some of the judges "hold" this and others "hold" that; that Judge Smith some time ago—last month or last year—decided it in such a way, while Judge Jones last week decided it in quite an opposite sense.

Lest it be thought that I am speaking of non-realities, or at least exaggerating the truth, I will give one instance (though I am convinced a dozen such cases will readily suggest themselves to any practitioner of experience), the question of venue on a promissory note, made in one district and payable in another—made we will say in the country and payable in Montreal. Now, this question alone is a question of vast practical importance to the commercial community in this city, who have notes and bills of this kind coming due every day. We will take a case of this kind.

A merchant has a note which he is unable to collect himself, and which he feels compelled, in order to secure himself, "to hand to his lawyer for collection." But in the place where the note was made he has no legal agent, knows no one to whom he can entrust it. It may be that the maker is fortunate enough to live in a place where there are no lawyers, and indeed, for many reasons the only satisfactory course may be to sue on it here.

It is payable in Montreal, and reason and common sense would suggest that there is the place where the right of action on it arises. And, besides, it was decided in such a case by Judge Smith or Judge Jones, at such a time, that it might be so proceeded on, and he brings action here accordingly.

The action is returned, the defendant appears and files an exception to the venue, the case is fixed for hearing, all the costs of a case on the merits are incurred, with the exception of those occasioned by the adduction of evidence, the question is taken *en délibéré*, and after some days, it may be some weeks, by which time the plaintiff is pretty sick of the whole thing, the judge with many learned arguments and with that comforting reservation *sauf à se pourvoir*, dismisses the action with costs.

Can any good and sufficient reason be given for this? There may be, but I must confess that in my ignorance I cannot imagine what it is. It seems to me that nothing would be easier than for the Judges, who should be and are the real law-makers as well as the law administrators of the country, to settle questions like this after they have arisen half a dozen times we will say, and a fair opportunity been afforded of doing so. One reason why they do not appears to lie in the unscientific way a great many of the Judges of our Courts have in dealing with the various questions of law and practice which come before them for their decision, treating every question on its own individual merits, without consideration of others of a similar character, and without aiming to establish the principle which regulates the whole; just as though a naturalist were to attempt to define the nature and characteristics of an entire genus from the consideration of a single specimen. The office of the judiciary appears to me to consist as much in building up the law as in administering it; in supplying what is lacking in it, as well as in applying that which it already possesses—a part of their functions which the Bench here in a great measure appears to overlook. The Roman Prætor, as we know, announced, on his accession to office, the rules and principles which he intended to administer during the term for which he was appointed, and these being added to and adopted by his successors, came at last to form a body of law fixed and certain which is to-day a most important element in the *corpus juris*.

This system, though impracticable at the present day, I cite for the purpose of pointing out the importance that was attached to the decisions of the magistrates even at that early period, and notwithstanding the many sources of what is now known as *positive law* which then existed, and the importance, moreover, which was evidently attached by the early jurists to that element of certainty and reliability, the absence of which, I submit, is sometimes so painfully apparent in our own jurisprudence.

S.

Montreal, March 12.

Sir Fitzroy Kelly, Chief Baron of the Exchequer, is seriously unwell, and has gone to Brighton to recruit his health. The Chief Baron has attained the ripe age of 82, and his retirement at an early day from the toils of office is considered probable.