

The law of the land is in its origin based upon custom. Whether at all, and if at all to what extent, custom is based upon nature we need not enquire; it would lead us into another field, interesting indeed, but of little importance in the present discussion.

When man got tired of the primeval method of determining rights, and found it necessary to prevent the vindication of rights by personal and private brute force, it was necessary for him to find some judge or arbitrator to determine between man and man. The arbitrator must proceed according to some rule, and the rule he should apply he found in the same way as you and I determine how to act in the ordinary affairs of life.

Wherever men have associated together for any length of time a course of conduct develops suitable in their view to their environment and the association. That course of conduct is a custom, and customs are from the earliest recorded time and earlier, and this in trivial as in important matters. How one man is to accost, to salute, another is a matter of custom, not only in the most polite and advanced, but in the most uncivilized and backward societies. Thieves have their etiquette as well as members of the Synod, and stevedores as well as members of the Academy of Medicine.

When the judge was called upon to determine the rights of two contending parties, he sought for the true rule of right, and found it in the customs of his people. What they had been accustomed to do was right for them, however it might be for another people.

Some customs there were which it was not thought by the people worth while to enforce, some virtues which were left in the realm of conscience. Even yet we have no law to enforce courtesy or charity;² we leave the cad to the reprobation of those whose opinion is worth having, and the ungenerous to his own conscience.

But customs which the people thought worth enforcing became the rules of law. These depended upon the people themselves. An illogical people had illogical customs, a generous people, generous customs; but whatever the custom was, that was the law.

That is what is meant by such maxims as "Custom is the life of the law," "Custom becomes law," "*Mos regit legem*," "*Mos pro lege*," "*leges moribus serviunt*," "*Cousuctudo est optimus interpret legum*," etc., etc.

An advancing community grows out of its old customs. What satisfied and suited the early folk irked their descendants. The law was unsatisfactory. In an advancing community the law is always unsatisfactory. Now law, to be law, should be fixed and certain, *misera est servitus ubi jus est vagum aut incertum*.³ Where a custom has once