

The Legal News.

VOL. V. SEPTEMBER 30, 1882. No. 39.

JUDICIAL REFORMS.

The following letter has been addressed by Mr. Justice Cross to the Attorney-General, on the subject of the proposed judicial reforms:—

*To the Honorable the Attorney-General
for the Province of Quebec.*

SIR,—Your predecessor in office having requested the opinion of the judges on the reforms suggested in the Report made to the Legislative Assembly by the Codification Commission on the subject of judicial reform, I beg leave to make the following observations:

Perhaps no attempt to present the subject to the profession and the public interested has hitherto been made so comprehensive in its completeness as the one on which I venture to make the few remarks now submitted.

It seems to embrace all, to have omitted nothing, and to have its parts appropriately fitting into each other.

I do not intend to attack nor even to criticise a system, nor to attempt to substitute one, but merely to make some general observations evoked by my own experience, in the hope that they may be found to support the views of some possessing the knowledge and ability to deal with this subject, and who may have given it a careful study.

A principal object to be kept in view seems to me to be to preserve what we have that is good, to be cautious in making changes, and to let these be based as much as possible on evident necessity, with as little as may be in the direction of what is merely experimental.

In revising the legislation for the last forty years on the subject under consideration, although we can discover many ameliorations, numerous incongruities wiped out and process of a special character facilitated, yet should we ask ourselves whether the expedients for delay and frustration of the operation of the law are less numerous and less effective than at the commencement of that epoch, whether the average delays of lawsuits are diminished, I fear we should have to answer in the negative. Are the ameliorating forces

therefore little effective, or have they taken a wrong direction? I am convinced that no general satisfactory answer can be given to this question, and if we wish to elucidate we must discriminate, but my object is only to take a general view.

It seems to me that in one direction there has been too much legislation, and that is in attempting to regulate the proceedings in Court, and especially fixing the delays within which rights must be claimed.

While I hold that the defining of rights is the proper province of the legislature, the regulation of the machinery by which these are put in operation is best left to the action of the Courts. The legislature operates with a measure of iron yielding little to emergency. Courts with a stricter rule for cases in general can temper it by concessions to meet the justice of particular cases. To comprise as much as possible all cases, the legislative delays are usually made more liberal than those of the Courts, but necessarily less plastic. Loss of time in ordinary cases is more likely to result from the operation of the former than from that of the latter. While the former three day rule might seem sufficient to a Court which could always concede further delay for special cause, it could not perhaps be judiciously adopted by the legislature to form a general rule, and rules of practice can readily and conveniently be altered as the test of experience impresses itself directly upon the Judges who have the remedy in their own hands to apply according to the emergency. Many instances will readily occur in which the superior advantages will be apparent of the control of the Judges in matters reasonably falling within the province of Rules of Practice. I would suggest avoiding legislation as much as possible in matters merely regulating the exercise of rights and matters of practice, including all special formalities merely touching the mode or manner of proceeding, at least until it became apparent that the judges in this respect failed in their duty, or were unsuccessful in controlling litigants in the exercise of diligence. It seems to me that much time is lost with the formalities of inscriptions and notices to proceed, good in themselves but not always essential, and much whereof might frequently be avoided by a simple entry on the Roll by the judge in the presence of the parties,