

## LEGAL MISCELLANY.

## LEGAL PRINCIPLES.

## No. II.

In the last number but one of the Law Register, under the head of "Law in the United States," we endeavored to show that the courts and profession in this country, are compelled to view the law more as a system of principles, than is usual in the English practice; and to represent the advantages of yielding at once to this necessity. In the present article, which we have numbered two, and in some succeeding ones, in which we shall preserve our present heading, we propose to follow up this view, and among other things to make some suggestions concerning the nature of legal principles; how they are introduced into the law, and how learned by its practitioners; how the correctness of a proposed principle is to be tested; how applied to new cases, and various like points. And if we seem to do this in an off-hand, rambling way, it will be, not because we have any doubt of either the general correctness, or the importance of our suggestions, which we shall try to make in language sufficiently precise; but because we will not burden the minds of our readers, already worn by severe professional labors, with anything needlessly dull. We had rather be suspected, by those who may fail to appreciate our remarks, of not being profound.

Law, in the sense of the law of the land, is but an emanation of natural justice, limited and modified by technical rules. Justice goes by rules, as much as the planets do; and these rules of natural justice, and these technical rules, together make up our system of legal principles.

We all remember our childhood, and how, when the first "sum" was set us in arithmetic, pleasure mantled in our cheeks, as we learned that by striking off the first line of figures, adding together what were below, and then adding this result to that first line, we brought out the same grand total, as when we added the whole. We had before learned the fact that there were several ways to the school-house; but that there should be more ways than one in such a magnificent transaction as solving a great mathematical problem,

was both new and delightful. Here is wisdom for the wise. Not alone in the exact science of mathematics, from its lowest to its most abstruse branches, are there a variety of methods for reaching the same result, but this fact, or law, as we may choose to call it, is nearly or quite universal, pervading all things. It certainly pervades our jurisprudence to an extent quite beyond what is dreamed by the casual observer.

No professional man of any observation has failed to notice, that some judges will come to remarkably accurate opinions at first impression, but when they reflect, or look for a reason, they are immediately enveloped in mist; while, on the other hand, others are hesitating or inaccurate at first, but are brought to clear and just conclusions, lucidly reasoned, at last; and the favored few unite the better qualities of both these classes, leaving the poorer qualities to be blended together in some others, who are not judges. So it is, in and out of the profession. There are men whose natural, uneducated sense will bring them, at first impression, to more just conclusions upon a legal question, not technical in its nature, than the most mature learning in other men, until the latter have made an exact investigation of the particular case. Now, these and other like facts are explainable upon the doctrine of various processes for reaching the same result, and the diverse qualities of men's minds. There is a natural sense in the human understanding, stronger and clearer in some persons than in others; in all more or less obscured or misdirected by vices of education, by previous false impressions, and perversions of the reasoning powers, which points to what is right under each given state of facts. In the earlier periods of the law, this was a principal guide to the judges, and it is more or less a guide still. But, as we have said, all things go by rules. And for attaining the same result, a more accurate and sure method, if we are qualified to practice it, is to look at the rules, and observe what they bring forth. These rules in the law are, as we have said, legal principles. We may employ them as we do mathematical propositions, often working out the same result by various and diverse formulæ. How they are to be learned, how their correctness tested, how they operate, and the uses we are to make of them, are inquiries reserved for future numbers.

J. P. B.