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Procedural Delay in California

THE subject of procedural delay is one that has attracted a great deal of popular attention for many years. Magazine articles often treat of cases in which justice delayed is justice denied, but none of them seem based on accurate information as to whether the cases they describe are the exception or the rule.

To determine this question, the writer has made an examination of some 20,000 cases filed in the Superior Courts for San Francisco, Sacramento, and Yolo counties, the San Francisco Justices' Court, and the Federal Court for the Northern District of California. The cases examined comprise all those filed in these courts during 1913, which was selected as a typical year and one sufficiently pre-war to permit the great majority of cases filed in it to reach judgment unaffected by war conditions.

Tables I[1] and II[2] give a general idea of the results of this

[1] TABLE I

The Average Time in months required for a Case to reach Issue and Judgment in the different Courts.

San Francisco Superior Court

	To Issue	*To Judgment*
Default Cases	.....	2.3
Contract	.....	3.4
Divorce	.....	1.9
Unlawful Detainer	.....	.4
Contested Cases	5.2	7.4
Class 1 (no demurrer)	4.1	.....
Class 2 (demurrer)	5.7	.....
Class 3 (demurrer and amendment)	9.3	.....
Contested Contract Cases	5.8	11.9
Class 1 (no demurrer)	4.3	9.8
Class 2 (demurrer)	5.8	12.8
Class 3 (demurrer and amendment)	8.9	13.7
Contested Divorce Cases	1.4	2.6
Contested Unlawful Detainer Cases	1.6	3.2
Contested Personal Injury Cases	5.2	8.6
Class 1 (no demurrer)	4.5	.....
Class 2 (demurrer)	3.1	.....
Class 3 (demurrer and amendment)	6.1	.....
Contested Foreclosure and Ejectment	.....	5.7
Contested Accounting, Cancellation and Fraud	9.3	11
Class 1 (no demurrer)	6	.....
Class 2 (demurrer)	8.4	.....

investigation. It is the purpose of this article to analyze these results and consider whether on the average procedural delay in California is greater or less than is socially desirable.

The efficiency of the administration of justice depends primarily upon three factors: the certainty, the speed, and the cost with which justice is administered. It is possible to over-

Class 3 (demurrer and amendment)	18.7	-----
Federal District Court		
Contested Cases	6.4	16.6
Contested Personal Injury Cases	5.5	15
Sacramento Superior Court		
Contested Cases	3.5	8.4
Class 1 (no demurrer)	1.9	3.8
Class 2 (demurrer)	2.8	10.9
Class 3 (demurrer and amendment)	7.6	15.2
Default	-----	-----
San Francisco Justice Court		
Contested Cases	2.4	5.4
Class 1 (no demurrer)	1.2	4.2
Class 2 (demurrer)	3	5.7
Class 3 demurrer and amendment)	4.1	7.6
Default Cases	-----	3.2

[2] TABLE II

Deviations from the average in per cent, as shown by the contract cases filed in the Superior Court for San Francisco.

Time of Judgment in contested cases		*Time to Issue where there is*				*Time between filing and deciding of demurrer*	
		No demurrer	*Demurrer but no amendment*	*Demurrer and amendment*			
Time Days	*Per Cent*	*Time Days*	*Per Cent*	*Per Cent*	*Per Cent*	*Time Days*	*Per Cent*
0	2/5	0	1	0	0	0	17
2	2/5	2	1	0	0	5	21
5	0	5	4	1	0	10	11
10	1 1/5	10	5	2	0	15	10
20	1 3/5	20	12	4	1	20	9
Months		*Months*				25	7
1	6 2/5	1	28	13	12	30	5
2	10	2	9	27	19	35	1
3	8	3	9	15	9	40	1
4	9	4	5	6	9	45	4
5	6 2/5	5	3	7	11	50	1
6	8	6	3	4	9	55	0
7	5	7	1	3	2	60	0
8	4 2/5	8	2	2	5	65	0
9	3	9	2	2	2	70	1
10	2 4/5	10	1	2	2	75	1
11	2 2/5	11	3	1	3	80	1
Years		*Years*				85	2
1	19	1	3	2	14	90	0
2	5 1/5	2	2	2	2	95	1
3	4	3	1	2	2	100	7
4	2 4/5	4	1	1	2		

emphasize any one of these elements. A court may decide every case presented to it with absolute justice, yet it may fail in its duty to the community. The cost in time and money of getting justice before that court may be so great as to result in an absolute denial of justice in the majority of cases.

A man owed $55 for groceries. He was sued in the justice court; he appealed, and there was a new trial in the circuit court, where a non-suit was granted because the plaintiff could not furnish a bill of particulars. On appeal to the supreme court it was decided to be unnecessary for the plaintiff to furnish the bill of particulars and a new trial was ordered. Upon the new trial the plaintiff recovered his $55.[3] But at what a cost! There had been three trials and an appeal. An attorney's bill will amount to $100 at the very least, unless he charges off the case to advertising or charity. Several of the large firms in San Francisco figure that they lose money if they charge less than $200 for drawing the papers in a simple case, consulting the witnesses and appearing once in court. A few of the leading trial lawyers charge $500 a day for their services. Win or lose, the attorney's fee must be paid. Then there are the expenses of the litigation: filing fees, jury fees, costs of printing briefs on appeal, etc.—altogether a formidable list and rnnning into several hundred dollars. These costs the winner may be able to recover from the loser, but whoever pays, the loss to society is still there. Then there is that part of the salary of the judges and clerks, rent of buildings, etc., which is attributable to this case, to be taken into consideration. This is no less a cost because not borne by either litigant. Altogether it seems impossible that the cost of collecting that $55 was less than $500 and probably it was over $1000. This is the first point to be considered: Is the justice obtained worth the cost of obtaining it?

As where small amounts are involved the cost of litigation is the primary consideration and not the quality of the justice administered, so in other cases the time required to obtain a judicial determination of the controversy may be the important element. Suppose a wage-earner is run over and injured by a street-car. If the injury is not permanent, it entails only additional expenses and loss of earning power, during the period of recovery. If it is permanent, it entails very likely permanent loss of earning power. Or again, within a year or two the injured party may be able to learn a new trade and his earnings, thereafter, may be no

[3] Stocklen v. Barrett (1911) 58 Ore. 281, 114 Pac. 108.

less than before. Even if the injury results in death, the orphaned children will grow up eventually and no longer need support. Even before this time, the mother may find a way to solve the problem of their support. In any case, the time when those entitled to damages need them is very soon after the injury. Whether the law allows them damages or not is probably from the social viewpoint largely immaterial, if the law takes five or six years to determine the liability. So in a personal injury case, if the wage-earner and his family, and the bulk of those suing for personal injuries are wage-earners, are to be kept from falling into a lower standard of living and efficiency, they must get justice quickly as well as cheaply. It is socially far more important that the courts do not take several years in deciding such a case, than it is that they decide it correctly.

But on the other hand, there are cases in which both time and cost are of negligible importance compared with the necessity of reaching a correct decision. If the City and County of San Francisco bring proceedings to condemn the property of the Spring Valley Water Company, whether it gets a decision within one month, one year or five years is of very minor importance compared with that of getting the property at a figure fair to all concerned.

The more money involved, the less important is the element of cost, because court costs and attorney's fees do not increase proportionately with the amount involved. Though in general it is true that justice becomes relatively more important than speed, the more there is at stake, this does not always follow. In a quiet-title action, where the plaintiff is in possession, but wants to clear his title so he can more readily sell the property, the land may be of small value and yet a delay of a year or two in the litigation may not be vital.

It is evident then that though a correct decision is of prime importance, it can be bought at too great a cost in speed and money and that the relative importance of accuracy, speed and cost is not fixed, but varies with the amount involved and the nature of the action. Let us now turn to the cases and see how these principles are exemplified in them.

In the Superior Court for San Francisco the average time to judgment is seven months in contested actions and two months in default actions. If the contested divorce suits, very few of which are really contested, be left out, the average time in contested

actions is over nine months. Only cases in which the defendant did not appear, or appeared only to waive time to plead, are considered default actions, thus excluding cases in which after the defendant had entered a pleading either he or the plaintiff defaulted. All others are classified as contested, even though the defendant appeared only to facilitate the plaintiff's recovery.

Though the average time elapsing from filing the complaint to judgment by default is two months, many of the cases differ greatly from the average. Four per cent of the cases, for example, take over a year. Why it should take over a year to obtain a default judgment it is hard to explain. Perhaps the plaintiff was unable to obtain service on the defendant until nearly a year had elapsed. Perhaps he was unable to find any property of the defendant for a year or so and did not want to go to the expense of taking a judgment until he could find property to levy on. Several attorneys do not enter the default judgment where small sums are involved and the defendant is apparently execution-proof. Besides saving expense, this practice has the advantage of making it unnecessary to renew the judgment every five years, because the statute of limitations does not commence to run until entry of judgment. Some cases, on the other hand, take less time to judgment than the time within which the law allows the defendant to plead, because the defendant appears and waives his time to plead.

Two months does not seem to be an unreasonable length of time for the average default case. It takes considerable time to find and serve the defendant. When served, the defendant has ten days to answer if served within the county and thirty if served without. The defendant may be in default for several days before the plaintiff's attorney discovers the fact. Then several days more may elapse before the attorney gets time to draw up the default judgment and present it to the court. Usually there is not enough involved and speed is not sufficiently important to justify an attorney in dropping his other work and obtaining a default judgment with the greatest possible speed.

In cases of unlawful detainer, where a tenant is wrongfully remaining in possession of the premises and the landlord is vitally interested in getting him out as quickly as possible, we find attorneys able to act with lightning-like rapidity. In such cases the average time to default judgment is less than twelve days. The law allows the defendant three days in which to plead, so that a

twelve-day average means that it takes the landlord's attorney on the average less than nine days to serve the tenant, enter the default, draw up the judgment, get the judge to sign it and then file it. Truly, there are none of the law's delays here!

The time to judgment may be divided into time to issue and time from issue to judgment. The time from issue to judgment might well be again divided into time from issue to trial and from trial to judgment, but in the great majority of cases less than a week, and usually not more than a day or two, elapses between trial and judgment. The average time to issue is five months; thus leaving two months for the average time from issue to judgment. Most of the time from issue to judgment represents the time required for each case to get from the foot to the top of the trial calendar, or the length of time the court is behind in its work. The speed with which some cases are heard seems to indicate either that they are not contested or are very short cases which the court can hear at odd moments, or they are actions in which the court recognizes the necessity for speed. But a considerable proportion of the delay is not due to the mass of legal business, but to the leisureliness with which courts and attorneys are accustomed to work. Unless there is something very urgent about a particular case, both court and counsel feel that an objecting attorney should not be forced to issue under a couple of months. If any attorney wishes to delay the trial of a cause, especially if he is not too punctilious about the truth of his excuses, there are many ways in which, even with an empty court calendar, he may do it.

As the average time to trial is not the same for each action within a particular class, so it is not for each class of cases. For example, it takes six times as long from issue to trial in contract as in divorce and twice as long as in personal injury. The actions which take longest to issue also take longest from issue to judgment. Though the court in some instances recognizes that particular cases or kinds of actions require greater speed than others, this is not done to any considerable extent. Contested divorce suits take only a month from issue to judgment. This may be because the court recognizes the social importance of a speedy decision in divorce cases, but probably it is because 80 per cent of the so-called contested divorce suits are not contested in the sense that one party wants a divorce and the other wishes to prevent its being granted. The defendant has appeared to

facilitate the granting of the divorce, to combat the granting of alimony or to get a divorce himself on a cross-complaint. In such a case he is just as anxious as the plaintiff for a speedy hearing of the cause.[4]

Unlawful detainer is undoubtedly a real instance of the law recognizing the importance of speed. From the time when the great landowners controlled the courts of feudal England, the necessity for a speedy ousting of wrongfully holding over tenants has always been recognized by the law. Another reason for the speed with which actions for unlawful detainer are handled is the simplicity of the issues involved. Of course, one can imagine an unlawful detainer case in which it would take a great deal of time to serve the defendant, draw the papers, hunt up the witnesses and prepare for trial. But in the average case of unlawful detainer these things are comparatively easy, much easier than in a personal injury case, for example. Suits for injunction form another class of cases where the court recognizes the necessity of speedy action. But these are exceptions. Let attorney Brown argue to the court that his personal injury case should be put ahead of attorney Smith's contract case because in his case his client is in the hospital and his wife and children need immediate relief. The judge would undoubtedly reply that the poverty of his client was unfortunate, but could not be allowed to interfere with the regnlar administration of justice.

The time between filing the complaint and issue depends upon the number of legal steps required to reach issue as well as the difficulty of serving the defendant. According to the legal steps employed, the cases are divided into three classes: (1) Cases in which the defendant filed an answer but no demurrer. In such a case there may be a demurrer by the plaintiff, a cross-complaint, answer to it, and one or more amended complaints or answers. But in the majority of cases in this class the only pleadings filed are complaint and answer. If more than one answer is filed, the time to issue is taken to be the time up to the filing of the last answer. (2) Cases in which the defendant filed a demurrer, as well as an answer, but in which the demurrer did not lead to an amendment of the complaint. In these cases, of course, no demurrer was sustained, neither did the plaintiff amend his complaint except upon trial. There may or may not have been

[4] The above conclusion is based on 2000 divorce cases examined at the same time this investigation was made.

amended answers, demurrers of the plaintiff or cross-complaints. (3) All other cases ending in an issue of fact, or more specifically cases in which there was an amendment of the complaint and demurrer filed. The demurrer may or may not have been sustained.

The average time to issue in Class 1, cases in which there is no demurrer, is over four months; in Class 2, cases in which there is a demurrer but no amendment, it is nearly six months. Thus it takes in cases in which there is no demurrer over a month and a half less to issue than in those in which a demurrer is filed and overruled. The average time from filing the demurrer to judgment on demurrer is from fifteen to seventeen days. Ten more days can be accounted for by assuming that the defendant always takes all the time allowed by law to answer, since when a demurrer is overruled it is customary for the court to allow the defendant ten days to answer. But even this assumption leaves at least twenty days unaccounted for. In cases in which there is no demurrer an extra pleading is filed in 25 per cent of the cases, while in cases in which there is a demurrer on the average 1.16 extra pleadings are filed per case—a difference of 91 per cent. Thus in nine cases out of ten one more pleading, cross-complaint, amended answer, demurrer of plaintiff, or the like, must be filed in cases in which there is a demurrer than in cases in which there is no demurrer. If the average delay occasioned by filing the additional pleading amounted to only twenty-two days, this would account for the difference of twenty days in the figures.

The average time to issue in cases in which there is a demurrer and amendment is over nine months. This is over three months longer than it takes in cases in which there is a demurrer, but no amendment. This three months comprises the time required to file the amended complaint and an additional paper in 45 per cent of the cases. One and sixty-one one-hundredths additional pleadings were filed on the average in each case in which there was an amendment, as against 1.16 in each case in which there was a demurrer but no amendment. In the cases in Class 2 it took twenty-two days on the average to file an additional pleading and one was filed in 90 per cent of the cases. In the cases in Class 3 there is an additional paper to be considered in 45 per cent of the cases. So it ought to add just half as much time as the additional pleading in the cases in Class 2, or ten days. If the time required to file the amended complaint averages the

same as that required to file additional pleadings, it takes twenty-two days. So to file an amended complaint and an additional pleading in 45 per cent of the cases should take a little over a month. But the difference between the time to issue in the cases in Class 2 and those in Class 3 is over three months.

The impossibility of accounting for the difference between the time to issue in the cases in Class 2 and those in Class 3 on the basis of the number of papers filed, shows that there are other reasons for the difference. The desire of the parties, or one of them, to delay the determination of the case is undoubtedly as potent a factor in determining the time to issue as the number of pleadings which must be filed to reach issue.

As mentioned before, many cases are brought not because there is a dispute between the plaintiff and the defendant, but because an action is the best way for the plaintiff to establish his right. In such a case, the defendant naturally will not file a demurrer, so they will decrease the average time to issue of the cases in Class 1, but not of those in Class 2. But if there is any considerable number of such cases, why should not there be a greater difference in the average time to issue between Class 1 and Class 2? Because the effect of such cases is offset by cases in which both sides know that the plaintiff has no intention of pushing the case, but has brought suit because of the advantage to be gained by having filed a complaint. For example, a power company does not want for the present to use a dam-site, but would like to keep competitors out. It files condemnation proceedings and keeps extending the landowner's time to plead. Finally the defendants decide to remove the encumbrance from their land, so after several years file answers to be able to move to have the cases dismissed for want of prosecution. In a large proportion of such cases no demurrer will be filed and so they raise the average time to issue of cases in Class 1 as compared with those in the other classes.

There is also some difference between the nature of the cases in Class 2 and Class 3. Demurrers are more likely to be sustained in complicated cases in which it takes a long time to draw the papers, than in simple cases. The greater the desire of the defendant for delay, the harder he will fight to have his demurrer sustained. So undoubtedly, cases in which a demurrer is sustained are on the average more complicated and harder fought than those in which the demurrer is overruled. Besides, the

plaintiff is discouraged by having a demurrer to his complaint sustained. Often over a month elapses from the sustaining of the demurrer to the filing of an amended complaint.

Out of every 100 cases in which the plaintiff recovers a judgment for money only, he recovers under $1000 in 66, between $1000 and $5000 in 25, and over $5000 in nine. The cases where between $1000 and $5000 is recovered take the same time to issue and judgment as cases in which under $1000 is recovered or in which the defendant obtains judgment, but those over $5000 take four months longer to issue and five more months to judgment.

To sum up, the time a case should take to issue and to judgment ought to depend upon the amount involved and the nature of the case. The time taken does vary with the amount involved. It varies also with the nature of the case, to the extent of giving remarkably speedy recovery in a few actions, notably unlawful detainer. But with a few exceptions the variation is not according to the social need for speed or slowness in the particular case or action but depends upon whether a demurrer and amendment is filed and upon the desire of the parties or one of them to prolong the case.

The difference in the time to issue in cases in which there is a demurrer and those in which there is not, shows that the obvious way to delay is to file a demurrer. For this reason every few years an attempt is made to abolish the demurrer. But abolishing the demurrer altogether would result either in greater delays or in great injustice. A demurrer usually represents merely a technical objection to the sufficiency of the complaint raised to gain time or tire out the plaintiff, but it may go to a point vitally affecting the rights of the parties. Under some name and at some time in the proceeding, the defendant must have a right to raise the objections now raised by demurrer. Suppose for example, that the defects now covered by the demurrer may be objected to only at the trial. If the judges would on trial sustain objections to pleadings and send the parties to amend with the same frequency that they now do, a great deal more, rather than less time would be consumed in getting to issue.

That reaches the real crux of the question: the frequency with which judges sustain frivolous objections to pleadings. The writer recalls an instance where an industrious search through a six-page complaint for an ambiguity finally resulted in the discovery that it was impossible to tell where the accident occurred.

The complaint alleged it was at a certain place on McAllister Street in San Francisco, but it did not allege that McAllister Street was a publicly dedicated and accepted street, so of course the "publicly dedicated and accepted" McAllister Street was not meant. Ridiculously enough, the court sustained the demurrer. The sustaining of demurrers on arguments like the above is one of the things that bring the law into contempt. But to take away from the defendant the right to object in some manner to an ambiguous complaint would result in great injustice. Unscrupulous attorneys would make a practice of so drawing their complaints that the defendant could not tell what was meant and would be at a great disadvantage in framing his answer.

The only real remedies, then, for the abuse of the demurrer are so to raise the standards of the bar that attorneys will draw better pleadings and so to educate judges that they will treat pleadings with greater liberality. But both these reforms would be very difficult and the method of their accomplishment beyond the scope of the present investigation. Without any such far-reaching reforms it may be possible, however, to reduce if not entirely to obviate, the evils of the demurrer.

When the legislature enacted that attorneys must attach to each demurrer a certificate that it was in their opinion well taken, it was thought that this certificate would deter attorneys from filing frivolous demurrers. But unfortunately this certificate has come to be regarded as a mere form like the verification of pleadings. If any proof is necessary for this statement, it is furnished by the cases in which a change of venue was granted. In such a case, if an answer is filed, the case is ready to be set for trial in the new jurisdiction and little time is lost, but if a demurrer is filed, the court will leave its determination to the court which will try the case and hence considerable delay will be gained. So naturally in every case examined the attorneys decided that the complaint was demurrable.

The best way to curb the evil of the frivolous demurrer would seem to be to require the defendant to file his answer at the same time that he files his demurrer. This would entirely obviate the delay in cases in which the demurrer was overruled. As a demurrer is sustained in the San Francisco Superior Court in only a third of the cases in which one is filed and in the San Francisco Justices' Court in but one-fiftieth of the cases, that would save a great deal of time. It would probably also result

in many less demurrers being filed. To make doubly sure of doing away with the frivolous demurrer, also require the defendant to make a small deposit, say of $10, when he files his demurrer, which would be paid to the plaintiff if the demurrer is overruled. These two remedies ought to do away with nine-tenths of the demurrers in the justices' court and at least half of those in the superior court.

A demurrer of the defendant is filed in two-fifths of the cases in the justices' court and over half the cases in the superior court in San Francisco. The plaintiff demurs only a tenth as often as the defendant. Like the defendant, the plaintiff has one demurrer in three sustained. This shows what an enormous drain upon the time and energy of judges the necessity of hearing demurrers really is. If the two remedies just suggested would reduce the number of demurrers filed even a half, the problem of the demurrer would be much less serious. The average case would reach issue very much more quickly than it now does. The time of the court taken up by demurring would be reduced; hence the courts would not be so far behind in their work and the time to judgment would be lessened.

It is necessary to do away with the frivolous demurrer because the time to issue and to judgment is in most actions far too long and should not depend to a large extent upon the ability of the defendant's attorney to discover technical objections to the complaint. But this will not provide for flexibility in the time to issue and to judgment depending upon the nature of the action or of the particular case.

Divorce is the quickest action. Because so few of the so-called contested cases are really contested, there is little difference in the time to judgment between default and contested cases. The average time to interlocutory decree, between two and two and a half months, is certainly as short as is socially desirable. The short wait between issue and judgment, about a month, shows that the judges who handle divorce suits are much less behind in their work than the rest of the judges.

Unlawful detainer is the next quickest action. The average time to judgment is only twelve days if the tenant defaults. That is certainly permitting a landlord to eject his tenant with as much speed as is socially desirable; it may even be too rapid.[5] But if

[5] R. H. Smith, Justice and the Poor, pp. 14 and 59.

the action is contested, it takes over three months to judgment, which is clearly too long for such an action.

Personal injury cases require eight and a half months to judgment in the lower court and over five months to issue. This is a ridiculously long time to take to issue. The cases before the Industrial Accident Commission average less than two months to judgment. As stated before, the time that the plaintiff needs compensation for his injury is, from the social viewpoint, immediately after the injury, not eight months after he files suit. The plaintiff has little money in most cases and so hires an attorney on a fee contingent upon recovery. The attorney usually stipulates that he shall receive from one-third to one-half the amount recovered. As the plaintiff probably obtains a judgment in his favor or a settlement in three-fourths of the cases, the attorney, in the average, gets very well paid for his services. But the plaintiff is in no position to bargain and one-third to one-half has become established as the market rate.[6] The attorney for the defendant usually knows that if the case goes to the jury his client will lose, but cannot agree with the plaintiff's attorney on the amount of the settlement. To bring the plaintiff's attorney down in his demands, he tries to delay the case as long as possible and cause the plaintiff's attorney as much work as he may, so the latter will think he has more to gain by a settlement than by a bitter, long-drawn-out battle. The defendant's attorney, therefore, resorts to all the methods of delay known to the profession and with such success that it takes over five months to reach an issue, when it should take less than a month, if the social objects to be served were considered.

Granting that the time to issue and to judgment in personal injury cases is excessive, what should be done about it? If the courts are unable or unwilling so to speed up their procedure as to take not more than double the time required by the Industrial Accident Commission, all personal injury cases should be turned over to a commission. But the courts could very easily handle personal injury cases as fast if not faster than the Industrial Accident Commission. Let them require the defendant to appear before a master within five days after he is served and show some good reason why he should not have his answer filed within five days and try the case within a month. This may sound revolu-

[6] Whether contingent fees should be allowed at all is questionable, but if allowed they should be regulated by the court. See R. H. Smith, Justice and the Poor, p. 85.

tionary, but it is what is now done in England. There, in nearly all cases in the superior courts, the parties appear before a master who determines the time allowed for each step in the action according to the exigencies of the particular case.

What has been said of personal injury cases applies, though to a less extent, to other actions. In nearly all actions, the cases take far too long and cost a great deal too much. It should not take eleven months with the attorney's fee now necessary, because the attorney must draw the complaint with technical perfection, look up authorities, argue a demurrer, etc., to collect a $300 note. The procedure of the Superior Court of San Francisco is keyed to handling large cases in which time and cost are subordinate to a correct determination of the issues. But it is used to decide small controversies. When large amounts are involved, however, does not the court procedure result in substantial justice? Probably not, but there are so few such cases that it is impossible to tell definitely. In such cases the court seems often to assume that its ordinary speed is appropriate for a $300 controversy and to slow down still further. As far as the cases filed in the San Francisco Superior Court in 1913 are concerned, the law seems to deserve nearly all, if not all, the opprobrium that has been cast upon it for its delays.

The San Francisco Superior Court has been used as an example. The same conditions exist in the superior courts for Sacramento and Yolo counties and undoubtedly also in all the superior courts of California. The "law's delays" are of course not so great in the San Francisco Justices' Court, but considering the difference in the amount involved, the showing of the justices' court is no better.

The situation in the second department—the first department was not investigated—of the Federal District Court is much worse than that in any of the state courts. Considering the number of masters and clerks a Federal judge can summon to his aid, it is ridiculous that one judge cannot keep the calendar clear with less than two hundred civil cases filed yearly. If that is impossible, how do the Chicago Municipal Court judges dispose of over 2000 cases per judge annually?

The average time to issue is over six months and to judgment over sixteen months in the Federal District Court as compared with five and seven months in the San Francisco Superior Court. The excessive delay seems to be due to the filing of many more

papers per case in the Federal than in the state courts and to filing many more briefs, such as briefs on demurrer and motions for a new trial, and to the greater length of time questions are kept under submission. All this results in a much greater correctness of decision than in the state courts. In cases in which important social interests are involved, the Federal court should be commended for the time and care with which each question is considered. But when the court is dealing with personal injury and death cases, it works with almost the same slowness and precision. The average time of over five months to issue and fifteen to judgment in personal injury cases often undoubtedly results in a positive denial of justice. It might even be socially more desirable if the Federal court would decide each personal injury case as soon as filed by rolling dice, rather than take fifteen months to reach an absolutely just decision.

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