

The Lower Canada Law Journal.

VOL. II. AUGUST, 1866. No. 2.

THE CODE OF CIVIL PROCEDURE.

In some respects, it must be conceded that we are not a backward people in this country, and the interest manifested in the revision and consolidation of our laws is one of them. We have had our Statutes revised, and we have had them consolidated, and now, while the subject of codification is still only on the *tapis* in England, we in Lower Canada possess two codes—the Civil Code, and the Code of Civil Procedure. That which England, with her illustrious jurists and eminent text-writers, has never accomplished, and still doubts the possibility of accomplishing, her enterprising colony has brought to pass. The Civil Code will soon be law from Gaspé to Ottawa, and the Code of Civil Procedure is, while we write, rapidly passing through Committee of the House.

The advantage of having a Code, even an indifferent Code, cannot be disputed, and although many will probably be of opinion that our Code, considering the time and money that have been expended on it, is not so immaculate as could be desired, yet its simple existence, as a cleared spot in the midst of a tangled thicket, must be a source of relief and satisfaction.

It is not our intention, however, at present, to enter into any discussion respecting Codes, but rather to refer to the action taken by the Montreal bar, with respect to the Code of Civil Procedure, which must naturally attract the special attention of practitioners.

At one of the meetings held in June, to consider the proposed changes to the Act respecting the Bar, it was suggested by Mr. RITCHIE, that it was time, then or never, to pay some attention to the Code of Procedure, a matter of much greater importance than that which was then being considered. Parliament was in Session, and the draft of the Code was rapidly passing through committee. He suggested, therefore, that a committee should be immediately named to take the draft of the

proposed code into consideration, and see what amendments were desirable. The Committee named was composed of Messrs. RITCHIE, ROBERTSON, Q.C., DOUTRE, Q.C., JETTE, and BETHUNE, Q.C., and although the time was short, and the weather none of the coolest, these gentlemen prepared a report, with annexed schedules of amendments, which evinces close examination and acute reflection. Besides the points which we have been able to notice below, the committee suggested a large number of minor alterations and verbal changes, most of which at once command the approval of the reader. A meeting of the bar was called to consider the report on the 19th of July, but it being vacation, and the notice short, there was not a *quorum* present, and the suggestions were merely submitted in an informal manner, the proposed amendments for the most part being acquiesced in by those present. The members of the bar present at this meeting were Messrs. ROBERTSON, Q.C., batonnier, MACKAY, RITCHIE, TORRANCE, DOUTRE, Q.C., JETTE, ARCHAMBAULT, PAGNUELLO, KIRBY, and the Secretary, Mr. SNOWDON.

The Report was as follows:

"The Committee named to consider what amendments are required in the proposed Code of Civil Procedure, beg leave to report that they have gone through the articles contained in the Report of the Commissioners, and the amendments suggested by the Committee are embodied in the Schedules A and B hereunto annexed. The amendments proposed to articles 45, 254, 262, 351, 352, 355, 356 and 357, are only concurred in by a minority of the Committee.

The principal changes recommended by the Committee are the following:

Art. 32. That parties bringing actions of damages *in forma pauperis* shall be liable to *contrainte* for the costs awarded to the opposite party.

90. That in case of default of defendant in *saisie-arrêt* after judgment, judgment may be rendered in vacation.

150. That in pleading, no replication be required.

210—222. That the articulation of facts be abolished.