the ease with which illustrated rules are applied. For what are the dicta of eminent judges and text-writers but illustrated rules? Many of these dicta have the authority of settled law, and no serious difficulties are found to arise in the process of interpreting them. Why? Simply because such dicta are always viewed with reference to the cases which give birth to them. Manifestly the same result would follow if the rules were laid down by an authority higher than either judge or text-writer—provided, that is, the rules were still united to the illustrative cases, and interpreted by reference to them. But, it is argued, granted that by means of the free use of illustration the legislator can include all the cases he has in his mind, how is he to frame his rules so that they may be applicable to *unforeseen* combinations of facts? So long as a rule of law exists only by implication in a series of decided cases, it possesses more or less of an undefined or elastic character, and in applying such a rule to new cases a judge has present in his mind the principle of expediency by which the rule is justified, and thus a safeguard is provided against a too rigid adherence to the rule in cases which might fall within it if it were reduced into set terms. However carefully the codifier may frame his abstract propositions, there is perpetual danger that his words, legitimately interpreted, will extend to cases which, if they had originally fallen within his contemplation, he would certainly have excluded. In the words of an able writer, ("The Jurist," New Series, vol. IX, part ii, P. 341)—

"We defy the ablest extractor of principles to codify any single branch or subject of judiciary law in such a manner as to anticipate and provide for future cases with a tithe of the completeness and certainty with which they are anticipated and provided for by the uncodified precedents; and this for the reasons already given—that the precedents are not bound in the fetters of set terms, and that their full import and application are inexhaustible and unknown even to those who make them, and can only be brought out step by step as new cases arise." ..... (Ibid, Page 340.) "The history of every head of judiciary law is, that first a case arises in which a general principle is established and applied; then cases arise which determine the limitations and exceptions. A principle caught by a codifier in the first stage of its development would be enacted in all the generality of a neat rule, without qualification or exception, and capable of none save by very rough nursing in the courts."

This argument is certainly plausible, and has appeared to many conclusive. We conceive the answer to be that no code should attempt to provide for unforeseen cases by means of detailed rules. It is perfectly obvious that any such attempt must be unsuccessful. It would, no doubt, be practicable to include all possible cases in a set of highly general principles or maxims, but such maxims would be valueless from their vagueness. In order that the rules of law may be useful, they must enter into considerable minuteness of detail; and, as a necessary result, much must be left unprovided for, because unforeseen. But, it will be asked, if the code does not provide rules which will take in unforeseen cases, how are such cases to be decided? We reply, in the same way as they are now decided, namely, by an appeal to considerations of equity and expediency. At present every judge holds himself justified in resorting to these fundamental principles so long as his decisions are not inconsistent with the general spirit or the details of the settled law, and we are unable to see that this liberty would be in any degree interfered with by a new arrangement of the settled law on a different plan. So long as the spirit of the law as shown by the illustrative cases is taken as the guide to interpretation, there can be no danger that a code will give rise to narrow and hurtful decisions. It may be urged that in addition to the mere decisions our books contain the reasonings of the judges, and that the study of these is of material assistance towards grasping the true spirit of the law. To this we fully assent, and we would therefore add to the code wherever needful and practicable, the reasons by which the rules are justified. We cannot but think that this element would be found of great value, both as affording an indication of the limits of the various rules, and as guiding to the decision of unforeseen questions. The maxim, *cessante ratione legis cessat ipsa lex*, would be applicable then as now, and the judges would still retain the liberty they now enjoy of resorting to first principles when occasion required.

We think, then, it is clear that the sacrifice of the power of development—so far, that is, as development consists in the application of old principles to new instances—is not a necessary consequence of a re-arrangement of the law in the form of a code. We are aware that there is another kind of so-called development—namely, that which consists in the actual alteration of established rules. To this species of development a code would, no doubt, prove a serious obstacle. This we are far from regarding as a mischief. On the contrary, we count it not one of the least advantages of a code that it proclaims the law as it is, be