

Akin to this question is a wider and more difficult one. Is our law with reference to contributory negligence reasonable and fair? This sounds like questioning the very foundation of our jurisprudence. You know that in civil law when there is an accident resulting from the negligence of both parties the loss is apportioned. The same law is administered by my brother Garrow when he deals with maritime cases. But in our courts if both plaintiff and defendant are negligent there can be no recovery. (I am leaving out of sight cases of ultimate negligence). If sailing on the lake there is a collision as the result of the negligence of both parties and one vessel is injured and one escapes injury each has to bear its share of the total loss. If navigating the even more perilous highway an unfortunate by the joint negligence of himself and a motorman has a collision with a street car, the chances are that all the injury will be done to him and comparatively little to the car. Assume the fault to be equal, it seems unfair that he must bear all—yet such is our law. Is it certain that our law is as just as the civil law?

Another matter that I think calls for consideration is the speedy trial of serious criminal cases; cases that can only be heard before a High Court judge. Minor offences can now be dealt with speedily by the county judge, but an innocent man (or worse still a woman) may remain in gaol for several months before this case can be heard. While there should be no undue haste in the trial of these cases it is not in the public interest that there should be long delay.

The expert witness is always with us. His presence is most felt in accident cases and testamentary cases in which capacity is in issue. The evil of a witness who is in truth a paid advocate and who states not facts but opinion is manifest. He was upon my list as a possible subject for reform. In many of the States there is some attempt to reach the difficulty by legislation mostly along the line of having a board of experts nominated, one or more of whom is to assist the court by his evidence. Among medical men the evil is admitted but the remedy suggested is a medical assessor to sit with the Judge.