

continue. Although we have in our statute-law no such splendid spur to judicial activity as that contained in the French Civil Code, Art. 4, to the effect that a judge who refuses to decide a case under the pretext of the silence, obscurity or insufficiency of the law, may be prosecuted for a denial of justice; yet our courts are expected to find the law covering a particular case, by hook or by crook, somewhere.

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ITS LIMITATIONS.—The reasonableness of judiciary law being thus conceded, the question arises, how far are the judges justified in exercising their undoubted authority to prescribe the law where the legislature has not spoken?

In the older repositories of the common law there are to be found many judicial tours de main, superimposed upon the process of making precedents by, to use Sir Matthew Hale's phrase, "illations on anterior law," and the resultant harvest of indisputably new principles is therein garnered. But courts now honestly endeavor to remember that their office is *jus discere* only, instead of grandiloquently talking about it as a wise limitation of their powers, and, at the same time, using it as a cover to screen their excursions into the forbidden and seductive field of law-making, as their forensic forbears were wont to do.

In *Webb v. Rorke*, 2 Sch. & L. 666, a case decided so late as 1806, Lord Redesdale said: "If a case arises of fraud, or presumption of fraud, to which no principle already established can be applied, a new principle must be established to meet the fraud; for the possibility will always exist that human ingenuity in contriving fraud will go beyond any cases which have before occurred."

If he meant by this, as it seems from the report he did, that a new principle can be enunciated without reference to any analogy it bears to one already existing, then he was altogether wrong.

An opinion more akin to the present attitude of the Courts upon this question was stated by Lord Brougham in the case of *Leith v. Irvine*, 1 My. & K. 294, where he says: