

The innocent are liable to suffer, and do often suffer for want of proper advice and defence, especially when first arrested. It can hardly be disputed that to prevent abuse of its own processes the State should be a "helper of the helpless." Of course the office should be so guarded as not to interfere with the right of the accused to choose his own defender if he will.

The uncertainty of judicial administration arises from one of three causes; the mistake of the judge as to law or his mistake as to fact, or the uncertainty of the law itself. There may be no rule of law to fit the case, or there may be one and the judge ignorant of it. A mistake of fact there is no remedy for, except by procuring the best persons to decide, be they well-trained judges or intelligent jurors. A plaintiff often begins a lawsuit, or his adversary defends it, with prejudices derived from a one-sided view of the facts. Thus it often happens that a party does not know the whole case, because he sees only his side of it. It is only when both sides are heard and their evidence produced, that the whole case is known. This is not a fault, but a benefit of the lawsuit, as it develops all the circumstances, and thus enables the judge, jury and party to see the facts as they are. We need not however dwell on this cause of uncertainty. Our concern now is with the mistakes of law made by the judges and the uncertainty of the law itself. Supposing the law to be certain and easily known, the mistakes of the judges are the mistakes of ignorance, for which there is no cure but in the substitution of capable for incapable judges. By so much as a competent judge is a blessing, by so much is an incompetent one a scourge. The one is learned, courteous, patient, firm, quick to discern and prompt to decide; the other is ignorant, rude, impatient, infirm of purpose, dull and dilatory. Both may be honest in the sense of intending no wrong, but the difference between them is that one is in his right place and the other is out of his place altogether.

The only remaining element of certainty or uncertainty is the character of the law itself, as it is certain or uncertain. Now the state of the law we pronounce to be one of

the greatest uncertainty. Did we not see many men of fair learning and intelligence affirm the contrary we should say that all men believed it and all men knew it. This uncertainty comes in a great degree from the nature of the sources whence the law is derived; it is made by the judiciary and not by the Legislature; made to fit particular cases, and not by general rules, and made always after the fact. It will not answer the objection to say that the Legislature makes bad laws sometimes. So does the judiciary. But the former need not make bad laws. If it be not able to make good laws for the future conduct of the citizen, leaving the judiciary to enforce them, still less is the judiciary able to make and enforce good laws for the past conduct of the citizen. We say a hundred times a day that we are governed by the common law. Where do we find this common law? The notion that it is found in usage or tradition we know in this young country to be untrue. Nothing here dwells in tradition; nothing in usage. The notion that common law is something floating in the atmosphere, visible only to the initiated, is one of those mythical phantasms which serve to amuse and deceive indolent credulity. Where then is this common law to be found? In the decisions of the judges, and there only. What judges? All the judges of the English speaking peoples—American, English, Irish, Scotch, and the English provinces all over the world—seventy or more distinct communities in all—with distinct judicial establishments. How many of these decisions are yearly made and reported? About 16,000 in this country alone. Are they announced in the form of legal propositions or precepts? By no means. They are the conclusions upon law and fact of legal controversies brought before different judges in different forms, argued on each side by different counsel, and reported by different reporters. Is there any guaranty of the accuracy of these reports? None but this: that they are generally made by official reporters, who gather as they may the facts out of documents, long or short, and masses of statement, large or small, and follow them with opinions as they are written by the judges, which opinions are sometimes dissertations