to become Federal Judge for the District of Kentucky, which position he filed with ability until his death, January 25, 1835.

In view of the fact that Judge Boyle was Chief Justice during this assault upon the judiciary, and stood with Spartan devotion to the cause through that memorable struggle, I feel that I cannot conclude this paper with anything more appropriate than the splendid and deserved eulogy which Judge George Robertson, himself an august and serene personality, once paid to Judge Boyle:

"As a lawyer, he was candid, conscientious and faithful; as a statesman, honest, disinterested and patriotic; as a judge, pure, impartial and enlightened; as a citizen, upright, just and faultless; as a neighbor, kind, affable and condescending; as a man, chaste, modest and benignant; as a husband, most constant, affectionate and devoted."

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**REFORMATION OF THE JURY SYSTEM**

By Lewis McQuown.*

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In an able and interesting address† on "Reform in Criminal Procedure," delivered by Judge Kerr before the Kentucky Circuit Judges’ Association, he urges that the law be changed so that in trials, in criminal cases, the juries shall only be required to pass upon the guilt of the accused, and that the judges be authorized to fix the punishment. He illustrates and enforces this contention by reference to numerous trials, where manifest injustice resulted from verdicts in which the punishment, fixed by the jury, was either excessive or inadequate. A system which provided these inequalities, he urges, should be changed.

Judge Kerr, at the close of his address, correctly and forcibly points out the cause of the inequalities in these verdicts:

"The great trouble with most juries is that the individual members, who compose it, resolve themselves into a law unto them."

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*Glasgow, Ky.
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selves, and they not only determine the guilt or innocence, the punishment to be inflicted, but the righteousness of the law."

This is doubtless true; and thus they deal with the guilt of the accused, in the same manner, and upon the same considerations, as in fixing the punishment. If they are opposed to the law, hung juries, or verdicts of not guilty, often result, whereas the same quantum of evidence, in a case where they favor the enforcement of the law, will produce a conviction. So that it would seem that all the objections against the power to fix punishment by juries applies, with equal force, to their passing upon the guilt or innocence of the accused. The law which the court has given them, in many instances, is regarded as only "a scrap of paper," and the verdict is based upon the law evolved by them in the jury room.

If, however, juries are to be shorn of the power to fix punishment, because they abuse it, in some cases, if, in like manner, this power to pass upon the guilt of the accused is abused, must they be dispensed with altogether?

If Judge Kerr is correct in the views advanced, would the remedy he offers cure the evil? That an experienced judge is better able than a jury to fix an adequate and just punishment, will be denied by few persons familiar with judicial procedure. But it will be well for those who seek to invest the judges with this power to carefully consider the consequences, which may result from the change. To pronounce a sentence of death, in pursuance to a verdict by a judge, is an unpleasant duty; but when the judge has the discretion to choose between life and death, a heavy responsibility is imposed. In the first instance, the jury has declared the penalty, and has the responsibility, but, in the last, it rests entirely upon the judge. It is questionable whether the extreme penalty would be as often imposed by the judge as it is now by the juries. Before service, the jurors are asked whether they are opposed to, or have conscientious scruples, against the infliction of capital punishment. But when and where, and by whom, will the judges be interrogated upon this vitally important but extremely delicate question?

When we consider that juries have been allowed, to fix the punishment so long, if the power to do so should be taken from them and vested in the judges, this would, or might, in some meas-
ure, engender resentment against the law and the courts, and have a tendency to cause hung juries, or verdicts of not guilty. Not knowing what punishment the judge would fix, in many instances, juries might refuse to find a verdict of guilty. They might be willing to find a verdict of guilty, in a murder case, and yet would not consent to the death penalty. So as to manslaughter, where there is a wide margin between the highest and lowest penalty. If the jury suspected that the judge would impose the maximum term, and they believed that only the minimum punishment should be given, in such cases convictions would be rare.

What is the remedy for these evils, real or conjectural? It will certainly, in a measure, be found in raising the standard of qualification for jurors, and in changing the mode of their selection. This will not eliminate all the evils that inhere in the system, but it is believed will contribute largely to that end.

The system of selecting jurors which prevailed before the introduction of the "wheel" furnished a higher class of citizens than we see in the jury box today. The commissioners selected one hundred names of men "free from all legal exceptions, of fair character, and approved integrity, of sound judgment and well informed." From this list thirty were selected by lot to compose the petit juries. It was an easy task for the commissioners to select these names from personal acquaintance. In selecting thirty of these by lot it was morally certain that each would possess the required qualification.

But under the present system, it seems impracticable, if not impossible, to obtain the same class of citizens. The commissioners are required to select the names from the assessor's book. This seems to be mandatory, and, no doubt, impressed with this idea, the commissioners assume that if the names appear on the book, it is evidence of sufficient qualification. In counties having a small population, where only 125 names are required, the commissioners may be personally acquainted with the persons selected. But in the more populous counties, where from 500 to 2,000 names are required, it seems impossible to do more than take many of them from the book, and no doubt this is the usual practice. Where one or two thousand names are selected, can the commissioners fairly and truthfully certify to the court that these persons are
qualified under the law? If they do so, it seems unbelievable. The law contemplates that the commissioners should have knowledge as to the qualification. In selecting one or two thousand this is impracticable, if not impossible. Hence the jury boxes contain many disqualified jurors. The wonder is there are not more.

Under the former system, the statute required a higher standard than the present law prescribes. Now it is "intelligent, sober, discreet and impartial citizens." Under the former law, the qualification was "free from all legal exceptions, of fair character and approved integrity, of sound judgment and well informed." A juror may be intelligent, sober and discreet, but has he character, integrity and sound judgment? Neither is required under the present law. A juror may be qualified without either.

It seems clear that many of the mistakes, and much of the injustice, of which Judge Kerr complains might, or would be corrected, if the standard for jurors was raised, and the mode of their selection changed. This subject is certainly worthy of the careful consideration of legislators, as well as of the bench and bar of the Commonwealth, for no important legal reform can ever be accomplished except by the efforts of those engaged in the administration of the law. The profession is indebted to Judge Kerr for calling attention to the miscarriage of justice under the present system.