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TRIAL BY JUDGE v. TRIAL BY JURY.

THE Maybrick case, of which we have been hearing so much, does not differ in essence from most other trials for murder. A man is killed; there is a certain amount of presumptive evidence against such and such a person; a coroner's jury find that this person is guilty of the murder. The presumptive evidence is after long delay brought before the Criminal Court; which delay, be it remarked, tends very much to increase the difficulty in getting at the truth, as lies and falsities have time to grow round the original kernel of fact, and make a regular problems for the solution of the professional dealers with other persons' misdoings—the lawyers and judge. In the Criminal Court the game begins. Each side has its theory for accounting for a series of events which are supposed to have taken place, and tries to establish that theory by the piecing together of details, the cross-examination of witnesses, and so on. It must be said that in this game the defence, which has to prove a negative, is necessarily very much weaker than the prosecution.

Next, the theory on either side being complete, it is in practice submitted to the judgment of *one man*, the judge, who is of course a thoroughly practised and skilful lawyer, drilled into a knowledge of what is called the "law of evidence"—*i.e.*, a series of maxims, more or less arbitrary, as such theories must be, as to the credibility of statements of events more than half forgotten, misunderstood by the witnesses at the time they happened, confused by hearsay, corrupted by prejudice—in a word, mostly lies. This one man, the judge, may be a treasure of impartiality, though he is not likely to be, since he is a successful advocate, and therefore *must* have been in the habit of wresting appearances towards the side that he was conventionally interested in, however they might have showed to his real self. But, however impartial he may be, it is not in the nature of man for a person not to take sides in a dispute which he is obliged to listen to, and considering his official position, the side that this person is most likely to take is the official one—*i.e.*, that of the prosecution.

In theory, however (as we all know), it is the jury and not the judge who have to make the final decision of the case,—but in theory only. For the jury are of necessity men of average intelligence, taken from the middle class; and they are in consequence deeply imbued with the middle-class prejudices of the day. Now the present-day middle-class theory of the jury has mistaken the function of the jury, and assumes that its business is, not to judge the case, as it was originally meant to do, but to correct any gross mistakes or partiality in the judge; to be, in short, a kind of censorship on the judge, and therein to represent the public generally. This being the case, as a matter of fact the jury almost always take their verdict from the judge's summing-up, and it is rare indeed that those who are watching a case need trouble themselves about the jury's decision when they have heard or read the judge's summing-up—unless, indeed, he is really puzzled over the matter, in which case, having no opinion, he kindly allows the jury to have one.

And now in the midst of this intricate game which is being played for the life or death of a fellow citizen, there is one person who is out of it all, and can only watch what is going on; and that person is the one who is principally interested. The mouth of the accused is shut until the decision is given. Whatever misunderstandings, falsifications, or wrong deductions take place must pass without challenge from his personality, although it is obvious that often a few words from the accused might explain the matter, and give a new course to the evidence either for or against.

In short, in an English Criminal Court sides are taken for and against the silent onlooking accused (who, in spite of all theories to the contrary, is always looked on as guilty from the first). The judge decides which of those two sides has the preponderating weight of evidence, and the jury formally ratifies his decision, unless it is so monstrously

unfair that they are compelled to protest by expressing their own opinion. The "criminal" either "escapes" or is convicted and slaughtered; our "cultivated classes" bless their stars they are not living in days of violence, and those of the working classes who are not Socialists at heart echo their cant in various degrees of *un-cultivation*, however miserably they may be living.

For the rest, this is that "average" justice which is in complete harmony with the commercialism of the age, which declines to supply the public with anything choice; it is, like all machine-work, a make-shift. Such make-shifts people put up with without grumbling for a long time; but at last when some dramatic demonstration of their futility is given, when the shoe-sole comes off in the middle of a muddy road, or the hat melts in a heavy shower, they get angry, and express their anger—in a futile way indeed, because they are the slaves of the machine which they grumble at.

That we would fain hope, is the explanation of the popular ebullition of temper at Liverpool the other day; the people there were at last struck by the obvious unfairness of the whole proceeding, of the farce which thus trifles with the lives and liberties of the citizens. At all events they directed the expression of their anger rightly this time. The judge and his summing-up is the real centre of the whole iniquity. That is the head and front of the attack on Trial by Jury, which, as long as it was a reality, was a true defence of the liberties of the people.

That is the interest the Maybrick case has to us Socialists. The case itself was a wretched one, a mere exemplification of the unhappiness which springs from the corruption of a Society founded on robbery; an unhappiness which so often avenges the wrongs of the poor on those whose iniquitous position puts them beyond the reach of the special misery which they inflict on so many millions of people, as good as or better than themselves. Yet, indeed, it must be said once more that Mrs. Maybrick's "immorality" weighed heavily against her, helped the judge to get the conviction, and that if people are to be hanged for making mistakes in married life, there will be a large mortality amongst the upper and middle classes:

The remarks in the capitalistic papers on this case, a great part of which amount to a defence of the present system of dealing with circumstantial evidence in criminal cases, are curious, but are too numerous to go through. One, however, must be noticed, because it is the argument most often and most plausibly used. It is admitted, say these wisecracks, that this was a case of doubt; but in the teeth of the maxim that the jury should give the benefit of the doubt to the accused, if this were done, almost no criminal could be convicted, as all evidence is circumstantial, and in almost every case there is doubt

What does this amount to but this? That so beautifully constructed is the machine of criminal law, that it gives us two overwhelming risks, either of the escape of the guilty, or the condemnation of the innocent. Unhappily, it is not doubtful which risk our Society will take hardened as it is by the daily and hourly practice of wrong against so many people.

In effect, it is a ghastly thing to note so many respectable persons sitting safe at home in luxury so convinced of the necessity for hanging some one, either the right or the wrong person, if a "crime" is committed. How strange that persons not ill-natured, not specially stupid, should think it above all things necessary that a private murder should be remedied by a public one.

As to the Court of Appeal which is in every one's mouth at present, it would be a feeble protection against injustice; and if, as I suppose, it were to be a court of professional judges, it would tend to a further weakening of what is left of the jury system, and so do more harm than good.

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