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DISSENTIENT OPINIONS.

The view is strongly expressed by a Toronto contemporary that the opinions of Judges of the Supreme Court who differ from the majority should not be reported, should not even be stated in court,—nay more, that the very names of the dissentient Judges should be suppressed. The advantages of unanimity are manifold, and the profession are in a position to appreciate them at their just worth. But we must take care that unanimity, or rather the semblance of unanimity, is not purchased at too high a rate. We shall quote part of the article to show the reasoning by which the proposition is supported:

"It is evident that one good end which would result from the suppression of dissentient opinions would be the reduction in bulk to that extent of the yearly volumes of the Reports. A very much overruled judge might then imitate the example of the Pennsylvania justice, who published at his own charges, in a volume by themselves, his own dissenting judgments, and so sought redress at the hands of posterity. It is further evident that if the reporters do their duty, and give a proper synopsis of the arguments of the opposing counsel, it is unnecessary to set forth the grounds of dissent on the part of any of the judges. Any attentive student of the case will see where doubts may arise. But when a judge has fully combatted his brethren in the conference room, and been voted down, it is better that his reasons for withholding assent should not be reported, so as to cast disrespect on the considered judgment of Courts of last resort. We think we speak advisedly when we say that the little weight possessed by decisions of Lower Canada Courts is partly owing to the diverse views entertained and expressed by the different judges who take part in the disposition of the case. Much better to suppress the disagreement and not to give prominence to it by publishing *in extenso* all that can be said against the opinion of the majority. As in family matters, if there be disturbances, better not aggravate the trouble by taking the public into your confidence. When Mr. Justice Maule, according to the well-known story, gave judgment, after Judge A. and Judge B. had just delivered conflicting opinions, by saying that he agreed with his brother B., for the reasons given by his brother A., he never intended that the views of the Court should be published for the benefit of the profession, or the confusion of suitors.

"The object of all decisions is to settle the law—to determine the just rule fitted to the existing state of things, and it is most important that the conclusion should be reached with such precision and unanimity, as not to provoke litigation. In the Court of final appeal for this Dominion, we think that the ancient customs of the Privy Council, and the well-considered practice of the Supreme Court of the United States, may well be recognised and adopted. The opinion of the Court should be composed and delivered by one member, and no dissenting judgment should be pronounced or reported."

The gratuitous sneer at the decisions of "Lower Canada" Courts may pass. A Bench which has been adorned by men like Sir James Stuart, Sir Louis Lafontaine, Sir A. A. Dorion, Aylwin, Badgley, Meredith, and others still holding office, needs no apologist. The opinions of the Quebec Bench have invariably been treated with respect by their Lordships of the Judicial Committee of the Privy Council, and in very few of the 2,113 cases heard and decided on the merits by the highest Provincial Court during the last sixteen years, have the judgments been set aside on appeal to England, as the reports of the Privy Council show. If the judgments of Quebec Courts are not appreciated or cited at Toronto, the reasons are probably the same as account for the fact that, while the decisions of English and United States Courts are constantly referred to at Montreal or Quebec, it has been a rare event to hear a reference to the opinion of an Ontario Judge in the latter cities.

But the question of present moment is this: Ought the opinions and the names of dissentient Judges to be withheld? The example of the Judicial Committee is referred to by our contemporary, as one to be imitated. It is true that the opinions of the minority of the Judicial Committee are withheld. But there is a special reason for this. The decision of the Judicial Committee is in the form of a recommendation to Her Majesty by certain members of Her Privy Council, and falls within the same rule and etiquette as other business before the Privy Council. Now that the work of the Judicial Committee is performed by paid judges, and the Committee has become very much like other Courts of Appeal, there is an element of fiction in the form, still retained, of presenting the decision as a recommendation to Her Majesty, and it may possibly in time be abandoned. At all events, there is good reason to believe that the suppression of dissentient opinions has proved highly inconvenient in several cases, and probably accounts for the