of them, are familiar. Reasoning of this kind assumes two things, neither of which can be admitted. One is that the unwritten law could be reduced to a simple code, without introducing more uncertainty by the imperfection of its language than it would cure by the settlement of open questions. The other assumption is, that such a code, when prepared, would be allowed to pass without alteration through the two Houses of Parliament.

Whatever may be thought of the first of these difficulties the idea that Parliament will delegate to any body of men the power of arbitrating, as it were, between all the conflicting judgments that have ever been given is utterly absurd. And if there be not such unqualified delegation of authority the code must go, in the usual course, into committee, and would come out of it filled with contradictions and absurdities, compared with which the existing uncertainty, which has been so much exaggerated, would be a very trifling inconvenience. Our objection to Mr. Webster's scheme is, that it is to a great extent unnecessary and altogether impossible. It would secure no imaginable purpose to stuff out a code with the universally accepted doctrines of the common law. If the first article were gravely to enact or declare that the eldest son was his father's heir-at-law, would any one be the better for the publication of the platitude? Mr. Webster gives in his paper some specimens of the sort of dogmas which he would put into his consolidated book of the common law. Here is one example—

A legal mortgagee is not to be postponed to a prior equitable mortgagee, upon the ground of the legal mortgagee not having the title deeds, unless there be fraud, or gross and wilful negligence, on the part of the legal mortgagee.

It is impossible to conceive anything more utterly useless than a formal enunciation of such a dogma as this. The difficulties which present themselves now in the contests for priority, to which such a clause would apply, are in determining what circumstances constitute the "fraud or gross and wilful negligence" referred to, and Mr. Webster would find it very difficult to suggest any set of circumstances under which a decision would be more easily arrived at by the aid of his proposed clause than it may be at present. The very nature of such questions (and a large proportion of our entire equity jurisprudence is precisely of the same character), precludes the possibility of codification. Words of vague general import, like fraud, negligence, acquiescence, undue influence, notice, and a host of others, which would form the essential language of the code, have really no precise and definite meaning apart from the circumstances of particular cases. They are terms involving distinctions, not of kind, but of degree, and no acuteness on the part of jurists would enable them to frame an explicit code, capable of interpreting itself, without the aid of decided cases. After all the head-notes of all the reports had been revised and arranged, and reduced into the shape of a statute, nothing of a practical kind would be done; for it would be just as necessary then, as it is now, to refer to the facts of the reported cases, in order to interpret, with any approach to exactness, the general propositions of law, of which such a code would consist. A compilation of legal platitudes in ambiguous language would afford but little assistance, either to the profession or the bench; and though it might, doubtless, be desirable to introduce more precision into some rather hazy districts of the law, it is exactly in this part of its task that a commission for the consolidation of the reports would be certain to get into conflict with Parliament, if not within itself, and to end by abandoning its functions in despair. Where the unwritten law is settled, a code is not wanted; where it is unsettled, the formation of a code would be impracticable

With a singular inversion of ordinary reasoning, Mr. Webster argues that, "if under arbitrary Governments the laws had been codified, so as to command respect, much more easily could a code be framed for a nation governed by its own intelligence." With all deference to Mr. Webster, we should have thought that an absolute governor, with only his own will and pleasure to consult, could impose a code of laws more easily than a commission, who have not only to satisfy themselves on a thousand difficult points, but to induce the 660 representatives of the "national intelligence" to accept, without inquiry, the projected alterations of the law. Even if the statutes alone are dealt with it is only to probable that the whole scheme may be defeated by the reluctance of Parliament to take the wisdom of the consolidators for granted, and pass their code without debating and altering it clause by clause. But by including the settlement of all the remaining uncertainties of the common law among the objects of the consolidation, the chance which there now is of seeing the work completed would be utterly destroyed.

Mr. Webster, and those who think with him, are not the first persons who have courted failure by forgetting to keep their enterprises within the bounds of possibility; and we hope that no encouragement will be given by the Law Amendment Society to a project which will render vain the exertions which have already been devoted to the more practical though sufficiently arduous business of statute law consolidation.—*Solicitors' Journal.*

COMMON CARRIERS.

One of the most important and fundamental doctrines of our law with regard to common carriers, as distinct from private carriers, and carriers under special agreement, is, that they are insurers, and liable for all damage accruing to goods during their carriage, unless it is caused by the act of God or the Queen's enemies, notwithstanding the conduct of such common carriers has been entirely free from negligence. (*Forward* v. *Pittard*, 1 T. R. 27; *Hyde* v. *The Trent and Mersey Navigation Company*, 5 T. R. 389). Thus says Holt, C. J., in his luminous judgment in the case of *Coggs* v. *Bernard*, (Raym. 917), with regard to a delivery to carry, or otherwise manage, for a reward to be paid to the bailee, "Those cases are of two sorts—either a delivery to one that exercises a public employment, or a delivery to a private person. First, if it be to a person of the first sort, and he is to have a reward, he is bound to answer for the goods at all events; and this is the case of the common carrier, common hoyman, master of a ship, &c., which case of a master of a ship was first adjudged, 26 Car. 2, in the case of *Moss* v. *Slew*, (Raym. 220; 1 Vent. 190, 238). The law charges this person, thus intrusted, to carry goods against all events, but acts of God and of the enemies of the King. For though the force be never so great, as if an irresistible multitude of people should rob him,