

THE EVILS OF CASE-LAW.

ground dangerous to his opponent, and what is still more to the point, he is advancing the science of law, and making it more perfectly what it ought to be—the perfection of human reason. And the same characteristics I would seek in a good lawyer should, in a still greater degree, belong to a text-book writer. A knowledge of law as a science, and not as a system of statutory enactments and judicial decisions, an ability to state clearly and correctly the fundamental principles which underlie the law, and which make it an agency for good, and an aptitude in illustrating by orderly and systematic citation of decisions, how the law is and ought to be applied and enforced, and what is perhaps of equal importance, an ability to draw the lines by which to show where the particular principles under consideration cease to be applicable, and to make clear where and when decisions given have drawn dangerously near to or crossed such lines—these are characteristic qualities of a good text-book writer, which, unfortunately, are possessed by few, if any, of the writers of late years.

An old toper, it is said, once expressed the opinion that no whiskey was absolutely bad, though he admitted that some whiskeys were better than others. The same line of reasoning, though in a reverse direction, might be suggested as applicable to the bulk of our late text books. Most of them are bad, though it may be admitted that some are worse than others.

Our judges, of course, are recruited from the bar, and a bad training for lawyers results in correspondingly poor judges. And in defence of the crimes, or rather errors and mistakes charged against judges, I must say that I am only surprised that they do not make more. A man cannot help being what he is, when, under the training he received, he could not have been anything else. And a lawyer who is trained or trains himself to a subserviency to precedents and authorities, will, if he reaches the bench, be more or less a slave to them still. And then, when out of the mass of legal literature available, crude, undigested, confusing, contradictory and irreconcilable masses of law, or alleged law, are hurled at him by opposing counsel, is it any wonder that he should often make mistakes?

Only a few days ago I was present in court when a lawyer of almost a national reputation sent to the law library for between forty and fifty volumes, to use in an argument as to a question of priority of lien, under an unauthorized corporation mortgage.

One eminent Federal judge of my acquaintance, some years ago, became so exasperated with the indiscriminate citation and almost endless reading of authorities, that he finally refused to listen to any prior decision, unless the facts in the case cited to him were in most, or all material respects, the same as in the case at bar. The rule was a good one; and in the case which I was arguing before him, the application of the rule resulted in a considerable shortening of the argument; and so far as I could judge, the application of the rule worked no injustice as regards the final result.

I have neither the time nor the patience to collect the data by which to ascertain with exactness the total number of volumes of regular reports, issued in series, which are published in this country, and to which, as they are all accessible to him, the American case practitioner may be supposed to refer from time to time, either for purposes of offence or defence; but from readily accessible facts and figures, an approximately correct estimate can be reached.

The official reports of our own State Supreme Court now number one hundred and seventy volumes, and new ones are being issued at the rate of three per year. For the last forty years the issue has averaged a little over two and one-half volumes per year. Besides these, we have between ninety and one hundred volumes of miscellaneous reports, issued in regular series, and fifteen volumes of weekly notes. This gives us an aggregate of over two hundred and seventy-five volumes of law reports confined to cases adjudicated in the courts of the State of Pennsylvania alone. As like causes, under like conditions, produce like effects, it is fair to estimate that the growth and amount of this style of literature has been and is about the same in other States as in our own, and facts and figures readily attainable, fully sustain the correctness of this estimate. Hence, making all due allowance for the short period which has elapsed since some of our younger States