

LAW REFORM.

place in English law within the last few years have been neither few nor small, yet they seem to be but shadows of coming changes of far wider scope and consequence. Unquestionably, there is in the legal circles of the mother country a strong tendency towards the codification of the laws; we think it needs no great wisdom to predict that this will be a result, the accomplishment of which is no more than a question of time. Probably before this consummation is reached, there will be many intermediate changes and modifications of the existing system, such, for instance, as are foreshadowed in Sir John Coleridge's address at the Social Science Congress. By these the various branches of the law in the matter of evidence, of commercial law, of real property law, and the like, will be systematized by way of codification. By process of complete codification the principles of law will be more or less changed: matters doubtful will be reduced to certainty; harsh rules will be mollified by direct enactment; consistency and logical development will supersede the disjointed and anomalous conglomeration of case-made law.

But in the immediate future, perhaps, there is no more pressing question than that of uniformity of curial procedure, and, coupled with this, the re-adjustment of the jurisdiction of the courts, so that any person who has a valid cause of action, whether legal or equitable, or both, may obtain an adjudication of his case upon the merits, without being driven from one court to another, on technical objections to the jurisdiction.

In this Province there has been a gradual assimilation of the practice in the courts of law and equity. This is especially noticeable in the mode of trying causes by the Court of Chancery under the circuit system, where the evidence is given *viva voce* in open court, the case argued at once and disposed of by the judge, just as in *Nisi Prius* cases, where a jury is not asked for. So in the establishment of local offices to facilitate the transaction of equity work, the Court of Chancery in Ontario has departed widely from English precedent, though it has acted in conformity with the common law mode of distributing business. As regards the jurisdiction of the courts: when one looks at the Common Law Procedure Act, and observes in how many points the systems of law and equity touch, and when

one looks at the reports, and observes in how many cases litigants have been prejudiced because courts of law and equity have not had co-ordinate jurisdiction,—one cannot but wish that some scheme were devised whereby the vexatious lines of demarcation might disappear and (in the language of a well-known pleader, who now adorns the bench of one of the common law courts) “the course of justice flow unobstructed.”

The conditions for the successful consummation of such a plan are more favourable in Ontario than in England. Besides the present similarity of procedure, to which we have adverted, which does not obtain in the English courts, we have not the numerous, well-disciplined, and devoted Chancery and Common Law Bar, which in England is powerful enough to delay the adoption of changes, beneficial to the public, though conceived to be detrimental to the privileged few.

There are two modes whereby the injustice to suitors which we have indicated may be remedied. The first is to leave things as they now are in respect to jurisdiction and procedure, and to confer upon the superior courts, by statute, the power to transfer causes from one court to the other, so that a common law cause of action which has strayed into chancery may be relegated to its proper forum, and so that an equity which could not be worked out at law by reason of the insufficient machinery of the court, may be passed over to a competent tribunal. This scheme, properly worked out, could, without doubt, be made an adequate provisional remedy, but it would be manifestly only a half-way stage to effectual relief. The ultimate goal of all such amendments can only be that to which the Attorney-General of England adverts in these words, “the fusion of our two systems of law and equity, a thing, in my opinion, which is absolutely certain one day to be done.”

Now, in setting about any scheme of fusion there are a few principles to be borne in mind by law reformers in Canada. It is impossible to satisfy every person, or class of persons, affected by the changes. New, and perhaps unpleasant work will be thrown on the bench and on the bar. Solicitors and attorneys will be unable to agree which class is to swallow up the other. This will be, however, a matter of small concern to the great body to be benefited,—the people—in whose eyes, according