

*COMMON LAW, CASE LAW, CHAOS AND CODES.*

In view of possible changes arising from the multiplicity of reported cases, and their burden, financial and otherwise, the following analysis of the contending opinions as to what law is, or ought to be, of two such great authorities as Coke and Bacon, will be of interest. It is taken from an editorial in a recent number of the *Central Law Journal*, of St. Louis, Mo. The writer says:—

“Lord Bacon said that within three hundred years the world would come to judge between himself and Lord Coke. The three hundred years have passed, and the world is reaping the fruit of its decision to follow Lord Coke. These two men held opposing views concerning the origin and nature of law—views so radically and fundamentally different that if the one set be true, the other must necessarily be untrue. Following these two leaders two opposing schools of thought have sprung up, each represented by its leading jurists, authors and teachers. The school of thought represented by the followers of Lord Coke has, up to the present time, greatly preponderated, in point of numbers. In fact, it may be said that, since the time of Lord Coke the legal world, as a whole, has followed in his footsteps, and, likewise as a whole, has repudiated the fundamental concepts of law held by Lord Bacon.

Up to the present time, however, the fundamental antagonism between the two schools of thought has been only dimly perceived by the great majority even of those who have ranged themselves on the one side or the other, while, so far as the profession at large is concerned, it may be doubted whether it has known that the antagonism exists.

The two ideas, like those of democracy and autocracy in the present world struggle, have until recently been accepted as consistent travelling companions, except for sporadic outbreaks of disagreement. Now, however, the real nature of the two ideas, as shewn by their results, is for the first time becoming evident.

Bacon's conception of law was that it consists of ideas which are not created by any human law-maker, but which exist as mental facts, independently of their recognition or non-recog-