

LEGAL MISCELLANY.

LAW IN THE UNITED STATES.

The difference in both the study and the practice of the law, between the United States and England, is very considerable, and it is becoming greater every day. In England, the lawyer goes to his books for *authority*, but in this country we have comparatively little that is, in the strict sense, authority. Nothing, in fact, is such, but the decisions of the highest tribunal of one's own state, and of the United States. For, in regard to the adjudications of the English Courts, before the settlement of this country, there is always room, theoretically at least, for the doubt, whether our forefathers brought with them a particular doctrine, as adapted to their altered relations and circumstances, while the mass of the law now administered in the Courts at Westminster, was settled at a later period; and it is not, therefore, strictly conclusive upon us. Then we have already reported in this country, more cases than are found in the English books; we have thirty-one states, and no tribunal is obliged to follow the decisions in a sister state. Yet all these cases that are not absolutely binding, have a weight as *quasi* authority. And no practitioner can properly or safely appear before a Court on any question of difficulty in the law, without referring to all the English and American decisions that bear upon the point.

When we consider the accumulation of reports, that the next fifty, not to say five hundred, years will produce, it is not difficult to see that to keep track of all the reported cases, will be a severe tax upon the exertions of those gentlemen in the profession, who spend their choicest hours in smoking cigars, or lounging at the country inn. And not only to those gentlemen, but to many youths of pretty sober habits, the prospect must look somewhat appalling.

Now, what is to be done about it? In the first place, those to whom the Lord has never given brains, will do best to leave the law, and seek some other calling. The profession thus cut down to the *paying point*, let each remaining man strip the ruffle from his shirt-bosom, and go to work. Let him feel below the rubbish of

cases for the solid timber of *principle*, and from such material by such men, let the fabric of our future American Jurisprudence be reared.

To be more precise, lawyers must arrange and argue their cases more upon principle, not, however, to the neglect of authorities; and judges will, as a necessary consequence, ground their decisions more upon principle. The writers of our text books must give us principles, supporting them by cases, only as spiles buried in the earth support the structure above that is to be seen and used. In this way, the law will become an instrument of the highest culture to its practitioners; and, although a competent knowledge of it will then, as now, be unattainable in a day, yet it will be quite within the reach of the human intellect for all future time. Our jurisprudence will become, in some respects, more like the European, but vastly better, departing essentially from the technical and unscientific form it wears in England. But if we follow strictly the English track, we shall find it, not tolerable, as there, but owing to our very different circumstances above adverted to, utterly intolerable. The only way of deliverance, open to us in such a case, will be that of codification, which, however good in itself, would not be good laid on such a foundation.

Another consideration is important, because it is practical. If we leave the future entirely out of view, no lawyer, even at the present time, can do himself credit, or his client the highest service, or open for himself a position of eminence in the profession, unless he studies and argues his cases upon principle. Nor can he do this, unless he makes the principles of the law, in every department, a subject of constant meditation and research. Authority is good and indispensable, but not "good to be alone;" it should always be found wedded to principle.

J. P. B.