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ENGLISH AND FRENCH LAWYERS.

In a letter to the *Albany Law Journal*, Mr. E. E. Moise, of New Orleans, remarks as follows upon the points of difference between English and French systems and their influence upon those who work under them:—

"In this State (Louisiana) with a Code almost an exact translation from the Code Civil or Napoleon—where the attorney is obliged to read the French commentators; with the law merchant governing—with no jury, unless specially prayed for in our State court, and then they, judges of the application of the law to the facts, the judge not being allowed to trench on the facts, with the common-law system of juries in the United States Court, some of my meagre observations on French and English legal mind may not be unwelcome. The difference between the English and French jurists and lawyers can be simplified by saying the former is concrete the latter abstract. It is hardly necessary to track the cause of this. The student of common law knows that there is no common law except as applied. The law is the law of a given case—of certain facts. This, that, or another fact allows the plaintiff to recover. This is technically known as *case law*—that is the law of an actual state of circumstances. There is the rule of *stare decisis* at common law. There is no such rule among the French, because the Code has accomplished what the desperation of common-law judges drove them to endeavor to accomplish by the rule of *stare decisis*. Codification was simply a means to an end. *Stare decisis* failed to accomplish it. Certainty in the law, fixed rules of conduct of right. Certainty in the meaning that as little is to be left to the judge's notion of right and wrong as possible. The peculiar system of practice in the French courts aided by the Code (generally a series of abstract principles) made the logic of the French lawyer a keen and heartless logic. It was and still is a logic of mind, a logic without feeling, that took no account of human passion and eradicated the governing principle

of the logic of the English lawyer—common sense.

"Law to the French lawyer was and is a proposition from which logically deduced conclusions should be the judge's decree. Law to the English lawyer (when not statute law) was and still is an attempt to put rules for human conduct into words—a rule, but not a rule pure and simple, but a rule to be applied to human actions. The English lawyer looks back because precedent is the closest he can get to a Code. If the English lawyer had a Code he would *not* look back. I desire to illustrate this with Louisiana and Louisiana jurisprudence. No one who is at all familiar with the jurisprudence of this State will say that the Louisiana judge or lawyer is a precedent-loving individual. No case lawyer can expect to succeed in this State. No lawyer who knows the law is this or that solely because it has been so held in such a case need have any hope of obtaining any prominence at the bar. And since the Englishman's concrete mind (practical) has assumed its prominence at the bar and on the bench—since law has come to be understood as intended to be applied to human affairs—you will not be surprised to know that the metaphysical and keen logic of the French jurist has lost ground considerably. Judge Spofford, in *Johnson v. Bloodworth*, 12 La. Ann. 701, in speaking of the French jurists, said: 'When jurists of a race so much addicted to *theoretical speculation*, and so little addicted to reverence for each others' opinions draw a conclusion from the Code, in which they unanimously concur, we may *perhaps* set it down as an obvious truth.'

"This is not an exaggerated statement, nor is it an imaginative description. It is a common thing for a lawyer with a bad case to go to the French authorities. It is a well-known and recognized fact among the older members of the bar that the young lawyer just admitted makes very pretty and very ingenious points: he is very keen, but like those authors from whom he is fresh, his arguments lack the element of common sense. He overcomes this in time.

"In *Ozaune v. Delile*, 5 N. S. 28-29, the Supreme Court declined to follow the French jurists, though the article of the French Code (Code Civil or Napoleon) was similar to ours. Why—for a practical reason; because the tex-