

JURIES.

is the pressure, that something will have to be done, and we see no other remedy than a reduction in the number of jurors. It has been suggested that, in certain cases, trial by jury should be dispensed with and the facts as well as the law left to the Court. Such a change would not be popular, and as we have trial by jury issues of fact ought to be decided by juries. The Attorney-General proposes that the number of twelve shall be retained in trials for treason, treason-felony, and murder, because he is unwilling to remove any of the existing protections for the life of an accused person. The suggestion is rather unfavourable to the proposal for a reduction of the number of jurors in any case. If twelve are likely to be more just than eight in a trial of life and death, why should they not be so in a trial, the issue of which will set the prisoner free or send him to penal servitude? And if twelve are likely to be more just than eight in the Criminal Court, why not in the Civil Court? Still there is a distinction in the public mind. There is a prejudice in favour of a man being tried by twelve of his peers, and perhaps it would be better to retain the number of twelve in all criminal cases and to reduce it in all civil cases. Such an arrangement would not offend the public sentiment, and it would give great relief to the demands on the jury list.

Mr. Erle proposes eight as the number of jurors. We should prefer seven, because it is an odd number, and it is a matter of experience that an even number of men are not so likely to agree as an odd number. Besides we have tried the odd number in the County Courts, and there it works very fairly.

We lately remarked that we strongly objected to a reduction of the number of jurors and at the same time the abolition of the rule of unanimity. But we further agree with Mr. Erle in his vindication of the rule of unanimity. Mr. Erle ably, and as we think conclusively, answers the chief objection to unanimity. It is said that if the verdict of the majority was taken, jurors would not have to be discharged and the costs of both litigants wasted. He tells us that the number of instances in which juries disagree is not more than $1\frac{1}{2}$ per cent. of the whole number of trials. Probably it will be contended that there would be more instances of dis-

agreement except that the minority gave way to the majority rather than render the trial abortive. But we must not assume that the minority give way in spite of strong conviction. What happens to the jury happens sometimes to the full Court. A judge who takes a somewhat different view of the law from the rest of the Court, does not feel justified in holding to his opinion against the views of the rest of the bench. Besides, those who dissent from the rule of unanimity can hardly do so on the ground that it practically involves the return of the verdict of the majority. Mr. Erle justly remarks that sometimes—when the evidence is conflicting and evenly balanced, or when the slight legal lapse of the defendant is more than compensated by the moral wrong of the plaintiff—the discharge of the jury is the only just conclusion. There is another consideration not mentioned by Mr. Erle. It is that the majority system would probably subject the jurors to personal obloquy. In trials which were associated with political or social questions, if a minority held the popular view, the names of the majority would soon be known, and they would be likely to suffer for their conscientious discharge of an onerous duty. On the whole, we see no valid reason for abolishing the rule of unanimity whilst there are very cogent reasons for its retention.

With regard to mixed juries, we are unable to offer any decided opinion. We agree with the Attorney General that the mixed jury system would be a return to the original practice, and that it is an innovation to have a jury entirely composed of common jurymen. But the historical argument is not conclusive, for, like other institutions, trial by jury must be modified by the changes of society. Our doubt about the mixed jury system is with respect to the working. It would not be desirable for the common jurors to submit their judgment to the special jurors, and we do not think that is probable. But is it not possible that the common jurors might resent the advice of the specials as dictatorial, and oppose it without a due regard to the evidence? At all events the substitution of mixed juries for the present common juries would be an experiment, and in such matters we do not approve of exper-