and collateral cause in the practice of this mode of trial, as for example, from the unwillingness of Judges to take the trouble of adding a number of fresh jurymen to the first twelve, where they could not agree in their verdict, and causing the evidence, that had been before given in the cause before the first twelve jurymen to be repeated over again by the witnesses to the original jurymen, till a verdict was obtained, in which twelve at least, out of the whole number of jurymen, were really unanimous. For this was the way of proceeding in this matter in the days of King Henry III., that is, about the year 1260 (or about fourscore years after the first institution of juries by King Henry II.) as appears by the following passage in the famous lawyer, Bracton."

Baron Maseres then quotes a passage from Bracton "De Legibus," &c., lib. 4, c. 10, which he gives a free translation of as follows :—

"It often happens that jurymen, when they come to deliver their verdict, appear to be of different opinions, so that they cannot bring in an unanimous verdict. In that case, the Court must order the assize or jury to be reinforced, or increased by the addition of as many new members as there are in the majority of the jury who already agree in one opinion and differ from the minority, or at least by the addition of from four to six new members. And these additional members of the jury shall join with the former jurymen in considering and debating the matter in question. Or they may, if the Court shall so direct, consider and debate the matter in dispute by themselves, without any such conjunction with the original jurymen, and give their answer concerning the matter in dispute, separately by themselves. And the verdict of these members of the original jury with whom these new jurymen shall agree in opinion, shall be allowed and held good."

And, accordingly, in his plan of administering justice in the Province of Quebec, the Baron proposed that a majority of jurymen should carry the verdict.

Mr. Warrington (Obs. on Magna Charta, c. 29) inserts part of the above passage from Bracton, and remarks that this continued to be the practice in the next reign when Fleta is supposed to have written. In confirmation he quotes a passage from Fleta, which, says he, "shews, that the Judge had a power of insisting upon the unanimity of the first jury impanelled; and it was probably found, when new jurors were added, that it was in reality the trouble of trying the cause over a second time, and so *toties quoties;* at last for the greater despatch of business, they insisted in all cases upon the unanimity of a jury." The above passage from the old work of Baron Maseres not only suggests the same arguments against the unanimity which are used by more recent critics (amongst others some of the writers to the *Times*, on the occasion of the Mainwaring verdict); but, in its historical account of the matter, it is in harmony with the account by Mr. Forsyth, in his work above mentioned. The Imperial commissioners appointed in 1830, to report upon the Courts of Common Law, recommended a change in this matter, and suggested that, after a certain fixed period of deliberation, if any nine of the jury concur in giving a verdict, such verdict should be entered on record; and in a failure of such concurrence, the cause should be made a remanet. But, as our friend of the *Albany Law Journal* says: "institutions cling to the people who adopt them, as the Old Man of the Sea clung to Sinbad, refusing to be shaken off." No change resulted from the recommendation of the commissioners, and although it may no longer be true that—

Hungry Judges soon the verdict sign,
And wretches hang that Jurymen may dine,

it appears from the Mainwaring verdict, that wretches have a good chance of hanging, that jurymen may be relieved from the trouble of fulfilling their solemn oath to "well and truly try, and a true verdict give, according to the evidence."