

UNANIMITY OF JURY VERDICTS.

think this evil somewhat overrated. An appeal to experience will probably show that amongst the great number of cases tried, say in one year, by juries, the proportion of those in which no verdict is returned is very small indeed. The authority of Chief Commissioner Adam, a man who made jury-trial in Scotland his special study for twenty years, is valuable on this point. He says that during the twenty years that he presided at jury-trials at Scotland, only one instance happened of a jury separating after being inclosed for several hours, without agreeing on their verdict. Instances in our own courts are more numerous, but accurate observation would show that they are of less frequent occurrence than is imagined.

The cases which are probably numerous are those in which through the obstinacy of a minority, of one man perhaps, an unjust compromise has been made between the jurors. One of the Ontario members in the recent debate expressed the true evil of the present system, when he reminded the House that the effect of it is too often to compel a juror, sworn to render a verdict in the sight of God according to his conscience, to trifle with his oath by the surrender, or ostensible surrender, of his convictions. Those in favour of the change believe that it will result in a more honest expression of the true opinion of a large majority of the jury than is practically obtained by the present system.

The antiquity of the jury is always appealed to by those who deprecate any meddling with its sacred details. The fact is, that it is when we go back to the origin of the jury that we find the justification for such a change as that in question. As the mover of the bill pointed out, the circumstances under which unanimity came to be required in early days have ages ago ceased to exist.

Mr. Forsyth, Q. C., has examined the whole question of the origin of the jury, with much industry and research. His explanation of the origin of the rule requiring unanimity, a rule which he does not hesitate to condemn, is apparently the correct one. He completely disposes of the tradition which represents the jury as being the invention of the Saxon Alfred. The jury cannot be discovered in the form in which we know it prior to the reign of Henry II. The Grand Assize, a tribunal for the settlement of questions affecting the title to land, which was fully developed in the reign of that monarch, and the trial of criminals by invoking compurgators, seem to be the germs out of which our present jury system grew. In trials of these sorts it was necessary to obtain the agreement of twelve men, but not necessarily of the first twelve selected. Dissentients were rejected and jurors added till the necessary unanimity was attained. Moreover, as is well known, the early jurors were nothing but witnesses. From various analogies, the number of twelve came to be looked upon as the necessary number of witnesses to establish the credibility of an accused person, or the existence of certain facts. In a primitive age opinions prevailed as to the quantity of evidence necessary to lead to a decision which more enlightened ages have rejected. For instance, for a long time three or more witnesses were required for the attestation of a will. We are now content with two. So with these juror witnesses, no smaller number than twelve would satisfy the suspicious minds of lawyers in those ignorant times.

The only argument advanced against the principle of the bill in question, which might appear at first sight entitled to weight, was, that the effect of allowing a verdict of nine, ten, or eleven jurors to be equivalent to a unanimous verdict, would