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# Law's Delays

Grant Foreman
*Muskogee, Oklahoma*

## THE LAW'S DELAYS

A GENTLEMAN of an acquisitive nature was adventuring about a large city seeking what he might turn to quick profit. Contact with the so-called font of justice gave him an idea, following which he opened up a quiet brokerage business. Perceiving a demand for jurors who would decide a case favorably to the side that was willing to pay a decent price, he set about supplying that demand. The trade mark on his goods was a pin stuck in the lapel of the coat in such fashion that in the jury box they would without ostentation be recognized by his customers: later they became known as the "pin brigade."

In time, however, as this trade lacked legal sanction—in fact violated the law—this clever broker and others were convicted. Our broker received a sentence to prison. He did not want to go to prison, so he took an appeal and gave bond; he then had his liberty just the same as if he had never been convicted and was again apparently clothed in the well known presumption of innocence. Of course under the law, after conviction the presumption of innocence gave way to a presumption of guilt, but the change did not inconvenience him as he had friends and was able to make a bail bond and hang his case up in a higher court for review.

He then went many miles away to another large city to live.

Ten or eleven years passed. The broker was still at liberty and his conviction had not been set aside.

In still another large city four clever men extracted from the mails a pearl necklace valued at over a half million dollars. Four weeks after the robbery the thieves were caught and after hearing were committed for trial. With such a princely swag they should have been able to make bond and build up a defense that would take the prosecution a long, long time to overcome; with such resources they should have laid the foundation for long and profitable litigation with a probability of enriching legal lore by many discussions and decisions of subtle questions of law. But—

—this case did not work out that way. Within four months after the robbery the thieves were tried. They had a hearing at which their rights were fully protected. They were convicted and received sentences varying from eighteen months hard labor and expulsion to seven years penal servitude. Four days later they gave notice of appeal to the Court of Criminal Appeal on questions of law upon which, in that jurisdiction, an appeal lies without the necessity of obtaining leave to appeal. The appeal was heard and

on December 20, 1913, twenty-six days after conviction, the appeal was decided against them, and the defendants began serving their sentences.

Our broker in the meantime was still at liberty.

The reason these two enterprises did not work out at all alike was because they were staged in different countries. The jury fixer operated in Chicago. The pearl necklace thieves used bad judgment in promoting their activities under the unsympathetic businesslike laws of England. Their robbery of the pearls mailed from Paris to London in July, 1913, created a sensation for a time but the matter soon became a closed incident, with the conviction of the robbers and recovery of the pearls.

The first case is an exceptional one in the United States, but the fact that it is possible is the amazing thing. It emphasizes the lax enforcement of the law in criminal matters that is in large part responsible for bringing the law into disrepute. Where the law is not respected it is not obeyed, and enforcement of law depending on local sentiment, breaks down; officials sworn to uphold the law forget their trust and juries indifferent to if not ignorant of their obligations, will turn loose influential criminals and make atonement by convicting helpless and less responsible ones. Where these conditions exist, the people—the sovereigns—more than likely have confused the regulation of the judiciary along with other responsibilities of citizenship with the game of politics. And the standard of the courts is no higher than the conceptions of the people they serve.

The lack of respect for the courts and for legal procedure induces the bringing of many frivolous questions into court and taking liberties with its processes which are encouraged by the indulgence of the courts. Though the responsibility is hard to locate in any one place, it is small wonder that the victim of the law's delays is losing respect for those who administer the law. He charges that our lawyers instead of advancing the usefulness of their profession are engaged in exploiting the infirmities of the law and of our legal procedure for their personal gain.

This indictment suggests the inquiry, To what extent is the success of this class of lawyers dependent on the indulgence of the courts? How far do the courts reward the adventitious intruder, and sacrifice the time belonging to meritorious litigants by grave consideration of clever sophistries and irrelevant issues? Then what about the layman who elects the judges? How far is he responsible for a system that has called forth bitter criticism of the law's delays?

To undertake to answer these questions would be a pretty big order. There is nothing in the scheme of enlightened government more jealously secured in theory, than the courts. No government is complete that fails to provide tribunals for enforcing the laws of organized society, for determining controversies between citizens and redressing their wrongs. We have established our courts to perform a most important function of government, yet we have suffered no end of follies to nullify the high ideals which conceived them and the practical good expected to come from them. Our courts are established for the dispensation of justice and every worthy applicant is invited to bring his troubles to the proper tribunal where an appropriate remedy is promised. To be effectual however that remedy must not be postponed, hence it has been well said that justice delayed is justice denied. That in many parts of our country the law's delays are not merely exasperating, but often result in practical denial of justice is a lamentable fact. That these delays have robbed our courts and judicial procedure of the respect necessary to their effective operation is also true.

While our laws are modeled upon the common law of England, we have codified and changed them in the various states to conform to our needs, in the fond belief that we have made a vast improvement over the English system. But we have made little reform. Some years ago when the people of England began to complain that their procedure was not responsive to their needs, an adequate reform was achieved in the enactment of the Judiciary Act of 1873. And this reform was inaugurated and carried forward within the bar itself, a feat that deserves emulation in this country.

In the English practice the courts are concerned with substance rather than with the form of the matters before them. They deal directly and expeditiously with controversies and the courts and the laws are respected. A presumption of regularity attaches at all stages of a proceeding. In many of our courts this presumption is not so well founded and judges are inclined to lend a too credulous ear to the claim of irregularity urged by the losing side in a controversy.

To such an extent is this carried that many of our appellate courts are burdened by great numbers of ill advised appeals, many of them filed for no reason but to delay the legitimate operation of legal remedies, and with the well founded hope of wearing out the opposing side. This is permitted by our practice. And while the law allows appeals almost as a matter of course in many states, it gives no adequate compensation to the litigant whose remedy is postponed. Between the lower and the upper court is a degree of wasted

time and energy that is not only a total loss, but is a positive force for delay and injury to many worthy litigants not directly involved.

In our country it is no uncommon thing for a man convicted of a crime to postpone for years his day of reckoning by appealing. The writer recently heard the Court of Criminal Appeal in London dispose of thirty applications for appeal in about two hours time, within less than a month after conviction. The three members of the court had read the records and were prepared to deliver their opinions in all the cases on the sitting. Four applications out of the thirty were allowed and these four were finally heard and disposed of six weeks and one day thereafter. Such prompt dispatch could give no encouragement to one who hoped by appeal to delay the judgment against him unless he had a well founded claim of error to urge. This court having jurisdiction over England and Wales disposes of all applications for appeal within a month after conviction.[1]

Courts of review were established to relieve against error and injustice in the nisi prius courts. They were conceived to serve a very necessary and useful purpose. But there is a disposition on the part of many litigants to regard them as a jungle in which the vanquished may plunge with the intention, not of achieving justice, but of avoiding or postponing it. So long as appellate courts make this possible, just so long will they be so exploited and meritorious litigants be denied the fruits of recovery. If the court docket is congested with appeals so that the court is a year or two behind in its work, the situation is that much more attractive to a judgment debtor, who appeals for the purpose of postponing the day of reckoning. So that delay begets the cause of delay.

Much valuable time is consumed by courts of review in the weary repetition and verbosity of opinions—time that would better be devoted to waiting cases, for this futility is noticeable in courts that are most behind in their work. Some judges are impelled to write a thesis on every occasion; frequently, it would appear from reading them, to gratify their vanity, to pursue a fatuous claim to erudition, or as an offering to the defeated party to assuage his loss. A practical jurist of Illinois used to say in reply to counsel's request for reasons in support of his rulings, "If the Court is right there is no necessity to give any reasons; if wrong, the less said about it the better." Where the law requires written opinions, a common sense middle ground is occupied by judges who value their time and the

[1] This statement was made to me by the Registrar of the Court of Criminal Appeal in London.

interests submitted to them, and have a proper conception of their duties.

The Supreme Courts of the states are in all stages of work. Some are up with their calendars, some are a few months behind and others are from a year to three or more belated in their work. Because I am able to give some figures concerning the Supreme Court of Oklahoma, and not to make invidious comparisons, a few observations concerning the workings of that court may illustrate a situation common to many courts, having a bearing on the law's delays.

Criminal cases in Oklahoma are reviewed by the Criminal Court of Appeals. Civil cases go to the Supreme Court, which is composed of five justices assisted by six commissioners. The justices are elected for six years and receive a salary of $4,000.00 per year.

This court composed of five judges and six commissioners is more than two years behind in its work. That is, when an appeal is filed there it will be more than two years before it is decided. The judges are probably as industrious as those of any other court in the country. There are before them many questions of great importance, especially those relating to land titles depending upon construction of Indian treaties. So that these judges are hard worked men and obviously in justice to the people they serve, as well as to themselves, all their efforts should be registered in the direction of efficiency and progress.

In the year 1912, the Supreme Court filed opinions that are reported in volumes thirty-one to thirty-six of the Oklahoma reports. They cover 4250 pages and contribute generously to the appalling multiplication of law reports that every complete law library must have. A number of these opinions were in original proceedings in that court, and appeals from the Corporation Commission. The remainder, comprising over ninety per cent of the whole, were opinions rendered upon appeals from the trial courts of the state. There were about 770 of these. Of this number 150, or more than 19 per cent were either dismissed or affirmed without inquiry into their merits because of informality in the record, failure to comply with the rules of court in taking appeal, absence of ground for appeal appearing on the face of the record, or failure to file briefs with the case, the latter indicating an abandonment of the appeal. This means that one out of every five cases before the court had to be examined, weeded out and an opinion and judgment written finding that the appeal is not properly before the court for action. The time of the court must be consumed in this entirely futile effort while meritorious questions wait for considera-

tion. There is here a total loss of time and energy that in the aggregate of a year's work would bankrupt any business enterprise.

Upon reading the opinions disposing of this class of appeals, one is impressed that the responsibility lies in part upon incompetent lawyers who are permitted to practice before the court, in part upon a class of litigants whose only purpose is to lodge appeals with the Supreme Court for delay, and in part upon the Court for attaching too much importance to the form rather than the substance of the appeals before it.

Many such appeals have reposed there for two years or more and when reached for consideration in their order, it is found that while they are not properly before the court for consideration they have served the obvious purpose of the appellant, of postponing the legal remedy secured by the victor in the court below.

A considerable number of the opinions in the remaining 620 cases were devoted to discussions of academic questions bearing on the right of appeal in given cases which did not reach the merits of the controversies. So that the net number of opinions actually deciding any question touching the righteousness of the judgments appealed from was much less than 620. But taking that number as the total of appeals decided, 275, or 45 per cent were reversed. This is not only a large percentage of reversals, but it is based on a large number of appeals decided. Whether this is a reflection upon the character of the nisi prius judges, or indicates a disposition of the appellate court to interfere unnecessarily with the judgments of the trial courts, only a close examination of the cases can determine. If in one year, 275 cases, each going through the expensive routine of trial, have been erroneously decided by the trial judges and that fact cannot be ascertained until two or three years later when it is determined that they must again be tried, the layman may begin to understand one phase of the law's delays. He may be disposed also to ask why the trial judges and the appellate judges should be so far apart as to the law in so many cases. He can understand too, why in the other 345 cases that were affirmed the losing parties naturally appealed to avail themselves of the almost even chance of a reversal, to say nothing of the two years delay in satisfaction of the judgment, that the appeal would give them, even though the judgment of the lower court would be affirmed.

The spectacle is often seen in a trial of a case of much time and skill employed in maneuvering to get in or to keep out of the case certain evidence and rulings. Nominally such a case is being tried in that court. Though in another sense it is being tried in the appellate court. All of that maneuvering is for the purpose of mak-

ing up a record for the Supreme Court which the parties know must pass on the case irrespective of the soundness of the judgment of the lower court, thanks to the easy road to the upper court. The losing party perhaps knows in advance that he is not entitled to prevail, yet he is making up a record upon which he can predicate some nice question of law, fallacious perhaps, but none the less requiring the reviewing court to write an opinion about it, and by virtue of the pondering the case may require, postponing the reckoning the lower court has decreed against him. So far as the appellate courts permit themselves to be exploited in this way, do they destroy their usefulness and add to the growing complaint against the law's delays. This folly is not possible in the English Courts where finality in most litigation is reached in the trial courts.

The judicial system of England and Wales serves 32,500,000 people. Recently there was published a wonderfully comprehensive and detailed report of statistics of that judicial system.[2] The Supreme Court of Judicature having jurisdiction over all England and Wales is comprised of two main divisions, the Court of Appeal and High Court of Justice, and the County Courts. The judges are appointed for life and enjoy large salaries. These inducements attract lawyers of the highest attainments, for once appointed to the bench there is no inducement nor excuse for political alliances which are so often considered necessary by judges in this country to insure a continuance of their comparatively short tenure of office, or to promote them to some higher political reward. The Lord High Chancellor receives $50,000 per year.[3] He is the head of the Judiciary of England to whom most of the judges are accountable. The eight members of the Court of Appeal receive from $25,000 to $30,000 each. Of the King's Bench Division, the Lord Chief Justice receives $40,000 and the fifteen justices $25,000 each annually. The County Courts have jurisdiction[4] where the claim for debt or damage does not exceed $500 and a limited jurisdiction in matters of probate, chancery and admiralty, with an appeal to the High Court of Justice on matters of law where more than $100 is involved. There are 53[5] County Judges in England and Wales appointed by the Lord High Chancellor,[6] presumably a most capable

[2] Judicial Statistics, England and Wales, 1911; Part I, Criminal statistics relating to Criminal Proceedings, police, coroners, prisons, reformatories and industrial schools, and criminal lunatics, edited by Edward Troup. Part II, Civil Judicial statistics, relating to The Judicial Committee of the Privy Council, The House of Lords, The Supreme Court of Judicature, County Courts and other civil courts, edited by Sir John Macdonell, C. B., LL.D., King's Remembrancer and Senior Master of the Supreme Court.

[3] Whitaker's Almanack, 1913, p. 226-231.

[4] 51 & 52 Vict. c. 43, Aug. 13, 1888; Hazell's Annual, 1913, p. 132.

[5] The Statesman's Year-Book 1913, p. 34.

authority for selecting good men to these offices. These County Judges and certain Borough and City Judges of like jurisdiction and the police magistrates of London receive $7,500 per year,[5] more than the average salary paid the judges of the state courts of review of this country and neary twice as much as the average paid to our nisi prius judges.

It appears from the report that in the year 1911, 1275 appeals in civil cases were filed in the Court of Appeal and High Court of Justice, which as regards appellate jurisdiction correspond closely to our appellate courts having authority to review the judgments of trial courts of record. In the same year there were in all 623 applications for appeal made to the Court of Criminal Appeal, and of this number 165 were allowed. 104 of the 165 were dismissed and one was abandoned. In 35 cases the conviction or sentence was altered and 25 persons who appealed were discharged. In these courts of review serving England and Wales, the appeals filed in 1911 amount to 3.82 per hundred thousand of population in civil cases, and 1.88 in criminal cases counting applications for appeal as an appeal, a total of 5.70 per hundred thousand of population in both civil and criminal appeals.

In the state courts of review of the United States in 1912, there were over 31,000 appeals filed both civil and criminal or about 34 per hundred thousand of population. In the nine United States Circuit Courts of Appeals and the Court of Appeals of the District of Columbia there were 1438 and in the United States Supreme Court 530 cases[6] brought for review during the year ending June 30, 1912, or two more per hundred thousand.

In the United States there are 89 state courts of review of independent jurisdiction, serving a population of 91,000,000 people. These courts are known variously as Supreme Courts, Courts of Appeal and Appellate Courts. They have appellate jurisdiction over the judgments of all nisi prius courts of their respective states. Most states have but one Supreme Court. Other states of greater population have found it necessary to create intermediate courts of review whose jurisdiction is not so great as that of the highest court of appeal in the state. And on the average the increase in the number of courts of review is accompanied by a greater percentage of appeals in the state. Add to these the nine United States Circuit Courts of Appeals, the Court of Appeals for the District of Columbia and the United States Supreme Court and we have an even one hundred courts of review. In the state courts of review there are

[6] Report of the Attorney General for 1912.

over 450 judges.[7] In the Federal courts there are 43 more, making in all 500 judges in the United States sitting in review over the judgments of courts of record of first instance.

The student desiring to observe something of the work of the courts of the United States is confronted at the outset by the fact that there has never been published any sort of compilation from which comparisons can be made, certainly nothing like the exhaustive report on the British courts. The nearest approach to it is the annual report of the Attorney General which furnishes a large amount of information concerning the Federal courts, and the Supreme Court of Illinois has published a compilation showing the work of that court from 1900 to 1910. It would be a huge task to compile a complete report on our state courts with their various and dissimilar plans of organization and laws. In order to make a few comparisons the writer with much labor has assembled some statistics gathered from the clerks of the different courts of review of the states and from other sources.[8]

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[7] Information obtained from clerks of these courts, supplemented by reference to state reports.

In addition to the members of the supreme courts they are aided by commissioners authorized by law in the following states:—Kentucky (1), Minnesota (2), Missouri (4), Oklahoma (6), and Mississippi (2).

[8] The statistics cited in this article concerning the appeals in the state courts were compiled from reports given me by the clerks of the courts of review in reply to my quests for the information. This investigation, which covered several months, gave me the desired information from all states of the Union except Louisiana, Florida, New York and Ohio. As to these states my information is not complete, so I have omitted them from my calculation, except that in arriving at the total number of appeals filed I have credited those states with the average number found in all other states. In the other forty-four states the clerks informed me that there were 25,616 cases brought for review, producing an average of 34.1 per hundred thousand of population. This average applied to the four states named gives 5,523 cases, which, added to the former number gives a total of 31,139 cases.

The population and the number of appeals in the various states is shown in the following table:

| | | | Number of Appeals | | | Number of Appeals per 100,000 | |
|---|---|---|---|---|---|---|---|
| | State | Population | Civil | Criminal | Total | Criminal | Civil and Criminal |
| 1 | Delaware | 202,000 | 9 | 0 | 9 | | 4.5 |
| 2 | Virginia | 2,061,000 | | | 225 | | 11.3 |
| 3 | Maryland | 1,294,000 | 165 | 10 | 175 | .81 | 12.8 |
| 4 | Vermont | 355,000 | | | 50 | | 14.3 |
| 5 | Wisconsin | 2,333,000 | 338 | 14 | 352 | .6 | 15 |
| 6 | Pennsylvania | 7,665,000 | 1182 | 55 | 1237 | .7 | 16.1 |
| 7 | Connecticut | 1,114,000 | 184 | 4 | 188 | .3 | 16.8 |
| 8 | South Carolina | 1,515,000 | | | 266 | | 17.7 |
| 9 | Massachusetts | 3,366,000 | 580 | 20 | 600 | .6 | 17.8 |
| 10 | New Hampshire | 430,000 | 75 | 5 | 80 | 1.2 | 18.6 |
| 11 | Illinois | 5,638,000 | 1911 | 42 | 1953 | 1. | 19.5 |
| 12 | Indiana | 2,700,000 | 479 | 71 | 550 | 2.6 | 20.3 |
| 13 | New Mexico | 327,000 | 50 | 25 | 75 | 7.5 | 23. |

Reports from the clerks of the courts of review of 44 states of the Union show that in 1912 the number of cases taken up to these courts by appeal or writ of error, ranged from 4.5 per hundred thousand of population in one state to 93.4 per hundred thousand in another. The average for all of the states so reported on was 34.

The states which show the smallest percentage of appeals are those in which the manner of selecting the judges or their tenure of office resembles that of England more than other states of the Union. In eleven states the selection of judges is removed from general political elections,[9] and appointment is made by the governor and council or legislature. The percentage of appeals in nine of these eleven states falls below the average of 34. In the ten states showing the smallest percentages, the selection or tenure of office is distinctive.

In Delaware with the smallest percentage, 4.5 appeals per hundred thousand, the judges are selected by the governor and senate and serve 12 years. In Virginia with 11.3 appeals the legislature selects the judges for 12 years. In Maryland with 12.8 the judges are elected by districts for 15 years. In Vermont with 14.3 appeals the

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|---|---|---|---|---|---|---|---|---|
| 14 | Michigan | 2,810,000 | | | 650 | | | 23. |
| 15 | North Carolina | 2,206,000 | 455 | 61 | 516 | 2.7 | | 23.4 |
| 16 | New Jersey | 2,537,000 | 570 | 30 | 600 | 1.2 | | 23.7 |
| 17 | Maine | 742,000 | 170 | 30 | 200 | 4. | | 27. |
| 18 | Iowa | 2,224,000 | 580 | 31 | 611 | 1.4 | | 27.4 |
| 19 | Wyoming | 145,000 | 33 | 7 | 40 | 4.8 | | 27.6 |
| 20 | Utah | 373,000 | 82 | 23 | 105 | 6. | | 28. |
| 21 | South Dakota | 583,000 | 150 | 15 | 165 | 2.6 | | 28.6 |
| 22 | Minnesota | 2,075,000 | 575 | 25 | 600 | 1. | | 29. |
| 23 | West Virginia | 1,221,000 | | | 367 | | | 30.6 |
| 24 | Arkansas | 1,574,000 | 406 | 94 | 500 | 6. | | 32. |
| 25 | North Dakota | 577,000 | 190 | 10 | 200 | 1.6 | | 34.6 |
| 26 | Kansas | 1,690,000 | 545 | 55 | 600 | 3. | | 35. |
| 27 | Rhode Island | 542,000 | | | 200 | | | 36.8 |
| 28 | Nebraska | 1,192,000 | 434 | 27 | 461 | 2.2 | | 38.6 |
| 29 | Mississippi | 1,797,000 | 520 | 180 | 700 | 10. | | 39. |
| 30 | Montana | 376,000 | 146 | 12 | 158 | 3.1 | | 39.3 |
| 31 | Arizona | 204,000 | 63 | 19 | 82 | 9.5 | | 40.5 |
| 32 | California | 2,377,000 | 853 | 125 | 978 | 5.2 | | 41.1 |
| 33 | Colorado | 800,000 | | | 157 | | | 44. |
| 34 | Kentucky | 2,289,000 | 930 | 92 | 1022 | 4. | | 45. |
| 35 | Missouri | 3,293,000 | | | 1623 | | | 49. |
| 36 | Oregon | 672,000 | 325 | 27 | 352 | 4. | | 52. |
| 37 | Georgia | 2,609,000 | 1040 | 370 | 1410 | 14. | | 54. |
| 38 | Alabama | 2,138,000 | 810 | 330 | 1140 | 15.5 | | 54. |
| 39 | Idaho | 325,000 | 166 | 14 | 180 | 4. | | 56. |
| 40 | Nevada | 81,000 | 39 | 10 | 49 | 12. | | 61. |
| 41 | Tennessee | 2,184,000 | 1300 | 500 | 1800 | 18.3 | | 64.2 |
| 42 | Texas | 3,896,000 | 2015 | 639 | 2654 | 16.5 | | 68.1 |
| 43 | Washington | 1,141,000 | | | 869 | | | 76. |
| 44 | Oklahoma | 1,657,000 | 1220 | 326 | 1546 | 19.8 | | 93.4 |

[9] The American Year Book for 1913.

legislature selects judges nominally for two years, but the custom has become established of reappointing them for life. In Wisconsin with 15. appeals the judges are selected at elections called for that purpose alone. In Pennsylvania with the small percentage of 16.1, judges are selected at elections but the judges of the Supreme Court serve for 21 years and those of the other courts for ten years. In Connecticut with 16.8 appeals the judges are appointed for eight years by the governor and legislature.

In South Carolina with 17.7 appeals, the legislature selects the judges of the Supreme Court only, for eight years. In Massachusetts with 17.8 appeals all judges are appointed by the governor and council for life. In New Hampshire with 18.6 appeals, the governor and council select all judges who may serve until they are seventy years old. The only states whose judges are selected by appointment that show more than the average number of appeals are Rhode Island and Mississippi.

Judges so selected are measured by their fitness to be judges more than are candidates at political elections. They assume the bench freer of political obligations and there is less incentive to embarrass their high office by political activity.

In many states the position of judgeship that is subject to the fortunes of politics is not attractive to a man of high attainments and a nice sense of propriety who is not financially able to be left at the end of his term out of office and without a practice. For that reason the office often embraces men who are willing to continue their political activity through their term of office to ensure themselves reelection or promotion to greater political rewards, thereby often lowering the standard of judges and bringing the administration of the law into disrepute.

Whatever may be the reason, it is apparent that in the states mentioned above there is the minimum reason for appealing lawsuits. Evidently litigants are to a very great extent satisfied with the decisions of their courts of first instance, and there is a finality at an early stage of litigation in those states that makes for expedition and directness in dealing with controversies.

The highest percentage of appeals is found in Oklahoma, where the clerk of the Supreme Court reports that in 1912 there were 1220 civil and 326 criminal appeals filed. In common with many other southern and western states, the salaries of the judges of Oklahoma are small, the tenure of office is brief and the right to exercise such political activity as he desires is regarded as justly conceded to a man who assumes the bench. It must be stated however that in Oklahoma there are many unsettled legal questions bearing on land

titles growing out of the construction of statutes enacted by Congress. And all of these observations would be affected in some degree by a knowledge of the percentage of appeals based on the number of suits tried in the various jurisdictions, a basis for comparison which some one with infinite patience may some day provide. But aside from the reason, the fact is that in 1912, in the state of Oklahoma with 1,500,000 population, there were almost as many appeals filed in 1911 as there were in England and Wales having twenty times the population, served by practically the same number of judges.[10]

Many interesting phases would doubtless be disclosed by a comprehensive report on the work of the courts of all the states; for example, the information obtained by the writer contains the number of criminal appeals filed in state courts of review in 1912, in 35 states.[11] In eleven states located south of the Ohio River and south of the 37th degree of latitude west of the Mississippi River and containing a population of 20,800,000, there were 2536 criminal appeals. In the remaining 24 states north of that line, with a population of over 40,000,000, there were 662 appeals in criminal cases. In the former the criminal appeals amounted to 12.1 per hundred thousand of population, and in the latter 1.6, one-eighth as many, or about the same percentage as is found in England. In the former, criminal appeals constituted 24.3 per cent of all appeals, and in the latter 6.4 per cent.

Oklahoma heads the list with 19.8 criminal appeals per hundred thousand of population; Texas with 639 criminal appeals had the greatest total, almost equal to the 24 northern states. In New Mexico 33 per cent of all appeals were in criminal cases, the largest percentage of all the states, closely followed in their order by Alabama, Tennessee, Georgia, Mississippi and Texas, each with over 25 per cent. In his excellent articles on Swift and Cheap Justice, Mr. George W. ALGER singles Oklahoma out as a state that "has started aright in the attitude of its courts toward crime." He cites as his authority a very creditable opinion of the Criminal Court of Appeals, refusing to order a new trial because of a technical error occuring in an indictment.

Twenty-four states show less than the average number of all appeals and twenty more than the average. Of the 24 states, seven

[10] In the face of this situation, two judges and one commissioner of the Oklahoma Supreme Court resigned to engage in the recent campaign, two of them running for nomination for governor and one for United States Senator. One of them was rewarded by being elected governor.

[11] Reports from clerks of Courts of review of 35 states contained this information. The other 9 did not separate the civil from criminal appeals.

lie west of the Mississippi and seventeen east. Of the twenty states above the average, 14 are west of the Mississippi and six are east; of these six Rhode Island is one and the other five are southern states. Of the 24 states below the average, only three contain more than one court of review, while of the 20 above the average, eight have more than one court of review.

The average salary paid the judges of the courts of review of the 20 states showing over the average of 34 appeals is $5450.[12] While the salary paid the judges of the other 24 states averages $5870. In the eleven states that select their judges other than by popular elections, only three pay more than $6000. Obviously the judges of these states are not distinguished from those of other states so much by the remuneration given them as by the method of their selection. And if any conclusion is warranted by the information collected, it is that in the states that have removed the choice of judges from the heat of political elections, better results are obtained and litigants are less disposed to exploit their courts.

The character of our courts conforms measurably to the ideals and common sense of the people who are responsible for them. The prescience of the framers of the constitution who provided for a life tenure of office for our Federal judges and referred the matter of their selection to the head of the government, is vindicated by the men of high standing who occupy those places, by the efficiency of the Federal Courts and the respect in which they are held. In those states in which the people have provided a method by which they place upon the bench men who are best fitted to perform the great public service of judge of a court and have adopted a sensible judicial system, their wisdom is shown by the high efficiency of their courts.

But where the people confuse the delicate responsibility of selecting judges to preside over their courts, with the parcelling out of offices and promoting the fortunes of political favorites; where a mistaken democracy dims the vision that should discern the high functions of its courts, with considerations of personal favor, political bias and parsimony; where they elect stupid legislators to enact endless, ill considered laws to control and confuse the courts, their folly is planted where it will long live and thrive to plague its authors who vainly cry out against the evils they have wrought.

GRANT FOREMAN.

*Muskogee, Oklahoma.*

[12] Reports of the clerks, and The American Year Book.