

they were fifty years ago. A transcript of the evidence is greatly different than depending on the "notes" of the trial judge, or a narrative statement of what was testified to, however diligently it was attempted to keep track of everything that was said and done. The minutiae now produced in a record enable opinions to quote the very words of witnesses, when the older cases had to content themselves with the substance of what they were understood to say. If one, however, will indulge himself with a fairly critical glance at "harmless error" in the Century Digest covering more than a hundred years of American decision in comparison with what he will find on the same subject in the Decennial Edition of the American Digest, he will discover that the ten year grist of cases on this line exceeds all that has gone before. In passing, we might also say, that, in general bulk, the number of cases under the title, "Appeal and Error" for the ten years falls little below that of the entire period of hundred years that went before.

If our legislation has produced this wonderful accumulation it is sadly at fault. If our facilities in the production of perfect records have done so, it would seem that we might have been better off without them.

These perfect records seem especially to have put judicial investigation on the line of search for error and to have coined phrases which are like stereotypes in decision. "We find no reversible error and the case is affirmed;" "the verdict is for the right party;" "the case was fairly tried and the verdict is supported by the evidence," all these and others seem to invite other litigants to try their fortunes before appellate tribunals should ill luck attend them in lower courts, for they are impression, and not principle, decisions.

And yet as often as these courts seem averse to allow conclusiveness to rest where the least error occurs, still in almost the same breath, with dogmatic positiveness, they will say, where there was no error in a trial that a recovery is too large. In other words they are ready to state the precise effect of competent evidence, but refuse to declare the precise influence of that which is incompetent.