

LAW REFORM ACT OF 1868.—THE NEW DOWER ACT.

to deteriorate rather than to improve, as has been found to be the case even in England.*

If the special business of the Superior Courts is increased by this Act, the special business of the County Courts will be proportionately decreased. Whatever other effect that may have, it will, we fear, tend to the gradual deterioration in the learning of the County Judges, they will in fact get "rusty;" they are likely to, and doubtless many will become more and more careless and pay less regard to legal principles; decisions when any thing special does come before them will be given more and more at haphazard; practitioners will be "at sea;" the laws will be administered without uniformity, and the general legal business of the country will suffer. The growth of the evil may in some counties, owing to the strength of character of the judge, be slow, but we fear the seeds of evil have been sown.

It is proposed we believe to give to the County Judges jurisdiction in those minor criminal cases which magistrates have hitherto disposed of, to be decided by them on their Division Court circuit. Whatever might be the advantages or disadvantages of such a provision it would not compensate for what the judges will lose in the way we have pointed out.

Attrition of one mind with another of equal, or better if of greater calibre is one secret of judicial success. What the county judges have of this advantage will in a measure be taken away by this Act. Better far to try if some scheme could not be devised to group the judges together so as to have an appeal from one judge to several and so increase the attrition.

As far as the profession are concerned, anything that is injurious to the *status* of the Judges by a reflex process operates injuriously on the profession.

The probable effects, as far as the public are concerned, have already incidentally been considered.

We do not propose at present to discuss other Acts of this Session which effect the tenure of office and dismissal of County Judges, they may possibly be disallowed by the Dominion Government as unconstitutional. But we must in conclusion protest against the absurdity of saying "the county

judges are a bad lot, but we will remedy that by making them worse, though in the process we may do much harm to the country. The Superior Court judges have plenty to do, but we will remedy that by giving them more, though the effect may be to injure the public, and in the end bring things to a somewhat similar but infinitely worse position than they are at present."

Whilst feeling bound to make these observations on some of the provisions of this Act, we are, on the other hand, glad to think that some of the provisions will be beneficial to the public. The decrease in the number of Criminal Courts (we allude particularly to cities,) will be a great boon to that most long-suffering class of men who have, as jurors, to sacrifice themselves for the supposed good of their neighbours, and the expenses of criminal justice will be largely decreased. By sec. 18 of the Act suitors will have the privilege (whether this is an advantage or not is too long a subject for discussion at present,) of having their cases decided by a Judge who can decide both the law and the facts together, and this without the public being deprived of the safeguard of a trial by jury, when such a safeguard is required.

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We publish in another place the "Dower Act of Ontario." If any subject required the manipulation of an experienced and careful law framer, this did. Whether it has now received the necessary treatment we are not at present in a position to say; a cursory glance would seem to show some great improvements.

We presume that sections 19 and 43, which at first glance might seem to conflict with each other, mean that the Common Law Procedure Act and Rules of Court are to regulate the practice as far as possible, but when these make no adequate provision, practitioners must fall back on the old practice in dower suits before 10th August, 1850.

Mr. Blake introduced an act to amend this Act, which he alleges will destroy vested rights. It is contained in a few lines:—

"1. The provision in the third section of the said Act contained shall not affect the right of any widow who shall have been married before the first day of February, A. D. 1869, to recover Dower out of any estate to which her husband

* See "Fallacy of Local Tribunals," *ante* vol. IV. p. 276.