

EFFECT OF THE ACTS RELATING TO THE ADMINISTRATION OF JUSTICE.

PERHAPS the ceaseless and quiet course of the stream of judicial decisions does more to change the boundaries and landmarks of the law than the more violent eruptions of legislative action. The suggestion is *apropos* of the decision in *Goodwin v. Roberts*, 23 W. R., 915, where it was held by the Exchequer Chamber that scrip of a foreign loan issued in England by the agents of a foreign Government was negotiable, on the ground that mercantile usage had so treated it. Chief Justice Cockburn characterised the law merchant as no fixed stereotyped unaltering law, but one capable of being expanded and enlarged so as to meet the wants and requirements of trade in the varying circumstances of commerce. It is the result of well-established and clearly proved customs of trade adopted by the courts of law—the sum of certain customs standing independent of, although sanctioned by, judicial decisions.

In a recent number of the Queen's Bench Reports of Ontario, the Chief Justice of the Court is reported in *Reg. v. Denham*, 35 U.C.Q.B., 508, as determining with grave humour (on a motion to quash a conviction for selling liquor by retail without a license) that selling a bottle of brandy is selling by retail. He observes that "selling a bottle of brandy for \$1.25 can hardly be considered doing a very large wholesale business." The reporter, with commendable research, thinks it necessary to buttress this opinion by a foot-note, calling attention to *Gorsuch v. Butterfield*, 2 Wis. 237, on this point. It strikes us that this is travelling rather far afield. It would have been better to have noted the case of *Reg. v. Strachan*, 20 C. P., 184, 190, in which the Chief Justice of the Pleas says that the Court would assume that the sale of a bottle, value sixty cents, would be a sale by retail.

EFFECT OF THE ACTS RELATING TO THE ADMINISTRATION OF JUSTICE.

THERE are difficulties in the administration of the law which will never be cured whilst men are men. Judicial conclusions will be diverse and conflicting, and therefore to some extent unjust, in many cases where they should harmonise and concur. The causes lie beyond the power of legislation to reach. We might refer, for example, to the whimsical instance related by Byron's friend, "Monk" Lewis, "wonder-working Lewis." He tells the story of a French nobleman who was accused of impotence by his wife before the parliament of Paris, and was also charged, before the parliament of Rouen, by a farmer's daughter with seduction, whereby she became pregnant. He thought himself perfectly sure of gaining either the one cause or the other; he was, however, to his great amazement, and doubtless to the great edification of the public, condemned in both.

Other kinds of difficulty in administering the law arise when the thing aimed at is to do complete justice to the claims of all persons interested in a given subject of litigation. These difficulties involve questions such as the true measure of one party's rights against the other; the modifications to which those strict rights are subject by way of rebate and set-off, or in consequence of equitable considerations; the remedies over which the party primarily liable may have against others, and the proper tribunal before which for once and all these rights may be vindicated and these complexities adjusted. Legislation in this Province has been addressed, and we think with no small measure of success, to the solution of these difficulties. No doubt the perfect remedy would be some well-devised amalgamation of law and equity into one comprehensive legal system, thereby re-