

"It is in vain to say that a thing might have been done by an individual but cannot be done by a combination of persons" (a).

Now-a-days, however, they go much more warily, if very much less logically and lucidly, with the result that Mr. Haldane (in the front rank of English Counsel), undertaking to explain the two latest judgments of the House of Lords (e), is forced to acknowledge that he does not understand them himself (f) and must perforce await further revelations (of the Common Law?) at the hands of the judicial mediums.

Heaven apart, whence are the judges getting this new law? It is not in the statutes, nor is it in the decisions. Whence then? From the Common Law enwrapped in the palpitating tissues of the heart of the people, or its diaphragm? The soul, as everybody knows, locates itself in the—well, perhaps we have trouble enough on hand for the present. But this Common Law—do somebody tell us where it is, and what it is, and is it like anything that we know something about? Is it regulating the trusts at present, do you think? And if so, is it making much of a job of it? Judges applying their notions of justice to new conditions, we can all understand; and to certain people that is what they seem to be doing, in this business of manufacturing trust and strike law. But the idea of judges labouriously delving into nothing, nowhere, and pretending that they are unearthing primeval aphorisms, axioms and principles placed there by omnipotence or by nature (by behemoths, just as likely) for use in these later stages—well, for one, I don't believe it. And is the Common Law only one law, since the noun is in the singular? Or is it one compressed epitome of all law, some primeval protoplasmic germ with wonder-

(d) *Mogul Steamship Co. v. McGregor*, (1892) A.C. 25.

(e) *Allen v. Flood* (1898) A.C. 1; *Quinn v. Leathem* (1901) A.C. 495.

(f) "These decisions (he says) disclose divergencies of view amongst distinguished men which make it hopeless for anyone to try to say with accuracy or certainty what the law is. Speaking for myself, I should be very sorry to be called on to tell a Trade Union Secretary how he could conduct a strike lawfully. The only safe answer I could give would be that having regard to the diverging opinions of the judges, I did not know." (*Contemporary Review*, March 1903, p. 368.) But why not take a look, Mr. Haldane, at the Common Law? Why, upon the theory that judges merely expound and interpret the Common Law, not read and expound a little yourself? Why? Because each judge is consulting, not any body of law, "true," "common," or otherwise, but is declaring what to him with all his personal idiosyncracies, his dreads, his antipathies, his sympathies, his forecasts, his whole mental characteristics and climate—what to his particular, brain, appears to be best.