

to be certain, but a mere statement of opinion. It is well known that witnesses' mere opinion as to facts will most often go for nothing. We know also that men's opinions are variable, and liable to change. But we are dealing, not merely with a man's opinion, or with that of a witness, but with the verdict of a jury. There is no room for change in the verdict of a jury; it is irrevocable. A jury states its opinions, and are asked whether they are all of that opinion; they answer in the affirmative and this is the last finding possible by that jury. They know that, and that they will be discharged and dissolved upon the recording of their verdict. Their opinion is fixed and invariable from the nature of things. They are twelve men, but one body saying in substance:—"Nos opinions sont fixes sur ce point." Surely the eleventh finding is certain enough and affirmative enough.

"We think," has been taken over and over again as a verdict. In the last case tried against the *Etna Insurance Co.*, for instance, "We think," I do not consider as certain or strong as the expression here, "We are of opinion." "We are of opinion," was the finding of the jury, p. 206, vol. 2, L.C.R., yet it was accepted by us as a good finding.

In sales, vendees are often held in fraud from having had reason to believe things. In insurance cases too, insured are often held in fraud from having had reason to believe things. If, in settling a special verdict, any difference arise about a fact, the opinion of the jury is taken, and the fact is then stated accordingly; i. e. according to the jury's opinion—8 taunton. Tidd Pr.

A governing principle in trials by jury is that the jury have entire jurisdiction over the matters of fact, and that the Court has none (where there is no motion before it to set aside the verdict, for inconsistent findings, or as being contrary to the evidence.) This principle is admitted wherever trial by jury is understood and practised.

The verdict in the present case, if not uncertain must stand, and be applied as it reads; the motion for judgment *non obstante verdicto* being dismissed. Whether it be certain or uncertain the defendants' motion for judgment in their favour cannot be granted. Why should defendants get judgment entered up in their favour upon a verdict confessedly uncertain, say where an important fact sent to be determined, has not been determined. If a verdict be maintained in a case like the present, the Court cannot dispose of the case upon it, but must order a new trial. If a verdict be ambiguous or uncertain judgment shall not pass upon it, but a *verdict de novo* shall be ordered: 1 Saunders Pl. Any court taking such a view of a verdict would have to order a new trial. I ought to make the verdict stand, if can. I see certainty in the jury's findings, and so seeing, I say that the defendants cannot get judgment in their favour, for the verdict is against them, and in favour of plaintiffs. Finding, as I do upon both motions by defendants, I pronounce for the plaintiffs' motion. I may be wrong. My judgment can be carried to appeal and if wrong, in so far as disposing of defendants' first motion as it has been, defendants have a remedy, as in *Tilstone and Gibb*.

LETTER OF D. TORRANCE & CO.

THE following letter has been addressed to *The Gazette* :—

MONTREAL, January 2, 1869.

SIR, - Before this case is disposed of in the Court of final resort, your readers will have forgotten all about it; and we, therefore, ask space now for a few words relating to the first judgment.

The missing letter, to which so much importance is suddenly attached, was not written to us at all, but was a private note addressed by Mr. Yarwood to Mr. Cramp, a day after that sent us containing the remittance. After writing to our firm on the 15th July, from London, enclosing the remittance, Mr. Yarwood proceeded to Toronto, and the next day, the 16th, while there, wrote this note and gave it, he states, to the hotel porter, to be posted. It did not go forward by that day's mail, but reached here on the 18th, and was answered the same day as follows:—

"MONTREAL, July 18, 1867.

"E. M. Yarwood, Esq., St. Thomas.

DEAR SIR, - I am in receipt of your letter dated Toronto, 18th inst. No doubt ere this you have learnt that we refused your bill for \$1,000. What other course could you have expected us to take? Apart from the origin of this transaction, it was surely due to us before asking further assistance, to disclose the reasons, and a full account of your affairs, but you choose to draw without explanation or authority, and the bill has been protested.

Respecting the balance due as yet, it is quite clear you are going to disappoint the expectations we had on your statements as to the time of payment, but you know it is a debt of honour; you have placed us in a cruel position, and I look to you at once to make it safe at any rate. I will undertake to get you liberal time, say a year, if required. Let me hear from you at once.

"Yours truly,

(Signed,) "THOMAS CRAMP."

That a private note addressed to one member of our firm, should not be filed with our business papers, will surprise no mercantile man, nor is it singular that such a document should be lost or mislaid. We attached neither then, nor now, the slightest importance to it; nor did Mr. Cramp, who would, however, have shown it to Mr. Hooper, had it reached him before their interview took place. At the trial, Mr. Yarwood, who wrote this note, and Mr. Cramp, who received it, were both in court, summoned by the Plaintiffs, so that no difficulty existed in ascertaining its contents, or any circumstances respecting it, that were considered to bear upon the case.

The supposition that Mr. Cramp or any member of our firm concealed, or cared to conceal, anything whatever respecting this whole matter from beginning to end, would be ridiculous as well as contemptible. From our point of view, no letter written by Mr. Yarwood or any one else after that of the 15th July, ought to have affected our decision. We took the ground, and still maintain it, that the remittance being unconditional, we had the right to pass it to Mr. Yarwood's credit; and the draft being made without the slightest authority, we would and did refuse to accept it. If the knowledge of Mr. Yarwood's acts was to govern our decision, we had within a very few days a full explanation of the transaction, but we still persisted, as we do yet, in maintaining the original ground. Nothing would have removed us from it but satisfactory security for the new draft.

It would no doubt have been extremely liberal for us to rectify a mistake of the Bank of British North America and protect the manager from censure; but we were not disposed to forget that the Bank held our property practically in pawn for the payment of another person's debts, and we had little hope of its restitution on any so-called moral or broadly liberal grounds. These would have been defined by the Bank solicitors.

As we consider, and are so advised, that Judge MacKay's decision is contrary to the evidence and the verdict as well as being otherwise bad in law, the case now goes before other judges and a higher court.

We remain, Sir,

Your obedient servants,

DAVID TORRANCE & CO.

THE SILVER NUISANCE.

MR Weir has sent us a circular in reference to the export of silver, from which we learn that there is still considerable doubt as to his being able to carry out his scheme. Mr Weir's proposition is simply this. He is receiving tenders of silver at 3½ per cent. discount, to be delivered within four months from the 10th of January, and paid for on delivery. If his whole scheme is sufficiently supported, he will accept the tenders, and export \$50,000 of silver weekly, until he has shipped \$2,000,000, the amount which he estimates as the surplus of silver now causing so much loss and inconvenience.

But as the United States silver dollar is only worth from 94c. to 95c. in gold, the loss in exporting must clearly be made up in some way. This loss, including commissions, freights, &c., Mr. Weir estimates at about \$80,000, or about the amount of discount paid in Montreal alone every forty days. To meet this deficit, Mr. Weir is taking tenders of one dollar per week and upwards, to be paid to him while the shipments continue. Those who contribute to this fund are to have the privilege of exchanging their silver at 2½ per cent. discount up to \$5,000 during five months. This is certainly a guarantee that Mr. Weir has confidence in his scheme bringing the discount down to that figure, which will far more than compensate those who pay a dollar per week towards the cost of shipping.

So far, we learn from Mr. Weir's circular, \$40,000 have been tendered to cover the loss arising from the sale of the silver, so that half the work has been accomplished. Mr. Weir, however, evidently feels that many parties deeply interested in the success of the movement are doing nothing to assist it, and it is just possible that a scheme, not difficult of accomplishment, and calculated to greatly lessen, if it does not entirely remove the evil, may fall to the ground through the indifference of those most interested in carrying it to a successful issue.—*Toronto Globe*.

RAILWAY FARES.

IF some social philosopher should predict that the day will come when a man can purchase a three-cent stamp and prepay his passage therewith to any part of the United States, as he may now prepay the carriage of a letter the proposition would no doubt be received with shouts of inextinguishable laughter. If the laughers were asked to say why the thing appeared to them so preposterous and absurd, they would instantly point out the difference between the standard half ounce of the post office and the 160 lbs of the living package; but on being pressed a little further, to show why a *pro rata* stamp should not suffice for the transportation of a 150 lbs. for any distance, would be obliged to confess that there is no impossibility in the case.

Mr. Braddon, of England, insists that the thing can be done in that country, and that a three-penny stamp would be enough to pay for any single journey, long or short. He bases his calculation upon the passenger traffic of 1865, when 3,500,000 passenger trains run over 71,000,000 miles, and carried 252,000,000 passengers. This traffic produced \$14,744,402, giving an average of about 21 miles and 73 passengers for each train, or about 4½ passengers per mile, and an average fare for the present average journey of 14d. Mr. Braddon has no doubt that the reduced rates would increase the tariff sixfold, which would give the railroad companies an excess of \$4,000,000 of receipts, with very little additional expense at a 3d. rate. He claims that of this increased number one-seventh would ride first-class, at 1s., and two-sevenths second-class, at 6d., which would raise the return of the railroads from £14,750,000 to £22,000,000.

These figures show that the proposition is feasible. The success of Sir Rowland Hill's post office plan has already shown what may be done under such a system. The inertia of established custom will no doubt offer a formidable obstacle to this revolution, but it must nevertheless be confessed that its success is not improbable. It is a fact that very low passenger fares have always stimulated travel and resulted in favour of the companies which have adhered to them for a

reasonably long time. The wisdom of this policy has been demonstrated on a very large scale in Belgium for two years past, and its success there has had a great influence on fares in Prussia, and to some extent in France.

In America no fair trial has ever been made of cheap travel. Occasionally competition has brought fares on particular routes very low for a time, but only to be raised again as soon as a compromise could be effected. The companies have always regarded the public as their lawful prey, and the public have returned the compliment by treating the companies as natural enemies and threatening to take away their privileges. If now it can be shown that the interest of the companies is coincident with the desire of the public for cheap fares a better understanding may be reached. But we fear it will be difficult to persuade the companies that "the bird in the bush is really to be preferred to the bird in the hand." It would be interesting, however, to know just what the receipts and expenditures were on the Sound steamers last summer, when passengers were taken from New York to Boston for \$1.—*Portland Price Current*.

ANOTHER OIL COMBINATION.

THE combination made by Judge Higgins, with the Canadian oil refiners, having about expired, the oil men have entered into an arrangement among themselves, so that the expectation of a decline in the price of coal oil at the expiration of the first combination, will not be realised. The arrangement is said to be as follows:—

1.—They bind or lease all their refineries to trustees.
2.—They bind themselves only to make a certain quantity of oil—which quantity is to be agreed to by a committee of the combination. Such quantity not to exceed the consumption of Canada.

3.—A committee to inspect the quality of the oil; and no oil, except such as has been approved of, to be offered for sale.

4.—A committee to measure the different stills, and apportion the quantity to be made by each refiner—which apportionment shall be *pro rata* according to the size of the still.

5.—A committee, through whom all sales are to be effected, who are also to regulate the price, &c.

CONTINENTAL HYDRAULICS.

A BOLD SCHEME OF ENGINEERING.

AT the last meeting of the Connecticut Scientific Academy, Gen. B. S. Roberts, United States Army, read a remarkable paper on the hydraulics of the Continent. He announced what we may style a very large problem, but he set forth its merits and its practicality that its national importance claims for it serious consideration. The General undertook to show that the system of confining the flood-waters of the Mississippi River in one narrow channel, by dyking, is obstructing the creative laws of delta bottoms and basins, and working the most serious evil by emptying into the Gulf of Mexico the delta-forming material that would, if the waters were left free, spread themselves over the low marshes and swamps, and in time raise them up to higher levels, by the cumulative process of delta deposit, and create cotton lands. He made a very clear demonstration of an easy and economical plan of engineering these dykes by a system of waste weirs that should create artificial rivers and carry all the flood-waters into the swamps, morasses, bayous, &c., of the Mississippi basin.

This was his first proposition, by means of which he insists that all the flood waters that come from the great western tributaries can be controlled and made available to undo the evil that had its beginning with the French and Spanish, who commenced this vicious plan of dyking when they owned the States of Louisiana and Florida, and the vast country west of the Mississippi.

After engineering and disposing of the flood waters of the Mississippi that come from the great western tributaries, he proposes another plan for engineering the waters of the lakes, so as to supply at all seasons to the Upper Mississippi, the Illinois and Ohio Rivers, enough of their surplus waters to fix a minimum low water navigation. He makes Lake Superior the natural feeder of the Upper Mississippi, and demonstrates the ease with which all the waters that empty out of it down the Sault St. Marie can be canaled into the head waters of the Rum River, and through that channel into Mississippi, into the Falls of St. Anthony. The waters of Lake Huron and Lake Michigan that are emptied into Lake Erie through the St. Clair River, he proposes to drain into the Illinois River, by deepening the Chicago River, and carrying them in an artificial bed to the head of navigation of the Illinois River. In like manner he would draw from Lake Erie the waters that discharge themselves over the Falls of Niagara, by deepening the Grand River, and from its head waters cutting an artificial river to the head of Beaver River, and down that into the Ohio.

These are Gen. Roberts' outline plans, and he is very earnest and clear in his convictions that they are practical and of easy economical accomplishment, under the direction of skilled, alive and enterprising engineers. He urges that the geography of the country is peculiarly favorable for the accomplishment of these plans, and seemingly invites the skill of man to undertake what God has so plainly left for him to do. It is not our purpose in what we have said, to endorse this plan; we are not professionally in that line. Whether it is practical or not, we do not know. But it certainly has novelty about it, and there is always to us a charm in new and bold thinking, and in great original undertaking. It seems to us quite clear that Gen. Roberts is a bold and original thinker, and is now wrestling with a great national plan of engineering the hydraulics of the continent, and appropriating them to such