

FIRST REPORT

Of the Commissioners for the Codification of the Laws of Lower Canada relating to Civil Matters, appointed under the Statute 20 Vic. Cap. 43.

To His Excellency Sir EDMUND WALKER HEAD, Baronet, K. C. B., 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 of reporting that they have completed a section of the work entrusted to them, consisting of the title *Of Obligations*, and in obedience to the statute under which they are acting, they herewith transmit printed copies of the same to your Excellency.

General observations.

This title comprehends the fundamental principles upon which a large proportion of civil rights and liabilities depends, and furnishes rules of universal application in their adjustment. The subject is important, and as this is the first completed portion of their work, the Commissioners deem it necessary to offer a brief explanation of their general mode of proceeding, and of the reasons upon which certain rules have been adopted, and changes recommended in the course of it.

The seventh section of the statute prescribes that the codes to be prepared under it, shall be framed upon the same general plan and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject as the French codes on corresponding subjects. To the instructions thus laid down by the law the Commissioners have endeavoured to conform substantially in the title now presented, but they have thought it expedient, in some instances, to depart from the course followed in the French civil code.

That great work, with all its excellencies, is not always happy in the classification of subjects ; and occasionally it exhibits a looseness of expression leading to conflicting interpretations, and in some instances to seeming contradiction.

These defects, the result of haste in execution, are pointed out in energetic terms by commentators of distinction, and to no title are their strictures more forcibly applied than to that of Obligations.

It would, of course, be inexcusable in the Commissioners to have carried their respect for the model proposed to them so far as to copy its acknowledged faults. They have tried to avoid them, and have sought for the means of doing so in the original sources of legislation on the subject, in the writings of the great jurists of France as well under the modern as the ancient system of her law, and in the careful comparison of these with the innovations which have been introduced by our local legislation and jurisprudence, or have silently grown up from the condition and circumstances of our population.

1 Trop. Vente, No. 45, p. 51.

6 Toul., No. 205, note 1.

7 Toul., No. 460.

4 Marc. on art. 1133, No. 450.