tween individuals, and every charge of crime against an offender, should be submitted to twelve men without learning in the law, often without any other learning, and that neither party to the contest could prevail until all the twelve men were of one opinion in his favor, he would certainly be amazed at the proposition. Nor have the European nations differed much with him in their estimate of trial by jury. It has been well understood and received the careful consideration of continental jurists for a great many years, without being adopted by any of them, in the form that we have it from England. Many attempts have been made to introduce it in some modified shape, but I think it safe to say that it has not in its essential Anglo-Saxon feature met the approval of any people except those of that race. In the days when kings exercised arbitrary power, the jury was among the sturdy, liberty-loving Englishmen a valuable barrier against oppression by the Crown. But in this country, where the people are sovereign, the jury is too often the mere reflection of popular impulse, and the safety of an innocent man is more frequently found to depend on the firmness of the judge than the impartiality of the jury. Still it is probably wise that no man shall be convicted of an infamous crime until twelve fair-minded men are convinced of his guilt. I am also forced to admit, however, that even in civil cases my experience as a judge has been much more favorable to jury trials than it was as a practitioner. And I am bound to say that an intelligent and unprejudiced jury, when such can be obtained, who are instructed in the law with such clearness, precision, and brevity, as will present their duty in bold relief, are rarely mistaken in regard to facts which they are called upon to find.

Since public opinion is not ripe for a candid consideration of the abolition of the jury system in civil cases, it is the part of wisdom in the legislator to make it as useful as possible. To this end the doctrines of the residence need other qualifications and disqualifications of jurors and amendment. The principle of trial by a jury of the vicinage was founded originally in the idea that the neighbours were better qualified to decide the controversy, by reason of their knowledge of the character of the parties and the circumstances of the issues to be tried. In modern times we have adopted the rule to exclude a man from the jury who knows anything of the case, or has an opinion of its merits, searching in some instances for weeks to find a man so ignorant or obscure that he has never heard of a case which has attracted universal attention, and does not know the most prominent public character in his neighbourhood. The evils of these restrictions have challenged public attention of late years. I can see no reason at this day for a trial in the vicinage, nor for restricting the area from which the jury is to be taken by county lines, and still less for refusing a man otherwise well fitted for a juror, because he has read an account of the famous case in the newspapers. In these respects, as well as in the number of the jury, which is too large, and in the requirement of unanimity in the verdict in civil causes, there is a fair field for judicious legislation.

An essential element of any system of administering justice is the law of evidence. The rules by which testimony offered in a suit is to be admitted or rejected, and the probative force of the different classes of evidence admitted, must always have a controlling influence on the verdict of the jury or the judgment of the court.

The common law of evidence was in many respects a very artificial system, and probably more restrictive in the rules which admitted testimony than any civilized code of laws. And while the courts have felt the evil of many of these limitations upon the use of testimony, calculated to throw light on the issue, they have been comparatively helpless by reason of their obligation to follow the established law of the case. In this matter, also, legislation has made no progress until a few years back. The exclusion from testifying of the individuals who were likely to know more of the matter in controversy than all others, because they are parties to the suit, or are interested in the result, is still the law of some of the States though abolished now by most of them.

It was until recently the universal law of this country that the mere contingent liability to costs rendered the party liable incompetent to testify in the suit. Wherever the rule of exclusion on account of interest or of