Englishmen may never swerve from that principle, "except as to that preposterous relic of barbarism, the requirement of unanimity."

This "relic of barbarism" has lately been the subject of discussion in the Ontario Assembly. A bill was introduced, the substance of which was, that in civil actions the jury might, after the absence of one hour, return a verdict of eleven of their number; after an absence of two hours, a verdict of ten; and after an absence of three hours, a verdict of nine: and that in any of these cases, the verdict so rendered should have the same effect as a unanimous one. This is not the first time an attempt has been made in the Ontario House to make such an innovation in the jury system. The House treated the proposals with more deference than on a former occasion, but it is not yet prepared for the change, and rejected the bill.

There is no institution which invites attack more than the jury, and at the same time there is no institution which the majority of legislators are so timorous of meddling with. Many sagacious thinkers have strongly pronounced against the rule of unanimity; and it is generally felt that, as Professor Christian says, if the jury system had been established by the deliberate act of the Legislature, no such rule would have formed a part of it. Still, the antiquity of the jury and its acknowledged usefulness, lead men to look with alarm even upon changes in its mode of operation. From an early period, it has been the custom to leave the decision of disputed facts to twelve men chosen indifferently from the community; and with this the custom has grown up of requiring these twelve men to agree before they can render a decision. What experience has sanctioned, as really valuable in this system, is the appeal to a competent number of unprofessional persons. There is nothing essentially useful in the custom, which has no parallel in any other institution, that the entire tribunal should be forced into holding, or the semblance of holding, the same opinion.

It will be observed that the change proposed by the bill referred to was not intended to extend to criminal cases. Such a limitation was a wise and proper one. In a criminal trial the evidence is either sufficiently clear, one way or the other, or it is involved in doubt. If the latter, that principle of our law, founded on considerations of mercy, that the prisoner should not be convicted where a substantial doubt of his guilt exists, should be allowed due weight. If then there is not unanimity amongst the jurors, if a minority of them are not prepared to find the prisoner guilty, it is consonant with the principles of our criminal law that the opinions of that minority should not be deprived of their influence in the prisoner's favour. The hesitating minority is analogous to the doubt of which the individual juryman is directed to give the prisoner the benefit. But in civil cases considerations of this sort have no place, and the opinion is gaining ground that it is not only unnecessary, but injurious, to require twelve men to agree, or appear to agree, in order to settle a dispute in a law court. A bare majority of one suffices to enact a law which may be fraught with the most tremendous results to an empire. How absurd it seems that a decision as to rights, which do not affect the interests of more than two private individuals, and that perhaps to the most trivial extent, should require the undivided assent of the full tribunal.

The principal ground put forward by the advocates of the bill in the Ontario House, was that under the present system there is a frequent failure of justice owing to the discharge of juries unable to agree. We are inclined to