The Legal News.

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The smallpox epidemic in Montreal has already given rise to a discussion on a point of criminal law. In the Queen's Bench, Crown Side, a jury had been impanelled in a capital case, and the trial had proceeded for some time, when it was discovered that one of the jurors came from a house in which a bad case of smallpox had just been detected by the medical inspectors. Mr. Justice Baby, after taking time for consideration, decided that it was prudent to discharge the jury, which was done, and the Court room was disinfected. The counsel for the prisoner, who had offered to allow another juror to be substituted for the objectionable one, subsequently opposed the swearing of another jury, on the ground that the prisoner's life had already been in jeopardy. This objection was overruled by the Court. It may be added that this case of *Reg.* v. *Considine* is rather unfortunate, because after the second jury had sat for a day or two, they also were discharged, owing to the illness of one of their number, who was attacked by so-called "Canadian cholera." The effect of the discharge of jury without verdict was fully discussed in the famous case of *Winsor* v. *Reg.*, L. R., 1 Q. B. 289, 390.

In *Creed* v. *Henderson*, 54 Law J. Rep. Chanc. 811, the question came up in Chancery, whether a promise to contribute to a charity can be enforced against the estate of a dead person. In 1881 a Mr. Hudson promised to contribute £20,000 to a fund for paying off debts on Congregational churches. The donation was payable in five annual instalments, and Mr. Hudson died before the last two were paid. The question was whether his estate was liable for the £8,000 remaining unpaid. Mr. Justice Pearson had no difficulty in deciding that, apart from the consent of all parties interested, no executor can lawfully pay a charitable donation promised by his testator, however solemnly, before his death. The reason, of course, is the absence of consideration for the promise. The donor, if he wishes to secure his charity to the proposed recipients, should by his will direct his executor to pay any balance which may remain due.

The case of *Reg.* v. *Sheppard* is of some interest, partly because the defendant was brought here from another province to undergo his trial for libel, and partly for other reasons to which it is not necessary to advert. It has shocked some persons that a defendant should be criminally prosecuted for the publication of a libel which he did not see until it was in print. In the result no undue severity is shown. Mr. Sheppard escapes with a fine. In the case of Mr. Edmund Yates, a literary man of some distinction, the defendant under similar circumstances was condemned to four months' imprisonment. Chief Justice Coleridge said (7 Leg. News, 138) "We have considered whether "it would suffice to inflict a fine, but a fine "on a person conducting a successful paper "with a large circulation, is a matter of com- "parative indifference."

SUPERIOR COURT.

[District of Iberville.]

St. Johns, P.Q., 18 & 19 Aug., 1885.

Before Torrance, J.

Louis Molleur, *fils*, v. Charles Loupret *et al.*

Prohibition—Information under Banking Act, 34 Vict. Cap. 5, s. 62—Language of Affidavit—Recusation.

Held:—1. *That the information in a case of making a false return under the Banking Act, 34 Vict. Cap. 5, s. 62, may be sworn to by a non-shareholder, and even by a citizen who is a debtor of the Bank.*

2. *The affidavit should be written in the language spoken by the informant, or in one which he understands perfectly.*

3. *Where prejudice is charged against a magistrate, and he denies under oath the existence of any such feeling, the Court will not grant a writ of prohibition on this ground.*

This was the merits of a writ of prohibition addressed to Charles Loupret, district magis-

trate for the district of Iberville, and to Pierre Bourgeois.

The evidence at the trial showed that Pierre Bourgeois made a complaint under oath, before the district magistrate, that Louis Molleur fils, President of the St. John's Bank, had made a false return under oath to the Government of the subscribed and paid-up stock of the bank. The return was required under 34 Vict., cap. 5, s. 62 (Canada.) It was stated in Court that the information sworn to by Bourgeois was in the same form and followed the indictment upon which Honoré Cotté was tried and convicted.—*Queen* v. *Cotté*, 22 L. C. Jurist, 141.

In the present proceeding, the petitioner complained that he had been arrested under the warrant of the magistrate, Charles Loupret, and he prayed that the enquiry before the magistrate might be prevented and the proceedings quashed for divers reasons. 1. Because the informant, Pierre Bourgeois, had no interest to make the complaint and was an insolvent. 2. No offence was shown in the information. 3. The affidavit of Bourgeois was in a language which he did not understand, namely, in English. 4. Because there was enmity and an expression of opinion on the part of the magistrate against Molleur *fils*, for which the magistrate was recusable as his judge.

The case was tried on Tuesday and Wednesday, and after the argument of counsel the presiding judge gave his judgment.

Per Curiam. Pierre Bourgeois, as a citizen, though not a shareholder of the bank, and though insolvent, owing the bank a large sum of money, was quite competent to make the charge, which was a public offence. There appears to be no ambiguity in the statement. It is precise and directly charges the falsity of the return made. Then, as to the informality in the affidavit being drawn in a language which was unknown to Bourgeois, this is an irregularity which the Court does not approve of, and here there does not appear any necessity for the use of the English language, but the evidence now given before me satisfies me that Bourgeois perfectly understood the terms of the affidavit and had it explained and read over to him word for word. This is sworn to by the magistrate as well as by Bourgeois. The magistrate was notified by the affidavit that a misdemeanor had been committed, and issued his warrant to arrest the accused in the usual course. The information under oath was only an accusation, but once made the duty of the magistrate was to proceed with the enquiry. He had no choice. His work was not a judgment. It was only an enquiry. It was not judicial; it was only ministerial, even though the accused were held for the action of the grand jury.

As to the criticisms of the counsel for the petitioner, that on the affidavit now under consideration, the deponent, Pierre Bourgeois, could not be tried for perjury, the question now before this court is not whether there could be a charge of perjury made against Bourgeois, but whether this court is justified in interfering in the proceedings of the magistrate performing an ordinary function under 32-33 Vic., cap. 30. The court would simply call attention to s. 11 of that Act, that no objection of form or substance is to prevail.

The most serious question is the charge against the magistrate that he had enmity, had expressed opinions against the petitioner, and could not do him justice. It was before this court that the magistrate under oath denied the existence of any such feeling. The rules of our civil code of procedure were referred to by counsel, as to recusation of a judge. These are not binding on the court in this case apart from their wisdom, but it is significant that, as a rule for the judges of this court, where there is no written proof of the ground of recusation, the declaration of the judge is conclusive, and the recusing party cannot produce oral testimony nor even obtain delay to produce written evidence: C.C.P. 186. The chief reason, says M. Rodier, Questions sur L'Ordonnance of 1667, Tit. 24, article 6, is to show respect to the judiciary. Our code C.C.P. 176, further says that the accusation against the judge for verbal or written threats was limited to the time since the suit began or within the last six months before the recusation. It is surprising how little has been produced in the way of evidence of expressions of feeling towards the petitioner by the magistrate. There is nothing this court can

base a judgment of recusation upon. The petition for the writ of prohibition should therefore be dismissed, but the court seeing no sufficient reason for the information not being in the language of the deponent Bourgeois, orders each party to bear his own costs.

Paradis, for petitioner.

Girard and *C. P. Davidson, Q.C.*, for defendants.

COURT OF QUEEN'S BENCH.

MONTREAL, September 18, 1885.

Before BABY, J.

REG. v. CONSIDINE.

Jury discharged for special reasons—Trial recommenced with new jury.

A jury had been sworn on the previous day to try the prisoner, on an indictment for murder.

In the course of the trial it was made known to the Crown Prosecutor and to the Court that Aug. Guilmette, one of the jurors, came from a house where a bad case of smallpox existed.

The Judge discharged the jury. The case being resumed on the following day, the prisoner's counsel objected that the prisoner having been once put in jeopardy of his life, no new trial could be had.

The Court overruled the objection, and the trial proceeded before a new jury.

C. P. Davidson, Q.C., and *J. A. Ouimet, Q.C.*, for the Crown.

J. J. Curran, Q.C., and *Barry*, for the prisoner.

JURISPRUDENCE FRANÇAISE.

Ratification—Vente—Mineur devenu majeur—Connaissance du vice.

La ratification d'une vente annulable comme consentie par un mineur, résulte suffisamment, de la part de ce mineur devenu majeur, de ce que, actionné par le vendeur en résolution de la dite vente pour défaut de paiement du prix, il s'est borné à opposer à cette action en résolution, bien que connaissant le vice dont le contrat était entaché, une prétendue donation du prix que lui aurait faite le dit vendeur. (22 *juillet* 1885. *Cass.—Gaz. Pal.* 16-18 *août* 1885).

Tutelle—Compte—Reddition—Dépens—Faute du Tuteur.

Si, aux termes de l'art. 471 C. Civ., les frais de reddition du compte de tutelle doivent être mis à la charge de l'ayant-compte, cette règle souffre exception lorsque les frais ordinaires d'une reddition de comptes ont été aggravés par la faute, la résistance ou les prétentions injustes du tuteur, notamment, s'il a mis du retard à rendre compte et que ce retard ait nui aux intérêts du mineur.

(7 *janv.* 1885.—*Cour d'Appel de Lyon.—Gaz. Pal.* 26 *août* 1885).

THE ADMINISTRATION OF JUSTICE.

[Continued from p. 295.]

A single word expresses the present condition of the law—chaos. Every lawsuit is an adventure more or less into this chaos. An anecdote has been told by a newly appointed judge of his first appearance in the consultation chamber of a court of appeal. The several judges expressed their views, one after another, while one of them walked up and down the chamber, and at length stopping before the new-comer, asked him what he thought of the machine; the questioner heard the answer, and replied, "I thought when I came here that the law was known, but I found that it was only guessed at." What does this anecdote signify? The judges between whom the little conversation occurred were two of the ablest and purest in the State. They had the common law in all its amplitude, with its accumulations of a thousand years. If they had nevertheless to guess at it, is it not high time to try something else?

It is idle to think of going on as we are going. The confusion grows worse all the time. Chaos deepens and thickens daily. If one would see how it works, he has but to look into the case of *Bank of the Republic* v. *Brooklyn City & Newtown R. Co.*, 102 U. S., where he will get a glimpse of the chaos, and find also an invitation to the judges of New York to change their law, as if they were the Legislature of the State. "The glorious uncertainty of the law" has become too serious for a proverb. What is the remedy? Nothing more or less than a recurrence to first principles, and to have our law made by

the Legislature and not by the judiciary. The function of legislation and interpretation cannot longer be intrusted to the same hands. The law must be reduced to a statutory form. What do we mean by this? Not that every future occurrence can be foreseen and provided for. Not that language can always be made so precise that different interpretations may be impossible. But we mean that the general rules of law upon given subjects may be so stated in a statute as to be guides for the citizen, the lawyer and the judge. We are apt to be imposed upon by names, and some of us seem to be in love with the imposture. Call a Code a statute and half the objections made to it disappear, simply because we are used to statutes and not to Codes. And yet a Code is nothing but a statute; a comprehensive statute it may be, but not an exclusive one. We all believe in statutes, for we have established constitutions in order to get them enacted; we elect legislatures every year to enact them, and we publish every year volumes containing them.

Where must we stop? Shall we be told, thus far you shall go, but no further; you shall not venture into the domain which the judges have appropriated to themselves; you shall not declare the laws of personal property, nor the laws of personal relations, nor the laws of corporations, nor those of contracts and other obligations; the laws of sales, exchanges, partnerships, insurances and negotiable instruments; you shall not tell the holders of public or private securities what rights they have or what duties they assume? But these are the very subjects which the people should be informed of, and for which legislatures are created. The only questions which an intelligent person can ask himself about any proposed body of laws on these subjects are these: Does it state new rules or old ones, or both; if old, are they true; if new, are they right?

The advantage of reducing to a statutory form the rules of law so far as possible is obvious. The citizen should have them for his own instruction and guidance, the lawyer should have them for his study, the judge should have them for his judgment. We all believe that an indictment in a criminal action and a complaint in a civil action are indispensable to the protection of the citizen. If the charge, be it criminal or civil, should be formulated, is there not greater reason that the rules of law on which the charge is founded should be formulated also?

We have another motive for action now. Every civilized country in the world has a Code, or is tending toward it. Great Britain alone of all European states is now without it, but even that composite kingdom is moving toward it with steps never halting, though irregular and fitful. It was but the other day that the London Chamber of Commerce presented a memorial to the chancellor of England for a Code of commercial law. The example of Europe has spread into Asia. Japan has a Code already, fashioned after the French model. China is about to pursue the same policy. Shall we, who have a government of the people, by the people, and for the people, alone of all the world, reverse the natural order of things, and leave the body of our laws to be made by a class?

There is another circumstance of lesser importance, but yet not wholly to be overlooked, and that is the admixture in English law of phrases, names and illustrations, monarchial, feudal, insular or Norman, peculiar to the situation and history of England, but unnecessary and unsuitable to be transplanted to these shores. They will readily occur to lawyers. The expressions "within the realm," and "the four seas," the definition of "navigable waters," and the illustration of a base fee are some of the examples. "Cestui que trust," "baron and feme," "feme covert," "pur autre vie," "semble," would not now be endurable, except by those whose life work it has been to "scrawl strange words with a barbarous pen."

Blackstone illustrates a base fee as one that would be created by a "grant to A. and his heirs, tenants of the manor of Dale." Kent has it, "to a man and his heirs, tenants of the manor of Dale." And very likely the expression has gone on in regular descent from commentator to commentator to the present year of grace. These are more than mere matters of taste; they mark the servility with which we copy from over the sea. Is it not time to set up for ourselves?

A restatement of the objections to the making of law by the judges may be given as follows:

1. It is not their function. In fact it violates the first principles of free government, which is the separation of its functions into three departments: legislative, executive and judicial.

2. The judges are unfitted to the making of law as they make it; not from unfitness in the judges themselves, but because they do not meet, consult and agree together about the law to be made.

3. The law made by the judges is not only fragmentary or retroactive, made for the act after the act is done, and at the expense of the suitor, who, if he had known beforehand what the law was to be, might have conformed to it.

4. The law made by the judges is made in part by persons not belonging to the community over which it is to be enforced; that is to say, the law which furnishes the rule for one State is made partly by the judges of other States and of foreign lands.

5. The law made by the judges is full of discordant elements; so discordant indeed that the process of selection is a game of hazard, if it does not become a game of chance.

6. The multiplication of law books coming from the judge-law-makers has already increased beyond all endurance, and is increasing in a compound ratio.

7. The law made by the judges is continually changing, and it is difficult to know beforehand what they will decide upon any given question.

Indeed if it were possible to put into ten words the chief cause of the present delay and uncertainty in our judicial administration, they would be these: Complex procedure, inadequate judiciary, procrastination, re-trials, unreasonable appeals, uncertain law.

Having thus presented an outline of the proceedings in lawsuits, the delay and uncertainty therein and their causes, we are brought face to face with the question of remedy. This is the work partly of the Legislature, partly of the courts and partly of the bar. The due share of each, we hope, may be made to appear as we go along. We have endeavored to give a brief summary of the usual proceedings in a hotly-contested litigation. They may be different in details in different States, but their essential features are the same in all. The delays in the various processes have been explained. We see where they occur and why they occur, and the only question remaining concerns the remedy.

Instantaneous justice is an impossibility. Even if the plaintiff alone were to be heard, the proper consideration of his claim would require some deliberation. Hence a little delay at least. And if the defendant comes into court he must be heard also. Hence more delay. And then the sittings of the courts are, to some extent at least, periodical. The nearest approach to a continuous sitting of the highest courts of first instance occurs probably in the city of New York, where trial courts are in session from the first Monday to the last Saturday of every month, except July, August and September. Bearing in mind then the necessity of giving to each side the opportunity of being fully heard, bearing in mind also the periodical sitting of the courts, and bearing in mind further the causes of uncertainty as we have explained them, we are to inquire what can be done to lessen the delay in the successive steps of the controversy and the uncertainty of the final result.

Remedies.

We have almost imperceptibly fallen into some observations respecting remedies, as we were discussing the causes of delay and uncertainty. We are now to proceed with the latter, at the risk of some repetition. A simple and direct method of procedure should be everywhere provided, without a single unnecessary distinction or detail, and without division into legal and equitable actions, or into different forms of legal actions. There is enough in the law to be learned without the study of needless distinctions and processes. The statement of claim and defence, that is, the pleadings, while they should be written, in order that the contestants may know precisely what is alleged on either side, and that a record may be kept for future use, should be as short as possible, and easy of amendment, in order that justice may never miscarry, from honest mistake. They should be delivered between the parties or filed with the clerk at any time, in vacation or in term. There can be no need of waiting for the sitting of a judge.

The issue being joined and the parties thus apprised of the precise points of contention, the trial should follow speedily. A few days may be necessary for this preparation. Witnesses are to be summoned; they may not all be at hand; and a commission to examine them may be necessary. How much of delay this may occasion cannot be foretold, and must be left out of the calculation. But when the parties are ready for the trial there should be, as already insisted, a tribunal ready to hear them. In some of the States the courts sit only twice a year, so that a delay of six months may occur before a trial can be had; and in some States a continuance over the first term is matter of right. Thus it seems that there are communities in which it is thought necessary to give a party charged

with an infraction of law a year's breathing time before answering. If the rule of *Magna Charta*, four courts a year in each county, and every case in readiness tried, was a good one six hundred years ago, nothing less should satisfy us now. In some of the States their Constitutions may not allow the establishment of courts enough to clear off all the cases as they arise. The Constitutions then are at fault, and the people who are the ultimate sources of justice, as of all other attributes of government, can by amendment make their Constitutions elastic enough to allow courts and judges to be increased or diminished according to the urgency of demands for justice. And we venture to affirm that the State fails in its duty to its people when it allows its courts of justice to adjourn leaving untried any case ready for trial.

If any thing could make one doubt the capacity of a people for self-government, it would be the spectacle of its Legislature, profuse in its general expenditures and niggardly in its appropriations for the administration of justice. Nothing can excuse the neglect to provide a judicial force sufficient for all the legal business of the country or the State, sufficient in quality and quantity, for one is of no use without the other; and yet we see cases everywhere waiting for trial, without courts to try them, and we see in many quarters judges so poorly paid that judicial places offer no temptation to those who are fit to fill them. We have even seen Congress twice within three years failing to make appropriations for the pay of jurors, so that for awhile in some of the Circuits of the United States no jury trial could be had.

The trial being opened, should be carried to its end just as fast as can be done with safety. But its duration depends more upon the judge and counsel than upon legislation. The law indeed can do but little to counteract mismanagement or supply the want of discipline in the court. It can indeed impel the judge whenever he is halting in his duties. The judge, if he will, can be prompt, strict and firm; he can so control the cause as to leave no chance for dawdling or impertinence; he can exact implicit obedience to legal rules; can require quick questioning and short speeches; reject repeated or insolent questions, whether objected to by counsel or not, and can continue the sitting longer or shorter as he finds expedient. The respective counsel can assist the judge in all this, and at the same time protect every right of their clients. Among other things, the judge can prevent a trial from degenerating into a contest of abuse toward clients and counsel or an onslaught upon witnesses.

It is painful to see reported, as we do so often, the insulting language thrown at parties, counsel and witnesses, without a word of rebuke from the judge, who sits with as much apparent unconcern as if it were a a thing of course. There are too many of these instances to be lightly passed over. It might do in Coke's time to address a party as he addressed Raleigh, with "Thou viper, I *thou* thee, thou traitor," but it will not do in these our days. It is high time that an end were put to the unseemly exhibitions in some of our modern courts.

Most of us can call to mind two judicial districts, side by side, in one of which the judge is alert and firm; he keeps his business well in hand, and clears his calendar every time; the other is a good lawyer and a good man, but he is feeble and indulgent; the lawyers run away with him; and the suitors run from him; he is always in arrears, and the arrears grow year by year. Yet these two judges are holding office under the same authority and administering the same laws. Is it impossible to make the last judge follow the example of the first?

We have said that much cannot be done by legislation to shorten trials. But where so much depends upon the judge, we suggest the advantage of concerted action, and recommend that the judges of each State, meet from time to time for consultation upon the best methods of maintaining the discipline and efficiency of the judicial establishment. Legislation however can provide that the verdict of the jury be special in every case, if required by either party or the court. This, as has been said already, will often save the necessity of a new trial, even though some of the exceptions may be found to have been well taken. The practice prevails in England under the Judicature Act and has lately been adopted in Nova Scotia, where it is said to have proved successful.

There is a provision in the law of New York that "An error in the admission or exclusion of evidence, or in any other ruling or direction of the judge upon the trial, may in the discretion of the court which reviews it be disregarded, if that court is of opinion that substantial justice does not require that a new trial should be granted." This is comprehensive enough, one would think, to prevent new trials, except for grave reasons; nevertheless the instances are few in which an error at the trial has been shown without drawing after it a new trial of all the issues. This is greatly to be regretted. Indeed we do not see how the assumption that an error at one trial must entail after it a new trial unless it appears that it could not possibly have affected the verdict, can result in any thing but delay heaped upon delay. Where there is no constitutional provision to prevent it, the judges might well be intrusted with power to dispose of the case upon the evidence or special findings without sending it back to a jury, unless the issues are of a kind which specially require the interven-

tion of that body. The laws of evidence are neither many nor difficult. The questions which most frequently arise under them and are made the occasion for new trials are less commonly questions of law than of logic, in respect of which an educated person off the bench may be as good a judge as on it. For example, suppose that in a suit against a surgeon for an unskilful operation, the question were asked whether he had sent in a bill for the service, should not the question be admitted? Why not? The neglect of one who lives by his profession to claim compensation for his services is a circumstance which most men would regard as of some weight in judging of his own consciousness of having failed of his duty. And at all events a just inference from the neglect is as likely to be drawn by the jury as by the judge. But surely the admission of the question should not be a reason for ordering a new trial.

The verdict being rendered, and judgment pronounced, the preparation of appeal papers, if an appeal be taken, is, or should be, merely clerical. Nothing new should be put into the record; nothing important should be taken out of it. Whatever of delay there be after judgment once pronounced, is in the hearing and deciding of an appeal. Here, where there ought to be little or none, it is great and scandalous. Where does it occur? In the hearing more generally than in the decision, though often in both. In the Supreme Court of the United States the decision, except in very exceptional cases, follows rapidly on the heels of the argument. So it does in the Court of Appeals of New York, and so we suppose it does in the highest courts of the other States. What then is to be done to provide a speedy hearing? Fewer appeals and judges enough to hear them, that is all. When we say judges enough to hear them, we mean judges enough to hear them as soon as they arise.

The obligation of the State to all its people is plain; it is to provide a competent and honest judge to hear and decide every question of an infraction of the laws; this obligation is absolute; but when it is once fulfilled the obligation to give also an appeal is qualified by circumstances. First, the State ought not to provide for allowing an appeal if it cannot provide for the hearing of it. It might as well offer an empty cup to a man dying of thirst. So much is clear. Nor ought it to allow an appeal if the presumption is great that justice has already been done, as in the case of two concurrent courts, unless a certificate be given by a judge that the case ought further to be examined. When indeed a question of public importance has arisen in respect of which a uniform rule throughout the State or Nation is imperative, an opportunity for the establishment of such a rule must be given, and when it can only be given through the highest judiciary, as in case of a constitutional question, then an appeal to the highest judiciary should be allowed. These are the two conditions which qualify the right of appeal, and applying these rules will enable us to solve all or nearly all the problems which confront us as to the number of judges and the number of appeals.

The judges of all courts except those of last resort should be compelled to render their decisions within a fixed period. How they can hold back their opinion as they do is a marvel which we should not believe were we not used to it. It is hard to conceive how any one having a proper sense of responsibility can leave upon his table untouched, day after day, papers which might relieve painful anxiety, perchance save from discredit or bankruptcy. One thing is certain, that either the judges account it unimportant what they decide, or they think nothing of withholding that which they were specially appointed to give, and that which suitors have a right to demand. Many cases in the lower courts, most of them, indeed, could be decided immediately upon the argument. The subject is then fresh in the minds of the judges, and the conclusions they reach at the close of the argument, if they were obliged to announce them then, would in nine instances out of ten be as just and as satisfactory as if they were given a week or a month or a year afterward. We fear that the inclination to write an opinion may unconsciously influence the mind to keep the case under advisement. Maryland and California have put into their Constitutions a command upon the judges to decide within fixed and short periods. The example of these States in this respect is worthy to be followed.

We think that the following should be deemed fundamental maxims of government in respect of the judicial establishment:

1. The Constitution should provide for one permanent court of last resort in the State, to which appeals should be so limited as not to exceed the capacity of the court to hear and decide them as they arrive. And if it should ever become so overburdened as to be obliged to adjourn for a term without hearing all the cases in readiness, further appeals should thereupon be limited until the court can clear off the arrears together with the current business. Temporary commissions should not be resorted to in courts of last resort.

2. The Constitution should also provide not only for permanent inferior courts, equal to the business of ordinary times, but for temporary commissions, as occasion may arise, to clear off arrears in the courts of first instance.

3. The methods of procedure should be as

direct and simple as possible, without an unnecessary distinction or an unnecessary proceeding.

4. The number and distribution of the judges, the frequency of the courts and the simplicity of the procedure should be such, that when the witnesses are in the State, the most strongly-defended lawsuit may be terminated in the court of first instance within a few months, and even should the case go to the utmost limit of appeal within the State, it may be terminated within a year at most from its beginning in the court of first instance to its ending in the court of last resort.

The conclusions at which we have arrived are that the present delay and uncertainty in judicial administration can be lessened, and by means as follows:

1. Summary judgment should be allowed upon a negotiable instrument or other obligation to pay a definite sum of money at a definite time, unless an order of a judge be obtained, upon positive affidavit and reasonable notice to the opposite party, allowing the defendant on terms to interpose a defence.

2. In an ordinary lawsuit the methods of procedure should be simple and direct, without a single unnecessary distinction or detail; and whatever can be done out of court, such as the statement of claim and defence, should be in writing, and delivered between the parties or their attorneys, without waiting for the sitting of a judge.

3. Trials before courts, whether with or without juries, should be shortened by stricter discipline, closer adherence to the precise issue, less irrelevant and redundant testimony, fewer debates, and without personal altercation.

4. Trials before referees should be limited in duration by order made at the time of the appointment.

5. The postponement of a trial should not be allowed because of the engagement of counsel elsewhere, nor ever, except in strict conformity to rules previously made by the judges, and for reasons of fact known to the court or proved by positive affidavit.

6. The record of a trial should contain shorthand notes of all oral testimony, written out in longhand and filed with the clerk; but only such parts should be copied and sent to an appellate court as are relevant to the point to be discussed on the appeal, and if more be sent the party sending it should be made to pay into court a sum fixed by the appellate court by way of penalty.

7. A motion for or against a provisional remedy should be decided within a fixed number of days, and if not so decided the remedy should fail. A week is time enough for a judge to hold such a motion under advisement. If he cannot within it make up his mind that a provisional remedy should be maintained it ought to fail. In all other cases a decision within a fixed period should be required of every judge and every court, except a court of last resort.

8. The ordering of new trials should be restricted to cases where it is apparent that injustice has been done.

9. Whenever a court of first instance adjourns for a term, leaving unfinished business, the executive should be not only authorized, but required, to commission one or more persons, so many as may be necessary, to act as judges for the time being, and finish the business. Such temporary judges should be commissioned in all courts except the court of last resort.

10. Whenever a court of last resort adjourns for a term, leaving unfinished business, further appeals to it should be so limited as to bring the cases before it speedily down to the limit of its ability.

11. The time allowed for appealing should be much shortened. One month, or at most two, should seem to be enough in all cases.

12. Greater attention must be paid to the selection of judges; without which no other reform, however good in itself, can succeed.

13. The law itself should be reduced so far as possible to the form of a statute.

14. Statistics of the litigation in the courts of the United States and of each State should be collected and published yearly, that the people may know what business has been done and what is waiting to be done.

In conclusion, we are obliged to admit that most of the blame for the delay and uncertainty which we have been discussing rests upon the profession of which we are members, in both its branches, whether on the bench or at the bar. We are a host in numbers; we have influence, direct and indirect, greater than that of any other profession or class of men in the country; we are part and parcel of the judicial establishment; we know best the laws of the land as they are, and we should know best what they ought to be; we can make ourselves heard and heeded in every legislative hall, in every executive chamber, and on every bench of justice; and we have given pledges, not less binding because not expressed in words, that the functions with which the State has endowed us shall be used to promote justice, not alone by assisting suitors in their private controversies as they arise, but by doing our best to make the occasions of such controversies as few as possible, and the issue thereof as speedy and as near the right as we can make them. That we have failed so long to redeem these pledges is no reason for failing longer. Let us redeem them now.

All of which is respectfully submitted.

August 19, 1885.

DAVID DUDLEY FIELD.
JOHN F. DILLON.