

THE EVILS OF CASE-LAW.

secure its abatement, is to understand fully how and why it arose, how it has come to be what it is—so that having learned thus much, we will be in a position to create, or aid in creating, a public sentiment adverse to it, such that those who are competent to deal with it, and have more or less power to control it, shall be stimulated to take it in hand.

Much and perhaps most of our modern law is judge-made law, by which I mean, that it rests for its original authority on decisions of the courts, rather than on statutory legislation. In such judge-made law, I include for my present purpose—though perhaps not with the utmost accuracy—the larger part of what we know as the common law of ancient date, and also those customs and usages which originate in the growth and development of our modern civilization, and which the courts necessarily adopt as governing rules in fixing the rights of parties who may have acted thereunder. I also include in the term judge-made law, those requirements of the law which result from the application of common law or other necessary rules of construction to the law, body of statutes which emanate from our legislative bodies. As is well-known, and as is often necessarily the case, such statutes are unintelligible or ambiguous, or even contradictory, unless resort be had to extraneous or outside sources for aid in ascertaining their meaning. And when such aid is called in, as it often must be, then a new body of law is created with which the skilful practitioner must to a greater or less extent familiarize himself.

Now the work of the lawyer, in part, is to apply the law of the land, whether it be statutory or judicial law, to the facts of his case, provided there be any settled law applicable thereto; and if there be not, then to secure, if he can, the creation of new or hitherto unmade, or at least unformulated law, such as will be best, and most effectually protect or vindicate the just rights of his client, and in doing so, promote the ends of justice. In either case two courses are open to him: one is to keep in mind the principles of right and wrong which theoretically, at least, underlie all law, and apply those principles to the facts under consideration, and thereby seek a righteous verdict of adju-

cation. In this work previous decisions, in so far as they apply, are an obvious, important and desirable aid, for the reason that they indicate the conclusions which previous judges have reached on the consideration of like questions, under conditions presumptively, at least, favourable to a just decision.

The other course is, to leave out of consideration entirely, or give but little weight to the underlying principles of right and wrong, and to look through prior decisions to see if one or more cannot be found which, either in the plain meaning of the language used, or by a distortion, or perversion, or stretching of such language, will secure a favourable result. This latter course is one that commends itself to certain classes of practitioners:

1st. To the new beginner, especially if he feels, as he naturally may, a little timid or distrustful of his ability to argue his case on its merits.

2nd. To the lazy practitioner, for it is much easier to read up what the judges have decided, and to make a real or fanciful application of such decisions to the case in hand, than it is, by extensive reading, hard study, diligent application and close reasoning, to convince the court of the justness of the case presented.

3rd. Case-law practice also commends itself to those members of our profession, of whom I am sorry to say there are some—though none perhaps in Pittsburgh—who care little or nothing for a just decision, but who look only to winning the case. And in this class I include the dishonest, unscrupulous and tricky practitioner—the *shyster*, in short—and also the practitioner who works only for fees.

And right here I may say that, in my opinion, a lawyer who works only for fees is neither a good lawyer nor an honest man. Such I believe to be, in part, the origin of the evil of case-law practice. And the remedy thus far is easily suggested:

1st. To discountenance the lazy and to compel them, if possible, to argue cases on principle, rather than on authority, which, of course, only the courts can do; and still further, to train them while students, so that they shall learn sound principles first, and how to state and apply them, and then how to cite and apply authorities afterwards. And this remedy