

In a recent case in the House of Lords, *Rodriguez v. Speyer*, 119 L.T. 409, Lord Haldane took occasion to make some observations on the subject of decisions resting on "public policy" which serve to shew how treacherous a ground it is—very like indeed what might be called a "legal quick-sand." He says, for instance, 'what the law recognizes as contrary to public policy turns out, to vary greatly from time to time'. Further, he remarks: "I think there are many things of which the Judges are bound to take judicial notice which lie outside the law properly so called, and among those things are what is called public policy and *the changes which take place in it*. The law itself may become modified by this obligation of the Judges." Furthermore, he quotes an observation of that very eminent lawyer, the late Lord Watson, when he said: "A series of decisions based on the grounds of public policy, however eminent the judges by whom they were delivered, cannot possess the same binding authority as decisions which deal with and formulate principles which are purely legal," and Lord Haldane remarks, "In England it is beyond the jurisdiction of her tribunals to mould and stereotype national policy"—by which it is presumed he means to include "public policy"—"their function, when a case like the present is brought before them, is, in my opinion, not necessarily to accept what was held to have been the rule of policy a hundred or a hundred and fifty years ago, but to ascertain, with as near an approach to accuracy as circumstances permit, what is the rule of policy for the then present time."

We may remark it is not for a moment pretended that this "rule of policy" is to be sought in any law, statutory or otherwise, but it is apparently solely to be derived from the inner consciousness of the Judges themselves as to what, in their opinion, for the time being, is the "policy" most beneficial for the public interests, and most in accordance with the general contemporary notions of liberty and justice.

So it comes to pass that what was yesterday declared to be "law" is in a later day declared to be mere "rhetoric."