

the appendage was a sinker. The professor would suggest that it was a float. Was there then a true body of law in England which was known as the Common Law?

Names are largely unimportant, so long as the things signified are rigidly determined. If, for example, you chose to call judges' decisions the "Common Law," I shall not quarrel with you. For my part, I should much prefer to denominate such law "judicial legislation" (*f*), or "judiciary law" (*g*). But if you say that the Common Law was, or is, a true body of law, with existence *separate* from the decisions, or if you use the words indiscriminately, meaning, now, the decisions and, now, something else, definable or otherwise, I venture to disagree and to protest.

Let us have some one meaning. Have we three sets of laws—(1) the Common Law, (2) the decisions, and (3) the statutes? Or have we four sets—these three plus Equity? Or really five—(1) the Common Law (in nubibus), (2) Equity (in nubibus), (3) Common Law decisions, (4) Equity decisions, and (5) Statutes? Or only two—decisions and statutes?

For example, have we Equity law apart from Equity decisions. We have, no doubt, as Dr. Bryce tells us, a

"Regard for substantial as opposed to formal and technical justice, the kind of conduct which would approve itself to a man of honour and conscience" (*h*).

or, as we might more shortly say, a regard for justice (for formal and technical justice is usually not justice, but injustice); but was there, or is there, "a true body" of Equity law anywhere but in the decisions?

Of course nobody ever thought that there was (*i*). Very well, now, where did the Common Law decisions come from? The Equity judges developed their system empirically, applying notions of justice to cases as they arose. What did the common law judges do? The answer is simple: Apart from Roman law and other written aids, these judges went to precisely the same source

(*f*) See Pomeroy's Equity Jurisprudence, p. 66; and Mr. Justice McClain's paper read before the American Bar Association, 1902.

(*g*) Bentham's phrase: Principles of Moral and Legislation, p. 8.

(*h*) Studies in History and Jurisprudence, 581.

(*i*) Mr. Pomeroy tells us that the early Chancellors were guided by "their own individual consciences, by their moral sense apprehending what is right and wrong, by their own conception of bona fides": Equity Jurisprudence, 50.