being a party to the suit has been abolished, it has met the approval of judges and lawyers, with rare exceptions. The only question yet open on that subject relates to its application to criminal cases. Many States of the Union now permit a man to testify who is on trial for a criminal offence. In most of them this must be voluntary on his part, and he can remain silent if he chooses. But it has been thought proper in such cases that the jury shall be instructed that his silence is to raise no presumption against him, as it might do if he refrained from giving explanations which the situation seemed to require. It may be doubted, however, if the charge of the court in such cases will be very effectual.

The exceptions to the law excluding hearsay evidence, which have been somewhat increased by the courts, might profitably be further enlarged by legislation.

The proof of character, whether good or bad, should, in my opinion, be admitted in many cases, both for and against the party, where it is now excluded. On a charge of crime, or an issue of fraud, which of itself proves the man, if guilty, to be a very bad man, it is usual to reject the light which his previous character, whether good or bad, will throw on the probability that he would do the act charged.

Without enlarging on the subject, I am of opinion that in criminal causes the French system of repeated and very free preliminary examination of the prisoner, in the presence of a judicial officer, in which questions are put and answered with great freedom, as the facts are developed, in which the accused has the fullest opportunity of prompt and early explanation, and is held responsible for its absence, when the examination is postponed and resumed as new information is obtained bearing on the guilt or innocence of the party, is much more likely to relieve the party, if innocent, of the disgrace and trouble of a formal trial, and to produce conviction in case of guilt, than our artificial strait-laced law of evidence permits. It is the boast of the common law that it protects the innocent at all hazards, and that it is better that many guilty should escape than that one innocent man should be punished. Yet I entertain a very strong conviction that, leaving out of the account prosecutions for offences purely political, fewer men are wrongfully punished, and fewer guilty ones escape, under the French than under our system of criminal procedure. There is in the law of evidence an inviting field for the Jurist and the Legislator. The book of Mr. Justice Appleton, of Maine, and the works of Mr. Stephen, are encouraging in this direction; and an examination of Mr. Bentham's labors on this subject would well repay the time so expended.

Looking at such legislation as affects the methods by which justice is administered in the courts, the modes of procedure in them, it will be found that the changes have been very important.

In several of the New England States, and in the State of Pennsylvania, courts of Equity, as distinct from Courts of Law, have always been unknown; but within the last thirty years they have conferred, to a limited extent, equity jurisdiction on their Common Law courts. It is not within the scope of these remarks to discuss the sufficiency of the courts of common law, as we received them from our English ancestors, to meet the demands of remedial justice. I take it that the struggle of the two States of Pennsylvania and Massachusetts, to do without the principles of the equity courts, in which struggle they finally yielded to the necessity of adopting them, is conclusive on that point. But it came very soon to be understood, that while the system of chancery law was a necessary element of our jurisprudence, it was not indispensable that there should be a separate court for its administration.

The States accordingly began very early to dispense with chancellors, and to require the judges of their courts of law to act also as chancellors. But while this was done by virtue of the same commission, and the style of the court was the same, in which the remedies were administered, there was a separate docket for each class of cases, the distinctive modes of pleading and practice were kept up, and the courts were in fact courts of law and courts of equity.

But about the time that Massachusetts and Pennsylvania had come to recognize the necessity of the principle of equity, to the completeness of their system of jurisprudence, the State of New York, which has taken the lead in all these innovations, or improvements, as you may