

no reason for extending the folly to other judges, for judgment should be given not according to precedents but according to the law."

The only words which Colonel Denison would disapprove of, I take it, are the last five, for he would apparently have no law whatever.

It is perfectly true that nowhere else than in England, and in countries which have derived their legal systems from England, have decisions of judges been systematically treated as authoritative. But the Romans were far from consigning litigants to the mere discretion of the magistrate. They, however, attached but small importance to decided cases, resting their law not upon them but upon the opinions of patented jurists possessed of the *jus respondendi*. But whatever advantages this system might have over our own in the direction of a more even and logical evolution of law, it certainly cannot have done much to remove the difficulty of ascertaining the law applicable to actual disputes arising amongst men. Indeed, we know that at various times attempts were made to meet this difficulty, until at last Roman jurisprudence sank to the point of "counting heads;" the famous Law of Citations of Valentine III. (A.D. 426) selecting five of the classical jurists of the greatest repute, and directing all judges to adopt for the decision of questions arising before them the law laid down by the majority of them, with a casting vote, so to speak, in favour of the excellent Papinian. But it stands to reason that there remained abundant opening for endless argument as to the applicability of citations from the writings of these sages to practical cases. And at any rate the difference between such a system and our own may be likened to the difference between drawing your water from a stagnant reservoir and taking it from a living stream.

However, the continental view of the matter, which looks for the law rather in the commentaries of jurists than in the decisions of the courts, is an inheritance from the law of Rome. In England cases have been cited in court as authoritative at all events from the time of King Edward I. And we are told by Sir Frederick Pollock that where the two systems have come into competition, as they have done in the Province of Quebec, the Cape Colony, and other British possessions originally settled under continental systems of law, the method of ascribing exclusive authority to judicial decisions has invariably been accepted. Under this system