The Legal News.

Vol. VIII. AUGUST 29, 1885. No. 35.

Simplification of procedure, increase of the number of judges of first instance, coercion of judges to render judgment promptly,—these are questions which have been debated at more than half a dozen bar meetings within as many years. The whole ground has now been gone over in a report submitted to the American Bar Association by Messrs. David Dudley Field and J. F. Dillon. We noticed, on p. 217, the fact that an inquiry was being made into the causes of the delay in the administration of justice. The high standing and long experience of the gentlemen entrusted with the task, as well as the universal interest of the subject, makes their report instructive reading. The *Albany Law Journal* says it gave rise to the greatest and most striking legal discussion of the last thirty years. The upshot was that all the conclusions of the report were adopted by the Bar Association at the August meeting, except that in favor of codification. On this question the Association voted an adjournment for a year. The report, as will be seen, is graphic and interesting, but the recommendations do not contain much that is novel. Forms of procedure are to be dispensed with as far as possible. The number of judges of first instance is to be increased so as to do away with all arrears, and the judges are to be obliged to give their decisions within a limited period after argument. The block of cases in appellate courts is to be prevented by restricting the number of appeals as soon as a block occurs, and until it is removed. This is a rough, but not very equitable method of getting over the difficulty. Why should A be wholly debarred from his appeal in order that B, with a precisely similar case, may be more speedily heard? The remarks in the report upon the improvident issue of injunctions are worthy of special attention. The loose and irregular way in which injunctions are granted now-a-days is a growing evil which should be checked.

The affirmation question came up in the Lord Mayor's Court, London, on the 26th instant. Mr. Charles A. Watts, a printer, of Johnson's Court, Fleet Street, having been called as a juryman before Sir Wm. Charley, Q.C. (the Common Sergeant), objected to be sworn in the usual way, whereupon Mr. Fitch, the Sergeant-at-Mace, handed to him the affirmation card prescribed by Act of Parliament in these terms: "I, ——, do solemnly, sincerely, and truly affirm, and declare that the taking of an oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare that I will well and truly try the issue joined between the parties, and a true verdict give according to the evidence." Mr. Watts, having perused the card, said he was not going to repeat the words upon it. Mr. Fitch: "Why do you object? It is the prescribed affirmation." Mr. Watts: "I object to the words 'according to my religious belief.'" The Common Sergeant: "Then what do you propose as your affirmation?" Mr. Watts: "I will say, 'I, Charles Watts, do solemnly, sincerely, and truly affirm and declare that I will well and truly try the issue joined between the parties, and a true verdict give according to the evidence.'" The Common Sergeant: "Well, I think you may do that." The case, in which the rest of the jury were sworn in the usual way, then proceeded, Mr. Watts, by virtue of having been called first, acting as foreman.

In a case of *Nash* v. *El Dorado County*, before the United States Circuit Court for the district of California (July 6, 1885), two points of some interest were decided with reference to coupons of bonds. First, it was held that coupons bear interest from the date of their maturity, at the legal rate. Chief Justice Sawyer remarked: "It has been repeatedly so held by the Supreme Court of the United States." Secondly, it was held that the Statute of Limitations runs upon coupons from the date of their maturity. "Each instalment," remarked the Chief Justice, "matures at a particular time, and at that time the payee is entitled to his money; the right of action accrues, and an action may be commenced at any time within the time pre-

scribed by the Statute of Limitations after the right of action accrues. I have no doubt, therefore, that the right of action upon the coupons accrues upon the maturity of the coupons, and do not think the statute will be evaded in consequence of the coupons being for interest, and attached to the bonds." See also 6 Leg. News, 385.

COURT OF QUEEN'S BENCH.—MONTREAL *

Joint Stock Company—31 *Vict.* (*Q*), *c.* 25.—*Subscriber before incorporation—Agreement to take Stock.*—The appellant signed an undertaking to take stock in a Company to be incorporated by letters patent under 31 Vict., (Q.) c. 25, but was not a petitioner for the letters patent, nor was his name included in the list of intending shareholders in the schedule sent to the Provincial Secretary with the petition. The appellant's name was not mentioned in the Letters Patent incorporating the company, nor did he become a shareholder at any time after its incorporation.

Held:—(reversing the judgment of the S.C., Cross, J. dissenting)—

1st. That the appellant never became a shareholder of the company, and could not be held for calls on stock.

2nd. (*The Union Navigation Co. & Couillard* and *Rascony & the same Co.*—followed and approved. *McDougall et al. & the same Co.* distinguished.)

3rd. (Per TESSIER, J.)—That a subscription to take stock in a company to be incorporated is a mere proposition and not a binding promise to take and pay.

4th. (Per RAMSAY, J.)—That under the terms of the Statute 31 Vict., Q. Cap. 25, the only persons who are shareholders in a company incorporated thereunder are those named in the Letters-Patent as such, and those who become members after incorporation.—*Arless & Belmont Manufacturing Co.*, May 21, 1885.

Jugement interlocutoire—Appel—Procédure—Chose jugée—Elections municipales—Commissaires d'écoles—Quo warranto—S.R. B.C., c. 15, *ss.* 39, 40—*C.P.C.* 1016—45 *Vic., c.* 29, *s.* 2—*Art.* 346, *Code Municipal — Jurisdiction exclusive. Jugé.*—Que l'appel du jugement final de la cour supérieure soulève de nouveau tous les jugements interlocutoires rendus dans la cause, et que le défaut par un défendeur d'exciper ou d'appeler d'un jugement interlocutoire renvoyant son exception à la forme, ne l'empêche pas de discuter ce jugement sur l'appel du jugement final, l'interlocutoire n'étant pas *chose jugée* sur les questions soulevées par son exception à la forme.

2. Que d'après les provisions de l'acte 45 Vict., c. 29, s. 2, et les articles 346 sqq., du Code Municipal, les contestations d'élections de Commissaires d'Ecoles doivent être portées devant la cour de circuit ou la cour de magistrats, qui ont une jurisdiction exclusive en ces matières.

3. Que partant le recours par bref de *quo warranto* établi par S. R. B. C., c. 15, s. 40, contre l'usurpation de telles fonctions, est abrogé.

4. Que même si ce recours existait encore concurremment avec celui indiqué par la loi nouvelle, la simple élection des défendeurs comme commissaires d'écoles, sans qu'ils se soient immiscés dans l'exercice de telle charge, ne donnerait pas lieu à l'émanation d'un *quo warranto* (C. P. C. 1016).—*Metras & Trudeau et al.*, May 27, 1885.

Mandamus—Corporation—Fine—C.C.P. 1025.—*Held*, that the fine which a corporation may be condemned to pay under Art. 1025 C.P.C., should be ordered to be paid one half to the Crown and one half to the petitioner.—*Montreal, Portland & Boston Railway Co, & Hatton.* March 24, 1884.

Company — Railway— Negligence.—Held:—That no presumption of fault arises against a railway company from a person being injured on the track; on the contrary, it is for the person injured to show that he had a lawful right to be there; and to enable him to claim damages he must also show that the company were guilty of some fault, neglect or imprudence whereby the injury was caused. So, where the plaintiff was injured at a street crossing, and it appeared there was a signboard indicating the crossing and that the

* To appear in full in Montreal Law Reports, 1 Q. B.

bell was rung and the whistle sounded to warn passers of the approaching train, it was held that the plaintiff could not claim damages from the company.—*Roy & La Compagnie du Grand Tronc*, May 26, 1885.

Insolvent Act of 1875—*Official Assignee continued as Creditors' assignee—Suretyship.—Held*: —Where an official assignee under the Insolvent Act of 1875 has taken possession of an insolvent estate in that capacity, and subsequently the creditors have appointed him assignee to the estate without exacting any further security, and while acting as assignee for the creditors he makes default to account for monies of the estate, the creditors have recourse upon the bond for the due performance of his duties as official assignee.—*Dansereau & Letourneux*, May 27, 1885.

Railway—Damage caused by sparks from locomotive—Responsibility.—Held, that a railway company is responsible for damages caused by sparks from its locomotives, notwithstanding the fact that the company has complied with all the requirements of the law, and has used the most approved appliances to prevent the escape of sparks.—*La Compagnie du Grand Tronc & Meegan*, May 26, 1885.

Taxes—Exemption—Educational Institution —41 *Vic. c.* 6 *s.* 26.—*Held*, that a school for the education of young ladies, kept by a private individual, and not under public control, is not an "educational institution" within the exemption of 41 Vict. (Q.), c. 6. s. 26.—*Wylie & La Cité de Montréal.* Monk and Cross, JJ., dissented. March, 1885.

THE ADMINISTRATION OF JUSTICE.

To the American Bar Association:

A special committee, appointed by the association at its last meeting to report at this one, whether the present delay and uncertainty in judicial administration can be lessened, and if so, by what means, have the honor to report as follows:

The resolution assumes that delay and uncertainty in the administration of justice do exist, and the assumption is unfortunately too true. The law's delay has been a reproach from time immemorial. In the Great Charter, extorted from King John more than 600 years ago, a solemn promise was made for himself and his heirs, that they would "sell or deny or defer right or justice to no man." And in respect of the most important litigation that could then arise, the further promise was made:

"We or (if we are out of the realm) our chief justiciary shall send two justiciaries through every county four times a year, who with the four knights chosen out of every shire by the people, shall hold the said assizes in the county on the day and at the place appointed. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them as is necessary, according as there is more or less business."

There was furthermore this stipulation:

"We will not make any justiciaries, constables, sheriffs or bailiffs but such as are knowing in the laws of the realm and are disposed duly to observe it."

Four hundred years after these royal promises, Shakspeare, in the soliloquy of Hamlet, counted the law's delay among the ills of life. And the name of the "*salle des pas perdus*" is the sad jest of waiting and weary suitors in France.

The evils of delay and uncertainty every lawyer knows very well, and every suitor knows better. If the chief end of government be, as is often asserted, the dispensation of justice, whatever hinders or embarrasses the attainment of that end is an evil of corresponding magnitude. Society can indeed exist, as it has often existed where judicial administration is uncertain, weak or corrupt; but the effect upon public morals and national prosperity will be, as it has always been, disastrous. It is the concurrent testimony of all history that no country has ever maintained itself long in healthy prosperity where the people felt that their rights were not safe under the law. The insecurity of life and property which a dilatory or uncertain administration of justice entails operates as a blight upon enterprize and frightens away not only the timid, but

all, even the boldest, who desire to dwell in peace and safety. These alternatives are presented to every political society,—justice or violence. If the public authorities cannot provide by peaceful means for the prevention or redress of wrong, private associations will undertake a part of the task, and violence will essay to do the rest. Already we see arbitration committees in large departments of business supplanting the courts, while in other quarters there are occasional outbreaks of violence, scandalous and criminal, liable to confound the innocent with the guilty, and menacing the very existence of social order. Society cannot allow any of its members to take the law into his own hands, or try to right himself by violence. Whenever it does so, it abdicates a part of its functions and in the end must give way to anarchy.

If at the formation of a government it were asked how soon shall redress be made to follow an infraction of the laws, the answer would be—so soon as the facts can be made known to the officers of the law. How near we have come to this ideal will appear hereafter.

The resolution of the association presents three questions:

1. What is the extent of the delay and uncertainty existing?
2. What are the causes?
3. What are the remedies?

The better to answer the first, we sought information from members of the association in the different States; for an answer to the second, we had only to follow the processes of a law-suit, as generally conducted; and in answer to the third, we venture the recommendation hereinafter made, to which the information received and our own reflections naturally led. We assumed that the extent of the delay might best be measured by the period between the beginning and the end of a law-suit and the uncertainty by the number of reversals on appeal, and upon that idea we addressed a series of questions to one or more members of the association in each of the thirty-eight States of the Union. The answers contain a body of useful information and suggestions of which we have been prompt to avail ourselves. A copy of the questions and a summary of the answers are annexed to this report.

Extent of the Delay and Uncertainty.

It appears that the average length of a law-suit varies very much in the different States, the greatest being about six years and the least a year and a half. The uncertainty varies also, the greatest average number of reversals in a single year being forty-eight out of seventy-three appeals, and the least forty-four reversals out of two hundred and forty-four appeals. In one of the States, from a series of Supreme Court reports, twenty-five volumes, taken at random, have 1,180 affirmances and 1,160 reversals. Nearly all the answers agree that the delay and uncertainty can be lessened, though they differ as to the means. Some advise one remedy and some another. Our own views will be given hereafter.

The business in the two most important courts of the country, the Supreme Court of the United States and the Court of Appeals of New York, is well known. That of the former during its last October term, that is from October, 1884, to May, 1885, was as follows: The number of cases on the docket at the close of October term, 1883, was 845; the number docketed during October term, 1884, 470; total, 1,315; number of cases disposed of at the term closed in May, 1885, 464; number of cases remaining undisposed of, 851; total, 1,315; number of cases continued under advisement from October term, 1883, 10; number of cases argued orally, 196; number of cases submitted, 119; number of cases continued, 16; number of cases passed, 8; total, 349; number of cases affirmed, 199; reversed, 97; dismissed, 39; docketed and dismissed, 27; questions answered, 2; settled and dismissed by the parties, 85; dismissed in vacation (under the 28th rule), 15; total, 464. The number of opinions delivered was 272. Judging by the past, it is estimated that the docket at the end of the next term will contain 1,300 cases.

The business of the Court of Appeals of New York was as follows: The number of appeals on the calendar at the beginning of 1885 was 782; when the court adjourned at the end of June for the summer vacation the number was 873. During 1884, 487 decisions were rendered, including appeals from orders entitled to be heard as motions. Some of

these decisions disposed of more than the particular case; one for instance, disposed of thirteen cases then on the calendar. In addition to the 487 decisions just mentioned, there were 92 on motions called non-enumerated. The whole number of decisions during 1884 appears thus to have been 505, leaving a calendar constantly increasing. The number of appeals in 1884—that is, of returns filed in that year—was 670; the number in the first half of 1885 has been 358.

In respect of delays in the other courts of the country, it is difficult to obtain statistics sufficiently comprehensive and at the same time sufficiently minute to form the basis of an exact report. In the City of New York we have however the means of ascertaining with considerable exactness the number of cases brought into the courts and the number decided within a definite period. It is to be regretted that it is not made the duty of some public officer in every State to furnish the statistics of litigation. The laws provide for statistics of many branches of business and many transactions of government; and it is remarkable that provision has not been made for the operations of that department of the government which most affects the security and well-being of the people. In the city of New York, as has been said, we are able to give details of judicial administration, from which some lessons at least may be drawn for the whole country.

There is in this city a Supreme Court of general jurisdiction throughout the State, with seven judges, a Superior Court of general jurisdiction within the city, with six judges, a Court of Common Pleas having also general jurisdiction within the city, and six judges; there is a City Court having jurisdiction of civil actions for money demands to $2,000, eleven District Courts with jurisdiction of money demands to $250, and one surrogate, besides three judges of the Court of Sessions and eleven police justices—the last fourteen being exclusively occupied with criminal business—making fifty-one judges in all for a population of a million and a half on Manhattan Island. The business waiting and the business done in these civil courts is reported as follows: On the Supreme Court Special Term calendars from the 1st of October, 1883, to the end of June, 1885, there were placed 1,295 issues of fact and 273 demurrers, the oldest issue being 1st February, 1873, and the latest 16th June, 1885; 612 of these issues and 162 demurrers were tried, dismissed or submitted. Every case was called in its order, and if ready, tried. On the jury (circuit) calendars, from 1st October, 1883, to the end of June, 1885, there were placed 4,518 causes, excluding 228 run down on the first call, and added to the calendar a second time with new numbers. The oldest issue was dated 18th January, 1860, and the latest 22nd June, 1885. Of all these causes, 742 only were tried and 1,123 were dismissed, referred, discontinued, settled or abated. All the causes on these jury calendars were called down to and including 4,003.

From the 1st of October, 1883, to the end of June, 1885, the courts were in session eighteen months, of twenty days for each month, making 360 court days in two years, during which time five causes were daily disposed of, on the average, in the several jury terms, and two causes daily, on the average, in the Special terms.

The business done at the chambers, during this period, resulted in the making of more than 30,000 orders after hearing argument.

In the Superior Court during 1884, the General Term disposed of 192 appeals, the Special Term tried 249 causes, the Jury Terms 689. There are now 1,746 cases awaiting trial, of which 86 are at the Special Term and 1,660 at the Jury Terms. There are no arrears at the General Term. The orders made at chambers numbered 11,983.

In the Common Pleas, during 1884, 372 appeals out of a calendar of 577 cases were decided at the General Term, including 179 appeals from the District Courts; 36 cases out of a calendar of 131 were tried at the Special Term. 229 were tried at the Jury Terms between October, 1883, and June, 1885, out of a calendar of 1,892 cases. 17,870 orders were made at chambers.

In the City Court, 2,257 cases were placed on the calendar, between July, 1884, and July, 1885, of which 1,608 were tried or otherwise disposed of. It takes five months to reach a case in its regular order.

In the eleven District Courts 12,170 civil

actions for damages were tried in 1884, and 33,924 cases of defaulting tenants and of corporation penalties were disposed of. There are no delays. A case is generally tried in two weeks from its commencement. There were only 179 appeals to the Common Pleas, and of these not more than three were taken to the Court of Appeals. In less than three per cent of the cases was a jury demanded.

In respect of uncertainty we can easily find the number of reversals in each State. We content ourselves with four States. An examination of the last volume of Reports of Decisions in the Courts of last resort of New York, Pennsylvania, Ohio, and Virginia, respectively, four States which may be considered representative and which have Courts of Appeal separate from the courts of first instance, gives the following results: Volume 97 of the Reports of the New York Court of Appeals contains 79 decisions, of which 38 were reversals. The judges cited in their opinions 449 decisions, being 353 made in New York, 56 in England, Scotland and Ireland, 8 in our Federal Courts, 7 in Massachusetts, 4 in Pennsylvania, 3 in Vermont, 2 in Connecticut, 2 in New Hampshire, 2 in California, 2 in Minnesota, 2 in Alabama, and in New Jersey, North Carolina, Kentucky, Florida, Virginia, Indiana, Maine and Iowa, one each. Volume 105 of the Pennsylvania Supreme Court Reports contains 95 decisions, of which 44 were reversals. The citations of the judges were 451. Volume 39 of the Ohio Supreme Court Reports contains 98 decisions, of which 46 were reversals. The citations were many. Volume 78 of the Virginia Supreme Court Reports contains 81 decisions, of which 40 were reversals. The citations were 576. The sources of these citations made by the judges of Pennsylvania, Ohio and Virginia in their opinions, were as various as those made by the judges of New York.

These were the decisions cited, examined and commented on by the judges in making up their own opinions. But the decisions cited by counsel and pressed upon the judges for their consideration were, it is safe to say, ten times as many. In volume 88 of the New York Reports, the number of cases cited by counsel was 5,037. A single case reported in volume 97 shows that the counsel on the two sides cited 285 decisions, of which 125 had been made in New York, 61 in England, 2 in Ireland, 4 in Pennsylvania, 4 in North Carolina, 4 in Massachusetts, 2 in New Hampshire, 2 in New Jersey, 2 in Kentucky, 2 in the Federal Reports, and from Maine, Vermont, Iowa and South Carolina, 1 each.

Some of the appeals were from courts which were themselves Courts of Appeal from lower courts. Thus the cases in the New York Court of Appeals were reviews of judgments and orders in the General Terms of the Supreme Court and the Superior Courts of cities, rendered on appeals in each from a single judge of the same court. Volume 42 of the New York Supreme Court Reports contains 130 cases reported in full, 14 "memoranda of cases not reported in full," and 317 "decisions in cases not reported." Of the first two classes, 82 were reversals, that is to say, 82 out of 144; more than half. Of the last class 69 were reversals, that is more than one in five; and of the whole 461 cases decided, 96 were reversals. The first page of the volume mentions 14 cases, reported in 8 volumes of Hun's Reports (25 to 32) as having been taken by appeal to the Court of Appeals, of which five were reversals and one a modification of the decision below. This volume 42 contains a list of 1,120 decisions cited by the court; whether cited in making the decisions not reported does not appear, but probably they were the citations in the cases reported fully or partly. In that view, if an average could be made, each of the 144 decisions rested on about eight previous decisions. Now it is probable that of the decisions in cases not thought worth reporting, few, if any, went to the Court of Appeals. Taking that for granted, it shows that the defeated parties acquiesced in the 69 reversals. Of the other cases it would require an actual count to show how many of them were reviewed by the Court of Appeals.

THE CAUSES OF THE DELAY AND UNCERTAINTY.

The best method of ascertaining the causes of delay is, as we have said, to follow the usual processes, and to discuss them as we go along. The first natural step is a complaint of the person aggrieved. By the common

law this step was full of danger ; it was necessary to choose first between two highways, one called legal and the other equitable, and on turning into the former it was found divided into several lesser ways, or by-ways, called forms of action. The suitor was obliged to choose one among them all, at the hazard of irretrievable defeat. This was the rule of the common law, and is still the rule of about half the States of the Union. The other method, that which the other half of the States and all the Territories but one now pursue, is to have one highway only, or to drop the figure, one form of action, in which the facts are to be set forth as they are or are supposed to be, and such relief sought as those facts may warrant. Between these two methods we see no room for doubt as to the choice. The methods of common law were unwise and injurious. They were unphilosophical ; they had no significance except as marks of a school of dialectics, now in all else forgotten, and they exposed the suitor to unnecessary entanglement in a maze of forms, over and above the hazard of the law and the evidence; the hazard of doubtful law conjectured out of irreconcilable precedents, and of disputed facts extracted from contradictory evidence.

A law suit is a contention before the judges of the land respecting an alleged infraction of law. Whether the complaint be made by the State or by the citizen, whether the demand be for the prevention or redress of a private wrong or the punishment of a public one, the ground of the complaint always is, that the defendant has violated, or is about to violate, a legal precept. Two fundamental questions are thus raised—what is the fact and what is the law. To the answering of these two questions all others tend, and as they are answered surely, easily and speedily or otherwise, the success or failure of judicial administration is determined.

The theory of a lawsuit is therefore to hear what the parties have to say, and to decide between them. In doing this, the simplest and most direct method is the best. The plaintiff must make his statement; that is the first step; the defendant must make his answer or be held to admit the truth of the complaint, that is the second; if they differ, the truth of the fact must be ascertained; that is the third; and then the law must be applied, which is the fourth step and the last if there be no appeal. These several steps may be shorter or longer. A short one is the best if it be a sure one. Some side steps may have to be taken, according to the circumstances of particular cases. But in all, not a single unnecessary step should be required or allowed. In other words, no form or proceeding should be permitted which is not necessary to ascertain or preserve the rights of the parties, no form or proceeding that cannot be understood by either party, none that causes needless delay or needless expense. There must however be a complaint, and if there be an answer there must be a trial of the fact, a judgment of the law, and an execution of the judgment with occasional incidental proceedings, such as orders made in the progress of the cause to insure the efficiency of the judgment. In other words, there may be these several processes—the complaint, the answer, possibly a reply, the provisional remedies of arrest, replevin, injunction, attachment, receiver or deposit, a trial of the facts in issue, the judgment of the law, the execution of the judgment and one or more appeals, twelve or fourteen distinct processes, most of which are or may become necessary in a severely contested lawsuit. The problem is how to expedite them all, preserving at the same time every right of the parties, and to cut off, with an unsparing hand, whatever is not necessary to this design.

Before discussing the regular and essential processes, let us discuss briefly the incidental ones, and say here once for all what we have to say about them. The first observation is, that they should never be allowed to retard the progress of the main contention. Whatever motions may have to be made respecting an arrest, an injunction or any other of the provisional remedies, they can be made without postponing the issue, the trial or the judgment. The practice of converting the incidental into the principal is not to be commended ; on the contrary, it is to be strongly condemned. The practice, however, grows apace. Actions are brought, not with a view to the

final trial and judgment, but with a view of gaining a temporary advantage, which may, from the sheer pressure of inconvenience and delay upon an adversary, force him to yield, through the operation of an arrest, or an injunction or a receiver. This is a dangerous proceeding. The motions are heard on one-sided affidavits, evidence of the loosest and most dangerous kind. The abuse of injunctions especially has grown to be a serious grievance. We have no hesitation in recommending that they should never be granted, except on positive evidence, after adequate security given to cover all possible injury from their operation, with an opportunity afforded of hearing both sides without delay, and the positive requirement of a decision within a fixed and short period. We do not think injustice would be done if a decision within a week were required. In the courts of the United States a restraining order cannot be made, unless "there appears to be danger of irreparable injury from delay."

Returning now to the regular processes of a lawsuit, we must remember that one of the parties at least is generally not averse to delay. It often happens, more often than otherwise, we fear, that one of them is very desirous of delay and strives for it. So that when we are considering how the several steps in a suit can be shortened, we must consider how they can be shortened against the will of the other party. For if both parties really desire a speedy decision, they can materially shorten every step and hasten every movement.

Before proceeding to consider these questions, however, let us observe that all lawsuits are not necessarily or properly to be treated in the same way. That indeed was the old plan of the English common law. A claim on a note of hand was treated like a claim to an estate. The parties came into court in the same solemn manner, the written pleadings were of the same formality, the trial was by the same machinery, the decision and the enforcement of it brought about by the same methods. Here, we think, was a mistake. When the parties have themselves stipulated in writing for the payment of a given sum of money or the delivery of a specific thing or the performance of any other specific act at a specified time, the process in dealing with a dispute between them should be summary. They have stipulated for a certain thing to be done at a certain time, and except in very exceptional cases should be held to a prompt disposition of their respective pretensions. This has been done in the State of New York by a special statute, under which a tenant who fails to pay the stipulated rent at the stipulated time may be made to surrender possession to his landlord, leaving all other questions between them to be settled afterward. And in England it has been provided by statute, that upon a promissory note or other negotiable instrument, the holder may have summary judgment, unless the defendant shows upon oath reasonable grounds of defence. We think, therefore, that a distinction should be made between different classes of claims, and while most of them may be left to the ordinary processes, some should be subjected to those which are summary. The reason for the distinction lies in this, that in the latter class of cases the parties have agreed upon every thing, or nearly every thing which the courts could have done for them, and have left little to be disputed. And furthermore, the exigencies of commerce will not admit of the delay which other claims may suffer, without the same loss or inconvenience.

Confining ourselves for the present, however, to the delays in an ordinary lawsuit, how are they to be dealt with? Opportunity to answer the charge must be given to every person charged with an infraction of law. Such an opportunity involves some delay. It is an inconvenience inseparable from human administration. Slow justice is better than swift injustice. Do your work as quickly as you can, but do it well, is the law's commandment to all its judges. And as to certainty—that is to say, absolute certainty—it cannot be affirmed of any thing dependent on human judgment. The most that a judge can declare is this: I infer from the evidence such to be the fact, and I find in the lawbooks such to be the law. It is only omniscience and omnipotence that can in an instant discern the fact and administer the law. All that can be expected of any system of judicial administration among men is, that it makes the nearest approach that man can make to the unerring judgment of an infallible mind.

[To be continued.]