Register 7.3.23.

ELDER CONSERVATORIUM.

INAUGURATION GATHERING.

The lecture hall at the Elder Conservatorium was the scene of a pleasant and interesting function on Tuesday evening, when the staff of teachers and the students met for a social gathering as an inauguration of the year's work. There was a large attendance. The Director (Professor Harold Davies) gave an address of especial interest and practical value.

After having welcomed the students, Professor Davies said that it was well worth while for them all to thus make friends and learn to understand each other. He wished them "A Happy New Year," seeing that the year's work was before them. A few things might perhaps make a difference in the success of their efforts. He urged them all, especially the new students, to learn all they could about the Conservatorium, its rules, and the opportunities it offered. Manuals were to be had which would help them to make full use of every phase of instruction available. He called the attention of those who had passed their second year to the alternative cause for the diploma which might be given for excellence of performance or for efficiency in teaching. He would like the facts about the teachers' course to be better understood. He hoped the concerts this year would be as good as, or better than, those of last year. It was easy to be enthusiastic beforehand, but the enthusiasm that counted was the kind that kept right on. Most of the concerts would be in the second and third terms to avoid undue pressure toward the end of the year. He was glad that the fine music which they brought within the reach of every one was being more and more appreciated by those who could not afford to hear it otherwise. Dr. Davies concluded by stressing the value of wide general culture, and the extreme danger of mere routine and of getting into a groove.

Mr. W. H. Foote gave a demonstration on the different woodwind and other instruments recently obtained from England for the orchestra. He also described their characteristics and history. The illustrations used were:—"Oboe, Beethoven's "Fifth Symphony;" Cor Anglais, "New World Symphony" (Dvorak); clarinet, "Oberon," "Der Freischutz," "Tannhauser," &c.; bass chlarinet, various examples; bassoon, "William Tell," Tschaikwosky's "Symphony;" horn, "Carmen" (intro. Micaela's Song), demonstrating bell effect and mute; trumpet, fanfare, &c.

Register 7.3.23.

A PROFESSOR ON JURIES.

After the light-hearted nonsense which has been talked about abolishing the jury system, Professor Coleman-Phillipson's evidence before the Law Reform Commission yesterday was eminently sensible and refreshing. His testimony, practical and "human" as it was, refuted the notion that the seclusion of a University necessarily destroys contact with and invalidates criticism of the practical workings, as distinct from the theory, of a legal or other system. The professor scouts the idea that juries should be dispensed with. He takes the view previously urged in these columns—that Judges no more than juries are immune from error, and that the "twelve good men" represent a useful lay leaven in the legal lump. The points whether the number should be maintained at 12, or whether majority verdicts should be permitted, are really immaterial. The main consideration is that there shall be no interference with the right of an accused person to be tried by his peers. Not so much as formerly, perhaps, is the jury necessary as "a protection for the weak and poor against the powerful and rich," but it remains a bulwark of liberty and an indispensable adjunct to the administration of justice. Apart from his reflections on the jury system, Professor Coleman Phillipson's comments on the "extraordinary latitude" allowed to counsel in the South Australian Courts, confirm the view that time-wasting and badgering of witnesses are much more prevalent here than in England. Probably the Law Commission will experience difficulty in suggesting legislative remedies for an evil which, in its main aspects, the presiding Judges alone can correct; but the growing volume of protest against the abuse of counsel's privilege must of itself tend to check the practice which the professor so roundly condemns.

Register 7.2.23

LAW REFORM

JURY SYSTEM DEFENDED.

By University Professor

Important suggestions relating to the proposed reform of the criminal and civil laws were made by Professor Coleman Phillipson in evidence before the Law Reform Commission.

Professor Coleman Phillipson (Professor of Law, and Dean of the Faculty of Law at the Adelaide University, and a member of the Inner Temple, London) gave evidence before the Law Reform Commission at Parliament House on Tuesday morning. There were present the Chairman (Mr. Young, M.P.), the Hons. H. Tassie, and J. Carr, M.L.C.'s, and Messrs. Birrell, Butterfield, Reidy, and Robinson, M.P.'s. The Professor said that in approaching the jury system they must have regard concerning whether they wanted to bring about a revolutionary or an evolutionary change. A good ideal was never to change anything unless they were absolutely certain that the change would give something better than that which they were seeking to alter. It was said that juries made mistakes. They all knew that Judges, too, made mistakes, and that judgments were often reversed on appeal. Even Parliament made mistakes. (Laughter.) If they were going to try to introduce something that would be entirely free from imperfection they might as well lie down and do nothing. It might be argued by some that juries often not have to decide points of law, but to say whether or not they considered that the accused person before them was guilty on the evidence. In the royal commission held in England in 1913 he did not know of one witness who had said that juries should be abolished. Juries were of great assistance to Judges. They instilled a deal of freshness and interest into each case. The Judge who sat day after day by himself hearing cases must in the end become fagged. The jury represented the community, and understood the movements of society. It helped to make the law intelligible and practicable, and a verdict by a jury had more value with the people generally than the judgment of a Judge alone. The jury was a protection for the weak and poor against the powerful and the rich. Generally speaking, he considered that there was a tendency among Judges who met with certain people at their clubs to sympathize more with that class than with the people of whom they knew little or nothing. Then, the jury did a great deal as an educative force. He thought that if he were concerned in a dispute he would be more disposed to ask a number of his fellow-citizens to decide the facts than he would be to leave it to a Judge.

Criminal Cases.

In all criminal cases the jury ought to be maintained. He did not think that any one who had had experience in the Courts or who had considered the matter seriously would say that juries should be abolished in criminal cases, and especially serious criminal cases. It would be the greatest mistake in the world to tamper with the jury system there. In breaches of rights, and where one's character might be concerned, the jury should also be maintained. In certain accident cases, where assessment of damages had to be made, one party should have a jury as a right, if he desired it. If "A" wanted a jury, and "B" did not think it was necessary, "A" should state the points which he desired should go to the jury, and only those points should be so decided, while the rest of the case should be heard by a Judge. In his opinion a jury was not desirable in certain kinds of mercantile cases, unless it were a special jury of men versed in the business concerned.

Jury Service.

It should be emphasized that to serve on a jury was not only a duty and an obligation, but a privilege and an honour. That would considerably lighten the work. Some jurymen complained of the burden which they felt in the service. There were in England too many exemptions from jury service. If he had his way he would compel lawyers, doctors, school teachers, and others to serve in their turn unless they could show that it was absolutely necessary for them to be exempted. That would be one way of reducing the burden for the other sections of the community, and of broadening the jury lists. In special instances excuses for absence might be accepted, but in other instances of absence fines should be imposed and enforced.

Contd

The Number of a Jury.

He had another suggetsion—and perhaps it might be regarded as a revolutionary one. It concerned the number of the jury. There was no special sanctity in maintaining the number at 12. It would help in the working of the system if the number were reduced to 10, nine, or even eight, but he thought it might be dangerous to go below eight. They wanted the jury to represent the spirit of the community, and also that the spirit of personal responsibility should be maintained. Twelve came to be almost a crowd, and crowd psychology was a very curious thing. It would be possible for a skilful advocate to influence 12 more easily than eight. The smaller number would not coalesce so easily as would the larger one.

Verdicts,

Personally, he did not believe in unanimous verdicts. He would go slowly in that matter, however. He said in cases of doubt go slowly and be certain of the ground. In capital offences, and certain very serious felonies, he would keep up the unanimous verdict for the time being, but it could be altered later on if that were found desirable on an alteration tried in other hearings. Regarding other offences, he would say that a three-fourths' majority would be sufficient. In a jury of eight a verdict of six would suffice. If one juryman fell sick or were absent it should not be necessary for the trial to be stopped and a fresh one started. The remaining seven jurors would be perfectly competent to give a verdict, and the verdict of six would still hold good. It would save an enormous amount of time and expense. Unanimous verdicts were required only in English-speaking countries. There was a Court of Appeal which could sit as a Criminal Court. In the House of Peers, 23 members needed to be present at a trial, and 12 would suffice to find a verdict against a peer who was accused of an offence. Then they had the working of Parliament, in which the decision was given by the majority. He thought it would be in harmony with prevailing custom to abolish the unanimity principle. A verdict of acquittal should be subject to revision, just as much as a verdict of guilty.

Counsel and Liability.

Counsel often abused their position, because of the extraordinary latitude allowed in the first place by the Judge, and, secondly, by the law. They should be liable for slander, if the slanderous expressions were outside their instructions; and if the statements were within their instructions the instructor should be liable. If the present law could be modified in that way an enormous benefit would immediately follow in the demeanous and methods adopted by counsel in the Courts.

Mr. Robinson—Do you think that the counsel's privilege has been abused here?—It has been far more abused here than at home. The whole atmosphere in the Courts in England is more dignified, and the Judges are on the alert to conserve the interests of the witnesses, who are treated as human beings. The professor, continuing, said he had not been in the Courts in South Australia, but, according to the reports in the newspapers, the abuse of counsel's privilege was a most monstrous thing locally. He said, that as a lawyer, and he had been at the Bar for over 15 years. If a man could not win a case by fair and gentlemanly proceedings, he should not be permitted to win by barbarous or vicious proceedings.

The Chairman—What steps would you take?—I would appeal to the Judges to use their powers.

Don't you think, for instance, where witnesses have been asked an improper question, such as "Did you bribe somebody not to come here to give evidence?"—and there is no truth in that suggestion, and it is practically a criminal charge—the Judge should be given power to suspend the solicitor?—Taking the privilege away would not help you.

Can you suggest anything else?—I would not go far as to give the Judge power to inflict a penalty on counsel.

Why?—Because counsel may be instructed to ask it in the first place, and may have asked it quite sincerely. If it should be simply a case of throwing mud at a witness, then, I might go so far as you suggest. I think I would prefer that the Judge should have the power he has now, and report counsel to the Law Society.

Challenging Jurors.

The professor, dealing with the question of challenging jurors, said the custom should be either abolished or reduced. Tampering with juries might be made a more serious offence and the punishment be increased. In vicious cases involving not be published because of its effect upon unsavoury details, the evidence should the public mind. He thought the press had an enormous influence on the public mind. It would be well if the law on the subject of juries were consolidated. He did not think it would be possible to limit addresses by counsel to any specified time. Some cases would occupy only a quarter of an hour, whereas the facts in another case might take days to explain.

Contd.

Women and Men.

Mr. Birrell—Have you considered the question of women being jurors?—Hardly at all. A good many people think it is right, and a good many conservative minded are against it.

You have experience of women?—Not on juries. I think that women should be kept out of politics. They have not the same intellectual, logical grasp men have, and never will have it, and they were never intended to have it. In some cases of which I know women can twist their male friends around their little finger.

Mr. Reidy—Is that by intellect or charm?—By intellect. Those who have intellect have not much charm, and vice versa. (Laughter.).

Courts of Conciliation.

The witness, dealing with Courts of Conciliation, stated that he had had no personal experience or firsthand knowledge of them. From what he had gathered, however, such Courts had been established in Scandinavian countries, and in some of the States of America. The parties submitted their cases in the simplest way, without the intervention of lawyers, and it was found most effective in the settlement of matters. To show how effective it had been he had figures which demonstrated that from 75 to 90 per cent. of civil cases were amicably adjusted. In 1888 there were 103,969 civil cases in the whole of Norway. Of those 2,300 were dismissed for reasons not specified, which left 111,169 cases to be adjusted by the Courts. Of those latter 81,015 were settled by the Courts—80 per cent. There were 7,886 in which the parties failed to reach an agreement and were submitted to the Court of Conciliation for adjudication by arbitration. Only 12,600 cases—about one-ninth—were sent on to the Courts of Law. The arguments in favour of such a system were overwhelming. Great relief was afforded to the Courts of Law, and it was simple and inexpensive, and did not lead to any ill-will among the parties.

Mr. Birrell—This system brings you together, and our system keeps you apart—Exactly so. I cannot see any reason why a system of that kind could not be adopted in South Australia. I think South Australians are quite as civilized and capable as are the Norwegians or Danes, and if they can only see their way to give and take a little bit they will succeed.

The commission adjourned until 10.30 a.m. next Monday.

Advertiser 7.2.23

VISITING ENGINEERS.

CONFERENCE IN ADELAIDE.

A BIG PROGRAMME.

Over 50 delegates to the conference of the Institute of Engineers, Australia, which is being held in Adelaide this week, arrived by the Melbourne express on Tuesday.

The visiting engineers were met at the station by Professor R. W. Chapman (President of the Council), Mr. J. Bowman (a vice-chairman of the Adelaide division), Mr. W. G. T. Goodman and Mr. E. V. Clark (members of the local committee), Mr. E. F. Eberbach (the South Australian secretary), and other members of the committee. Senator J. D. Millen (a vice-president of the Council) is a Tasmanian representative, and included among the visitors are the following members of the council:—Messrs. H. E. Coane and A. C. MacKenzie (Melbourne), Frankel (representing Professor H. E. Whitfield, Perth), A. J. Gibson (Newcastle), R. J. Boyd and F. P. Kneeshaw (Sydney), and the secretary (E. S. McLean). Some of the delegates are guests at private homes, but those staying in the city include:—At the South Australian Hotel—Messrs. M. C. Coates, H. E. Morton, R. J. Pringle, T. M. Ritchie, and J. Jobbins (Melbourne). At the Grand Central Hotel—Messrs. A. J. Arnot, T. H. Houghton, and W. M. Poole (New South Wales). At the Grosvenor—Messrs. C. F. Assheton, A. E. Bowen-Steane, A. E. Fraser, L. E. W. Horne, A. T. Jones, C. A. Lonsdale, J. McGeachie, H. Stiepewich, W. Stephinson, J. D. Smith, C. E. Todd (New South Wales); S. M. Allen, W. A. Emmerson, T. Ewing, R. E. Fuller, E. P. Grave, E. D. Reid (Victoria), and F. Morrison (Western Australia).