gards contests in the courts in civil suits, the jury system was one of doubtful utility; and if I had then been called upon, as a legislator, to provide for a system of trial in that class of actions, I should have preferred a court constituted of three or more judges, so selected from different parts of the district or circuit in which they presided as to prevent, so far as possible, any preconcerted action or agreement of interest or opinion, to decide all the questions of law and fact in the case, rather than the present jury system. * * * This impression upon me, growing out of my practice, I have since come to think, however, was largely due to the fact that, owing to popular and frequent elections of the State judges, and insufficient salaries, the judges of those courts in which I mainly practised were neither very competent as to their learning, nor sufficiently assured of their position, to 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. It may as well be stated here that a case submitted 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 but little better than a popular trial before a town meeting. * * * An experience of twenty-five years on the bench, and an observation during that time of cases which come from all the courts of the United States to the Supreme Court for review, as well as of cases tried before me at *nisi prius*, have satisfied me that when the principles above stated, (principles upon which judges should instruct) are faithfully applied by the court in a jury trial, and the jury is a fair one, as a method of ascertaining the truth in regard to disputed questions of fact, a jury is in the main as valuable as an equal number of judges would be, or any less number. And I must say, that in my experience in the conference room of the Supreme Court of the United States, which consists of nine judges, I have been surprised to find how readily those judges come to an agreement upon questions of law, and how often they disagree in regard to questions of fact which apparently are as clear as the law. * * * I am therefore of opinion that the system of trial by jury would be much more valuable, much shorn of many of its evils, and much more entitled to the confidence of the public as well as of the legal and judicial minds of the country, if some number less than the whole should be authorized to render a verdict. I would not myself be willing that a bare majority should be permitted to do this. There could be little difference in the confidence which would be reposed by the court, the public, or the parties, in the opinion of five men or of seven. It should be something more, then, than a bare majority. If the jury is to consist of twelve men, I certainly would not be willing that its verdict should represent less than eight, which is two-thirds, or probably nine, which is three-fourths. Many of what are called mistrials, produced by a failure of the jury to render a verdict, would be avoided if the power were given to nine or eight to render a verdict instead of requiring them all to unite in it, and such a verdict would be entitled to as much confidence as if it were unanimous. In respect to civil actions, where the question at issue is the right to specific property, or to damages for failure to fulfil a contract, or torts against the person or property of the plaintiff, this approach to perfect justice is perhaps as near as the fallibility of human nature permits, and the change removes the most serious objection to the system of trial by jury, the one which stands out as almost without support in reason or experience.—*American Law Review.*

COUNTY COURT (COUNTY CARLETON.)

OTTAWA, Dec. 30, 1887.

Before ROSS, J.C.C.

REDGRAVE v. CANADIAN PACIFIC RAILWAY CO.

Railway Company—Responsibility for freight—Condition of contract requiring notice of loss within thirty-six hours.

(Concluded from page 23.)

PER CURIAM (continued):—

The case was very fully and ably argued. The question now is whether upon the facts evidence and findings of the jury, the plain