

the largest, which are to be decided by principles that are not disputed. That is to say, that the propositions advanced by the counsel on opposing sides are such as will be generally conceded, and need no support from judicial decisions. In these cases, which, in my experience, are the most numerous, the work of the judge is to determine from the case before him, that is, from the pleadings and the evidence, whether it falls within the principles offered by the Plaintiff or Defendant for its solution, or within some modification of these principles which counsel of neither party has adopted. The decision of this question demands the highest exercise of the reasoning faculties of a mind well stored in those general rules of law which lie at its foundation as a science, and the aid given in such cases by the decisions of other Courts is not much. The scientific arrangement of the facts of the case as seen in the pleadings and evidence, by a well trained judicial mind, must in this class be always the main reliance for a sound administration of the law.

There is another class of cases, the decision of which turns upon a construction of constitutions and statutes.

In these the decisions of the highest Courts of the government which adopted the constitution or enacted the statutes should be conclusive in most cases. In the construction of the Constitution of the United States, or an Act of Congress, the decisions of the Supreme Court of the United States ought, until reversed by that Court, to be followed almost without question. That Court has given expression to the rule in regard to the construction of the State constitution and statutes by the highest Courts of the States enacting them, in the adoption of the principle that even in the case of co-ordinate and concurrent jurisdiction it will follow those Courts in the construction of the statutes and constitutions of their respective States.

A third class of cases are those which, arising under the general rules of the common law, or in Equity, and in which the abstract reasons for one rule, or for another opposed to it, are nearly balanced, where it is more important than the rule should be establish-

ed and followed with uniformity, than that one or the other rule should prevail.

In this class, if there are differences in the cases decided, the question should be determined by the weight of authority. It is in this class of questions that adjudged cases are most useful, and in which the examination of them by counsel are of great aid to the Court, and are likely to reward the labor of those who make the examination thorough. Perhaps to this class should be added those in which the decisions of the Courts have become "rules of property," governing the rights of parties to real or personal property.

As regards the relative weight to be given to the different Courts whose decisions are relied on, it is more difficult to speak. I shall say nothing of the value of the decisions of the English Courts in questions purely of common law or in Equity. Not because I underrate them, but because every one understands their value, especially in equity and admiralty cases.

Leaving these, and the questions arising under State statutes, the value of a decision is estimated by the character of the Court, or of the Judge who delivered the opinion, or by both. These vary much in the Courts of the United States. Without being invidious, or undertaking to name other Courts of high standing, there are many things in the history and character of the Supreme Judicial Court of Massachusetts which entitle its reported decisions for the last hundred years to great consideration.

But a decision often has a merit apart from the standing of the Court in which it is made, owing to the high character of the Judges of the Court, or of the Judge who delivered the opinion.

Opinions delivered by such Judges as MARSHALL, TANEY, KENT and SHAW have a value apart from the Court in which they were delivered. Even the dissenting opinions of these men, and their *obiter dicta*, have weight in the minds of lawyers who have a just estimate of their character, which they cannot give to many Courts of last resort of acknowledged ability.

After all, the convincing power of the opi-