they must be under any system, I venture to say that taking the volumes of reports of all the States which have adopted the Code, and comparing these volumes as to that class of cases before and since its adoption, its advocates will have every reason to be satisfied with the reform.

There may be those present who will think it a sufficient refutation of this assertion to say: "Look at the volumes of Howard's Practice Reports." One answer to this reference is, that while Mr. Howard calls his volumes "Practice Reports," that term would as fitly apply to any other series of reports as to his. The number of his volumes is swelled by reporting every thing else as well as practice cases. A better answer, however, is found in the fact, that for reasons which I shall give, the new system of pleading has in the courts of New York been far more productive of contests which reach the higher courts than the same system has in any other State where it has been tried.

As I have already said, this State was the pioneer in the introduction of the code system. Here it met its first and fiercest opposition. The very great number of judges who were called to administer it naturally led to differences in construction. All these courts have reporters, and by reason of the complexity of your judicial system almost every section of the Code was made the subject of conflicting decisions.

I take the liberty of saying also, that the principal source of the contests over the Code of Procedure was the hostility of the lawyers and those who then occupied the bench. All of these had been bred as lawyers under a system of pleading very technical, very difficult to understand, which constituted of itself a branch of learning supposed to be very abstruse and very valuable. It was one of the titles to reputation and success in the profession, that a man was a good special pleader. To find, as many of these erroneously supposed, all this learning of a life-time rendered useless was more than human nature could bear with composure.

To see the tyro in the profession, made by this change in the law of pleading, as capable of preparing a good declaration, a good plea, or a good bill in chancery, as the patriarch of the bar, to see his blunders remedied by the simple process of amending the pleading, instead of gratifying his adversary by being turned out of court as a tribute to that adversary's learning, was very provoking.

No system of practice, which the ingenuity of man could devise, would at first work out satisfactory results which should be received with the determined hostility that this was, by the lawyers who had to conform to it and the courts which had to introduce and construe it. The Code, itself, being a first attempt, was not of course perfect. It was undoubtedly too minute in its details, and was, therefore, too voluminous. It undertook to provide specifically on every exigency of the practice, when it would have been wiser, after abolishing all technical forms of action and pleading, and establishing a few general rules in their stead, to have left the courts to perfect the system by the application of those philosophical principles of pleading which are essential to all systems, and which go to make pleading a science. When the prolixity and minuteness of the Code encountered the querulous distrust of the courts and the hostility of a profession which shrinks from innovation as from a plague, it as not to be wondered that it was unpopular. But under all these disadvantages the general system has come to receive the approval of the profession in this State, and I suppose that the number of those who would be willing to abolish the Code of Procedure is small, even in New York. Outside of this State, it has met with as general approval, wherever it has been tried, as any reform in the law can be expected to meet. There were those who opposed the substitution of milder punishment in the long list of crimes once punished by death, including sheep stealing, who thought the abolition of imprisonment for debt was a fatal stroke at the sanctity of contracts. Even now by a slight stretch of conscience in charging fraud, a man who cannot give bail is thrown for an indefinite time into Ludlow street jail, whose only crime is that he cannot pay his debts. Those who have faith in progress, of whom I hope always to be one, in the progress of the race, in the progress of science, in the progress of the science of the law, must make up their minds to encounter the opposition of this class, always