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THE SUPREME COURT AND ITS CHAMPION.

The *Law Journal*, of Toronto, has essayed a defence of the unusual expressions applied by the Supreme Court to the judgment of our Provincial Court of Appeal in *Grant* v. *Beaudry*, and which were noticed in a previous issue by our correspondent "R." (p. 41). It is obvious, however, that discussion of a question is idle when a controvertist is either totally ignorant of the facts, or wilfully misrepresents them. The champion of the Supreme Court evidently knows nothing about the case of *Grant* v. *Beaudry*, for he states that the Court of Queen's Bench gave "an opinion on a subject "which was not before the Court as a Court of "Appeal, *and had not even been discussed in the "Court below*, and of the existence of which the "Queen's Bench had no judicial notice."—which our readers know to be utterly unfounded. The champion does not appear to have read even the communication to which he professes to reply; for he says: "We perfectly agree "with 'R.' that the judgment of the Supreme "Court will hurt neither the reputation of that "Court nor that of Mr. Justice Gwynne, one of "its brightest ornaments." But what R. said was that the decision of the Supreme Court in *Grant* v. *Beaudry* will not hurt the reputation of the Court of Queen's Bench.

Apart from the obvious fact that the champion is disqualified by ignorance from expressing any opinion on the question, there is no attempt to assail the position taken by "R.," a position which is supported by formal citations of the law. We may, therefore, dismiss without further remark the impotent effort of the champion who, *rabido ore*, has rushed to the defence of the Supreme Court.

But it occurred to us while reading the communication of "R." that something might have been said, which was not said by our correspondent. "R." restricted himself to the pure question of law, as to the discretion of a Court to pronounce upon a point not absolutely necessary to the decision of the cause. But if he had chosen to pursue the subject a little further, what would have been the result? How does the Supreme Court itself stand as to "extra-judicial" opinions? We call its champion as our witness. In March, 1880, referring to the judgments of this Court, the *Law Journal* says:

"The main difficulty that meets one in con-
"sidering some of the judgments of the Supreme
"Court is *upon what grounds does the judgment
"of the Court rest—what is and what is not extra-
"judicial in each particular judgment—and in the
"united result which forms the decision of the
"Court?* Consider for instance *McLean* v.
"*Bradley*, 2 S.C.R. 535. * * * The judg-
"ment as reported emphasizes the want of har-
"mony in the Court, and by consequence
"weakens the authority of its decisions *and
"sows the seeds of future litigation by the diversity
"of opinions expressed on points which are left un-
"determined by the Court, though peremptorily
"and often diversely passed upon by individual
"judges.*"

In *Grant* v. *Beaudry* the Court of Queen's Bench, at the instance of both parties, pronounced an opinion upon the sole question submitted on the merits, and which had been the subject of a long and expensive trial, for the purpose of sparing the parties the cost and inconvenience of further litigation, but it appears that the Supreme Court, if we may believe its champion, *sows the seeds of future litigation* by *its* extra-judicial utterances!

So far we have heard the champion as a witness. Now let us respectfully ask some of the learned Judges of the Court to step into the box. Turning to volume 3 of the Supreme Court Reports, we find at page 576 that a majority of three of the judges of the Court (including Mr. Justice Gwynne), in the well known case of *Lenoir* v. *Ritchie*, expressed an opinion on the right of the Provincial Legislatures to deal with the appointment of Queen's Counsel. The opinion is summarized in the head note to the case, page 576, par. 3, but immediately after we find under No. 4, *per* Strong and Fournier, JJ., the following: "That as this Court ought
"never, except in cases when such adjudication
"is indispensable to the decision of a cause,
"to pronounce upon the constitutional power
"of the Legislature to pass a statute, *there was
"no necessity in this case for them to express an
"opinion upon the validity of the Acts in question.*"
And this *précis* is fully borne out by the re-