

EIGHTH REPORT

*Of the Commissioners appointed to codify the
Laws of Lower Canada.*

To His Excellency the Right Honorable CHARLES STANLEY, VISCOUNT MONCK, Baron Monck of Ballytrammon, in the County of Wexford, Governor General of British North America, and Captain General and Governor in Chief, in and over the Provinces of Canada, Nova Scotia, New Brunswick and the Island of Prince Edward, and Vice Admiral of the same, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY :

The undersigned Commissioners have the honor to submit with their present report the Code of Civil Procedure, as the completing portion of the work which the statute of the twentieth year of Her Majesty's reign had in contemplation. Preliminary observations.

The Commissioners are not called upon to argue the necessity of this part of the codification. There is no occasion in this country to controvert the opinions of the visionaries who have asserted that procedure is but an obstruction to the administration of justice and a mechanism devised by lawyers to procure themselves a livelihood. These ideas, which at one time may have met with some encouragement, now only provoke ridicule; especially since the attempts made to abolish forms in the administration of justice have only succeeded in rendering their usefulness more manifest. All know the opinion expressed by Napoleon on this subject before the *Conseil d'Etat* : "*Les formes sont la garantie nécessaire de l'intérêt particulier ; des formes à l'arbitraire il n'y a pas de milieu. C'était des temps barbares que ceux où les rois assis au pied d'un arbre jugeaient sans formalités.*"

The provincial legislature following the course already traced has ordained that the Civil Code should be accompanied with a code of procedure, to secure uniformity in its execution, and has enacted that both codes should be drafted upon the same general plan and should contain, as nearly as it was conveniently possible, the same amount of detail upon each subject as the French codes.

In the work now submitted the Commissioners have indeed been able to adopt very nearly the general plan of the French code of procedure ; but as regards the order of subjects, they have been obliged to deviate considerably from that plan, the difference in the system of judicature and in the procedure itself requiring a different arrangement.

The French code commences with the inferior jurisdictions and finishes with the higher courts, giving *seriatim* the rules which belong to each court. By adopting this course the Commissioners would have considerably extended their work, they would have repeated a great number of rules common to the different courts, and would have created a confusion detrimental to their work. In Lower Canada, moreover, our procedure, like our civil laws, is taken from several different sources. As the groundwork we had the ancient French laws, and espe-