

In the other States, Louisiana of course excluded, the maxim generally obtains. *Clarke vs. Hawkins*, 2 Ames, R. I. R. 219; *Warren vs. Skinner*, 20 Conn. 559; *Rose vs. Hall*, 26 Conn. 392; *Jones vs. Perkins*, 7 Cushman Miss. R. 139; *Brown vs. Cambridge*, 3 Allen 474; *Matthis vs. Bryson*, 4 Jones, N. Car. R. 508.

J. P.

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## LAW REFORM AND CODIFICATION.

The present Lord Chancellor, WESTBURY, who has long had the reputation of holding very radical, not to say revolutionary, views in regard to Law Reform, delivered a speech in the House of Lords, on June 12th, which would afford ground of justification for any scheme in that direction, which we have read or heard of in the last twenty years in America, during which period many and various madcap plans of reform in the law have been promulgated and defended, and some of them adopted.

The proposition of his Lordship to revise and simplify the statute law of the Imperial Parliament, which extends over forty-three or forty-four octavo volumes, embracing the period since the 20th of Henry III., is certainly a very creditable one. These, in the language of the learned Chancellor, "are printed without the least regard to order; there is no system or arrangement in regard to them. They are printed just as they had been passed, chronologically; \* \* enactments on the same subject being dispersed and scattered over an immense extent of ground. Unfortunately our legislation has been extempore. We wait till a grievance is intolerable, and then apply ourselves to a remedy. Our legislation has always been on the spur of the moment. \* \* You have no persons to assist you who are trained or educated in the great work of legislative composition." His Lordship then proceeds to discuss the process of patchwork to which a bill is subjected in going through committee, and also through the several stages of its passage, and finally comes to the very natural conclusion that even a compilation of the statute law of the realm, bringing all upon particular subjects into one chapter, and omitting such

such portions as, by lapse of time and change of circumstances, have become wholly obsolete, is a most desirable result.

The wonder to an American is that such process of revision and elimination has not been many times resorted to long before this late day. The written law of a State is a very different thing from its unwritten law. The written law is intended to embody general principles, merely, and not to reach all possible cases, as the unwritten law is claimed to do. It is easy to provide general principles, such as will embrace the majority of cases; but quite impossible to reduce any system of written law to such minuteness of specification as will meet all, or nearly all, the cases that occur.

Written laws, and written constitutions, of necessity, only embrace such facts and principles as have already transpired. They only contain, so to speak, the history and the wisdom of the past. And there is no possible objection, either in theory or in practice, to subject them, at intervals, to thorough and careful revision. And although such revisions will, in the main, be more wisely conducted, by adhering pretty closely to the general outline of the old system, without the introduction of very numerous modifications and improvements, even these are certainly not to be regarded as in any proper sense excluded from such a revision. This revision and analysis of the statute law of the realm is a thing for which the public convenience most loudly calls then, at the present time, most unquestionably; and one which we should not expect could be much longer deferred. And the speech of the Lord Chancellor is entitled *REVISION OF THE STATUTE LAW*, and the commission which his Lordship asked of the House extended no further than to a revision of the existing statute law of the realm. His Lordship intimated a hope that after the accomplishment of this desirable purpose, he should at some future time ask them to give him a committee for the purpose of ascertaining what is the best mode by which the future legislation of the country may be conducted, so as to secure an improved form in the composition of bills, all which seems to be most clearly demanded. But his Lordship then continues: "When the task of expurgating and classifying the statutes has been completed, it will be necessary to adopt

some system for revising the enormous amount of accumulated decisions, so as to check the uncertainty and confusion they introduce into the law." The learned Chancellor expends at least three-fourths of his time and force against the decisions of the Courts, just as if they could have been avoided or might have been better. The speech is, in that respect, a most remarkable document, such an one as we might expect rather from an American legislator just escaped from college or the law schools, from one just putting on the harness, rather than from one, who, like ST. LEONARDS or LYNTHURST, or any other in the position of Lord Chancellor of England, had worn it with distinguished honor for half a century, and who was then ready to put it off. The speech of the Lord Chancellor was certainly ingenious and labored; but it contained a very large proportion of exaggeration and hyperbole, not to say caricature, in regard to the evils of the uncertainty in the English law. And if we had not become accustomed to think and speak with some degree of reverence of any one who had presided in the English House of Lords, we should say that the speech was anything but satisfactory to our own mind. It was filled with claptrap and small game, antithesis and evasion, which would have done no discredit to a Westminster Reviewer, and was at the same time evidently drawn up with a view to serve a purpose; to show either his own superabundant wisdom, (which may be generally assumed, upon such difficult questions, to be nothing less than conceit), or else, to bring in doubt the learning and experience of the long list of his predecessors upon the English bench, which is scarcely less than arrogant presumption, in any one man, be he high or low, Lord Chancellor or not.

His Lordship, in moving the second reading of the bill, appealed to the House to take the matter of statute revision wholly upon trust, and grant him a commission without examination, which was done at once, by passing the bill to be enacted the 7th of July. We could not better give expression to our own feelings in regard to the puerility and shallowness of his Lordship's views of reducing the entire body of the unwritten common law of England to absolute simplicity and certainty, by means of his own personal efforts

and the aid of a committee of counsellors, than by quoting the language of Lord ST. LEONARDS on the occasion of the second reading of the bill. His lordship said, "that as to revising the decisions of the judges, so reported, the scheme was impracticable. The judges took great pains to give at length the grounds and reasons for the judgments which they pronounced, so as to satisfy all men that their judgment was mature, that it was founded upon authority, and that it was justified by principle. Any set of men who were competent to revise those judgments, to correct that which was mistaken, and to reconcile that which was conflicting, would be worthy of seats in their Lordships' House. But he was inclined to think that to embody their mere opinions in an act of Parliament would not be a satisfactory way to deal with the carefully prepared judgments of the judges; and that it would be better to leave the task of revision to the Exchequer Chamber, and to the appellate jurisdiction of their Lordships' House. As he was one who objected to a code, it was satisfactory to know that there were so many difficulties in the way, that they were not likely to have it."

The proposition of the Lord Chancellor in regard to revising the common law, and reducing it to the uniformity of a code, by the aid of a commission, occupied the largest portion of his Lordship's speech, on introducing his bill for the revision of the statute law, and, in justice to the learned author, we ought, perhaps, in all fairness, to give its outline and scope. After spending more than one long hour in stating in the most offensive and gull-catching air, the many conflicting decisions to be found in the last three hundred years, and the very great difficulty which besets a suitor and his counsel in determining precisely when and how one of these lame cases will meet its *quietus*, and whether it will really be overruled before his case will be controlled by it, his Lordship launches out into an extensive quotation of the very words of many of the most eminent of the English bench, in different courts, and at different periods, in favor of the following of precedents; and next presents a most melancholy array of evil and devastating consequences, resulting from the overruling of decisions after men had acted upon the

faith of their validity and continuance. All which has been done a thousand times before.

His Lordship then gives a synopsis of the remedy which he proposes, at some future time, to apply to heal all the infirmities of the English law, and especially its uncertainty. The process is a very simple one, easily described, but, in the language of Lord ST. LEONARDS, in its very nature "impracticable." "The first thing to be done with these reports," says the learned Chancellor, "is to revise and to expurgate them; to weed" (a favorite phrase) "them of decisions that are in contradiction with one another; when there are opposing decisions to settle those which ought to remain," (something of a task;) "to cleanse out and to get rid of all matters that are not warranted by the present state of the law," (which nothing short of inspiration and prophecy could hope to accomplish;) "and to divide the reports into three classes," (the most easy of accomplishment of any portion of his Lordship's self-imposed task;) which being stated, the results are thus enumerated: "As to the old reports, I propose that we should preserve the conclusions properly come to; that in the second period we should weed the reports of what is useless, and retain only those cases which are fit to be used as precedents; and to perform a similar work in respect to cases of the present time. The result will be a body of recorded precedents brought into a moderate compass, and occupying, we may estimate, but a tenth of the bulk of the present reports. The law thus purified and refined," &c. This is certainly a most expeditious and commendable process of elimination of all the disturbing elements in the law, and a short process for the production of the pure residuum of the very quintessence of justice and certainty; which we very often find laymen ready to accept as a problem of easy accomplishment; and the non-accomplishment of which is not seldom attributed by them to the perverseness and interested motives of the legal profession, who fear thereby the loss of their emoluments, much in the same childlike way in which many arrive at the conclusion that half the counsel who argue any cause upon the opposite sides, must necessarily act in bad faith, since they must of