Jury Service

and

The Need for More Women Jurors.

By Mrs. Keynes, J.P.

"Twelve good honest men shall decide in our cause,
And be judges of fact though not judges of Laws."
—*Old Song*.

Lord Brougham, when writing in 1828 on *The Present State of the Law*, said "the whole machinery of the State, all the apparatus of the System and its varied workings, end simply in bringing twelve good men into a box."

The custom of referring the question of guilt or innocence to untrained lay judgment goes far back in our history, and as Lord Brougham indicates, lies at the basis of our judicial system. Twelve citizens, brought together almost at random, untrained in weighing evidence, unacquainted with and probably bewildered by Court procedure, are arranged in rows in an incommodious "box," and are required to arrive at a unanimous opinion as to the facts of the case laid before them. The evidence may be very complicated and presented by witnesses who contradict one another, or, at least, offer very different aspects of the circumstances in question. Add to this, the assaults made on the minds and emotions of the jurors by highly sophisticated pleading on both sides, and it seems almost incredible that the twelve good men (and women) can arrive at a decision of any value.

And yet the system meets with general approval, which means that in the great majority of cases, and in the main, the verdict is accepted as right and fair. Judges themselves bear evidence to the relief they find in sharing with the Jury the onerous duty of deciding on the guilt or innocence of the prisoner. This is not, however, the explanation of the survival of the jury. The survival would rather seem to be due to the idea, deeply rooted in the British mind, that the jury is the strongest barrier that can be put up between the defendant and an unfair decision. It is fully recognised that the jury, as a group, have a keen sense of

responsibility, and it is a well-known canon of British justice that, where there is any doubt, the benefit must be on the side of the accused. The man-in-the-street may distrust the subtleties of the law, but he feels that if twelve men (and women) like himself, after hearing all that can be said for and against, unanimously agree that the accused is guilty, guilty he must be.

Further, to strengthen the position of the accused against an unfair trial, he has always been given a "**right of challenge,**" by which he can himself to some extent control the composition of the jury. Coke wrote in 1600: "The end of challenge is to have an indifferent (i.e., fair) trial, ... and to bar the party indicted of his lawful challenge is to bar him of a principal matter concerning his trial." Blackstone added in 1765: "It (the right of peremptory challenge of a juror without showing cause) is a provision full of that tenderness and humanity to prisoners for which our English laws are justly famous."

The right of challenge has taken on a new aspect since women were made eligible for Jury Service by the Sex Disqualification (Removal) Act, 1919, as it is now used from time to time as a means of removing all the women from a jury. There are three rights of challenge: (1) "*to the array*," or whole panel of jurors, but this is permitted only where it is claimed that the Sheriff has shown partiality in calling jurors; (2) *peremptory* challenge to individual jurors up to 20 in trials for felony (not for misdemeanours) where no cause need be shown; (3) *for cause*, where some cause must be shown. Bias, or lack of proper qualifications, or the fact that the juror has himself been convicted of a crime or misdemeanour, are "good causes," but sex should certainly not be allowed to rank as proof of bias.

Sir Ernest Wild, Recorder of London, after dealing recently at the Central Criminal Court with a case where the women jurors had been challenged, is reported as having said that the right of (peremptory) challenge should be brought to the attention of Parliament. It was, he added, a curious anachronism that arose from the time when forfeiture of goods and life could follow a conviction for felony. While this challenge could be made in the case of stealing a fowl, it could not be made in a case of criminal libel, incest, or other grave misdemeanour without stating the cause. This anachronism ought to be attended to by the proper authorities, especially when use was made of it for the purpose of defeating the express opinion of Parliament that women should be allowed to assist in the administration of justice.

The anachronism to which Sir Ernest Wild here calls attention lies in the fact that some crimes which have comparatively recently been made punishable, like incest, are classified as misdemeanours, and not as felonies, and are treated in a different way from cases of larceny, which may be much less serious but are classified as felonies. Challenge is, therefore, used differently for crimes that appear at least of equal seriousness, but happen to be in different categories.

Unfortunately, even if the accused does not object to women on the jury, "any Judge, Recorder or Chairman of Quarter Sessions before whom a case may be heard, may, in his discretion . . . . or at his own instance make an order that the jury shall be composed of men only, or of women only, as the case may require." Sex Disqualification (Removal) Act, 1919. This power is not often used, but it more often happens that the person before whom the case is being tried suggests to women jurors that they should retire, or asks if they wish to do so, thus implying that in his opinion it would be more seemly if they did retire. And this occurs in the very cases where women are most required, that is, in cases of sexual assault upon children.

When, after a recent case of this kind, the National Council of Women protested against the action of the Chairman of Quarter Sessions, the reply was that it was "embarrassing to the Court, as well as to Counsel, to have to put plain questions in sexual cases in the presence of women. Further, that the men upon the jury are greatly relieved if women are not of their number when they retire to consider the evidence in an unpleasant case." A different view was expressed by the late Recorder of Manchester, A. J. Ashton, K.C., who said he was entirely in favour of having women to assist in such cases, as he regarded women as better judges than any man of the truth of what a girl might say. With regard to any unpleasantness that might arise, he added: "when once a proper vocabulary has been provided, indecency disappears, and I believe that men and women get through this necessary service to the State without distress to themselves and with great advantage to the country."

It is certainly the considered opinion of large numbers of people of experience throughout the country that women have a definite responsibility and duty in reference to jury service, and their presence on the jury is of special importance when cases are tried in which children or young girls are concerned.

Juries. Juries are of several kinds, with different qualifications and different duties.

Grand Jury. The qualifications for Grand Jurors are not defined, but for the Assizes it is customary for the High Sheriff to select them from Justices of the Peace or persons of position. Their full number should be twenty-three, and a verdict by twelve is necessary. They hear only the case for the prosecution, and their duty is to enquire whether there is a *prima facie* case against the prisoner. The main object of this enquiry is to prevent malicious or frivolous prosecution. If the Grand Jury find a "true bill" of indictment, the case is then tried before a Petty Jury.

The Grand Jury for Quarter Sessions cannot include Magistrates, since they take part in trying the cases, or sit with the Recorder. The persons forming the Grand Jury have, therefore, no special experience,

and as they are not provided with a Clerk, their deliberations are sometimes unduly prolonged and occasion delay in the proceedings of the Court. During the war, the functions of Grand Juries were suspended, and it is doubtful whether in the case of Quarter Sessions they need have been resumed. This does not apply to Assizes, where their assistance is of real value.

Common or Petty Jury. The qualifications for a common juror are that he or she should occupy premises rated at £30 in London or £20 elsewhere, or own real property worth £10 a year, or leasehold worth £20 a year.

Special Juries. Special Jurors are selected from the ordinary Jury List, but are persons of good position, and presumably, therefore, of better education and more knowledge of the world. They must occupy a house rated at £100 in a Town or £50 elsewhere, or a farm rated at £300. A special juryman may be called to deal with difficult civil cases, and receives a fee of one guinea for each cause on which he is sworn. He is also liable to serve as a Common Juror.

Coroners' Juries. The qualification of Coroners' Juries does not depend on the Juries Acts. In practice they are drawn from house-holders or wives of householders in the neighbourhood of the place where the inquest is held.

Jury Lists are compiled annually from the lists of electors by the Registration Officers and sent to the Clerks of the Peace.

Exemptions from Jury Service. All persons over 60 years of age can claim exemption, and although not disqualified, they are not placed on the list of jurors. (During the war the age for Jury service was raised to 65. This was found quite satisfactory, and the higher limit might well be revived as a permanent rule).

Other persons who are exempt are Peers, Members of Parliament, Judges, Magistrates, Councillors (except in London), Barristers-at-law, Solicitors, Doctors, and Chemists, if actually practising, Officers on full pay, officers of the Post Office, persons engaged in Customs and Excise, etc.

Number of Jurors. When qualifications have been considered and exemptions allowed, the number of men available is, in some counties, barely sufficient to provide the Sheriff with a list that will serve him for Quarter Sessions for three years, and it is considered undesirable to call upon any juror more frequently than once in three years, especially where the distance to be travelled to the Court may be considerable.

While, however, the number of men may be just sufficient, the number of qualified women is totally inadequate to secure proper representation. After the passing of the Sex Disqualification (Removal) Act, 1919, Rules regulating the service of women on

juries were made by the Rule Committee of the Supreme Court. The following are of special interest:—

The number of women summoned on the panel shall be as nearly as possible in the same proportion as the women are to the men in the Jurors' Book. Where possible not less than 14 women shall be on the Jury panel. (This requirement will clearly not be possible to carry out at Quarter Sessions in agricultural counties where the proportion of women to men jurors sometimes does not exceed 4%).

Upon every jury summons served upon a woman there shall appear a notice that she may apply to the Summoning Officer for exemption from attendance as a juror on account of pregnancy or other feminine condition or ailment. (A medical certificate or affidavit by the juror of unfitness has always been sufficient to secure exemption from attendance as a juryman. The special mention of "pregnancy or other feminine condition or ailment" seems therefore superfluous and is objectionable).

Position of Women under the Act of 1919, and the Rules of 1920 *re* Women Jurors.

1. Women, except in rare instances, are not qualified to be Jurors until they are middle-aged, or past middle age, since they are seldom house-holders, or holders of real property, until the death of husband or father. Those available are almost invariably widows or spinsters. Married women are practically excluded.

2. The number of women called on a Jury Panel is, therefore, not enough to provide more than an average of one or two on each Jury; and since the names should be drawn by ballot there may be no women on a given Jury.

3. A woman, after having been called on the panel, may be excluded from serving on any particular occasion by the Judge, Recorder, or Chairman of Quarter Sessions. (This applies also to men, but the power is exercised only in the case of women).

4. A woman may be removed from the Jury in cases of felony without cause stated (although really on ground of sex) and, if removed, cannot be replaced by another woman, except by the chance of the ballot. (A man may be removed in the same way, but it happens much less frequently).

5. On the Jury Summons it is suggested to a woman that she can easily obtain a medical certificate ensuring exemption from service.

Proposals for Amending Legislation.

1. The power to decide that the Jury shall be composed of men only or of women only should be withdrawn.

2. The obsolete distinction between felonies and misdemeanours should be abolished and the number of peremptory challenges should be limited to ten.

3. If a woman is removed from a Jury by challenge, it should be made legal to ballot for her successor from among the remaining women on the panel, until means can be taken for securing a larger representation of women on the Jury panel.

4. The mention of a special medical certificate available for women should be omitted from the Jury Summons.

5. The age of exemption should be raised to 65.

6. The Grand Jury should be abolished for Quarter Sessions.

7. **In order to increase the number of women who are liable for Jury Service, there should be included in the list the wife or daughter of an exempt householder (unless the woman is herself exempt for reasons of employment, age, or health). The liability would thus be placed upon the household instead of the householder, and married women would be eligible.**

This leaflet may be obtained from the General Secretary, National Council of Women, Murray House, Vandon Street, London, S.W.1. Price 2d. each or 1s. 6d. per dozen.

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