THE

AMERICAN LAW REGISTER.

JULY, 1864.

LAW REFORMS AND LAW REFORMERS.[1]

The vast changes which have been effected during the past fifty years in the law, and in the mode of administering the law, in those countries which have adopted the "common law" of England, as the foundation of their jurisprudence, are but little understood by the people generally, and but poorly appreciated by the profession which is best acquainted with them. Indeed, a considerable number of lawyers (though rapidly decreasing) look back with regret upon the law as it was, and can see nothing in the reforms of modern days but (in the language of a late judge) "the crude innovations of conceited pretension." We purpose, in a brief article, to review the progress of law reform during the present century, and to sketch the character and labors of one or two of the principal law reformers.

Law reform, as a special department of thought and labor, seems clearly to have owed its origin to Jeremy Bentham. There may have been many before him who saw the gross defects of the common law as plainly as he did—there may have been some who made their censures public—but there were none who made any impression upon the public mind, and none who have left any

[1] We publish the following article for its interest as an account of the origin and progress of codification in legal practice, without expressing any opinion in respect to the value of the changes which are detailed.—Eds. Am. Law Reg.

traces of their labors in accomplished reforms, or in any broad and philosophic statement of the vices of the system. The change in the oral proceedings from French to English, the subsequent reduction of writs and pleadings from Latin into English, the statutes of jeofails, of assigning breaches, of double pleas, &c., were not the fruit of any general theory of reform, but originated in the burden of particular evils, so preposterous and so onerous, that as soon as they were fairly submitted to a legislature of laymen, their common sense revolted, and, in spite of lawyers, they swept the odious things away.

At the beginning of this century, the criminal law of England was contained in a multitude of uncouth statutes, nowhere reliably collected together, of Draconian severity, of gross inconsistency, and, of course, of little effect in staying the progress of crime. The simple story of poor Mary Jones is enough to picture the whole. This unhappy girl, married, and a mother, at eighteen years of age; robbed of her husband by a press-gang, who forced him into the navy, to be paid twelve cents per day; starving in the streets, and made desperate by the sufferings of the child at her breast, snatched up a piece of muslin, which the shopkeeper, after stretching his conscience to the utmost, swore to be worth a little over a dollar. Her heart failed her, and she laid the stolen goods back again. But she had been seen, and was arrested, tried, sentenced, and *hung*, leaving a child not a year old behind her.

The civil department of the law might, however, be supposed to be more humane and reasonable. But it was far indeed from being so. Imprisonment for debt was the almost invariable rule, and though the spirit of "innovating and conceited pretension" had so far despised "the wisdom of our ancestors" as to compel creditors to pay sixty cents per week for the support of pauper debtors, instead of leaving them to "starve in the name of God," as a pious judge congratulated himself was the rule at an earlier day (*Dive* vs. *Maningham*, 1 Plowd. 68), yet thousands of unfortunate and honest men lay entombed for years on this wretched pittance, and begging by turns beneath a grating, from the passers-by. Indeed, the public, more charitable than their laws, maintained for many

years a society for the relief of poor and honest debtors, cancelling the debts of as many of that class who had been confined for several years, for sums less than $100, as the subscriptions would allow. Can any comment upon such a fact be necessary?

The whole system of judicial procedure was obstructive to justice. The expenses were ruinous. The delays, in Chancery particularly, were almost incredible. A suit was an heir-loom in the family of a solicitor. The law of evidence was admirably contrived to shut out the truth. The pleadings and practice of the courts were absurdly technical and intricate. Of the three great courts, in which alone common law suits of any moment could be brought, one was a shelf on which dull and stupid judges were laid out of sight, to bungle over revenue cases, and such other matters as clients might—unhappily for themselves—submit to them; and another was closed against all but about a dozen advocates. Real estate was tied up with all manner of injurious restrictions. Trade was hampered by endless varieties of oppressive regulations. Married women had scarcely any rights that the law would respect; *poor* wives, especially, had no protection outside of the police courts. And, the native energy and virtue of the people having secured to them, in spite of all these abominations, some degree of happiness, though vastly less than they have now, this system was unanimously pronounced to be the perfection of human reason.

Into the midst of such a state of the law—many of the worst details of which we are compelled to leave unmentioned—was born a man who ventured first to doubt, and finally to deny, with emphasis, the wisdom of the legal system which he found in existence. This man was Jeremy Bentham.

This most distinguished of English Law Reformers was born in London in 1748. His father and grandfather were reputable attorneys in London, and the former had accumulated a considerable fortune by his professional labors. Bentham was distinguished by remarkable precocity: at three years old it is said he found pleasure in reading Rapin's History of England: before attaining the age of seven he had made respectable progress in the study of Latin and French. At the age of twelve he was entered as a com-

moner at Queen's College, Oxford; he went through the University and took his degree of A. B. in 1763, at the age of fifteen. Shortly after he commenced eating his commons in Lincoln's Inn, but attended at Oxford to hear Blackstone's lectures. To these lectures he listened without the presumption, at that time, to set himself up as a critic, yet not without some occasional feelings of protest. Returning to London, he attended as a student the Court of King's Bench, then presided over by Lord MANSFIELD, of whom he continued for some years not only a great admirer, but a profound worshipper. He took his degree of A. M. at Oxford, at the age of eighteen—the youngest graduate that had been known at either of the Universities, and in 1772 he was called to the bar.

Bentham had been educated to sentiments of the most devoted loyalty to the English government, and had breathed from infancy, at home, at school, at college, and in the courts, an atmosphere conservative and submissive to authority, yet in the progress of his law studies, beginning to contrast the law as it was with law such as he conceived it might and ought to be, he came gradually to abandon the position of a submissive and admiring student, anxious only to make the law a ladder by which to rise to wealth and eminence, for that of a sharp critic, an indignant denouncer, a would-be reformer. His father, who fondly hoped to see him Lord Chancellor, had some cases in readiness for him on his admission to the bar, and took every pains to push him forward, but in vain: his temperament, no less than his moral and intellectual constitution, wholly disqualified him for success as a practising lawyer. He soon abandoned, with disgust, to the infinite disappointment of his father, all attempts at labor in the line of his profession.

For some years he supported himself upon a very narrow income, devoting his attention to general study, and especially to the science of chemistry, which was then in its infancy, to metaphysics and to jurisprudence—the latter rather as it should be than as it was. The writings of Hume and Helvetius had led him to adopt utility as the basis of morals, and especially of legislation, and

already he began to write down his ideas upon this subject—the commencement of a collection of materials for, and fragments of, a projected but never completed code, which, for the remainder of his life, furnished him with regular and almost daily employment.

He published a great number of works between 1776 and 1827, all manifesting great ability and unbounded zeal in the cause of legal reform. The most famous of these is his "Rationale of Judicial Evidence."

In 1811 he addressed an elaborate letter to President Madison, offering, upon the receipt of a letter importing the President's approbation, and, as far as depended upon him, acceptance of his proposition, forthwith to set about drawing up for the use of the United States, or such of them as might accept it, "a complete body of law—in one word, a pannonion, or as much of it as the life and health of a man, whose age wanted a little of four-and-sixty, might allow of," asking and expecting no reward beyond the employment and the honor of it. This letter, beside a sketch of his plan, which embraced not merely the text of a code but a professional running commentary of reasons, included also a vigorous attack upon the existing system of English and American jurisprudence, and an answer to certain anticipated objections both to the plan and to himself as legislator. Mr. Brougham wrote, at the same time, to some American friends, expressing his opinion that no person in Europe was so capable as Bentham of such a task. For various reasons the proposition was not accepted.

In 1822 he published his "Codification Proposal," addressed to all nations professing liberal opinions, offering his services as legislator, and arguing in favor of a code emanating from a single mind. He was consulted on the Spanish penal code, and published some letters thereon, and similar applications were made to him from Spanish America. But the downfall of liberalism in the Peninsula, and the protracted civil wars in the late Spanish colonies, disappointed his expectations in that quarter. Becoming recognised in England as a leader of the radical party, he entered with great zeal into political controversy, and published in this connection many vigorous pamphlets. His last published work was his "Constitutional Code."

In his earlier writings Bentham expresses himself with great terseness and energy; in his later writings he sacrificed everything to precision, for which purpose he employed many new words, some of which, such as international, codify, codification, maximize, minimize, &c., have become permanent additions to the language. His analysis of human nature, on which he based his system, can hardly rank him high as a metaphysician; his employment of the exhaustive method of reasoning frequently led him into useless subdivisions and unnecessary refinements, but he had a very acute intellect, a thorough devotion to truth, a strong spirit of benevolence, unwarped by any selfish or party views. Unawed by authority, he appealed to reason alone, and having devoted his whole life to the study of jurisprudence, his works abound with suggestions and ideas as novel as they are just. In the improvements introduced of late years into the administration of the law both in England and America, many of his suggestions have been followed, often without acknowledgment or even knowledge, perhaps, of the source whence they originated. There are many more of his ideas that may yet be put to use.

The labors of Bentham, although not crowned with any immediate success, furnished an inexhaustible fund of arguments for the use of men who took a more active part in public life. Sir Samuel Romilly was perhaps the most eminent and able of these. He entered public life at a time when three hundred different offences were punishable alike with death—when murder, robbery, counterfeiting, sheep-stealing, and shop-lifting were all equally heinous in the eye of the law. His first public effort was to oppose a project for making these ferocious laws still more bloody; and during many years of public life he never ceased struggling for a reduction of the number of capital offences. He also exerted himself strenuously to reform the practice of the courts of law and equity. But all his efforts were in vain. Lord ELDON, the embodiment of blind and headstrong conservatism, was then in practically supreme power, and was able to thwart all attempts at reform. Romilly died a melancholy death in 1818, without seeing any fruit of his labors.

Other men, however, were kindled to enthusiastic endeavors by the doctrines of Bentham and the example of Romilly. Prominent among these was Henry Brougham. With a wonderful flow of language, and with untiring perseverance, he fought the Court of Chancery and all its allies. Not long after the death of Romilly, commissioners were appointed to investigate into the condition of the courts, and though composed of men by no means radical in their tendencies, it was impossible for them to avoid the conclusion that the state of things into which they examined was disgraceful to an enlightened country. A swarm of useless officers, receiving enormous salaries for doing nothing, were found in every court. Every avenue of litigation was choked up with business. The Chancellor was hopelessly behind his calendar. Though no corruption was imputed to any official, yet the state of affairs was such that even corruption could not have made it much worse.

Some moderate reforms were effected in the constitution and procedure of the courts, at the instance of the commissioners, but the judges were not disposed to join cordially in the work, and it was not until the Tory party lost its unity in 1829, that any substantial progress was made in civil procedure. Meanwhile, however, a great improvement was made in the law of crimes and punishments.

Sir Robert (then Mr.) Peel, although a leader of the Tories, gave way to the pressure of the reforming party, and introduced a series of measures, amounting to a partial codification of the criminal law, and greatly restricting the death penalty. In this case, as in many others, he adopted the ideas of his opponents, and secured to himself the credit of measures to which the whole current of his previous life had been opposed.

In 1830, the new rules of the common law courts greatly simplified the pleadings and practice of those courts. In the same year the Tories were swept out of power, and Lord BROUGHAM succeeded Lord ELDON as Chancellor of England. He went to work with vigor; cleared off the long arrear of cases, and thereafter rendered the decisions of the court with a promptitude unknown before.

From that time a constant series of reforms have been in progress. The courts have been remodelled, the law of real property greatly improved, the law of evidence reconstructed on wiser principles, and commercial law modified to meet the wants of commerce, instead of fettering commerce to abstract and unphilosophic notions of law.

The vast alterations in practice and pleading since the new rules we reserve for future consideration, inasmuch as it was one of the results of the great change effected in New York in 1848, and of that we must first speak.

The doctrines of Jeremy Bentham (of which we have heretofore spoken) met with but a very limited degree of attention, and a still more limited acceptance, in America. A young, busy, and practical people, such as were our fathers and grandfathers in the period between 1800 and 1825, are apt to take law ready made, and accept it with any rough modifications which will make it decently applicable to their condition, without critical examination and with little thought of reform on any extended scale. Had Bentham come over to this country, instead of addressing letters to presidents and governors, settled down as an American citizen, framed a code for one of the new states of the far west, and presented it to the legislature at its first meeting, it is by no means unlikely that it would have been adopted by half a dozen western states in succession, and by this time would have been law in the larger part of the free states. Just so we fully believe that, at this day, if some enterprising law-reformer would exert himself to provide for the wants of the new and thinly populated territories, such as Colorado, Dakota, Nevada, and perhaps even Kansas and Nebraska, he could secure the whole of that growing region for the experiment of codified law, which he may spend all his life in vainly urging upon New York or Massachusetts.

Such an effort must, however, be made in the very childhood of a state. The same people who would eagerly accept almost anything as a system of law at first, will, as soon as they *have* a system, and have gone to work under it, be more deaf, if possible, to suggestions of change during the first fifty years of their history,

than an old and leisurely people. In young states, all men are absorbed in the pursuit of business. Few have wealth, and none think of leisure. Defects in their laws are uncared for, until they produce some glaring injustice, when the excrescences are promptly and carelessly hewn off—often in such a way as to create greater evils. No comprehensive system of reform can be thought of, and the few who urge it are like men crying in the wilderness—or rather, like men who should from the wayside attempt to preach to passengers in a train at full speed.

The first approach to the ideas of Bentham, in any of the states which accepted the common law of England as their own, was in the consolidation of the statutes, which was effected in several states at various times, beginning, we believe, with the revision of 1813 in New York. The Revised Statutes of 1830 went somewhat further, and undertook the entire codification of some branches of the law, especially concerning real estate. It is a curious circumstance that the very authors of these statutes should have been sceptical as to the feasibility of codes, after having themselves made, of their own mere motion, the greatest stride towards codification ever known in that state.

The revision of the statutes did not, however, originate (consciously at least in the minds of its authors) in any scheme of comprehensive reform. Neither did the great and beneficent measure, by which, shortly afterward, imprisonment for debt was abolished. Indeed, this last measure was tried as a mere experiment. Many months were allowed to pass after its enactment, before it was put in force; and the law books of the time express serious doubts as to its remaining a law for even one year. It has stood undisturbed for thirty-two years, and is not in much danger of disturbance now.

By this time, however, the minds of some energetic and philosophic men had been imbued with the belief that the system of common law needed not merely patching here and there, but a general revision, and a consolidation, so far as should be practicable, into one written body of law. The first practical effort in this direction was made in respect to the procedure of the courts

of justice. We must, therefore, say a few words concerning the condition in which that procedure was, and the efforts which were made to improve it.

Notwithstanding some valuable improvements effected by the Revised Statutes, the system of practice, both at law and in equity, in the state of New York, remained in a very discreditable condition. The new rules and the legislation of 1830, which greatly improved the English practice, were not followed in America, and the procedure of the courts of New York was perhaps more complicated and technical than that of any other state in the Union. Certainly that was the general opinion of lawyers in the other states. The judges, though invested with very broad powers, declined to attempt any thorough reform, and the legislature did not know where or how to begin.

It was well, looking at the result, that these things were so. Law reform needs to enlist the sympathies and interest of lawyers, and the tedious delays and embarrassments of legal practice bore almost as hardly on lawyers as on their clients.

The actual evils of the system then in existence induced a lawyer in active and successful practice, although then comparatively young, to publish a short tract upon the subject. This appeared in 1839, and was followed by pamphlets from other and anonymous pens, all complaining bitterly of the state of the courts and of legal practice, but none having any definite plan of reform to propose.

In 1842, the author of the tract first referred to, Mr. David Dudley Field, submitted to the judiciary committees of the New York legislature some bills embodying a plan of reform, as broad perhaps as the constitution then in force would permit. Even then Mr. Field had arrived at the conclusion that a complete fusion of law and equity was not only desirable but possible, and not only possible but absolutely essential to a complete reform, and to a proper administration of public justice. The Constitution of 1821 appeared to stand in the way of this scheme, and, while waiting for its remodelling, Mr. Field was content to urge an instalment only of his general plan. His sugges-

tions—all of which, and more, have been since adopted by half the northern states, and in great part by England and Canada—were then received with respect, but entire incredulity. He stood for some time absolutely alone in his theory of reform.

In 1846, however, an opportunity arrived for which law reformers had anxiously waited. A convention was summoned by a vast majority of the people to revise the constitution of the state. That convention was controlled by men who, if not fully sympathizing with Mr. Field's views, were yet resolved to leave no obstacle in the way of their adoption by the legislature. While a decisive majority refused to blend the administration of law and equity into one system by a provision of the fundamental law, an equally decisive majority refused to deprive the legislature of the power to do so, if it saw fit. This was the wisest disposition of the subject which could be made. It would have been impossible to provide in the constitution all the rules and limitations which were necessary to accompany so great a change, while the way was left perfectly open for the legislature to perform the work in the most thorough manner. The new constitution provided, moreover, for the appointment of commissioners to revise the system of legal procedure, and of other commissioners to reduce to a written code the whole or a part of the common law. These provisions, in themselves, signalized a wonderful progress in public opinion. Twenty years before, the idea of a codification of the law was considered a visionary impracticability, and could have found no recognition in a statute, much less in a constitution.

Mr. Field, very soon after the adoption of the new constitution by the people, published another tract, urging the complete fusion of law and equity. Eminent jurists (such as the late Judge SANDFORD), who had doubted the wisdom of the change before, withdrew their opposition when the Court of Chancery, as a separate institution, was abolished, feeling that the double jurisdiction could not be well administered by one set of judges. Thus, although he found no one to co-operate actively with him, Mr. Field met with but slight opposition, and carried with him the sanction of a number of the leading members of the New York bar, when he visited

Albany in 1847, for the purpose of inducing the legislature to instruct the commissioners on practice and pleading to prepare a system uniform in its application to cases of legal and equitable cognisance. In this purpose he was successful, and the commissioners were so instructed by law.

It might naturally have been expected that when the legislature had determined to adopt a theory of which Mr. Field was the first, and for years the only advocate in this country, that they would have made him one of the commissioners to carry it into effect. But it was not so. The uncompromising advocates of any reform are almost invariably the objects of a prejudice which survives all objections to the reform itself. The legislature voted to adopt Mr. Field's plans, and to exclude him from all part in the honor of enacting them. He had not asked, or hinted a desire for the post, and was not disappointed.

Nevertheless, the preconcerted plan broke down. When the commissioners met, Mr. Loomis was fully imbued with the new doctrines. Mr. Hill was strongly opposed to them, and the decision lay with the late David Graham. Belonging to a conservative party, himself a conservative man—being engaged in a large and brilliant practice—the author of some works having a wide sale, which would be superseded by any radical change—having just issued a new edition of his treatise on practice, the best ever published, before or since—having in it expressed his belief that no radical changes would be made—his nature, his associations, his interests as a lawyer and an author, his pride of consistency, and his pride of opinion, all combined to induce him to take part with Mr. Hill. It is highly honorable to his sense of good faith and of loyalty to his constituents that Mr. Graham took the opposite course. Certainly we do not impute the slightest misconduct to Mr. Hill, who acted in accordance with his sober judgment as to the welfare of the state; but we do think that Mr. Graham judged rightly in holding himself bound, by the clear instructions of the legislature, to abandon his own peculiar ideas and to carry out the theory of the statute under which he acted.

Mr. Hill resigned in September 1847, and the legislature having

met again, a caucus was hastily summoned to choose his successor. Mr. Flanders, of Franklin (now, by the way, a peace Democrat, while Mr. Field is a war Republican), who was then in the Assembly, without any consultation with Mr. Field, strenuously and successfully urged his nomination and election.

The commission, as thus reconstructed, was homogeneous and effective. The main principles of a code of procedure were agreed upon, and within five months the code and the accompanying report were drawn up, revised, printed, and laid on the desks of the legislature. This code was almost entirely the work of Mr. Field.

Peculiar circumstances gave the commission great influence with the New York legislature of 1848. It was overwhelmingly Whig, and its members knew that they owed their election to the abstention of the "Barnburners" of the Democratic party in the fall of 1847. Mr. Field was one of the most prominent and able men of that section of the party. Mr. Loomis was scarcely less prominent in it. Mr. Graham was a leading Whig. The legislature was accordingly attentive to every wish of the commissioners, and almost obsequious in its concurrence with their views. A few amendments were made in the Senate, but when the bill came down to the Assembly, Mr. *James Brooks* (curious fact!) moved its reference to a select committee to report complete the same day. Of course the committee never examined the bill—the chairman ran around for the signatures of his fellow-members—the bill was reported without amendment, and passed unanimously.

And thus, with scarcely a murmur of opposition, the project which only six years before had seemed even to its author but a remote vision, was embodied into a law which, though fiercely assailed, has weathered all storms, and established itself impregnably in the jurisprudence of the country.

This was, however, the first and last instance of unanimity in regard to the code.

The mass of the legal profession were not prepared to hear of the enactment of the measure so soon. They had supposed that it would be referred to the next legislature, and adopted, if at all, only after much consideration and extensive revision. They

awoke suddenly to the fact that it was the law of the state, and that within three months from its passage the old forms of pleadings and proceedings were to be known no more.

Nevertheless, no special dissatisfaction was manifested until after the new code had gone fully into operation. The first few years thereafter were by no means creditable to the bar of New York. Every difficulty was thrown in the way of the operation of the new system. Every doubt was magnified—every blunder of a lawyer was imputed to the code. No honest effort was made, by those who complained of its vagueness, to cure its defects, and supply what it needed, but all their exertions were devoted to the distortion of those provisions which were the most unmistakable and vital of any. The legislature of 1849 was generally hostile to the code, and would have repealed it outright, had it not been for the fear of the people at large, who did not sympathize with the lawyers.

The professional members of the legislature of 1850 were even more bitter against the code than those of 1849. The commissioners now reported their work complete—the so-called Code of 1848 being confessedly only a fragment of the whole, though the most important part. The committees appointed to examine the work of the commission entered upon their duty with unconcealed dislike, and used all their efforts to prevent the codes from being enacted. There were some peculiar features of the bills as reported, which were far in advance of public sentiment at that day; and these, though by no means vital to the work as a whole, were eagerly seized upon by its adversaries, and perhaps unnecessarily insisted upon by its friends. It would have been a great thing gained to have secured even a mere codification of the practice as it was, leaving amendments for a future period. This was not, however, done. The fact that the proposed code changed the name of the writ of *habeas corpus* to the writ of deliverance was the principal argument used against it, and this weapon proved successful. The codes reported by the commissioners needed, without doubt, very careful scrutiny, and some alterations. The expediency of some of the changes proposed by them may even

yet be doubted, although some of the most important have been adopted piecemeal by later legislatures. But there can be no question in the mind of any reasonable man that all the rules of practice which are now scattered through the revised statutes, and in the reported decisions, ought to be brought into a single statute, and arranged in their appropriate order. This is not yet done, and if it is left to the unprompted wisdom of legislators or to the public spirit of the bar as a whole, probably never will be done.

The code, in its fragmentary form, was thus left to make its way. Its enemies could not repeal it, though they could prevent it from being perfected. The first ten volumes of Howard's Practice Reports, and the first fifteen of Barbour, contain abundant evidences of the perversity with which a large part of the bench, as well as the bar, strove to nullify its plainest intentions. It was not until very recently that its very foundation and vital principle, the union of law and equity, was conceded to have any existence at all.

But such disfavor was not universal. Some of the justices, and those whose good opinion was most valuable, recognised the intrinsic merit of the new system. Mr. Justice DUER (*People* vs. *Sturtevant*, 3 Duer 621) used the following language:

"Whatever may be the terms in which other persons may choose to describe their" (the commissioners') "labors, in my deliberate judgment they have accomplished, and, generally speaking, ably and successfully accomplished, a most difficult as well as important and honorable task. The monument that has been raised, as a work of science and art, may doubtless be improved. Its defects may be supplied, and its proportions corrected or enlarged. But the foundations are solid and deeply laid, and the structure will stand.—*Manet et manebit.*"

The Code of Procedure was far more popular abroad than at home. Missouri adopted it in substance in 1849, and many other states adopted in whole or in part the complete code which New York rejected in 1850. California adopted the civil and criminal codes entire in 1851. Ohio, Indiana, Wisconsin, Kentucky, Minnesota, Kansas, Alabama, Oregon, and all the new territories, except Colorado, New Mexico and Utah, have adopted the substance of the complete codes, though one or two of the states have

retained a partial distinction between law and equity. The legislation of Massachusetts, Mississippi, Michigan, and some other states, has been largely influenced by it. Its effect upon the legislation of England and her colonies is perhaps its most remarkable triumph, although not so complete as it has been in some of the western states.

The "new rules" of 1830 remained as the tide-water mark of reform in the practice of the English courts for many years. The doctrines of Bentham, in regard to the evidence of interested parties, took deep root, and were gradually incorporated into law, but in other respects little progress was made, when the news of the adoption of a new system in America reached Great Britain.

The nature and operation of the New York Code were not much understood by English lawyers until the autumn of 1850, when Mr. Field addressed the Law Amendment Society, at its request, upon the subject, after which the society issued letters of inquiry to a number of prominent American lawyers, requesting their opinion upon the practical workings of the code. The responses to these questions were generally favorable to the new system, and the exceptions were rather amusing than weighty. Judges McCoun, Harris, Parker, Brown, Sandford, Duer, Campbell, Bosworth, Hoffman, and Daly, besides some leading members of the bar, expressed their approval of the general principles of the Code in warm terms, while Judge Ingraham, William Curtis Noyes, Esq., and others, substantially, though more guardedly, concurred. But Mr. B. Davis Noxon insisted, that "among lawyers in this state, holding a high standing in the profession, there was but one opinion about the code, and that was unfavorable to it." His hostility, however, did not carry him so far as that of another gentleman, who seems to have directed his clerk to answer "No," to every question, so palpably absurd are some of his responses. These two were the only ones who even then ventured to recommend the repeal of the Code, and the appointment of commissioners of *experience*—David Graham, we suppose, having had none.

The law reformers of England were encouraged by these answers to prosecute their work, and in 1851 they secured the appointment of a commission on the subject, which reported a bill more sweep-

ing, perhaps, in its operation, than the Code, except that it did not consolidate law and equity. Pleadings were reduced to a brevity worthy of a drum-head court-martial, and the practice was made as simple and direct as possible. This bill became a law in 1852. In 1854, equitable defences were allowed to be set up in common law courts, and Lord WESTBURY, the present Lord Chancellor, is well known to be ardently in favor of adopting the only remaining principle (though the chief one) of the New York Code—the complete fusion of law and equity. The whole current of opinion and of events seems to be tending that way. If Lord WESTBURY should remain long in office, he will undoubtedly accomplish his favorite object, and even if the Tories should gain possession of power, they are no longer what they once were, and will not throw many obstacles in the path of a just and necessary reform.

In the state of New York, the work thus accomplished has never been estimated at its proper value, and probably never will be by the present generation. Every little narrow-minded lawyer even yet delights to cast a stone at the Code, and to ridicule the reforms which elicited warm praise from the greatest names of the English bench and bar. The legislature has never found time to complete its examination of the entire Codes of Procedure, and a mere fragment of the whole is all that is law. But time will do justice to the ability which devised and the labor which prepared this great work. That which has been done will never be undone, and at some day, when we have a legislature not exclusively devoted to lobby business, it will take up this unfinished task, and complete that which ought to have been completed years ago.

T. G. S.