



LAW REFORM.

The *Canada Law Journal* of the 1st October last had an article commenting upon some remarks made by the police magistrate in reference to excessive law costs. The issue of that journal dated the 1st Nov. contains a reply from Col. Denison, in which he says that he had not made charges against the legal profession, but against the system of the administration of civil justice. After correcting one or two errors he goes on to say :—

"Now having corrected these errors, I will state my views in reference to the administration of civil justice.

"The State has taken upon itself the duty of settling disputes between citizens. This is an absolute necessity, unless we relapse into barbarism, where no man would have any rights unless he was able to defend them by force. The State, having taken upon itself this duty, and having the power of organized government to enforce any thing it undertakes, it follows that the individual citizen is at the mercy of the system which the State devises, and is helpless in its hands. I hold therefore that when a man is a peaceable citizen, obeying the laws, paying his taxes, and conforming to the rules of organized society, that he is entitled if he gets into any difficulty or dispute with a neighbor, which they cannot settle between themselves, to be able to appeal to the State to see that justice is done, and I feel that this duty should be performed at the least possible expense to the individual.

Now, what is the usual course under the present system? Two neighbors in a business transaction have a dispute or a misunderstanding. It often happens that there is a good deal to be said on both sides. The differences, however, are irreconcilable, and the citizens have to appeal to the State to decide. One citizen goes to his lawyer, lays the whole case before him naturally with his own coloring, and gets an opinion on the law. The counsel knows well that no one can positively tell what is the law, but probably gives an opinion that his client has a good case, and one that is worth fighting in the courts. A letter is written to the other side, or a writ is served, and the defendant goes to his lawyer for advice. The lawyer hears the defendant's statement, looks up precedents, and advises him to defend the case, although he also knows that there is no certainty as to the law. The case is now fairly started, and the costs begin to roll up. Motions of all kinds can be made; to set aside appearance, for security for costs, for particulars of statement of claim or defence, to strike out statement of claim or defence, for better and further affidavit on production, to compel attendance of witnesses, and so on. Then the examination for discovery, and other examinations, conducted at great length, and with tiresome reiteration and repetition and taken down in shorthand, all extended in full, all rolling up heavy expenses. Then after all these motions and filings of affidavits, and examinations upon them, and attendances, and drafts and engrossings, etc. the case at last comes before a jury. Technicalities of law are brought up, and discussed and overruled and reserved. Then witnesses are examined again, with the same reiteration and repetition all again taken down in shorthand. Objections are raised to questions. These are also argued, and the objection sustained or overruled, with points again reserved. These things all tending to confuse the minds of the jury as to the real merits of the case, which are often to be found on both sides.

Then follow long arguments of counsel, then the judge's charge, then the objections to the judge's charge, the reserving of more points, with the result that the jury will probably give the verdict one way, while the judge has reserved law points to settle whether the decision should not be the other.

The case may then come up before the full court, and the points of law concerning which (if the law is the great science our profession claim it to be) there should be no question, have to be decided. Three judges, supposed to be experts, impartial, upright men, who have devoted their lives to the study of the law, sit for hours and listen to the same arguments on the same evidence, with the same precedents quoted under the same magnetic influence and ability of the counsel on both sides, without the slightest reason apparent why they should differ, if there is anything in our boasted science of law, and at the end of it all two of the judges will decide one way and one the other.

Then an appeal is taken to the Court of Appeal, and the same thing happens, only the judges of this court are supposed to be still more highly trained experts, and here also will two decide one way and three the other on exactly the same facts and arguments.

Then follows an appeal to the Supreme Court, where the same old story is told, with the result possibly that three will decide one way and two the other.

Lastly comes the Judicial Committee of the Privy Council, and then a final decision is made one way or the other, but apt to be the nearest right, because they have no appeal above them, and do not trouble themselves nearly so much about precedents as about justice.

Then what happens? One man wins and the other loses, neither being altogether in the right, and neither altogether in the wrong, but one gets everything, the other loses everything, his own costs and his opponent's taxable costs, while the successful man is heavily punished in his solicitor and client costs, and in the mental worry, loss of time, etc.

The total costs in a case like this would probably amount to thousands of dollars, if not tens of thousands, and might have been as satisfactorily settled without expense, and with just as much certainty if the parties had tossed a copper to decide it at the start.

It must be remembered that a man once in law cannot avoid this. If a poor man is fighting a rich man, or a rich corporation, he must absolutely give up his right to have the case decided, or run the risk of ruin.

It was against this system that I have based my remarks, and expressed my hope that some day the people through their Parliament would be able to reform it. I think that the State should legislate so that the judges should decide disputes quickly and simply and without formalities, and without regard to anything except the absolute justice in each case; that there should be only one appeal, which should be final; that musty precedents, perhaps the mistakes of men gone by, should not be worshipped or followed to create injustice. If the State did this, did away with all fees of every kind, and hired the lawyers at fixed salaries to assist the judges in bringing forward evidence, there is no occasion why disputes could not be settled in one-tenth of the time, and at one-twentieth the expense now incurred.