A restatement of the objections to the making of law by the judges may be given as follows:

1. It is not their function. In fact it violates the first principles of free government, which is the separation of its functions into three departments: legislative, executive and judicial.

2. The judges are unfitted to the making of law as they make it; not from unfitness in the judges themselves, but because they do not meet, consult and agree together about the law to be made.

3. The law made by the judges is not only fragmentary or retroactive, made for the act after the act is done, and at the expense of the suitor, who, if he had known beforehand what the law was to be, might have conformed to it.

4. The law made by the judges is made in part by persons not belonging to the community over which it is to be enforced; that is to say, the law which furnishes the rule for one State is made partly by the judges of other States and of foreign lands.

5. The law made by the judges is full of discordant elements; so discordant indeed that the process of selection is a game of hazard, if it does not become a game of chance.

6. The multiplication of law books coming from the judge-law-makers has already increased beyond all endurance, and is increasing in a compound ratio.

7. The law made by the judges is continually changing, and it is difficult to know beforehand what they will decide upon any given question.

Indeed if it were possible to put into ten words the chief cause of the present delay and uncertainty in our judicial administration, they would be these: Complex procedure, inadequate judiciary, procrastination, re-trials, unreasonable appeals, uncertain law.

Having thus presented an outline of the proceedings in lawsuits, the delay and uncertainty therein and their causes, we are brought face to face with the question of remedy. This is the work partly of the Legislature, partly of the courts and partly of the bar. The due share of each, we hope, may be made to appear as we go along. We have endeavored to give a brief summary of the usual proceedings in a hotly-contested litigation. They may be different in details in different States, but their essential features are the same in all. The delays in the various processes have been explained. We see where they occur and why they occur, and the only question remaining concerns the remedy.

Instantaneous justice is an impossibility. Even if the plaintiff alone were to be heard, the proper consideration of his claim would require some deliberation. Hence a little delay at least. And if the defendant comes into court he must be heard also. Hence more delay. And then the sittings of the courts are, to some extent at least, periodical. The nearest approach to a continuous sitting of the highest courts of first instance occurs probably in the city of New York, where trial courts are in session from the first Monday to the last Saturday of every month, except July, August and September. Bearing in mind then the necessity of giving to each side the opportunity of being fully heard, bearing in mind also the periodical sitting of the courts, and bearing in mind further the causes of uncertainty as we have explained them, we are to inquire what can be done to lessen the delay in the successive steps of the controversy and the uncertainty of the final result.

Remedies.

We have almost imperceptibly fallen into some observations respecting remedies, as we were discussing the causes of delay and uncertainty. We are now to proceed with the latter, at the risk of some repetition. A simple and direct method of procedure should be everywhere provided, without a single unnecessary distinction or detail, and without division into legal and equitable actions, or into different forms of legal actions. There is enough in the law to be learned without the study of needless distinctions and processes. The statement of claim and defence, that is, the pleadings, while they should be written, in order that the contestants may know precisely what is alleged on either side, and that a record may be kept for future use, should be as short as possible, and easy of amendment, in order that justice may never miscarry, from honest mistake. They should be delivered between the parties or filed with the clerk at any time, in vacation or in term. There can be no need of waiting for the sitting of a judge.

The issue being joined and the parties thus apprised of the precise points of contention, the trial should follow speedily. A few days may be necessary for this preparation. Witnesses are to be summoned; they may not all be at hand; and a commission to examine them may be necessary. How much of delay this may occasion cannot be foretold, and must be left out of the calculation. But when the parties are ready for the trial there should be, as already insisted, a tribunal ready to hear them. In some of the States the courts sit only twice a year, so that a delay of six months may occur before a trial can be had; and in some States a continuance over the first term is matter of right. Thus it seems that there are communities in which it is thought necessary to give a party charged