

## COMMUNICATIONS.

## QUEBEC JURISPRUDENCE.

To the Editor of THE LEGAL NEWS :

SIR—In your article on "Dissentient Opinions," in the last number of the LEGAL NEWS, you quote from an Ontario publication an article in which it speaks in rather unflattering terms of the decisions of the Courts of this Province. I do not intend any reply to this article in the sense of defending the decisions of our Courts. You yourself have sufficiently done so already, and I think with you, that the profession in Ontario is not in a position to throw stones or other missiles about. If the decisions of the Quebec Courts are little quoted in Ontario, the decisions of the Ontario Courts are as little quoted here. Of the Ontario digest, which has been for some time past in course of publication, there are, as far as I can discover, but one or two copies in the city, while but very few of the fraternity here are apparently aware of its existence. So much for Ontario decisions.

But while I conceive the Ontario people are not in a position to cast aspersions themselves, is there no truth in what they say, or if there is, should we be too proud to confess it?

You point to Sir James Stuart and others as samples of our judiciary, but is it not a little like pointing to Washington as a sample of American statesmen?

Let us profit by the ungracious remark of our Toronto friend and look for a moment on this side of the curtain also.

It is granted that the decisions of our Courts are not infallible. The decisions of no Courts are. It is granted that our jurisprudence is not perfect. None is. Is it then as near perfect as we can make it, or is it possible to advance it a step further towards that star-like goal, perfection? If I venture to say we can, I think that must be granted also.

We have a Code of Civil Law of which we are justly proud. It is all the Code Napoléon is, by which the people of France have been governed for the last half century, and perhaps a little more.

And, notwithstanding this, I have very little hesitation in saying that the decisions of our Courts have a larger degree of uncertainty about them than those of the Courts of any

country with which we are at all familiar. And why? Because the judges in our Courts have not sufficient unanimity—or unity, perhaps, would express it better—in their bearing towards the jurisprudence of the Province as a whole; but treat each case separately and individually, and sometimes with very little regard for the opinions of each other. Each judge thinks his own opinion quite as good as that of any other judge, or bench of judges, or number of judges expressed at different times, and "rather better." To illustrate, if I am not misinformed, a well known judge of the Superior Court here, has more than once, when authorities and precedents have been quoted to him, declared that he cared nothing about them; that he considered his own opinion quite as good as that of the authority quoted to him. And so indeed it may be; but if every judge acts entirely upon his own opinion, sometimes very hastily formed, and attaches no weight to the opinions of others, who have been called upon to decide the same points in previous cases, what must be the result? Just what we see it in our courts every day. Unless the law is expressed in black and white in the Code, a lawsuit is the merest game of chance. You might as well—and, indeed, for the client very much better—flip up a shilling and abide by the result, as appeal to the courts. And even when the law is expressed in black and white, it is by no means uncommon to see a judge exhausting his ingenuity to evade the plain meaning of it, in an endeavor to make it square with some preconceived opinion, or, worse still, some hidden motive or feeling existing in his breast in regard to the matter in hand. I might, and so might any practitioner in the Province for the matter of that, cite scores of points of law and practice—points which are, in some instances at least, recurring every day—which have been tossing about for years past, like chips upon a wave, blown hither and thither by the breath of every succeeding decision, and finding no rest, to the disgust of clients and the no small anxiety of attorneys.

The direct cause of this I have shown, but there are remoter causes behind, which I may endeavor at least to conjecture at in a future communication, if you can find room for this.

Yours,  
S.