

the South-Eastern Railway Company; and, on the other hand, the appellants, as representing the present holders of mortgage bonds, must be taken as standing in the shoes of the bondholders whose debts were unpaid at the passing of the Act. The appellants will be entitled, in the present proceedings, to the benefit of all rights and preferences which were attached to these mortgage debts during their subsistence.

Their Lordships will accordingly humbly advise Her Majesty to affirm the orders appealed from, and to dismiss the appeal. The costs of this appeal must be borne by the appellants.

Judgment confirmed.*

THE COMMON LAW AS A SYSTEM OF REASONING.

(Conclusion from page 111.)

Jurist work and codification compared.

The other remedy is to jump this ditch, and to codify the law while yet it has not had a single jurist, and make sure that it shall not have a jurist hereafter.

I do not deem it necessary to place before you the various plans for codification, and discuss them separately. As already said, the majority of the American Bar Association defined last year their plan, namely, to reduce the law itself, "so far as in its substantive principles it is settled, to the form of a statute." The law consists of everything which the Courts judicially know. The changing of it by statutes has always been practiced in every country governed by the common law, and no one ever objected to it if the particular change was deemed judicious. If it is thought to be convenient to have the principles of the law, as far as settled, tersely and clearly stated for professional use, I certainly concur. That work your jurists will do when you have them. And in doing it they will rely for support on their own merits, not on legislative propping. You can test their

work; and, as said before, practically adopt or reject it like any other book, as it is found to be good or ill. If you accept it, what will be the effect of proceeding further and enacting it into a statute?

If your jurist is able to express himself in a way to avoid questions of interpretation,—a feat never yet accomplished in any legislation,—so that all will understand him to mean what the common law did, I will consent to the proposition that judicial things will go on much as they did before. Of course, there can be no pretense that any good has been done, for neither in form nor in substance is there any change. What was settled before is no more than settled now. But, in another aspect, the change is vast. You have dropped from reason to the legislative "Be it enacted."

To illustrate: If one brings suit for building a fence which is the hypotenuse of a right-angled triangle, for which he was to be paid an agreed sum per rod, and the lengths of the perpendicular and base are severally proved, but not that of the hypotenuse, the length of the latter is matter of law, and the proofs are adequate. Now you enact a code providing that the square of the hypotenuse of a right-angled triangle shall equal the sum of the squares of the perpendicular and base. You will remember that, under the old system, if a boy in a class asked his master how this could be, the latter would draw the triangle on the black-board, extend his lines, and show how the problem is reasoned out. The boy's brain would be stirred, a step would be taken in teaching him to think. Under the new system, the master would say, "This is provided for by the one thousand three hundred and fiftieth section of our glorious code. It was explained by an old Greek named Euclid. Perhaps it was discovered before; at any rate, it has long been settled. In the year 1886, there was a meeting of great lawyers at Saratoga, and fortunately the best minds were in the majority. Saratoga, please note, is a place of water; hence it is certain that these best minds were not drunk. They resolved that whatever is settled should be enacted into a statute. Our legislature had the wisdom to follow the light; therefore, until the statute is so changed as otherwise to provide,

* See also *Corp. Co. of Drummond & South Eastern Ry. Co.*, 3 Leg. News, 2; *Banque d'Hochelaga v. M. P. & B. Ry. Co.*, 4 Leg. News, 332; *Wason Mfg. Co. v. Lewis & Kennebec Ry. Co.*, 7 Q. L. R. 330; *Stephen & Banque d'Hochelaga, M. L. R.*, 2 Q. B. 491.