The Legal News.

VOL. V. APRIL 8, 1882. No. 14.

DUPUY & DUCONDU.

If the holding of the Supreme Court in this case, as it appeared in the *Legal News*, No. 10, be correct, the judgment is not as erroneous as "N. W. T." would have us believe. It does not declare that the sale of a Crown timber licence carries with it a warranty as to there being no preceding concession. It does hold that the warranty of the second deed in this particular case is binding. Nor does it seem the Court was misled by any reference to Art. 1576, C. C.

If "N. W. T." be correct that there was a new consideration for the warranty of the second deed, then he is perfectly justified in saying that the Court of Queen's Bench, and for that matter of it the Superior and the Supreme Courts too were mistaken; and we must applaud the happy accident that by a majority of one judge in the last Court of Appeal, an "injustice" was not committed, although the motive of the judgment was bad. One may be permitted, however, to doubt that so important a fact should have escaped the attention of eleven judges in a case argued by numerous and able counsel.

R.

THE SUPREME COURT BILL.

We assume that the Bill concerning the Supreme Court is in a great measure tentative: that the subject not being an easy one, a draft has been submitted for the purpose of eliciting an expression of opinion, rather than with the idea of making it law.

A preliminary objection to the Bill is that it threatens to obstruct the business of the two provincial Courts. A sixth judge was lately deemed necessary in the Court of Queen's Bench, in order that there might be a spare judge to hold the criminal terms without interfering with the sittings in appeal. Take one judge away to Ottawa, and you will immediately have a cry for a seventh judge in the Court of Queen's Bench. So, too, in the Superior Court. A seventh judge was considered necessary in Montreal, and if one be taken away for Supreme Court cases, an eighth judge will soon be asked for. This method of eking out Supreme Court deficiencies suggests the Hibernian's plan of lengthening his blanket—he proposed to cut a piece off the bottom and sew it on at the top. To mend the administration of justice in the Supreme Court, judges who have been declared by Parliament to be necessary are to be taken away from the inferior tribunals. It were surely more economical to add at once a third permanent judge from this Province to the Supreme Court. A question may also arise, whether the Dominion Parliament has a right to interfere in this manner with the organization of our Courts, and to take our judges away from their districts and from the Province.

But there are also two grave objections to the scheme considered with reference to the work of the Supreme Court itself. First, it brings judges from a court of first instance to pronounce upon the correctness of judgments rendered in appeal from that very court of first instance. This is swinging round the circle. The "judge-in-aid" may have the casting voice to reverse the unanimous judgment of the Provincial Court of Appeal, and to restore the original judgment of the court of which he is a member. The second objection is still more serious. As the "judges-in-aid" would be constantly changing, the door would be opened to dissonant interpretations of the law by the court whose function it is to fix the jurisprudence. We do not assume that precedents would deliberately be disregarded; but every one knows how easy it is to make distinctions in order to get round a decision which is believed to be wrong.

The Montreal bar, it may be added, at a meeting on Tuesday, passed a resolution, without a dissentient voice, expressing disapproval of the bill, as tending to impair confidence in the Court, and to destroy the certainty of its jurisprudence.

MORE UNSATISFACTORY RESULTS.

On page 74 of Vol. 4, we noticed a decision of the Supreme Court, in *McKay* v. *Crysler* (3 Sup. Ct. Rep. 436), overruling by a majority of one the opinion of six judges of the Ontario Courts, as well as of the two dissentients in the Supreme Court. Three prevailed over eight.