of evidence and let the entire transcript of the proceedings go up to the appellate court. Abolish motions for new trial and bills of exceptions. Let the appellant state in his brief the points on which his appeal is based, and have the brief served on opposing counsel fifteen days before the hearing in the appellate court. Let the appellate court render final judgment in all cases, civil and criminal, increasing or diminishing recoveries in civil cases and sentences in criminal cases, in its discretion. One verdict by a jury is enough. It seems to me a solemn farce for a case to be sent back two and three and four times for re-trial before a jury. Such a thing should be legally impossible of occurrence. The victor in such cases finds himself vanquished at the conclusion. The law has kept the word of promise to his ear and broken it to his hopes. It has given him a Barmecide's Feast.

"6. Allow no appeals in misdemeanor cases. The pardon board and the governor can be trusted to take care of an occasional miscarriage of justice in that class of cases. Allow no appeals in civil cases where the amount in controversy does not exceed five hundred dollars in value. Where a less sum is involved neither side can really afford to appeal, the poor man least of all.

"7. Abolish the pardon board and discourage in every possible way the miscellaneous signing of petitions for pardon by people and the granting of pardons by the governor except in rare and unusual cases. Our people have acquired a Gallic instability of character. They have developed a sentimentality which seems to abhor punishment for crime. Jurors who convict a man of a crime involving life imprisonment will sign a petition for his pardon within a brief while after conviction. It is a safe bet that Mrs. Maybrick could not have been kept in any American prison for as much as five years, even if there had been no doubt whatever of her guilt. We have much to learn from England in firmness and stability of character, as well as in adherence to law and the judgments of the courts."

In conclusion Mr. Hitch said: "The General Assembly of Georgia convenes within a few weeks, and I would suggest that this association memorialize the governor and through him the General Assembly to create a commission of fifteen distinguished citizens who shall be charged with the duty of studying the evils which have grown up under our present procedure, of making diligent inquiry into the laws of practice and procedure in other States and countries, and of reporting to the General Assembly in 1912 with a plan for the reorganization of our judicial machinery, and for a thoroughgoing reform and revision of all our laws of administration and procedure, civil and criminal, to the end that justice may be done speedily, economically and with inexorable certainty and precision." R. H. G.

Attitude of Bench and Bar Toward Reform in Judicial Procedure.—A recent number of the *Central Law Journal* (vol. 71, pp. 327-329) contains an editorial in which the mental attitudes of the bench and bar toward judicial reform are contrasted. Judge Evans of the Supreme Court of Alabama is quoted as saying in a recent opinion: "Our system of pleading is like an exogenous plant, whose capacity for multiplying limbs is only limited by the climate and the fertility of the soil. * * * What the system should be in this State could in my opinion best be devised, after a most thorough investigation into the workings of the different systems of pleading of the different States

and countries of civilization, by a body of men most learned in the law and altruistic in character. It may be true that the common-law system has its snake heads, but it seems to me that in nearly every instance where one has been cut off by our legislature, two have grown out to take its place."

Thereupon he brings his digression to a close as follows: "Do I object to the system? I can't say that I do. While as a citizen and a judge I deplore it, yet as a lawyer and dialectician I rejoice in it. As a means for the administration of justice, its efficacy is to be doubted; while as an intellectual gymnasium its appointments could scarcely be improved upon."

"We believe that, in general aspect, the portrayal of the Alabama situation may be considered by our readers applicable in other States, but we dissent from the view that members of the bar, as lawyers and dialecticians, may rejoice therein. Furthermore, we see little in the system as 'an intellectual gymnasium' for special laudation.

"The system fosters astuteness more than acumen, expertness more than erudition, cheese-paring more than breadth in interpretation and trivialities in literalness more than the spirit of a noble science. The evil in our administration of justice is being as freely acknowledged by lawyers as by judges and with neither appears a more sincere desire to have this evil corrected. It is the 'bent' of mind it has produced in the bar and the bench which we will attempt to portray.

"At the threshold of this attempt we will assume that an environment in the evil has been created for practitioner and for court. It has produced exigencies which have caused both to yield. It has made the practitioner devote no inconsiderable, if not the greater part, of his attention and effort to the obstructing rather than the facilitating of the administration of justice. It has overwhelmed the court so that it cannot 'possibly investigate' sufficiently to 'understand the law.' Therefore, the environment accentuates these exigencies the more it is prolonged.

"The bar has come to regard successful practice of law to consist in avoiding, and interposing obstacles to, a trial on the merits, notwithstanding that the shibboleths of the codes are that pleadings shall contain plain statements of facts constituting actions and defenses, and that they shall be fairly and freely construed in the interests of justice. This is not saying that they relish this style of success, but merely that it is the only way that is open to them under the lawless law that is to be administered.

"In their Sisyphean efforts to roll stones of principle to the top of our system's hill, only to see them roll back to its base, if they are lawyers with ideals worthy to be cherished, their minds incline to the desire that the machinery of justice shall be scientifically exact. Under any other plan they constantly encounter judicial whims they cannot anticipate and they reap discomfiture from rules as uncertain as the length of 'the chancellor's foot.'

"Neither is the practitioner inclined to believe that, because desultory or interested efforts have not produced a scientific system, which by reason of its certainty will insure the largest measure of justice, such a system is unattainable. The harder he struggles with a loose, disjointed, uncorrelated affair, the more he yearns for its opposite, and that for which one most yearns, the more clearly it appears in the horizon of endeavor.

"Upon the judge the environment presses in a wholly different way. His

prime purpose is in reference to a concrete result—the disposition of a cause on the merits. He thinks of precedents, but they are more like restraints than guides. It is natural to every man to believe that he is possessed of an intuitive sense of justice which needs no prods or fetters. His inclination is to debate within himself, in each case, whether he should go the length a precedent invites or stop at the point a precedent defines. If the precedent is not in accord with his own sense of justice, he is inclined to distinguish it away or squarely repudiate it. In a word, he wishes to do justice, but it is his own justice he wishes to do.

"Further than this, he wishes, if he can, to do justice in his own way, and rules and forms may seem to him either as merely declaratory of his own plan, and, therefore, largely superfluous, or he is impatient of them as making him do something he does not wish to do. Also the judge tires of unending discussion about the interpretation and practical application of these mere accessories of the law.

"That a court cannot go directly to the heart of controversies it is established to decide, after it has tried so hard to end discussion about preliminaries, is a covert reflection on its intelligence, and it is merely human they should become weary about them. Also it may be said that just as the practitioner is inclined to believe that fixed rules are the only safe course, judges may conceive themselves able to mould a less exact system into a good working plan. At the same time, if judges were left to devise and formulate their own system, they would make each rule as universal as they could and one regulation consistent with another. There is sufficient disposition on the part of everyone to try to do this much. The judge, like the counsel before him, wants certainty, but the judge may not care so much about its according with old precedents as the counsel. The judge would be willing to trust to the judiciary developing and correcting the accessories to justice, while the counsel might think that this development and amendment would endanger the harmony of an original plan.

"Something, all agree, must be done. What is the best course to pursue? To our mind legislative tampering with a code is a distinct failure. Responsibility should be placed somewhere else. We believe there is but one of two methods left—either that suggested by Judge Evans or to devolve the duty on the judges of courts of record." R. H. G.

Criminal Procedure.—The following is taken from the *National Corporation Reporter* of August 31:

"In a recent address before the New Jersey Bar Association, its president said that 'a more complete, wise and excellent structure of criminal legal procedure than that furnished by the common law for the protection and security of the individual and the punishment of evil-doers, is not to be found in the code of any nation upon the face of the earth. It does not contain a single requirement that has not been the direct result of the experience of ages.' We presume that the learned speaker referred to criminal legal procedure as it exists to-day in this country, for in England, until long after our separation from that country, a person accused of crime could not testify in his own behalf and was denied the services of counsel on his trial.

"It would be interesting to have the opinion of an intelligent layman on this optimistic description of criminal procedure—some layman who, for a year, had kept track of the crimes committed, let us say, in the city of Chicago, of