

say that even his arbitrary methods would be better than the petty wrangling over small points of evidence that consume so much of our time.

But, gentlemen will say, if we don't reverse these cases for error, what will become of our rules; what will become of the rules of pleading and the rules of evidence, if we don't reverse these cases for their violation? Again, I appeal to experience. What has happened in England? For more than a generation it has been impossible to base error on any matter of practice, pleading or evidence, unless it was fundamental to the cause. What has been the result? Are the rules of pleading thrown away in England? Are the rules of evidence disregarded in their Courts? By no means. It is the testimony of all who are familiar with English practice that the rules of pleading and the rules of evidence are much better observed there than they are with us. So the fact that causes are not reversed because of errors in matters of pleading or practice, or evidence, has nothing whatever to do with the observation of those rules. And yet, a distinguished Court before whom many of you have practised, recently reversed a case because the cross-examination of a witness was permitted to extend somewhat beyond the examination in chief, and the reason assigned was, what will become of the rules of evidence unless we enforce them by a reversal of the cause for their violation?

Some of you might say, as has sometimes been said, that this practice of English Courts cannot obtain here because with us trial by jury is secured by the constitution. Is the right of trial by jury any more sacred in America than it is in England? Was not the provision found in our constitutions securing that right taken from Magna Charta? Is it not as much a matter of constitutional law in England that a man with a proper cause shall have a trial by jury as it is here? Most certainly it is. Is there any provision in any constitution that you know anything about that secures to a man the right of several trials by jury? Is there any provision in any constitution that you know anything about that secures to any citizen an absolutely infallible trial by