divided, the chairman should have a casting vote. The foreman innocently requested that the greatest publicity might be given to the letter, in order to contradict the many false reports that had been in circulation ; and was, probably, much astonished at the obtuseness of Mr. Cross, who regarded their course of action as very like casting lots for the verdict. The *Times* hints that such delinquency on the part of jurymen is by no means unparalleled; while a writer in the *Albany Law Journal* makes a strong attack on the whole system of trial by jury. He regards it as a relic of the past, which, like slavery, once served a useful purpose, but should now be abolished. Certainly the reasons for the continuance of an institution are not always the same as the reasons to which it owed its origin, and the writer in the *Albany Law Journal* maintains there is no reason for the continuance of trial by jury at all. In the days of inequality it was a defence of the weak against the strong, and so promoted justice. Where equality prevails it promotes injustice. As it now exists it is beneficial to only two classes—professional jurors and jury lawyers. In places he becomes more abusive than argumentative. Thus for example he says :—

" The Jury is the clown of the law. It is constantly inventing new and ingenious tricks for the evasion of duty. It is the patron of the joke called 'temporary insanity,' and the author of numberless other jests of a like character. It is a never-failing source of amusement to all except its victims. There is nothing certain about it but its uncertainty. It has been sneered at and satirised and lampooned and caricatured. Judges have snubbed it, and legal wits, like Curran, have riddled it with sarcasm in open Court. Yet a mistaken conservatism suffers it to continue its blundering way, unchallenged."

He asks what greater virtue lies in twelve than in three, six, or nine—what reason there is for requiring absolute unanimity in the decision—why the ma-

jority should not control in law as in politics, in juries as in appellate courts —and sundry other unpleasant questions calculated to make the Palladium of our liberties shake upon its pedestal. And there is no doubt that— especially as regards the requirement of unanimity—he is not without supporters. This, as Mr. Forsyth points out in his "History of Trial by Jury," (ch. xi), has been attacked by such men as Bentham, Professor Christian, and Mr. Hallam, who (Supp. Notes, Midd. Ages, p. 262) speaking of " the grand principle of the Saxon polity, the trial of facts by the country," says :—" From this principle *(except as to that preposterous relic of barbarism the requirement of unanimity)* may we never swerve—may we never be compelled, in wish to swerve—by a contempt of their oaths in jurors, and a disregard of the just limits of their trust."

But " vixere fortes ante Agamemnona," and years before any of these gentlemen, our fellow-countrymen in Lower Canada, assailed this feature of jury trial. Mr. Baron Maseres, who was Attorney-General of Canada up to 1773, in his Account of the Sentiments of the Canadians concerning the Introduction of English Laws and Trial by Jury into the Province, cited in 14 How. St. T. 618, says, (p. 324) :—

" Some of the Canadians observed that it was a strange thing, and a hard one, to force twelve persons, who really think differently upon a doubtful matter that is referred to their determination, to say, upon their oaths, that they are all of the same opinion, and to continue to be shut up together without food or light, till they do so. This, they said, was putting the decision of causes into the power of those jurymen who had the strongest constitution, and could go longest without food. And it was also forcing some of them to break their oath, and commit a kind of necessary perjury. . . . I must confess, I think those reflections just ; insomuch that I am convinced that this unanimity could never have been required in the original institution of juries, but must have grown up from some accidental