

guides and aids in reaching right conclusions in the matters in controversy before them. For instance, by the Prussian Code (*Allgemeines Land-Recht*. [Introd.] s. 6) it is declared that "the opinions of law professors and the views taken by prior judges shall not be in any way considered in future decisions." Yet so persistently have the judges referred to the opinions of commentators upon this code and to previous decisions thereunder that a sort of *usus fori*, or customary law of the courts, has grown up under the name of "*Juristenrecht*." Again, Art. 5 of the French Civil Code, prohibits the judges from pretending to lay down general rules when giving their decisions. Yet there is hardly a French decision that one takes up where he does not find the judge repeatedly referring to "*la doctrine et la jurisprudence*," and also discussing the case from what he designates "*le point de vue juridique*." It is idle to say that these opinions and "points of view" do not exercise an important influence in the determination of new cases as they arise; and it is difficult to see how, in the result, this custom materially differs from the English mode of deferring to precedents, no matter how strenuously that principle may be disavowed in theory. But this by the way.

After all said and done, English judiciary law is but a *mos artificiali*, a usage of the trade, so to speak. For as in every other department of human activity, there have, perforce, grown up certain recognized canons which govern its operations, whether it be that of the carpenter with his rules as to scarfing and mortising, or that of the mathematician with his axioms and logarithms, so under our indeterminate system of jurisprudence the judges find it necessary to declare certain dogmas of procedure and principle to facilitate the determination of particular cases as they arise from time to time; and in order to avoid dissonance and confusion the *rationes decidendi* of such cases are crystallized into precedents. Until the legislature makes its enactments precise enough to meet every possible case arising thereunder both in respect of doctrine and procedure (and we think that day is somewhat distant), this usage of the Courts must, of course,