

alley, a third person had a strip of land extending much further along the alley than the former's. For its benefit, the city on his application, put down a sewer as far as he desired, and from the line of the alley where it ended he built a fence. The aldermen, in making the assessment, saw nothing in the precedent precluding their compelling the one who had already paid for his sewer benefit to pay a second time, but they clearly discerned that the precedent forbade their getting over or under a fence. So they assessed the one whom they did not pretend to have benefited, the same as though he had never paid an assessment, not only as far as they had built the sewer, but finding no fence, to the very end of his land. They assessed the other, for whose exclusive use the sewer was made, simply to his fence; thus casting the chief part of the burden upon the one not pretended to have been benefited; and relieving him for whom alone they had made the expenditure. It was vainly urged upon this honorable body that the reason on which the assumed precedent proceeded did not apply to this case. They could see that there was here a wrong, but they could discover no way for shaking off the precedent. They had been educated to be business men, and as such they were excellent; but they could not discern, as even a boy would do who had been a week in an office where the common law is practiced, that a precedent to be applicable to the case in hand must have proceeded from the same reasons with the new case to which it is to be applied. Some years afterward, the city extended its sewer along the rest of the alley for the benefit of this third person's land, and the honorable aldermen assessed the third time the other abutter. But now the rule of the common law found a parallel in the laws of business. Not an alderman could fail to discover that, if he paid for a cargo of coal before it was dug, then paid for it a second time after it was mined and before it was delivered, he would lose all the profits of merchandising if compelled to pay for it a third time, after delivery. So it became possible for the man who had been assessed thrice to the other's once to induce the honorable board to remit this third assessment which, in

form as well as in substance, had been paid years before.

A trifle may sometimes illustrate so great a thing as even the fall of an empire. This case is of little consequence in itself, but it brings to view immeasurably important things. Did you ever consider how seldom is an anarchist, or a curser of all government, born and bred in a country governed by the common law? It may happen that there are no lawyers on a board of aldermen. But in the higher walks of government, the incumbents of office are mostly, or, at least, largely, lawyers. And this sewer assessment case is, therefore, seldom paralleled in larger governmental affairs. Strike down the common law and banish it from us, and sewer justice will be the common justice of the country. But let us look a moment at this sewer justice. It is not intentional wrong-doing, it is simply what occupies the space where the common law is not. The officers who administer sewer justice mean well. With all their hearts they aspire to know the ways of duty, and they unflinchingly walk by the light which they get. Their neighbours, the public, do not frown upon them; all being in the dark together, no one doubts that the law is admirably administered. Yet all see that injustice is being done. The conclusion to which large numbers arrive is, that the whole system is wrong; that the law, from which injustice thus proceeds, should be put down and banished; and that government, which establishes what is so wicked as law, should be banished also.

#### *Conclusion.*

If codification succeeds to the extent of assassinating our common law, what but Heaven can we rely upon for the future! In the hope of better things, I turn from this picture of despair.

If I were addressing a less intelligent audience, I might urge upon you action to prevent an enormous, threatened danger. But it is unnecessary I should say more to you.

I have thus laid before you the most important subject connected with the future of our jurisprudence. Please supply my deficiencies with your own more fruitful and valuable reflections.

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