

**OBSERVATIONS**  
**ON THE**  
**TRIAL BY JURY;**

**PARTICULARLY**  
**ON THE UNANIMITY**  
**REQUIRED IN THE VERDICT.**

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**BY AN EMINENT ENGLISH COUNSEL.**

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# OBSERVATIONS,

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**T**HE Trial by Jury is the favourite of the English nation,—and deservedly so ; for the people have the greatest obligations to it. Their liberties have been protected by it, when every other bulwark of them has been stormed by violence, or sapped by corruption ; when Parliament was venal, and Judges time-servers. With such pre-eminence as this, he would deserve ill of his country who should attempt the vain task of turning the public opinion against it. Yet, excellent as it is, there are circumstances attending it which appear so to militate against reason, common sense, and the first principles of justice, that we cannot help wondering so little has been said of them. But we are creatures of habit, and may be familiarized to absurdity as well as danger, so as to be insensible to high degrees of either, when we constantly live in their company. If these circumstances had no farther effect than producing inconveniences, even

considerable ones, the writer of these pages would probably not have been inclined thus to notice them, but would have left them to the correction of time and experience; but, if it can be shewn that these absurdities in theory are followed by vices in practice,—that the fair distribution of justice is frequently impeded by them,—that where it is otherwise, such distribution is often obtained by an agreement to set aside the law,—that they introduce perjury not only into the courts, but on the seats of justice,—he feels it his duty, as most anxious for the purity of its administration by conscientious jurors, to bring forward these evils to public view, to strip them of the sophistry by which their deformities have been concealed, to examine them by the light of truth, and weigh them in the balances of reason and experience.

I conceive the following axioms not to be liable to doubt; and if I can shew that the circumstances in the trial by jury, to which I allude, are inconsistent with them, (that is, with reason, as applied to the subject in question), I shall have proved them, by that balance, faulty; and the conclusion that they ought to be rejected will be established.

1. The end to be proposed by every process and mode of trying causes, civil and criminal, should be the distribution of justice to the parties

before the court, with as much expedition as is consistent with fair inquiry; with as much caution as excludes unnecessary delay; and with as little suffering to all concerned, as is compatible with attaining the object of the trial.\*

2. To require an improbability as an essential part of any mode of trial, tends to impede, and frequently to defeat its end.

3. Judges ought not to be placed in the dilemma of suffering pain, or committing perjury.

Before I proceed farther, I shall shortly describe the present manner of trial by jury. It is not intended here to speak of the grand jury, whose constitution and process appear sufficiently free from objection, and in which unanimity is not required. I speak only of the petty jury, of that which in criminal causes decides in the last resort,—and in civil ones, generally without any preceding it. This Jury consists invariably of twelve men, freeholders or copyholders of L.10 per annum or upwards; and, in certain cases, lease-holders, inhabitants of the county where the cause is to be tried, chosen by lot in open court immediately before the trial, from the whole pannel summoned by the sheriff. These

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\* See, on this last point, the admirable chapter in Bentham's *Theorie des Peines et des Recompenses*. On the *Economy of Punishments*.

are sworn in criminal cases, *truly* to try, and true deliverance make, between the king and the prisoner at the bar, and a true verdict give, *according to the evidence*. In civil cases, they swear in the same manner, *mutatis mutandis*, always concluding as in the former case, that they will give a true verdict *according to the evidence*. After the council and witnesses have been heard, the Judge recapitulates the evidence to the Jury, with his remarks on it, and his instructions on such points of law as the case may involve; and concludes by desiring them to consider of their verdict. They consult together in court for a few minutes; and if they do not agree, they desire to withdraw. An officer of the court is then sworn to keep them safely, without suffering any one to speak to them, or speaking to them himself, other than to ask them if they are agreed in their verdict, and without meat or drink, fire or candle, till they are so agreed. When they are agreed, they give notice to their keeper, who re-conducts them into court, where they deliver their verdict. Before taking it, the officer of the court asks them if they are agreed; and on the foreman replying in the affirmative, the verdict is taken, and the Jury is finally thus addressed by the officer: "Gentlemen of the Jury, hearken to your verdict as the court has recorded it. You find the prisoner at the bar guilty or not guilty; or,

you find for the plaintiff or defendant, and so you say all." If any juryman declares his dissent, the verdict is null, and the Jury is remanded, and kept as before. Thus they must remain till they become unanimous, or till the judge has finished his other business. If they still differ, he is to take them with him in a cart to the other places on the circuit in succession. It does not appear whether, on this tour, they are to eat or drink. I have not found any farther process directed for them, and therefore I suppose the above, when regularly practised, has never been known to fail.

To remark on this account ;

First. Is there any good reason for the number of the jury being in all cases twelve? This may have originated from some forgotten Scandinavian superstition, or more probably from the number of compurgators required to confirm the oath of a person thus clearing himself of an imputed crime ; and who, from their character, perfectly distinct from that of jurymen, must necessarily have been unanimous. But what are the real advantages of a jury? That it tries a man by his equals and neighbours, men of the like condition and feelings with himself ; that it so regulates the judicial power as to bring it into action just when and where it is wanted ; and having discharged its office, it disappears ; so that in general no man

can say he fears another as his judge; and that it is a power exercised *by* the people *for* the people, who therefore trust in its impartiality and love its lenity. Still nothing proves, that twelve is a number fitter to produce these benefits than eleven or thirteen; and there is one reason why it is not so good as either; because it is an even number, and therefore admits a division into two equal parts. It is also in most cases too large. There is no use in assembling twelve men to do that which nine, seven, or five, would do as well or better. A man's time is a part of his property, and in the present state of society a valuable one. Therefore if the law compels twelve men to join in doing that which seven would do as well, five of them are injured without benefiting the public, which is injured also by the loss of those direct or indirect services the five might have rendered it, if not so employed. Perhaps it may be denied, that seven men will decide as well as twelve. It is sufficient to ask the denier, whether, when men form their own judicature, as in arbitrations, it ever enters into the mind of either party to desire twelve arbitrators? The dictates of experience and enlightened self-interest in pursuit of accurate examination and fair decision direct them to a smaller number than the lowest I have mentioned. In general, arbitrators are but two, with an umpire to determine where they disagree;



nor did I ever hear a complaint they were too few.

Secondly. Why should the county jurymen be always freeholders, copyholders, or leaseholders? In the present state of society, from the vast increase and diffusion of personal property, there is a great mass of respectable and enlightened men who are not so. In corporation jurisdictions, even now they are not required to be such. It is a hardship on the former to confine this onerous duty to them, when the better class of householders, who are called to discharge so many other important public duties, might share it with them, without detriment to the public.

One of the most exceptionable parts of the whole process, is the jurymen's oath; for he is made to promise under that sanction what frequently he cannot perform. He is sworn to "give a true verdict *according to the evidence,*" whereas under the present practice his oath should be to "give a verdict according to the opinion of the majority of his fellows." It is admitted he may found his verdict on his own private knowledge of the transaction, which may contradict the conclusion drawn by his fellows from the testimony given in court. But supposing he knows nothing more of the cause than from that testimony, it is possible, especially where

there is intricacy, or contradictory evidence, he may still differ from them in his inference.\* He cannot, as the law stands, discharge his conscience by giving his verdict individually. He must therefore either perjure himself, by agreeing in a verdict which he believes false and unjust; or abide the consequences with his colleagues, by compelling them to remain with him, and submit to the processes devised by the wisdom or barbarism of our forefathers to enforce unanimity.†

The first principle of these processes seems to be, that a deliberating jury should never be too comfortable. Perhaps in a fine warm summer day they may pass a few hours without much in-

\* On the decision of the Douglas cause in the House of Lords, the late Lords Camden and Mansfield drew diametrically opposite inferences from the same evidence; Lord Mansfield supporting the legitimacy of the claimant, and Lord Camden denying it. Had these been private men on a jury, or had the House of Lords been under the juror's oath, and compelled to be unanimous, one must have been perjured, or both have been starved.

† How distressing must be such a situation to a conscientious mind, and how uneasy its reflections on what has past, though under a compulsion almost irresistible! That such feelings are not mere supposals, the letter in the appendix will witness. The author of it is well known and highly respected, as well on account of his general conduct and character, as particularly for his accurate, conscientious, and frequent discharge of the important duty in question.

convenience. . But in winter, when the days are short, and the air cold and keen, the absence of fire and candle,\* of meat and drink, will rank high in the catalogue of negative comforts; and will go a great way toward producing the same sort of uniformity in civil cases, as the application of other modes of torture by the Holy Inquisition has done in ecclesiastical ones. Scarce any man will deliberately risk his health by enduring cold and hunger, amidst the remonstrances and reproaches of his neighbours, whom his obstinacy compels to suffer with him, when, by a word, or even by silence when the verdict is taken, he may relieve himself and them; and for which word or silence none but his own conscience can accuse him. There *may* be heroes in virtue equal to this martyrdom; but for human nature in general, made of the stuff we know, it is too severe a trial of integrity.

But let us take another view of the Jury, and suppose one of them interested in the question. This may happen a thousand ways without its being known to the party entitled on that account to object to him. He may be secretly moved by hatred or friendship, fear or hope. If he has an athletic temperament, with an un-

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\* I believe the courts now generally wink at the allowance of fire and candle.

feeling mind, no very uncommen union, he may take little share in the discussion of doubtful points with his colleagues, but may content himself with signifying to them that he has made up his mind, and if they will not agree with him, they must try to outstarve him, for he will not give up his opinion. This lasts for six, twelve, fifteen, twenty hours; and if this one man's strength is greater, or his appetite less troublesome than those of his colleagues, he carries his point and the verdict against the opinion and conscience of the other eleven. There is reason to think this is no uncommon case. Every attorney knows, that if he can but depend on one or two of the Jury for sufficient stubbornness to serve his client, he needs not care for the rest. In such a transaction, ten or eleven out of the Jury are inevitably perjured. Instead of a true verdict according to the evidence, they give what their consciences tell them is a false one, and contrary to it; and to this crime the very law which ought to punish it, compels them. Yet notwithstanding these absurdities and crimes in consequence continually reiterated in the temples of justice, few in comparison have noticed them. Men in general have been content to let things go on as they found them; and so long as only the Jurymen were compelled to perjure, the Judges seem to have thought it sufficient to keep clear of it

themselves. Suppose a Jurymen about to be sworn, were to state this difficulty to the Judge, and request permission to give his verdict individually. The Judge of course refuses. The Jurymen refuses the oath. The Judge thereupon fines, and perhaps commits him for refusing to put himself in the way of forswearing himself. The Judge only enforces the law as it stands. The Jurymen, notwithstanding, is morally right, and the Judge wrong. The law authorizing such a procedure, is immoral and odious.

As to authority on this point of unanimity, Blackstone dismisses it with the remark, that it is peculiar to our Judicature, and that in the Gothic Original it was not required.\* This does not seem as if he were partial to it. Lord Hale declares, "That the unanimous suffrage and opinion of twelve men carries with it a much greater weight and preponderance to discover the truth of a fact than any other trial whatsoever." Granted, if there is a *real* unanimity. But on every case at all doubtful, there is probably only an apparent and compulsive one. In such cases, it is far from

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\* Professor Christian remarks on this passage (3 Black. Com. 376.) "The unanimity of twelve men, so repugnant to all experience of human conduct, passions, and understandings, could hardly in any age have been introduced by a deliberate act of the Legislature."

certain, that the verdict is the opinion even of the majority. It may be, and I believe often has been, that of one obstinate man against the other eleven, who has got the better of his fellows, not by reason but by perseverance.

The most recent, however, as well as the most respectable direct authority in favour of the unanimity of Juries, is the opinion of the late Lord Ashburton, as cited with approbation by Lord Stanhope, in his "Rights of Juries defended," p. 94. The passage is as follows :

"We should also remember, that it is not necessary for the Judges in a court of law to be unanimous, but that a Jury must. This is perhaps one of the most excellent parts of that admirable institution. A great lawyer, whom I can never think of without veneration, nor mention without respect, made an observation on the law requiring unanimity in Juries, which was the result of great wisdom, experience, and attention. He said he had frequently observed from the countenance of a Jury, that the major part of them were carried away by a sudden impulse, as it were, from something that was said by the witnesses or counsel ; and that sometimes that impression was a wrong one. But that he had observed one or more sensible men among the Jury, as it was likely there would be out of such a number, who were not carried away by such

wrong impression ; and that afterwards a right verdict was brought in : which *proved*,\* that as the majority of the Jury could not bring in a verdict without the concurrence of the rest, the more sensible men had by argument brought over the others to their opinion. This therefore was the good effect that resulted from the unanimity that the law requires."

To examine this :

Certainly nothing is more common than for wrong impressions to be produced in the minds of individuals composing a deliberative assembly of any kind, whether legislative or judicial. It happens not only with the twelve men of a petty jury, but with the larger number of a grand one, and with every popular assembly whatever, from the homage of a Manor Court to the two Houses of Parliament. If unanimity is necessary to cure this in one case, it must be so in all. The disease and the patients are alike, and so must be the remedy, which will conduct us in the last case to the unanimity of a Polish diet. † We know how *that succeeded*.

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\* A strange inaccuracy from so accurate a logician ! Allow the vague inference of their opinions from their countenances to be true at a certain point of the trial, still nothing *proves* they were not corrected afterwards in the course of it by other means than those he supposes.

† It was the privilege of every individual member of the

But admitting the discovery of one or two wise men by their faces among their blockheadly colleagues, and also that the blockheads join the wise men afterwards in a right verdict, what does this prove? Only that it would be wrong to take the opinion of the Jury in the middle of the trial; for by the supposition they had corrected themselves before the verdict. The means by which they did this, Lord Ashburton could only conjecture, and on no very solid ground. I contend it on the contrary to be a fairer and more probable guess than his, that they were corrected by the means provided by law for that purpose *during the trial*: by the arguments of counsel interested to remove such wrong impressions, by the summing up of the evidence, and by the Judge's opinion on the whole of the case.

On the other hand, I cannot but believe, that in the course of his practice Lord Ashburton must have seen many instances of bad verdicts wrung

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diet of Poland to stop its proceedings at pleasure, simply by rising and pronouncing the word "Veto." This was the chief cause that none of the civilized nations in Europe was so ill governed; none had a code of laws so imperfect, or so ill administered. The nobility, who were the legislators, were divided into factions, each ruled by a foreign power, whose interest it was to prevent all amelioration. Where persuasion failed, the sabre was commonly threatened or used to the minority.



from the majority of a Jury, probably by the obstinacy of one or two. This happens particularly so as to produce acquittals against the clearest evidence in prosecutions for those peculations of public or private property, where the shame is lessened by the numbers engaged in similar transactions; such as those for the embezzlement of the king's stores; when the trials are in the *neighbourhood of their places of deposit*. But it may and does happen, in other cases, from partiality or interest on either side; and requiring only deafness to reason and persuasion, with a competent strength of nerves and a good knack at fasting, a Juror so qualified is sure of carrying the verdict.

But granting that the supposed sensible minority is exclusively, and without other assistance, to operate the conversion of the thick-headed majority, does the required unanimity forward this desirable end? I trow not, unless it be supposed not more difficult to persuade ten than any other less number. The sages may have succeeded with eight or nine, and yet all their sense and logic may be thrown away on the tenth, who may laugh at their arguments, and compel them to his verdict by starvation. This is too dangerous a power to be trusted to any individual, especially when a sort of clandestineness attends its exercise, which in a great degree relieves him

from the dread of public reprobation. None can accuse him but his fellows, who cannot betray his ill conduct without confessing their own weakness. There may have been many such cases as described by Lord Ashburton; but his inference, that the right verdicts were produced by the required unanimity, is drawn from an excess of hypothetical refinement; to which his acutely discriminating mind was sometimes prone, but which, in this instance at least, outruns common nature and common sense. Besides, the persuasions of good reason and sound argument, as they are supposed to have prevailed with the whole, must have prevailed with the greater part; and thus, rejecting the unanimity, the verdict of the majority would have been the same with the right and unanimous one, without risking its defeat, by the dulness, passion, or interested motives of the minority.

Here, or perhaps before this, I may be encountered by a warm invective against innovation, a panegyric on the wisdom of our ancestors, *Nolumus leges Angliæ mutari*, with other pithy sentences, serving against all change as well for the better as the worse. Now, (though I claim a fair hearing for any proposal to expel blasphemy and perjury from the seat of justice, if such proposal had never before been uttered by the mouth or conceived by the brain of man), yet if I

can shew that even the number was originally uncertain, that the unanimity contended for was anciently not required; that when the Jury were not unanimous, it was often at the discretion of the judge either to increase their number till he found twelve agreeing, or more simply, and I conceive more wisely, to receive the verdict *ex majori parte juratorum*; I trust I shall have answered all such declamation, for I cannot dignify it with the name of argument. For proof I request the reader's attention to the following authorities on the subject, as chiefly collected in Reeves's History of the English Law.

“ I say then, first, with respect to the number, an assise, i. e. a recognition of right in the nature of a verdict, could not be taken by less than seven, though it might, for particulars reasons, be taken by *more than twelve*.”—Bracton, as quoted by Reeves, V. 1. P. 326.

“ In some special cases the jury may be less than twelve; and in some *must* or *may* be more. 1. They may be less. Thus it may be in Wales, under the provision of the 34th and 35th Henry VIII. which allows of six; so also it is in some special cases in England; as six or eight in inquiry of damages on default, and in inquiry of waste; though this latter has been questioned and even denied. Further, there is in Glanvil a writ for a Jury of eight to inquire into the

age, where infancy is alleged. 2. Instances in which the law allows or requires more than twelve; are attain, in which there must be twenty-four; the great assize, in which there must be sixteen; the grand Jury for indictments, consisting of some number between twelve and twenty-three; and writ of inquiry of waste, in which thirteen have been allowed."—Hargrave and Butler's edition of Coke on Littleton. Note 274, on 155, a.\*

"If there was a difference of opinion among them, the Court might order the assize to be *afforced*, i. e. that others should be added to the majority equal to the number of dissenting voices. If they happened to agree, their verdict was good, and the dissenting Jurors were to be amerced."—Reeves, H. E. L. V. 1. P. 330.

"In civil cases, Fleta lays it down for law, that when there was a difference of opinion among the Jurors, it was at the election of the Judge either to *afforce* the assize, by adding others till twelve were found unanimous, or to compel the assize to agree among themselves, by directing the sheriff to keep them without meat or drink till they all agreed in their verdict. Another method was, to enter the verdict of the greater and lesser part of the Jurors, and then the

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\* See also the farther authorities then referred to.

verdict was taken *ex dicto majoris partis juratorum.*”—Reeves, H. E. L. V. 2. P. 267.

“ We have seen the method which had got into practice, in the time of Edward I. of compelling a Jury to agree in their verdict. This authority over Jurors seems to have been exercised by judges with very little scruple. Some instances of the treatment experienced by Jurors in this reign, (Edward III.) will shew the notions entertained by our ancestors concerning this proceeding. In the eighth year of the king, in a writ of *mort d'ancestor*, a Juror, who had delayed his companions for a day and a night, and this, as the book says, without any good reason, was committed to the Fleet, and was afterwards let to mainprise till the Court were advised what step to take with him. In the third year, when, in an action of trespass, one of the Jurors would not agree, the judge took the verdict of the eleven, and committed the twelfth to prison. The same was done in the twenty-third year. But the taking a verdict *ex dicto majoris partis juratorum,*” though conformable to the old practice, began to go out of use toward the latter part of this reign ; for, in the fortieth year, when eleven gave their verdict without consent of the twelfth, they were fined by the justices.”

“ In the next year, this point was debated and finally settled. In an assize, all the Jurors were

agreed except one, who could not be brought to concur with them; they were therefore remanded, and remained all that day and the next without eating or drinking; then being asked by the justices, If they were agreed? the dissentient answered, "No;" and that he would first die in prison: upon which the justices took the verdict of the eleven, and committed the single Juror to prison. But when judgment was prayed in the C. B. on this verdict, the judges were unanimously of opinion, that a verdict from eleven jurors was no verdict at all; and when it was urged that former judges had taken verdicts of eleven, both in assises and trespass; and particularly one was mentioned, taken in the twentieth year of the king, Thorpe\*, one of the justices said, it was not an example for them to follow, for that judge had been greatly censured for it. And it was said by the Bench, that the justices ought to have carried the Jurors about with them in carts, till they were agreed. Thus it was settled at the close of the reign, that the Jurors must be unanimous in their verdict, and the justices were to put them under restraint, if ne-

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\* I am not certain whether this was the respectable chief justice of the same name who was hanged in this reign for corruption in his office.

ecessary to produce unanimity."—Reeves, H. E. L. V. 3. P. 105.

We see, therefore, that this salutary power of taking the verdict of the majority of a Jury remained till near the end of the reign of Edward the Third. Then, unfortunately, and in the teeth of both precedent and reason, the judges agreed that a verdict of less than twelve, was no verdict at all; and prescribed shaking the Jurors together in a cart, as a specific to cure differences of opinion. Hunger, cold, and discomfort, were held forth as the *ultima rationes* adapted to their capacities, and ever since they have been unanimous at their peril.

We may now compare the present mode of trial by Jury with the axioms we set out with.

It appears the unanimity required, is in opposition to the first, because it prevents the *speedy* administration of justice, by frequently causing unnecessary delay in long and vain endeavours to overcome unreasonable or interested obstinacy; and still more, by introducing a modern practice manifestly illegal and injurious to the suitors, that of discharging a jury who cannot agree, and deferring the trial to a future occasion. It also incurs the *danger* of a small minority, even of *one*, dictating the verdict. It introduces *restraint* and *suffering* for a purpose on

which they should never be employed, to influence a judicial opinion.

It is inconsistent with the second axiom, because it requires the existence of the high moral improbability, that in cases of difficulty, twelve men should be fairly and *bona fide* unanimous in their decision; and with the third, because it tends to place jurymen in the dilemma there stated.

I appeal to our legislature, unfettered as they are with the Juryman's oath, to the judges, and to the other magistrates, whether a compulsive unanimity in their decisions would not be a most oppressive and intolerable burden; whether it would not palsy their deliberations, frustrate their endeavours for the public good, and essentially impede the administration of justice. Jurors are men of like passions and feelings with themselves; not perhaps so well instructed, and therefore less likely to weigh accurately the opposite reasons in a doubtful case, and to be unanimous in favour of a small preponderance. Let them remember, that on points of law, as well as of fact, the highest authorities sometimes disagree\*.

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\* It is said, the opinion of twelve Jurors is the test of truth; and if they do not all agree, the test fails. Answer, —The opinion of the twelve Judges is the test of law, yet they frequently differ. The law, notwithstanding, is settled by that of the majority.



Let them relieve the juror from the necessity of compounding with his conscience for a forced assent to a verdict he disapproves, and no longer compel him to "risk the laying perjury on his soul," in the discharge of a public duty, which, by its nature, of all others, should be the farthest removed from a crime so offensive and odious.

**APPENDIX.**

**APPENDIX.**

**FROM THE TIMES NEWSPAPER OF FEBRUARY  
13TH, 1812.**

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*To the Right Hon. Lord Ellenborough.*

**MY LORD,**

THE subject on which I am about to address your Lordship, being intimately connected with the administration of justice, I should incur the greater risk of offending your Lordship by expressing than by with-holding any apology ; but, that I may not intrude unnecessarily on your Lordship's time, presuming that your Lordship may peruse this letter, I introduce the subject of it without farther preface,—The Necessity of Unanimity in a Jury to the Delivery of a Verdict.

The remarks which I am about to make, are not the result of a transient feeling, or of a su-

perfidious observation, but of very many opportunities which have occurred, in which I have witnessed the uneasiness of others, and have been myself a participant. To say that I have ever known a Juror consent to a verdict by which he felt that he violated his oath, would be saying far too much; but, on the other hand, not to say that I have known a Juror defer to what he conceives may be, and hopes is a better conception of the evidence than his own, would be to say too little: nor need I add, that as men's minds are differently constituted, this circumstance operates differently on their after reflections; and, in some cases, places them in situations which were never contemplated by those who promulgated the duties of jurors in delivering a verdict. I had a friend (he is now no more) who, on a similar occasion, consented to a verdict approved by eleven others, to avoid pertinaciousness; but so convinced was he that he had been accessory to the injury of the person against whom the verdict was given, that he sent him the amount of the loss sustained thereby \*. I am not about to con-

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\* The name of this conscientious Juror was Joseph Paice, Esq. The Judge who tried the cause was the late Lord Mansfield.

This recompence might be made in a civil case, and by an opulent man; though upon him it was a great hardship. But in penal cases, where not only property, but character,

tend, nor will any body contend in the abstract, that this was his duty; but such was his feeling; and such may be the feelings of many who cannot gratify them, without neglecting a higher duty. I mention the circumstance only to confirm what I have just observed, that jurors are often placed in situations that were never contemplated, and to which, if possible to be prevented, I humbly contend they ought not to be exposed.

It is not necessary on this occasion, nor would it be on any, to draw your Lordship's attention to what has been the original constitution of a Jury; whether a greater number should be sworn, and a given number be necessary to find a verdict, or whether a mere majority of the present number, or of a greater number. After I should have referred to all that I have read, and communicated all I have ever thought on the subject, I should have occupied just as much of your Lordship's time as would be necessary to read it, without having added a jot or tittle to what your Lordship knows; but, on the contrary, have left an incalculably greater portion of knowledge altogether unREFERRED to.

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liberty, and life, are at stake, who can compensate the sufferer. Indeed, it may be questioned, whether, even by such compensation, the Juror entirely discharges his conscience. His oath allows no such alternative.

Having had the honour to serve as a Juror for many years, I cannot fail to have heard from the learning, the brilliance, and the wisdom of the bar and the bench many very wholesome admonitions; and that I may prove I have not heard them all in vain, I will endeavour to act at this time in conformity with a very recent one from your Lordship. "I think no time employed in a cause too long, if it be confined to the cause only." Impressed with the respect that is due to this remark, I leave this "cause," which is one of very serious importance to men wishing to discharge their duty as they ought, to that degree of consideration to which your Lordships shall think it entitled.

I cannot be mistaken with respect to my own feelings on this subject; and though I have not previously consulted my brethren, I am fully convinced that their sentiments and wishes concur very much with my own; *that we could by some means be released from the necessity of unanimous concurrence in a verdict before it can be received.* In addressing myself to your Lordship, I am forbidden by every consideration of respect to adopt any terms that may have even the appearance of approaching your Lordship with adulation; but in referring these general suggestions to the possible attention of the justice, the learning, and the dignity which are

the general as well as the presiding characteristics of our courts, there can be no doubt of their being received with condescension and candour.

I have the honour to subscribe myself,

A JUROR.

The circumstance of a Jury having been *shut up*, as it is termed, for twenty-six hours, and being then unable to find a verdict founded on unanimity, will perhaps be considered as no mean illustration of the above remarks.

*Times Newspaper, as above.*

THE END.