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JUDICIAL REFORMS.

The following letter has been addressed by Mr. Justice Ramsay to the Attorney General for the Province of Quebec, commenting on the Report of the Hon. Mr. Justice Loranger as Commissioner for the Codification of the Statutes :—

MONTREAL, 25th August, 1882.

SIR,

In compliance with the request of your circular of the 1st May last, I have examined the first report of the Commissioner for the codification of the Statutes, comprising a proposed law for the re-organisation of the Courts and the consolidation of the Code of Procedure, with all the care circumstances would permit of.

Criticism of such a work must necessarily appear somewhat ungracious, and its utility may possibly bear no fair proportion to the labour it entails.

In the remarks I deem it my duty to make, I do not purpose entering into the merits of the *redaction* of the various clauses of the proposed legislation; but shall confine myself to considerations which appear to me to involve questions of general principle.

The chief objects sought to be attained by all systems of legal procedure are so obvious, that little or no difference of opinion exists as to them; but the modes of arriving at the desired result are very various. Few subjects have attracted greater attention, and every system hitherto produced has been exposed to almost clamorous denunciation. Lawyers gain by protracted legislation, and the delays of justice, it is said, are due to their sordid speculations. I do not feel called upon to answer these wild accusations, which contain just that semblance of truth which is sufficient to capture the most foolish fish. Sham philosophers prose, and rhetoricians rave about the delays of justice. They might about as well expatiate on the time it takes to ripen an ear of corn. In theory, every impediment put between the creditor and the recovery of his lawful debt is a tortious

delay. Forms of procedure are the penalty we have to pay to avoid surprise and ensure justice. Celerity in legal proceedings is therefore simply a question of degree.

In organizing a judicial system, while it is evidently wise to have before one's eyes the highest conceivable form of excellence, it is important not to be led away by abstractions, often fallacious, and even when theoretically right, too difficult of application. The new system should differ from the old as little as possible. All unnecessary changes in the law are bad, and before making a change it is proper not only to be sure that the old law is defective, but that there is a tolerably strong presumption that the proposed alteration is an amendment (1). By thus keeping up the traditions of civilization, alone, can true progress be secured. Obedience and respect are more willingly accorded to an old law than to a new one.

The report contains some useful suggestions; but, as a whole, it seems to me to have been dictated by ideas totally at variance with the rule of amendment just mentioned. It is a radical change of all our present notions—it introduces a system of procedure so different from the one existing, that lawyers will have to learn their profession anew, at the expense of their clients, it introduces some forms of absolutism totally foreign to the habits of the people of this country, and subversive of individual rights, and it alters the position held by the Judges in every British country, introducing a sort of subordinate surveillance over them, borrowed from some revolutionary source or other. Whether this up-turn of all our judicial system is the out-come of the Commissioner's own mind, whether he has copied it from any system actually in force, or whether he borrowed it from the writings of others, we know not. Hardly an authority is cited, and the occasional references to the English law show a very imperfect knowledge of that system, while the old French law is discarded as being unsuitable to our times and circumstances.

(1.) The danger of making changes of a radical kind is very real. This is particularly true as to matters of legal procedure. All changes untried by experience are little more than groping in the dark, and what, at first sight, seems a desirable simplification too often can be turned into a cause of delay, or it works in-justice.