

## The Legal News.

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### BUSINESS IN APPEAL.

The delays of justice have at all times been the subject of serious complaints, and the grievance has often been of great magnitude. It is not possible entirely to avoid the inconvenience, but it is not the less the duty of the legislator to adopt every possible means of facilitating the transaction of legal business. Within the last twenty years much has been accomplished in this direction by cutting down the delays of procedure; but all this fails to secure the desired result so long as obstacles occur in the hearing and adjudication of cases. A mere cry for "despatch" is idle. Despatch without opportunity for due deliberation would be a misfortune. On the composition of the judicial body, and the facilities they have for hearing and deliberating, we must depend for securing the only kind of despatch that is to be desired.

It is not our intention for the moment to refer to the Courts of original jurisdiction. The serious difficulty with us at present is as to the business in appeal, and in the remarks we have to make we do not desire to throw any kind of blame on the Judges of the Court of Queen's Bench. In a previous number we have shown that the arrears by which the Court is now encumbered are not of their making, and that in the face of an immense increase of business the Court has not lost ground. The practical question therefore resolves itself into this: Is it impossible for the five judges to clear off the arrears? If they cannot, some temporary expedient should be devised in order to accomplish this object. But we do not think this is necessary, and we have reason to believe that the judges are not of opinion that it is. It requires no very deep study of our system to discover very formidable impediments to the despatch of business, which being cleared away would give the Court an opportunity of applying its energies more effectively. In the first place the judges are by law compelled to reside in two towns 180 miles apart. Secondly, there are but four terms of eleven days each for hearing cases in Montreal. Thirdly, practically the whole five judges are obliged to sit in every

case, otherwise they are liable to re-hearings, which take up much time. Fourthly, by reason of the necessity of the five judges all sitting at once, it is impossible to hold extra terms of the court, appeal side, without breaking in on the vacation or on the terms of the criminal court.

The remedy for all these evils is simply to allow the judges to fix their own sittings, to make the quorum of the Court on the appeal side four, and to abolish all restrictions as to residence.

Some prejudice exists as to the quorum of four. It is said that if the judges are equally divided, it is the judgment of the inferior Court that prevails and not that of the Court of Appeal. We see no harm in that. It is a result directly in accordance with principle. The theory is that the presumption of law is that the judgment is correct, and it should not be touched in appeal unless it be clearly wrong. How can it be said to be clearly wrong if one-half of the Court of Appeals thinks it right? The presumption then in favour of the judgment should prevail. But we go further and say that this chance in favour of the successful litigant in the Court of first instance, constitutes a wholesome check on litigation. There is, however, another thing to be considered, and it is that four is arithmetically the best quorum for a Court of Appeal. If the judges in Appeal are equally divided, as has been said, the judgment below should be confirmed, and we have thus a decision of three judges to two. If again there is a division, but not an equal one, you have perhaps four to one, and at any rate three to two. But by our system the judgment is often rendered by three against three, and when complicated by a decision in Review, it may be by three against six.

As far as authority may have weight, it is in favour of a quorum of four. When Sir Louis Lafontaine, no mean authority as regards the organization of civil courts, re-organized the Courts in 1849, he made four the quorum in Appeal. This was altered owing to an outcry, which continued to increase rather than to abate after the alteration. The truth is it was a criticism of the uninformed. Again, recently when the Judicial Committee was re-organized, the paid judges were appointed to the number of four, and the Court usually sits with four Privy Councillors.