Legislatures also made mistakes; teachers, parents, and so on, made mistakes. Were all those, therefore, to be abolished? Improvement might well be necessary, but once the work of abolition was started on the ground of imperfection, as it appeared to this or that critic, then the speedy doom of the human race, and of many other things, was sounded. Besides, it was sheer blindness and irrational prejudice to rest one's arguments on a few mistakes made by a jury, and to leave out of account the millions of verdicts that had commended themselves to the Judges and the public alike. A verdict of a jury against the weight of evidence was a ground for retrial, so that an error of this kind might be rectified. Next it was said that juries had shown prejudice and partiality. No doubt a few such cases had been found, but on those no logical mind would base a broad generalization. There was no guarantee that Judges were entirely free from partiality and prejudice. Further, objectors declared that juries were ignorant and incompetent for their task. But a profound intellect and great learning were not necessary for their work, which was to decide mere matters of fact; its value lay. A jury, besides bringing of society, and possessing varied experience of daily life, activities, transactions, business methods, processes of manufacture, agricultural methods, and so on, were generally as capable of deciding questions of fact as Judges were. Indeed, Judges were often ignorant of the circumstances, mode of life, language, and ways, of many sections of the community; while the knowledge of those things possessed by some members of the jury might help all to come to a sound verdict. However, there were certain matters as to which an ordinary jury might be less competent; on that point he would certainly make a suggestion.

#### Value of the Jury.

Having refuted the main objections, he would like to emphasize the great value of the jury, and point out in what respect its value lay of a jury, besides bringing various kinds of knowledge and experience to its task, imported a freshness and interest in each case. It took broad and liberal views, and preferred substantial justice to fine technical points. It tended to make the law intelligible and practical, bringing it down to the actual facts and events of everyday life. Its verdicts were decisions of disputes on their merits, and did not add to the complications of the system of precedents. It was a stimulus to the Judge, who had carefully to separate facts from law in his summing-up. It represented the community and public opinion, and could make its influence felt in regard to amending laws that did not keep pace with the needs of a progressive society. It had ever been and would continue to be a protection for the weak and poor against the powerful and rich. The decisions of a Judge and jury commanded greater respect and acceptance than the decision of a Judge alone. In serious criminal offences, and especially in murder charges, a decision of a Judge alone involved too great a responsibility for one man to bear. Crimes concerned the community; and the jury represented the sense of the community. Furthermore, the jury system possessed a great educational value; it was, as De Tocqueville said, a "gratuitous and open school" for all citizens. As against the few recent critics, apart from the anonymous writers in the press, who counted for nothing, there was a long succession of great Judges with lifelong experience of juries strongly in favour of retaining the jury trial.

#### Suggestions.

While the jury should be retained in criminal cases, and in certain civil cases where character was concerned, and where damages were to be assessed in cases of accidents, that was if a party demanded a jury, an ordinary jury was not desirable in some mercantile cases—for instance, marine insurance, charter parties, bills of lading, bills of exchange. The number of the jury might perhaps be reduced to 10 or nine, or even eight. A jury of eight would still represent the community, its crowd character would be lessened, and the personal responsibility of each juror would be increased a little without becoming too heavy for him to bear. Next, the unanimity rule in verdicts might be modified. While retaining it in capital crimes and certain felonies, a three-quarters majority might be accepted in other offences and civil cases. After all, in the present practice unanimity was often more apparent than real. Decisions were now given in many Courts, and important matters were decided in Parliament, on the basis of majority vote; so that the change suggested was in keeping with long-established practice. If a juror fell sick, the case should go on with the rest, no difference being made in the three-

quarters majority for a verdict. The right of peremptory challenge should be restricted. The adoption of such changes would prevent many retrials, waste of time, labour, and expense, would make for speedier justice. As verdicts of guilty were open to review, so should verdicts of acquittal be. That would help to deter "jury-squaring." Lastly, the law relating to juries should be consolidated. There were revolutionary and destructive tendencies abroad to-day. A Government disposed to give way to these, and to make wholesale changes in public or domestic life without sufficient reason, and without being certain that suggested substitutes were clearly better for the people at large—a Government that paid heed to the clamorous voices of a few and disregarded the spirit, genius and traditions of the people—was surely paving the way to national destruction.

Register 23.3.23 (also advertised)

### THE UNIVERSITY OF ADELAIDE.

#### Examination Results, March, 1923

##### SUPPLEMENTARY EXAMINATIONS FOR THE DEGREES OF BACHELOR OF MEDICINE AND BACHELOR OF SURGERY.

###### FIRST YEAR.

- Inorganic Chemistry. George, Norman Evan.
- Zoology. Hurst, Harvey Herbert.
- Physical Chemistry. Laurence, Bruce Ernest.
- Willing, Charles Eric.

Thus completing the first examination.

###### THIRD YEAR.

- Anatomy. Morey, Geoffrey Wilson.
- Rollison, John William.
- Bacteria Medica. Pick, Hector.

Thus completing the second examination.

###### FOURTH YEAR.

- Zoology. Fellow, Henry Edwin.

###### FIFTH YEAR.

- Clinical Medicine. Birch, Hugh McIntyre.
- Clinical Surgery. Lewis, Aubrey Julian.
- Wicks, Frederick Ralph.

Thus completing the third examination.

##### SUPPLEMENTARY EXAMINATION FOR THE DEGREE OF BACHELOR OF DENTAL SURGERY.

###### FIRST YEAR.

- Inorganic Chemistry. None passed.

###### THIRD YEAR.

- Material Medica. Mallan, James Michael.
- Bacteriology. Coombs, Harold Robert.

Thus completing the third year

Register 23.2.23 (also advertised)

#### NEW COMMERCE SCHOLARSHIP.

The directors of the Adelaide Co-operative Society in their half-yearly report, submitted at a meeting of the society on Thursday night, state:—"We have to report that arrangements are in progress to found a scholarship of commerce at the Adelaide University. It has been felt for some time that a lasting memorial of the great work of Mr. George Thompson on behalf of co-operation, and the founder, and for many years manager of this society, should find suitable expression. After due consideration and consultation with the family of the deceased this form of recognition is considered the best and most useful. The scholarship will be named 'George Thompson Co-operative Scholarship in Commerce, Adelaide University.' It will be tenable for five years by a selected and nominated candidate by the board of the society every five years in perpetuity. The scholar on passing the examination successfully obtains the diploma in commerce, and is entitled to affix A.C.U.A. after his name. The candidate must be over 16 years of age, and the son of a co-operative member of at least three years' standing. We feel sure of your hearty endorsement of our action. The amount required for the scholarship will be paid from the association fund." A letter from Dr. H. Heaton was read, in which the writer expressed appreciation of the proposal, and offered his support.

#### ROSEWORTHY AGRICULTURAL SCHOLARSHIPS.

Each year the Government offers to students six scholarships, tenable for three years, at the Roseworthy Agricultural College. For this purpose the State is divided into six parts, and the Minister of Agriculture (Hon. G. F. Jenkins) has now received the report of the Principal (Mr. W. J. Colebatch, B.V.Sc., M.R.C.V.S.) on the results of the examination which was held on March 14 and 15. One of the conditions is that competitors must be boys of not less than 16 years nor more than 19 years of age on April 1 of the year in which they compete, and must have been already in attendance at the college. Two candidates, who were under age, were allowed to sit on the understanding that they would not be eligible to receive a scholarship until the claims of those of the required age had been satisfied. As more than six candidates of the right age have qualified, the under-age ones cannot be further considered. The scholarship allotted to District No. 1 was won by Gilbert Norman Lewis, of St. Peter's College; and in District No. 4 Arthur Thomas Hooper, of the Moonta High School, was successful. There being no eligible candidates for the remaining four districts, in accordance with the practice of previous years, the Minister has made the scholarships, not competed for, available to the following:—John Sidney Phillips, of Adelaide High School; George Ruskin Rogers, of the Technical High School; and Arthur Walter Scott, of the Clare High School. The allocation of the sixth scholarship is still under consideration.

Advertised 23.3.23

#### WORKERS' EDUCATIONAL ASSOCIATION.

##### LECTURE BY MR. R. C. BALD.

Under the auspices of the Workers' Educational Association, the newly-appointed assistant lecturer in English literature at the University (Mr. R. C. Bald) delivered an address last night entitled, "The Byron, Shelley, and Keats of Our Time." There was a good attendance of members.

Mr. G. H. Wright, who presided, welcomed the lecturer, and assured him he would find a keen appreciation of good literature among the members of the association.

Mr. Bald said Byron died in 1824 at the age of 36; Shelley in 1822, aged 30; and Keats the year before, when only 25. Similarly, almost a century afterwards, England lost three young poets, whose works contained more of promise than of actual fulfilment than their great predecessors, but who had nevertheless produced some of the most significant poetry of modern England. The three men—Rupert Brooke, James Elroy Flecker, and Wilfred Owen—all died during the war period. Two of them saw active service. Flecker belonged to the British Consular Service, and lived in Greece, Constantinople, and Smyrna. More than any other poet since Keats he loved and sought beauty for its own sake. He strove to reach the perfectly finished impersonal art of the French Parnassians. His range of subject was not great, but he found equal beauty in the classical myths, in the sights and sounds of England, or the caravan setting out across the desert. His most powerful work was a play, "Hassan," which revealed his pessimistic outlook as well as his love of the concrete beautiful things of the earth. Rupert Brooke began his poetic career in a vigorous independence of spirit. He could make a poem out of his sea-sickness, or of his hatred of two fat Germans who snored and snarled opposite him in the train, or delve into the intricacies of love. But woman's love was, certainly not everything to Brooke; it was only one of the many wonderful experiences the world had to offer him. In his poem "The Great Lover" he did not even mention woman at all. Dager intellectual activity was one of his chief characteristics. A young poet's work was often marred by exuberance of passion. With Brooke the reverse was the case, and only later did he attain a perfect blend of subtle thought and deep