

tive, and the judicial, is one so long established and so generally admitted that we receive it implicitly, with but little reflection. According to common conception neither interferes with or invades the other, but, in practice as well as theory, they are distinct.

A very slight experience of the actual workings of the judiciary will show how mistaken this view is. Its powers invade both of the other departments. Though the judge does not make laws or execute them in the abstract or the general, he does so in individual cases. He decides without precedent that A. owes B. money, and sends the sheriff to execute his judgment. He decrees that a child must be taken from a parent,—that a citizen shall be deprived of his liberty,—that some street may invade my grounds. He stops the construction of a public work; he sets aside an election; he decides the title to a corporate office; he strikes dead an Act of Assembly; and, when called upon for his reason, he says: "I have found no precedent or analogous case, and I must, therefore, declare that to have been always the law, which in my opinion ought now to be the law." How a bad man would use such a license, it is unnecessary to explain.

The doctrine that there is existing law for every possible state of facts, that every judge is able to find this law, and that in announcing it he only declares or applies it, as distinguished from making it, is a very beautiful theory, and falls in harmoniously with the established views of government to which we have just referred. But in practice and in substance it is wholly illusory. It may restrain a good judge, and coerce him to explore more conscientiously the sources of customary law, in the hope that there are precedents or analogies to guide him. He may hunt, with the patience of an enthusiast, for the smallest rivulets from the fountain of justice, but he may never find them, and when he does, his very excellence of character may lead him to doubt them. It is only when the waters flow in a steady and certain current that he feels constrained to be carried along against his judgment and his sense of right. Instructed that he is not to make, but only to find the law, he may, with his books around him, be

put to a somewhat different kind of mental process, and reach a different result from that which he would reach if he were freed from the control of such a principle. But, in the end, it amounts to the same thing; what the judge would have decided if he had been a despot, he decides, believing that he has subordinated his judgment to the received theory of his government.

This result arises, most frequently, when questions connected with the organization and construction of public bodies, titles to office, the regularity of elections, the constitutionality of statutes, and other matters having relation to local governments, or of a public or *quasi* public character are presented. The law on these subjects is less settled, and the judge is left without precedent or analogy more frequently than when he is considering such a point, as one arising between landlord and tenant, or the parties to a note. And this is the very field in which political biases are most exercised, and passions and antagonisms have most influence. It has been a very melancholy experience to the quiet and unexcited watchers of events, to find, in how many cases, judges, whose decisions in matters of every-day business, are those of justice, with bandaged eyes, and even scales, when questions of public concern arose, have decided, again and again, sometimes with temper, each judge taking the side of the party which elected him.

(To be concluded in next number.)

THE HOUSE OF COMMONS contains 128 members of the legal profession: 95 English barristers; 18 Irish barristers; 6 Scotch advocates, and 9 attorneys. There are 5 serjeants-at-law, and 30 Queen's Counsel.

IRISH LAW APPOINTMENTS.—By the substitution of Mr. MORRIS for Judge CHRISTIAN, in the Court of Common Pleas, the present Tory Government has constituted a tribunal consisting entirely of Roman Catholics. The *Times* remarks that this is an unprecedented event.