first witness is dismissed, and an adjournment to the next day is taken. The next day comes and goes, with the like experience, and so another, and yet another, until at last, the testimony being finished, a discussion is opened upon one or more requests to the judge for his charge to the jury; then follows the charge, the exceptions to the charge come after, and finally the verdict, with perhaps fifty or a hundred exceptions on the record.

The trial being ended, a re-examination of all the legal questions that arose can generally be had if either party desires it, and one or the other will desire it, if he thinks he can derive advantage from it. The method of re-examination differs in different States; in some the questions are carried directly to another court; in other States they are re-examined in the same court by other judges or possibly by the same judge. The success of whatever method depends upon the ability of the judges; of the trial judge in the first place, and the re-examining judges in the second. An incompetent judge is an expensive officer. It were better for the State if all the incompetent aspirants for judgeships who beset nominating conventions or executive chambers, were provided for at the public expense in some other way, than that they should be seated upon the bench to harass and bewilder suffering counsel and more suffering suitors.

Whatever may be said in other respects of the institution of the jury for civil cases, it cannot be denied that it is the cause of great delays. This is the effect principally of two causes, one of which is the requirement of unanimity. When the jury is discharged, by reason of disagreement, the case has to be retried. Another and much more considerable cause of delay in the final result is the ordering of a new trial for a misdirection of the court or an erroneous admission or rejection of evidence. This may be obviated to a great extent by requiring the verdict to be special, upon questions submitted by the judge. The result would be that an error of the judge upon a trial would not require a new trial, unless the error related to a finding essential to the judgment; that is, one without which the judgment could not have been rendered. We shall recur to this subject.

Costs, too, have something to do with the delays. Two theories are propounded respecting them; one that they should be made sufficient to cover all the expenses of the successful litigant; the other that they should cover only the fees of the court officers, such as clerks and sheriffs. On one side it is argued that a party who has put his adversary to needless expense and suffered defeat in the suit ought justly to indemnify this adversary; on the other side it is argued that no system of costs will prevent an unjust claim or an unjust defence, and that in most instances they are instruments of oppression, rather than of justice, and if they are made to depend at all upon the discretion of the judge the discretion is dangerous. The choice between the two depends more on experience than on theory. And we think experience has shown that to allow no costs, except the fees of the officers, is better than to attempt an indemnification for the expenses of the prevailing party.

It appears to us that a great deal of time is wasted and no little uncertainty introduced into the law by the habit of delivering long opinions at the time of pronouncing judgment. Any one who will look into the decisions of Lord Mansfield will perceive the difference between the old habit and the new, much to the disparagement of the latter. Our volumes of reports have too many dissertations in the shape of opinions. The inconvenience thence arising is manifold; the time of the judges is wasted; the reports and the cost of the reports are grievously swollen; and worst of all, there is the chance, with reverence be it spoken, that some of the dissertations, if their expansion goes on, may be delivered in clouds of verbosity, covering as with a fog the points to sight and steer by.

We think moreover that giving by statute a preference to certain cases on the calendar is a mistake. The courts may well be trusted for the regulation of their own calendars; and when they find a case to be of such public importance as to require a hearing before all others they will be quite sure so to hear it. Whenever the State enacts that one case shall be heard before another, which stands ahead of it in order, it confesses its own negligence or inability to provide a prompt hearing for all.

[To be continued.]