

## The Legal News.

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### THE COURT OF QUEEN'S BENCH AND ITS SITTINGS.—SENTIMENTAL AND OTHER VIEWS.

In the issue of 1st December an endeavour was made to show practically the working of the four days' rule—the word system is purposely avoided, as it seems to wound certain susceptibilities, and its use might afford excuse for digression. It was also sought to establish the recondite truth that the greater the fraction the less the quantity, or that a third is less than a half.

The *Gazette* interviews have been useful in letting us know who are in favour of the four days' rule, whence the objections come, the nature of these objections, and, to some extent, the motives which prompt them. The six very eminent members of the bar, interviewed by the *Gazette* reporter, have given in their adherence to the proposition to abolish terms and substitute sittings in the most unqualified terms. This is more important as it is the affirmation of a recommendation of the Bar, in November, 1876, Wotherspoon's Manual, 2nd Ed. pp. viii, ix. It may be said that since that time the bar has asked for monthly terms; but this was only subsequent to, and in consequence of, the destruction of Mr. Mousseau's bill in the Legislative Council last session. Their demand amounts to this, give us the means to be heard, we have been persistently refused the remedy we asked—there are degrees of badness, although the Code tries to say there are none of fault.

The "open secret" of the *Gazette* retains something of its original mystery. It is, however, no secret at all, that three Judges have avowed their approval of the four days' rule, and the Chief Justice has expressed no hostility to it publicly, so that the Justices Tessier and Cross alone oppose it avowedly.

It is, therefore, important to examine their reasons.

Mr. Justice Tessier's apparently amount to this—he doesn't like to leave his home, for the relative discomforts of an hotel, and he doesn't

like to have the Court sitting at Montreal for lengthened periods of time in his absence. Both these feelings are perfectly natural, but they are *personal*, and therefore, they can only be regarded as minor considerations. The learned Judge is, however, reported to have made two statements which require comment. He says: "The great difficulty has been in getting the cases heard. There has been no complaint about any delay in deciding them." With all due deference to the learned Judge, this is argumentative "padding." It is obvious that the fewer the cases heard, the less likelihood will there be for any ground of "complaint about any delay in deciding them." It is equally obvious that if the number of cases heard is considerably augmented and if the opportunity to decide them is almost totally taken away, the delay in giving judgments must necessarily become the part of the system in which the defect is apparent. The expedient attributed to the Irishman whose blanket was too short is not alone an outburst of Milesian genius. There is, however, another mode of concealing the precise spot where the arrangement breaks down—that is, by giving hasty and half-considered judgments; or, as Judge Baby happily put it, although unreported, "si l'on nous impose une *besogne* trop forte les jugements s'en ressentiront." One word more on Judge Tessier's communication to the interviewer. The rendering judgments have considerably narrowed the days of term for hearing cases, and the attempts to have *délibérés* and to deliver judgments on days fixed for that purpose out of term, have signally failed.

It is almost touching to find that Mr. Justice Cross is embarrassed by a hankering after the old system (he calls it a system) which obtains in England and elsewhere; and he is not appeased by the belief that the Privy Council sits almost continuously until the work is exhausted. As a matter of history Mr. Justice Cross was not always so conservatively minded. In the last year of his practice (Nov., 1876), he attended a meeting of the Bar which voted the annihilation of the term system in the Court of Appeals *nem. con.*, and he took by no means a passive part in that meeting. Such change of view is perhaps not singular. Proverbially, circumstances alter cases, and men's