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Elimination of General Verdicts and Instructions to Juries

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Elimination of General Verdicts and Instructions to Juries.—General and aggravated criticism of the courts of our land in late years has induced the preparation of this paper. It is a rare thing when one can pick up a law journal without discovering in it somewhere a criticism of the procedure in our courts having to do with their inefficiency, touching their unreasonably expensive methods, bias and prejudice of juries, their uncertainty in obtaining justice, substitution of arbitration in lieu of courts, general dissatisfaction with the jury system, going to the extent of advocating the abolition of juries especially in civil cases. These complaints come not only from litigants, but from the public, the press and lawyers themselves, and even the courts. Is it not high
time that something of a constructive nature be done to correct the situation? Prolonged criticism of the courts has tended to cheapen them, and to bring them and the bar in disrepute, and will continue to do so unless a remedy is found. To remedy the situation, an analysis must be made to determine where the real or greatest faults lie in our procedure.

In the first place, it might be mentioned that there appears to be very little, if any, criticism directed at the courts or the bar so far as the procedure in chancery causes is concerned. It has been confined to law cases wherein there are jury trials. Recently may be noted suggestions of reverting to the practice in many European countries where cases are tried without a jury by the courts. Another suggestion is the trying of law cases with three judges sitting together, drawn from districts outside of the locality where they live, to take the place of a jury. This latter method, of course, would involve the changing of our constitution, and people would be reluctant to make so radical a change as to do away altogether, in the near future, with juries in law cases. The remedy, therefore, must lie, for the present at least, in reorganizing our present system and injecting new methods in it to eliminate delays, numerous trials and resultant unnecessary expenses, and in simplifying the work of juries. Past President, Kemble White, in his annual address before the West Virginia Bar Association in 1925, had this to say: "It will be found upon investigation that a large percentage of reversals in the Supreme Court result not from the erroneous exclusion of evidence offered, nor from improper evidence admitted * * * * * but from the erroneous instructions propounded." In the same volume of the report of the Bar Association meeting for 1925, is the report of the Criminal Law Committee of 417 criminal cases examined, from volume 42 to 97 inclusive of the West Virginia Reports, showing that of those cases 256 were reversed and 161 affirmed. Of the 256 reversed, 87 cases, or 33%, were reversed on account of instructions. Sixty of these cases, or 25%, were reversed because the evidence was insufficient. Four were reversed on account of defect in the
verdict. In short, 60% of those cases reversed need not have been sent back for a new trial if the juries had been required in them to answer only interrogatories and not render a general verdict; in other words, if the juries had only been required to decide the facts in the case rather than the whole case itself. An examination of Vol. 98 of our West Virginia Reports, picked at random from the others, reveals that there were 42 civil cases in that volume that had actually been tried by a jury. Twenty of those had been affirmed. Six were reversed for reasons not involving instructions, and the other 16 were reversed because of the erroneous instructions. It is safe to say that an examination of all cases reversed by higher courts will reveal the fact that 60 to 75% of them have been reversed because of improper instructions, or because the jury decided the case contrary to the law and the evidence.

It is elementary that juries should decide the facts and the courts decide the law, but when, as it often occurs, the courts and lawyers do not always know the law during the trial of a case, and juries are improperly instructed, or probably not instructed at all, on vital points, it is not surprising that under our present system, cases involving large amounts should be tried as many as three times in the lower court and twice in the Supreme Court, due to error in instructions, or a misapplication of the law to the facts by juries. It is a fact, as Past President White pointed out in his address, that, “as many as forty or fifty instructions are often given in one case, and if the papers containing such instructions were taken from the court room, neither counsel nor the court, relying on memory, could even approximate a fair reproduction of the abstruse distinctions attempted to be made by the formulas read.” Instructions to juries are not understood by juries. They are merely devices which lawyers are forced to adopt to obtain errors and reversals contrary to their own wishes and the wishes of the bar and courts in general, but it is all in the game, because it is permitted and the other fellow does it. Is it any wonder that the public and the bar have become disgusted and that litigants put the blame on the lawyers that they are trying to earn larger fees by trying cases over so often? If a case is so close of decision that it may be
decided a couple of times for each party before a finality so that the winner in the end is also the loser, would it not be better to gamble with chance just one time and actually have something left to the winner, than to gamble "the best two out of three" and have the winnings eaten up in several expensive trials?

My suggestion is to do away with instructions, except the usual one on the credibility of witnesses and have the jury decide only questions of facts submitted to them by interrogatories and eliminate general verdicts altogether. Once these facts are decided by a jury, the court, which is the logical agency to do so, can then apply the law. There should then be no further occasion for submitting the case to a jury if the interrogatories submitted cover the material issues or facts in the case. On questions of materiality or irrelevancy of evidence, the courts should be liberal in admission of such evidence, and should immaterial interrogatories be submitted and answered no harm is done. In fact there is no reason why litigants should not then be permitted to have the jury answer any number of questions, whether the lower court itself thinks they are material or not. The Supreme Court may think otherwise, and if so, judgment may be entered by it without a new trial in nearly all cases. Under such a system, the possibility of a new jury trial could arise in only two instances: 1. Where the jury is unable to agree. 2. Where the court refuses or fails to propound material interrogatories. Where a jury answers interrogatories inconsistently, it might be provided that such inconsistency could be called to the jury's attention and it be then given an opportunity to reconcile its answers before being dismissed. Once the facts are thus determined on interrogatories without a general verdict, the lower court would apply the law. The Supreme Court would then say whether it had been properly applied to the facts which had been determined, and if it had not been properly applied by the lower court, then and there the Supreme Court would apply it and end the case.

There is no particular reason why courts should not decide the facts in law cases as well as in chancery cases. Our chancery procedure certainly works more satisfactorily than does our law procedure, and is much less subject
to criticism, but tradition and usage have made jury trials inherently a part of our government so much so it would be extremely difficult to eliminate jury trials in this country. For the present at least, if ever, it would not be advisable to eliminate general verdicts in criminal cases by substituting interrogatories in lieu thereof. This might come later, however, but in civil cases, there is no good reason why the plan would not be workable, and much preferable to the present plan where juries can render answers to certain interrogatories which are inconsistent with the general verdict, when many times the general verdict is more often the mere expression of the wish or desire of the jury rather than its conclusions based on the evidence. More frequently than not, juries disregard instructions altogether, and where there is evidence sufficient to permit the court to let the jury decide the case, the jury decides it not according to the law propounded, nor the preponderance of the evidence, but according to its sympathies, or its own interest as applied to the particular question involved, or the views of one or a few individual jurors who can argue the meaning of the court’s instructions better than the other jurors. Inquiry after the verdict often reveals that the jury’s decision rested on an erroneous construction of the instructions or on some point of law or evidence that neither the court nor the attorneys thought was controlling, or that should have entered into a consideration of the case. It is wrong in principle for juries both to decide the facts and apply the law to the facts. As long as lawyers and courts who are supposed to be learned in the law have difficulty in applying the law to the facts, how can it be expected that juries can do so intelligently? It is confusing for them to attempt it, especially where there are many instructions involving many distinctions of law and many applications of it. Interrogatories would take away from the jury the application of the law to the facts, which would simplify their work by directing their attention to the real issues, the facts in the case, and would eliminate any chance of juries being misled by attorneys arguing to them, and misleading them with, irrelevant and immaterial matters injected into the arguments. It would simplify and shorten the argument of the lawyers requiring them only
to argue the facts and not the law. It would shorten and simplify the work of the jury for the same reasons, and make it possible for the court to shorten the trial of the case, all of which would tend to cut down the expense of the courts.

The time does not seem remote when the public will require a change in our jury system, possibly to the extent of the elimination of juries altogether by constitutional methods in civil cases. This might be going too far. It would be better to make our changes gradually rather than radically. The elimination of instructions to juries and the substitution of interrogatories without the general verdict is such a gradual change in our system as might prevent any radical changes later looking to the abolition of juries altogether.

—Thomas H. S. Curd