

say will be beneficial; for no man can hope to tell, without practical experience, what will be the real operation of a new Code of Procedure.

"But it was high time that something was done to expedite, and amend and simplify the common law, which deserves all the praise which your chief judge and Mr. Evarts have lavished upon it, and which, some thirty years ago, was in serious danger.

"It had become associated in the minds of many men with narrow technicality and substantial injustice.

"That was not the fault of the common law, but it was the fault, if fault it were, of the system of pleading, which looked at practically, was a small part of the common law, but very powerful men had contrived to make it appear that it was almost the whole of it—that the science of statement was far more important than the substance of the right, and that rights of litigants themselves were comparatively unimportant unless they illustrated some obscure, interesting and subtle point of the science of stating those rights.

"Now, I prefer to confirm what I am telling you, by authority much greater than my own, because it might be said, and said with truth, that I was merely condemning a system which I possibly disliked, because I never was very proficient in it. I well recollect to have heard Sir Wm. Erle, who was a great lawyer, who was chief judge of the Common Pleas, and whose name may be known to many of you on this side of the Atlantic—relate a remarkable conversation that took place between a learned baron—a famous man of those days—himself, and a third person, very distinguished in his day, but little remembered in the present: Charles Austin, a man of singular gifts of mind, who devoted himself chiefly to making a fortune, and whose reputation, immense with his contemporaries, is chiefly known to posterity by a striking sketch of him, given in his autobiography. These three men were in a London Club, and the baron said that he had joined in the building of sixteen volumes of *Meeson & Welsby*, and that that was a very great thing indeed for any man to do. Sir Wm. Erle, with more candor than courtesy, replied that it was a fortunate thing there had not been a seventeenth volume of *Meeson & Welsby*, for if there had, the common law

would disappear from creation amidst the universal jeers and hisses of mankind, and Charles Austin followed up this observation of Sir Wm. Erle, in this way: he said: 'I have heard you say that before, baron, and suppose there is something in it, but now, in candor—in the palace of truth—do you think that the world, or that England itself, would have been the least worse off if every case in every volume of *Meeson & Welsby* had been decided the other way?' Now, you must not pursue a story, you know, beyond its legitimate conclusion, and what exactly it was that the learned baron answered, I am really unable to say; but it is a comfort to think that those subtleties, if there was any merit in them, have not entirely been banished from the earth, and I am told that there is a State in this progressive Union in which they are, at this moment, as alive as ever, and I venture upon this subject, to make you a practical suggestion.

"You have lately procured, may I say most wisely, a great National Park, into which the beauties and glories of nature, and the strange and eccentric forms which natural objects sometimes assume, may be preserved forever for the instruction and delight of the citizens of this great republic. Could it not be arranged, that with the sanction of the State, some corner in that one State should be preserved, as a kind of pleading park, in which the glories of the *negative pregnant*, *absque hoc*, *replication de injuria*, *rebutter* and *sur-rebutter*, and all the other weird and fanciful creations of the pleader's brain might be preserved for future ages to gratify the respectful curiosity of your descendants, and that our good old English judges, if ever they re-visit the glimpses of the moon, might have some place where their weary souls might rest—some place where they might still find the form preferred to the substance, the statement to the thing stated. I cannot help thinking that that would be a matter worthy of the liberality, of the genius and conservative instincts of the great American public. But it is really, to speak seriously, a great pleasure for me to find that slowly, and if I may say so, with wise hesitancy, you are gradually admitting into your system those changes which we have lately made, as and when they satisfy the needs, the temper, and the genius of your people."