

But to justify him in the pronouncing of this decision, something which men are prepared to receive as law is necessary. *Real law*, by the supposition there is none; fictitious law must, therefore, be feigned for the purpose. What does he then? As above, under the name of *a rule of law*, either he makes for the purpose a piece of law of his own, or, as above, he refers to and adopts, and employs for his justification, a piece of law already made, or said to have been already made, by some other Judge or Judges.

What must all this while be acknowledged is—that, setting aside the question of its propriety and utility in other respects—if, so far as regards *certainty*, viz.: on the part of the decision, *certainty*, and, on the part of those persons whose lot depends on it, the faculty of being *assured* beforehand what it will eventually be—a decision grounded on this sham law were upon a par with a decision grounded on Statute Law, thus far, at least, it would come to the same thing, and it would be a matter of indifference whether the rule acted upon were put into the state of *Statute Law*, or kept in the state of *Common Law*. In that case, for determining the utility of the proposed operation called *Codification*, the only question might be—as between the two sorts of law—which of the two, their respective *sources* considered, afforded, generally speaking, the fairest promise of being most conducive to the universal interest? That which, at the present time, in contemplation of the exigencies of the present time, would have for its authors citizens of the State, mostly natives of the country—chosen by the rest of the citizens, in like manner mostly natives—or that which, in the course of several hundred years, was made at different times by from one to five persons, every one of them appointed by a Monarch—by a Monarch, under a constitution of which even in its most improved state, the yoke was found by you to be so grievous that, at the imminent peril of your lives and fortunes, and by the actual sacrifice of them to no small extent, you resolved to shake it off, and shook it off accordingly.”