

SIXTH REPORT

*Of the Commissioners appointed to codify the Laws
of Lower Canada in civil matters.*

To His Excellency the Right Honorable CHARLES
STANLEY VISCOUNT MONCK, Baron Monck of
Ballytramon, in the County of Wexford,
Governor General of British North America,
and Captain General and Governor in Chief,
in and over the Provinces of Canada, Nova
Scotia, New Brunswick and the Island of
Prince Edward, and Vice Admiral of the
same, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY :

The Commissioners have the honor of transmitting the sixth report of their work, containing the titles of Mandate, Loan, Deposit, Partnership, Life-Rent, Transaction and Compromise, Gaming Contracts and Bets, Suretyship, Pledge, Privileges and Hypothecs, Registration of Real Rights, and Imprisonment in civil cases.

These titles complete the third book of this code.

The accompanying observations are intended to indicate the sources from which the articles submitted have been derived, and to explain when necessary, the reasons upon which they have been adopted.

TITLE EIGHTH.

OF MANDATE.

Preliminary
Observations.

This title presents a contract which enters largely into the daily operations of life, and is of great practical importance, particularly in mercantile business. The observations contained in the report of the title "Of Lease and Hire" shew how unsubstantial is the distinction between the hire of personal services and mandate, when not gratuitous. After a careful examination of the theories of the various writers on the subject of the difference between the two contracts, it appears certain that it is neither the fact of a price being paid nor the nature of the service which distinguishes the one from the other. The distinction as made in the Roman law, from which the contract in all its fundamental rules is derived, was founded upon the social differences which existed among that people, and chiefly, in the earlier periods of their history, upon the fact that certain arts and professions were exercised by free citizens and thence called liberal, while others were left to slaves. The compensation paid for the former class of services was termed *honorarium* and payment of it was voluntary, and could not be recovered by action at law; that for the latter was called *merces* or *pretium*.

It is evident that a rule of difference like this, having no other foundation than the shifting conditions of social rank in a state, can never properly become fixed or universal in character; it must vary with the changing estimate which different societies, according to their various constitutions, place upon the honor or dishonor of particular employments, either from their imputed excellence or from the dignity of those who follow them. That occupation which at one time, in an aristocratic state, is regarded as disreputable, at another period,