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# A Legal Myth

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with the Act is not unconstitutional as in violation of the article forbidding excessive fines, nor is it class legislation.—Flick vs. Industrial Commission, 239 Pac. 1022, (Colo.). (Note—this is contra to the decision of the North Dakota Court in a similar case.)

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In a claim for death of employe it was found that a path over tracks was used as an approach to the plant; that the employer had never objected to such use; and it was, therefore, held that the use of such path represented a risk annexed by the conduct of the parties as an incident to the employment, and the injury was in the course of employment.—Corvi vs. Stiles & Reynolds, 130 Atl. 674, (Conn.).

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Services of a wife in nursing an injured workman, who was removed from hospital to his home because surgeon believed recovery would thereby be hastened, are held to be reasonably expected without compensation from affectionate wife who is physically able to render such services.—Galway vs. Steel Erecting Co., 130 Atl. 705, (Conn.).

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Where the question of dependency arises in death claims, the existence of such dependency as of the time of the accident must be proved. —Maryland Casualty Co. vs. Campbell, 129 S. E. 447, (Ga.).

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A mine examiner, who left the place where his duties required him to go, and went to a motor shed, where he was not supposed to go, and undertook to operate dangerous machinery, which the rules and instructions of the employer forbade him to use or attempt to operate, voluntarily went outside the reasonable sphere of his employment and put himself beyond the protection of the Compensation Act.—Lumaghi Coal Co. vs. Industrial Commission, 149 N. E. 11, (Ill.).

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A night watchman, whose place of duty was on premises of employer, cannot fairly be said to have been injured in the course of employment where injury occurred on street after he had left the premises to go two blocks away for lunch.—Dreyfus vs. Meade, 129 S. E. 336, (Va.).

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## A LEGAL MYTH

We accept as a fact that, under our system of legal procedure, the jury is the final judge of all facts in criminal cases. Whenever, therefore, an appellate tribunal has brought before it problems of the admission or exclusion of testimony that might have had a bearing upon the result attained by the jury, cases are sent back for a new trial in order that another jury may determine the case upon the basis of the proof that was actually admissible in evidence. We have had a number of such cases in this state as well as elsewhere.

There are those who call such errors "technical errors," and advocate the determination of such cases by the appellate court upon the basis of the general result achieved by the jury, regardless of these technical errors. The reply of others, voiced at the annual meeting by Mr. John

H. Lewis of Minot, in his address on the English system, for instance, is that this represents a change in our system and should be recognized as such, if adopted.

As a matter of actual fact, is it a change of our system? Are not ninety per cent of the verdicts of juries, whether in civil or criminal cases, the result of compromise, rather than the result of strict consideration of evidence?

We have in mind a recent term of a District Court during which three successive cases came to our attention, two criminal and one civil, in none of which the jury arrived at a determination that was in accord with the evidence. One in particular, resulting in a criminal conviction for a lesser charge than that brought, was quite clearly not in accord with the actual facts presented—yet the expressions of disinterested bystanders, and the private acknowledgment of the Court itself, was to the effect that the verdict represented substantial justice.

Let us suppose now that in this particular case evidence was admitted or excluded that might have had a bearing upon the judgment of the jury. Should such a case be sent back for a new trial just for that reason? If we accept as actual fact the theory that, under our system, the jury is the body to determine every issue of fact, and does so determine it upon all of the evidence presented, without resort to compromise or consideration for what is termed "substantial justice," the answer should, undoubtedly, be yes. But, if we acknowledge and accept what we know to be the actual facts underlying all—or the great percentage—of jury verdicts, then why not recognize the theory for what it is, a myth, and govern our appellate pronouncements accordingly, namely, by paying very slight attention to errors in the admission or exclusion of evidence?

## NEWS ITEMS

Dean Pound's discussion of "The Crisis in American Law" in the current Harper's is causing wide comment in the press.

A constitutional amendment adopted by the state of New York at the last election permits the reduction of state departments from more than one hundred sixty to not more than twenty. Another amendment adopted at the same time is calculated to make the judicial machinery more efficient.

The committee on Jurisprduence and Law Reform of the American Bar Association is urging bills before Congress providing for declaratory judgments and for simplifying procedure on appeals in the federal courts, and is opposing the Carroway bill calculated to limit the powers of federal judges upon the trial of jury cases.

The comprehensive survey recently undertaken by the Missouri Association for Criminal Justice contemplates thorough scientific research as a basis for reform. Its results will be awaited with interest.