

we should term revising the statutes, doubtless an excellent undertaking, he collected what he chose to preserve of the writings of the jurists, altered the extracts as far as the new purpose required, and consigned all the remainder to eternal oblivion. Having done this, he shut down the gate, as far as he could, forever upon reason. Of necessity, the ship of state, "which, though so great, and driven of fierce winds," had theretofore been kept from foundering by the "very small helm" of reason, went down, and Rome and the world were overwhelmed by centuries of darkness and woe.

Let me anticipate my argument by reminding you that the world presents now an exact parallel to this. There is a little island upon which the angel of light as she flew over it dropped a spark. Spurning Justinian's folly, she accepted reason, named it the common law, and rose to a power and glory which mock the very brightest of Roman dreams. Her navies rule the seas, her colonies watch the sun in all his course around the world, her glory threw off in one of her flights these United States of America. But the longing of laziness has of late taken possession of her. And she threatens to substitute acts of Parliament for all her common law of reason; and make it possible for sluggards and fools to practice at her bar and preside in her courts. If she does it, it requires no gift of prophecy to foresee that her encompassing seas will weep upon the dripping rocks around that little island a more mournful requiem to her entombed empire than was ever before sung over fallen greatness and glory.

*Philosophy of the common law.*

Returning now to our own law, let us approach the more practical parts of the subject through a preliminary inquiry into the less obvious nature of that reason whence the palpable proceeds. In other words, employing an expression which may sound a little mystical, while it is not so in truth, let us call up to our comprehension the invisible innermost, or soul, of what the outward sight discerns as the body of the common law.

We see around us a universe, upon every part of which the Creator has made the im-

press of law. This earth wheels onward upon its axis in obedience to a law which man has been able to discover. But if you ascend the highest tower or mountain-peak, and in the loudest voice ask the earth why it moves thus, it can give you no answer. It does not know. In the earlier ages man did not know. Yet from the beginning it moved as it does now. Go to the seas and ask the fishes why their habits are as they are,—ask the codfish why he feeds upon the bottom, and the mackerel why he gets his food at the top and moves in schools,—ask any question of any fish and you get no answer. Yet there is not a fish that does not move in exact obedience to the laws which the Maker has impressed on its nature. Consult the birds and the beasts, and the same facts reveal themselves. Consult man, and the result is not essentially different. He has a partially dormant and partially active power of reason. Feebly, and as in the twilight, he distinguishes between right and wrong. Yet God has impressed upon him his particular nature, the same as upon the beasts, upon the birds, upon the fishes, and upon the physical earth. Ask the child why he claims a thing that has been given him as "mine," and feels wronged and cries if his right is denied, and he cannot tell you. His nature teaches him that it is so, yet his efforts at reasoning upon the question are as futile as those of the fish.

Following instinct, or conscience, or whatever else we call it,—in other words, moved by impulses from the nature given by God to man—he, while living as all must in society, establishes various customs and usages. After they become universal the court takes judicial cognizance of them as law. When statutes are enacted it takes the like cognizance of them also. But it does not stop here. It notices in the same way opinions which have become universal and uniform, the teachings of science when so diffused as to be known by all men, and whatever is understood of the nature of man and of the relations of society. Especially it takes judicial cognizance of reason, and of the fact that directly or indirectly it is the highest guide of man. It thus becomes the highest guide of the court, so that our law is denominated