

crush out the reasoning powers, and reduce the intellect to idiocy. In every view, therefore, we need jurists. If the Roman jurists, to illustrate the applications of their principles, had possessed these printed reports of facts, how incomparably glorious would be their commentaries! Or, if our law, with its multitudinous reports, had men like those jurists to present it for professional use, how immeasurably above what it now is would it practically be!

Every lawyer acknowledges that there is no such number of legal principles as of judicial decisions. And there is a class of lawyers, by many claimed to include all the best ones both in England and in the United States, who are clamorous to have the principles legislatively enacted into a code, a process familiarly known as codification. This tumult may well remind us of the familiar instance of the husband and wife who quarrelled over the question where in their room to set the bureau. The domestic storm, you remember, rose so high that the priest had to be called in. Said the holy man, "show me the bureau." "We have no bureau, your reverence, it has not been bought." Let me suggest, therefore, that we suspend our quarrel over this question of codification until our law has received such juridical culture as to inform us, and enable us to agree among ourselves, just what and how many are its elementary principles, reduced to their smallest proportions. We have already seen that to ascertain this is the proper work of the jurist; it is absolutely outside the functions of the judge, who can do it only by departing from his duty of relieving his docket from the press of cases upon it, and without the possibility of having before him the materials or tools indispensable to jurist work. When we have jurists, and they have done this work, a question which has of late been much discussed by the American Bar Association will, it is submitted, more properly arise than now. You remember that, at the close of the debate last year, it was by a small majority resolved, "that the law, so far as in its substantive principles it is settled, should be reduced to the form of a statute." And you remember that, for a considerable time past, there has been in New York a chronic quarrel

as to whether or not a particular draft of a code shall be legislatively adopted. Now, if this or any other proposed code truly embodies the principles of the common law reduced to their smallest proportions, the Courts can be made to know the fact more readily than the legislature. And if this great juridical work has really been done, we may well set up here our Ebenezer. Any man who has done it has only to publish the book; and if the world is sufficiently enlightened, it will receive it. What is already established does not need to be established by a second process to make it stand. The utility of the writing can be made as well to appear without the legislature passing upon it as with. And after its utility has become universally recognized, —after the bureau has been bought,—its position, whether among the written laws or the unwritten, can be more intelligently determined upon than before.

You will call to mind that a well-known English advocate of codification, Mr. Justice Stephen, has prepared and published what he proposes for codes. That, so far, is an attempt at something like jurist work. Let our American advocates of codification do the same; and, when they have produced what all our Courts accept as the embodied principles of the common law, reduced to their smallest proportions, the further question of their legislative enactment will present itself, not prematurely, but at its proper time. Then, if the codification doctrine as expounded by the American Bar Association prevails, we shall have the multiplication table and the entire arithmetic, together with all the learning of the schools, put into form for the use of pupils, under the name of a statute.

Our legal text-books—Piracy.

But I am here reminded that we have immense numbers of legal text-books, and I am asked whether I deny that they proceeded from jurists. I reply, that they are of vastly differing qualities, and that no one characterization could properly be applied to all. Though the common law itself invites the culture of jurists, almost the sole thing which it has overlooked is the fact that they cannot live on uncooked electricity and air. They