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## Equal Protection

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(b) Injustice of Verdicts, Due to Jurors' Inexperience in Weighing Testimony: In part, this allegation is not true in fact; jurors in a good proportion of cases are as well or better qualified than a judge. But, so far as it is true, it is needless and is remediable. Its prevalence in modern times is due to the abolition, a century ago, in all but a few States, of the judge's power to comment to the jury on the evidence. That guidance was a known feature of jury trial when our fathers put it into the Constitution. This charge against jury trial is readily remediable.

(c) Injustice of Verdicts, Due to Jurors' Emotion and Bias: This charge is the one most often and emphatically repeated. In the first place, its prevalence is much exaggerated in fact. In the second place, it is partly remediable, by restoring the judge's power to comment. In the third place, a good deal of it could equally be found in the personnel of a judge-trial. And in the fourth place, what is left of it is a virtue, not a vice, of jury trial. (See Merits)

(d) Injustice of Verdicts, Due to Jurors' Corruption: Not much is made of this. But so far as it occasionally exists, it is not chargeable to jury trial, but to human nature. A judge can be corrupted, as well as a juror, and the detection is no easier. In a recent notable criminal trial, in which the jury was waived (for fear of popular emotion), and a lenient sentence was imposed, the number of citizens who expressed the view that the judge had been bribed was disappointingly large.

(e) Injustice of Verdicts, Due to the General Verdict Form, the Mode of Giving Instructions, etc.: There is nothing inherent in these defects. All of these features can be reformed. They have been in some jurisdictions.

(f) Waste of Time in Selection of Jurors: Of course this should be improved. And it can be, without infringing on the jury trial proper. An eminent Canadian judge has told us that he in all his experience only once knew the proceeding of selection to consume more than half an hour. The time-waste is chargeable to the legal profession, not to the jury system.

(g) Sacrifice of Business Convenience by Jurors' Abandonment of Occupation: Most of this is needless. A flexible plan, permitting attendance at convenient times, is perfectly feasible. It is already in use in some jurisdictions.

(h) Jurors' Discomfort During Service: This is a large fact, and a disgraceful one, in many regions. But it is anything but inherent in the jury system. It is due to low ideals of decency in the community and slackness of court officials. Every courthouse ought to have a spacious set of rooms with every hotel comfort for the jurors. There is no need for treating them like down-and-out lodgers. When a community is ready to give the jurors ample quarters, equally comfortable with those of the judges, this defect will disappear.

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#### EQUAL PROTECTION

Mr. Paul Campbell, of Minot, presents the following article concerning small claims, court costs, legal aid societies and public defenders:

"No man shall be deprived of his life, liberty or property without due process of law. Every man is entitled to the equal protection of the law".—Constitution.

"It is clear that the theory of American law is altogether sound and admirable and we may proceed to inquire how far we have succeeded in translating this theory into action. How far have we been able to secure actual equality before the law?"—U. S. Department of Labor.

"But if the individual in seeking to protect himself is without money to avail himself of such procedure the Constitution and the procedure made inviolable by it do not practically work for the equal benefit of all. Something must be devised by which everyone, however lowly and however poor, however unable by his means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set this fixed machinery of justice going."—Chief Justice Taft.

"A third problem in the administration of justice in the modern city is to make adequate provision for petty litigation, to provide for disposing quickly, inexpensively and justly of the litigation of the poor, for the collection of debts in a shifting population, and for the great volume of small controversies which a busy, crowded population, diversified in race and language necessarily engenders. It is here that the administration of justice touches immediately the greatest number of people. . . . The most real grievance of the mass of the people against American Law has not been with respect to the rules of substantive law but rather with respect to the enforcing machinery which too often makes the best of rules nugatory in action. Municipal courts in some of our larger cities are beginning to relieve this situation. Moreover, there is danger that in discouraging litigation we encourage wrongdoing, and it requires very little experience in the legal aid societies in any of our cities to teach us that we have been doing that very thing. Of all peoples in the world we ought to have been the most solicitous for the rights of the poor, no matter how petty the causes in which they are to be vindicated."—Dean Roscoe Pound.

"It is idle to speak of the blessings of liberty unless the poor enjoy the equal protection of the law."—Charles Evans Hughes.

"That society is rotten where one citizen as against another can overpower him or undermine him by law wielded with an uneven hand. Only the blind, cruel or the unjust in heart can wink the eye at this unnamable curse."—Lord Shaw.

"It seems almost incredible that past legislatures have failed to provide some simple and inexpensive method of collecting wages of employees other than the present prolonged, technical and costly process of bringing suit in the civil courts."—Montana Dept. Labor.

"The cost of collecting small claims by suit at law is now so great and is subject to such delays that the poor man must endure his losses, however unjust they may be."—Commonwealth Club California.

"In recent years there has grown up a vast army of wage earners—industrial workers—whose families and dependents constitute a great section of our population. Their standard of living and habits are such that they are dependent upon the normal functioning of society, and the pay check, and its regularity are vital to their existence. The problems of making justice readily accessible to them is real, not a theory or a legalistic controversy. It might be said that speedy justice to all is a matter of life and death in democracy. . . . There is little complaint from those whose financial position enables them to employ the best available counsel and pay the rapidly increasing court costs, that the courts are not open to them and that they are

deprived of due process of law. . . . It is the man without means to pay the court costs, reporters' fees, costs of appeal and other charges as a condition to enjoying the right to litigate and who, with his dependents, may not endure the delay of justice, that is heard to complain that the law is for only the rich and there is no justice and while every man is entitled to the equal protection of the law, only he who can pay for it and wait gets the law's protection. In this state of mind, such a man whose rights have been infringed is an enemy to society, a potential red. . . . It suggests that our administration of justice often fails to secure actual justice in the case of the plain everyday citizen, who of necessity fits so generally into the social structure. This is not because we have too few courts or too few judges or because the judges fail to work diligently and faithfully and honestly. On the contrary, we may be reasonably sure that when a case actually gets before a judge, justice will be done. Innumerable cases which are meritorious and of far reaching consequence from a social standpoint never reach a court because the persons who need judicial aid find themselves unable to get their cases into court. There are three factors which impede the effective course of justice, when its protection is sought by a person of small means. The first factor is delay. The second is the expense in court costs, fees, reporters' fees and transcript charges. The third factor is the necessity and expense of employing lawyers, with no effective provision in law for the recovery of this additional cost from the employer. Some states have imposed an attorney's fee for the plaintiff where there is a suit on a wage claim, but these statutes are not effective to overcome the objection of the costs and fees to be advanced when suit is started or the seriousness of delay."—D. A. Skeen of Salt Lake City Bar.

For some time the writer (Mr. Campbell) has felt that the matters brought to mind by these quotations were of importance and the problems were problems requiring solution on the part of society, and its corps of social workers, lawyers, judges, courts, legislatures and others. The writer feels that these conditions can and should be remedied; not thru one, but thru some or all of the following methods: Legislation, Rules of Court, Small Claims Courts, Conciliation Tribunals, Legal Aid Societies, and Public Defenders. If anything is to be accomplished along these lines, particularly in so far as legislative action is required, the work should be started at this time and the writer would be glad to hear from all persons interested, social workers, lawyers, judges and others, with an outline of their views on these matters and suggestions of methods of organization and operation.

### EXONERATION

The Supreme Court of North Dakota, following investigation and report by the State Bar Board, recently exonerated Attorney F. E. McCurdy of Bismarck, the charge against him being unprofessional conduct, made by a prominent business man of that city.

Mention of the fact of such exoneration is made here, not because of the particular individuals involved, nor because it is so unusual to have an attorney exonerated, but because the whole incident again emphasizes the inadequacy of such exonérations, even if they should be followed, later, by recovery of money damages.

More so than men engaged in other callings or professions, practicing attorneys seem to be at the mercy of an apparently merciless