

"New Brunswick.*"Message to the House of Assembly, 14th February, 1854.***" EDMUND HEAD.**

"His Excellency the Lieutenant Governor lays before the House of Assembly, the remaining Reports of the Law Commission, and recommends such Reports to the careful consideration of the Legislature."

E. H.

The Reports communicated by this Message are as follow:—

LAW COMMISSION.**SECOND REPORT OF THE LAW COMMISSIONERS.**

To His Excellency Sir Edmund Walker Head, Baronet, Lieutenant Governor and Commander in Chief of the Province of New Brunswick, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

Since our first Report made in accordance with Your Excellency's Commission and the Act of Assembly, we have given attention to those matters required by the Act which we had not time to investigate on the former occasion, and also to the finishing of the revision; and now submit this second Report, together with the printed revision of the Statutes, and six Chapters on Equity Law Procedure.

Although we anticipated, when the first Report was presented, that we had nearly finished that part of our duty which related to the revision of the Acts of Assembly, we found, on further investigation, a large amount of labour in arrear in that department alone; and while superintending the printing of the Chapters accompanying our first Report, we proceeded to complete the codification of all that remained, with the exception of those Acts which required to be infused into the Common Law and Chancery Reform, and such as we deemed necessary to form a second Volume.

We have prepared also for the revised Volume a Chapter containing a Chronological List of all the Acts repealed by our codification.

We have to observe that we have received a very small number of replies to the printed Queries, which we long since forwarded to the Legislators, the Judges, Officers of the Courts, Barristers, and Magistrates, throughout the Province. The Chief Justice, the Master of the Rolls, Judge Parker, and Judge Street, the Advocate General, the Hon. Thomas Gilbert, the late Hon. Wm. Crane, and Richard Carman, Edward Smith, Wm. N. Buckerfield, John T. Williston, and D. L. Dibblee, Esquires, are the only Gentlemen who have sent in answers.

After the utmost consideration that we have been able to give to the subject, we are constrained to differ from the view taken by the three Judges and Master of the Rolls, who have favoured us with their valuable suggestions on almost every head of our enquiries, relative to a very important and leading feature of reform, namely, the union of the Court of Chancery with the Supreme Court, and have unanimously decided on proposing such a union, according to the plan prepared and now submitted under the Title of "*Supreme Court, Equity Side.*"

From this difference of opinion, and the importance of the change from the existing mode of administering Equity both in this Country and in England, we feel it to be necessary to enter somewhat at large into the consideration which have induced us to adopt this view.

We think there is no one branch of our Jurisprudence in which we are so deficient as in our Courts of Appeal. In the Supreme Court we have four Judges, who, from a sound legal education and long experience in the Common Law Courts, are prepared at any time to settle principles of Law, after the case has undergone a thorough sifting at Nisi Prius. Whatever at times may be the doubts entertained of the soundness of a decision thus given, the general feeling among the Profession has always been that of confidence in their finally matured judgment, especially when each Judge has distinctly applied his mind to the particular case, and given his reasons for the opinion expressed. From this Court there is an Appeal to the Court of Error, consisting of the Head of the Government, and his Council, which is open to some grave objections. The matters of error are usually merely technical, and often for that reason, and their extreme nicety, the more abstruse; but they may, by means of a Bill of Exceptions, and in some other cases presented on the Record, become substantial; in which case it is obvious there is an Appeal from the best Court in the country to one singularly formed for the review of matters decided by such a Court. In ordinary cases it is plain that the Judgment of this Court is *liable* to be reversed by the decision of two or more professional gentlemen, at the very time in full practice, whose judgment may be heated by contests with the Judges, and by the violence of political debates; while it is *possible* the professional portion of this Court may one day consist of the Attorney and Solicitor General alone, and either, or even both of whom, may have been Counsel in the cause appealed from, and consequently disqualified from acting. If these two gentlemen, supposing them to be qualified to sit, had the

decision