The Legal News.

Vol. III. JANUARY 17, 1880. No. 3.

CRITICISM OF JUDGMENTS.

A communication from Messrs. Brooks, Camirand & Hurd appears in this issue in reference to the cases of *McLaren* v. *Drew* and *Fuller* v. *Smith*, noted at vol. 2, p. 388. This letter, we understand, has been submitted to the learned Judge, and with it the correspondence on the subject may properly be closed. A word on the subject of criticism of judicial utterances may now be in order.

We have always thought that great advantages would flow from a fair and temperate criticism, offered openly, of the judgments which are rendered by the Courts. That is certainly infinitely preferable to the secret assaults by which a Judge's reputation may be severely tried, without his having any opportunity of defending himself, or even knowing the quarter from which the attack has proceeded. If a professional journal has any special office at all, apart from supplying information as to current decisions, it must open its columns to all communications which come within the limits of honest criticism. The best way of ensuring fairness, as a general rule, is that the critic shall guarantee his good faith by writing over his name. With such a rule, we have not the slightest fear that the privileges of criticism will ever be abused, or that any Judge can suffer injury by unmerited censure. The learned Judge who rendered the decisions in question on this occasion, we feel assured, would be the last to complain of any criticism of his judicial acts which might be made under such a restriction. There has been too much clandestine depreciation of our Judges in the past: too little frank speaking; and the reputation of the Provincial bench has suffered in consequence.

LAW REFORM.

Conferences are said to be in progress with reference to contemplated changes in the administration of justice, and the result will probably be embodied in a bill on the meeting of the Legislature. We trust that the day of hasty innovation is past. Too many of the changes which have been made have resulted in confusion, simply because they were pressed through before one in twenty of the members of the bar had any opportunity of expressing an opinion on their merits. In this matter the practice in England, where every important change is preceded by long and careful consideration, might be followed with advantage. The bill should be drafted and printed, and distributed among the profession, and then, if serious difficulties are suggested, it should be left over for examination during the recess.

AGENT OF FOREIGN PRINCIPAL.

A difference of opinion has existed between the Superior Court and the Court of Appeal with respect to the question involved in *Doutre & Dansereau*, noted in the present issue. At least two of the Judges of the former Court, in similar cases, had arrived at a different conclusion from that announced in appeal. We confess that we found a difficulty at first in accepting the latter as a satisfactory solution of the question. But when the grounds of the final judgment are examined, it will be seen that the Court of Appeal has not laid down any new or startling doctrine, but the case has been treated very much as a matter of fact. The difficulty was that a person pretending to be agent brought an action in his own name on a contract, and when the contract is looked at, it discloses an obligation to another party: the agent's name nowhere appears, and his claim is left without anything to sustain it. The view of the Court of Appeal appears to coincide with that urged by the appellant in some remarks which we quote from his factum :—

"Le nom de Dansereau n'apparait nulle part. Comment Dansereau peut-il être assujetti aux dispositions de l'Art. 1738 C.C., et être responsable personnellement envers les tiers, lorsqu'il ne contracte pas personnellement? Il ne peut être facteur qu'en autant qu'il contracte personnellement, pour un principal étranger. Ici il n'y a pas de preuve que Doutre ait fait affaire avec Dansereau en aucune qualité. . . . . Il est indubitable que lorsque l'écrit a été signé, l'Intimé n'avait pas en sa possession les livres que l'Appelant achetait, et que, de fait, il n'en a jamais eu possession. C'est l'Appelant qui a payé la douane. La Cour d'Appel, *in re Crane*