The Canada Law Journal.

VOL. XXIV. FEBRUARY 1, 1888. NO. 2.

IN reference to the case of *Saylor* v. *Platt*, as to which we gave in our last number for 1887, a form of order for particulars in an election case, we find that the only point decided was as to the time for giving particulars in an election case. The learned judge stated, in giving judgment, that he would not follow his former decision in *Dickson* v. *Murray*. 19 C. L. J. 211, in which he held in accordance with the modern English practice that the time should be seven days, as he found that this view had not been generally adopted by other judges. For the sake of uniformity he would therefore follow the former practice, and make the order for delivery of particulars fourteen days before trial.

JUDGE F. MILLER, one of the nine judges of the Supreme Court of the United States, contributes an able article to the last number of the *American Law Review* on "The System of Trial by Jury." After tracing the history of trial by jury in the United States, he says that his practice in the courts, before he came to the bench, had left on his mind the impression that in civil suits juries were of doubtful utility. He would then have preferred a court composed of three or more judges, so selected from different parts of the circuit as to prevent any preconcerted action or agreement of interest or opinion, to decide all questions of law and fact. He now thinks that this preference was largely owing to the popular and frequent election of the judges of the court in which he was practising, and to their insufficient salaries. They were neither very competent as to their learning, nor secure in their positions. They could not, therefore, exercise that control over the proceedings, in a jury case, and especially in instructing the jury upon the law applicable to it, which is essential to a right result in a jury trial. A case left to the unregulated discretion of a jury, without that careful discrimination between matters of fact and matters of law which it is the duty of the court to lay before them, is little better than a popular trial before a town meeting. The judge should clearly and decisively state the law, which is his province, and with equal precision point out to the jury the disputed questions of fact, which it is their duty to decide.

An experience of twenty-five years on the bench has convinced the learned judge that, when the principles above stated are faithfully applied, a jury is in the main as valuable as an equal number of judges would be, or any less number. His experience in the conferences of the United States Supreme Court is that the nine judges come to an agreement very readily upon questions of law, while they often disagree in regard to questions of fact which are as clear as the law. His conclusion is that judges are not pre-eminently fitted, over other men of good judgment on business affairs, to decide upon mere questions of disputed fact.