

same pretext. The injunction must issue. I am aware of the responsibility assumed by the court in interposing to prevent the execution of an act of the Legislature; but the complainants have appealed to this court for protection, and I may not shrink from the duty they have imposed upon me.

Injunction issued.

LEGAL MISCELLANY.

LEGAL PRINCIPLES.

No. V.

In our last number we drew from the case of *Morris vs. Miller*, in which the leading opinion was delivered by Lord Mansfield, an illustration of the truth, that what a judge says in pronouncing the judgment of the Court, is not necessarily, nor always law, though the decision itself be correct. It was our purpose, in the present number, to deduce a further illustration from a very recent American case, correctly decided, in which the opinion of the Court was pronounced by an eminent living judge. But on reflection, we fear that our views for making the selection might be misapprehended, awaking unpleasant feelings not intended to be awakened, and thus that an injury would follow, overbalancing the good. When men are dead, and a certain time has been given for their bones to bleach and dry, we are all at liberty to overhaul and rattle them as we will; but until then, great caution and circumspection are required.

That a judicial *dictum* is not entitled to the weight of authority, is a very common observation, the truth of which needs not to be enforced. But the matter we wish to bring out, lies deeper. The remarks of Lord Mansfield, to which we called attention in our last number, were not what are usually understood to be *dicta*, but they were the very words in which the precise judgment of the Court was pronounced, being as much the essence of the decision as any

words could be. Still, even such words, expressive as they are of the reasons or principles on which a case is decided, do not, though the decision itself be just, always truly reflect the law.

The point we had thought more particularly to illustrate in this number, if we had selected the case we proposed to ourselves, is, that judges frequently state several distinct and independent reasons for a decision, upon any one of which we are led to understand they consider the case might alone repose; but on examination it will appear that a part only of these reasons are sound. Here the decision is correct; the reasoning accompanying it is good in part, and vicious in part. And the thing concerning which we wish to interpose a caution, is not to take, without examination, such reasoning as being just. A decision, indeed, may not be right; but it is very much more likely to be so, than the entire reasoning of the Court on the point; while the decision is, in the locality where pronounced, a legal authority, but the reasoning is not.

It may appear to a person who does not please to reflect, that the reasoning and conclusion are so connected, that both, like the voice and echo, must bear one character as right or wrong. This, however, is far from being so. Men do not know always, and perhaps we might say usually, what it is that influences their own judgments. If they do know, they do not always, and perhaps we may here also say usually, mention the real thing, when called to state their reason. Let it not be said that this observation is a sweeping charge of dishonesty; for it is not so. When a man does what we have thus stated, his act bears a character somewhat approximating, to say the least, towards the dishonest; yet he does not really mean it so, but he means to state what he thinks will be most satisfactory to the person he addresses.

Now, this same thing enters, to a greater or less degree, into the legal opinions of judges; and we must, therefore study them with the allowance and the caution thus indicated. If a judge, for example, pronounces an opinion which he supposes is to be carefully read and examined by a highly cultivated and intelligent bar, in the midst of whom he officiates, it will be more free from the blemishes we are speaking of, than if pronounced to an ignorant bar, or to non-pro-

fessional men. Of course, it is of the highest importance to the adjudication, that the case should have been well argued; but we are here supposing it to have been equally well argued in both instances. And in this observation we impute no corruption to judges; but only state a fact relative to the workings of the human mind.

Besides, we should remember that a judge has no better opportunity to know what is a legal principle, than the humblest man in the ranks of the profession. This knowledge depends upon the person's natural capabilities and his experience, study and reflection. We think we have sufficiently shown that Courts do not decide principles, but cases, though, of course, in deciding the latter, they must have a certain recognition of the former.

While in these observations, we are endeavoring to correct a too common error in the minds of professional men, we trust that our meaning will not be misapprehended. It is of the highest importance in studying cases, to look into the reasoning of the Court. The necessity of this is so apparent to any professional man, that it need not be enforced. But, at the same time, we cannot use too much caution against being led astray by false lights.

J. P. B.

THE DEATH OF THE HON. THOMAS DAY.

The Hon. THOMAS DAY died at Hartford, Conn., March 1, 1855. The pages of this journal have been enriched, on more than one occasion, by important legal matters from his pen. Mr. Day was born on the 6th of July, 1777, and was a descendant in the sixth generation from Robert Day, who came to Massachusetts in 1638.

The editorial labors of Thomas Day commenced as early as 1805, when he began to report regularly the Decisions of the Supreme Court of Errors; but he took notes of cases in the latter half of the 18th century, and his reports cover a period ranging through more than half a century. At the June Term, 1853, he declined a re-appointment, and the Supreme Court of Errors were pleased to express their high respect for his eminent services and exalted character, and to thank him for his advancement of juridical science through his numerous reports, and other legal produc-