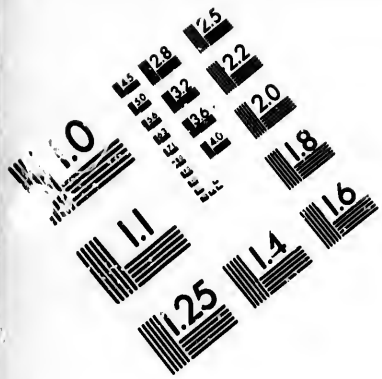

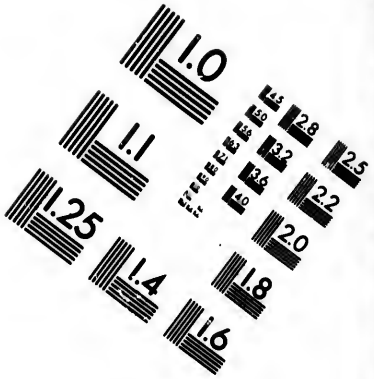

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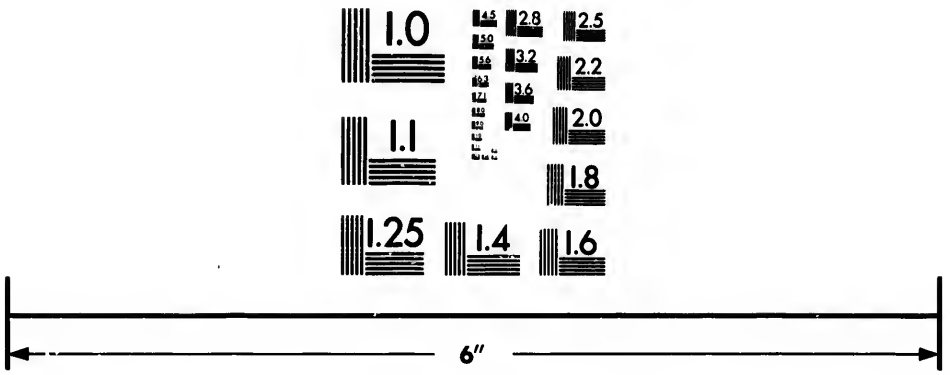

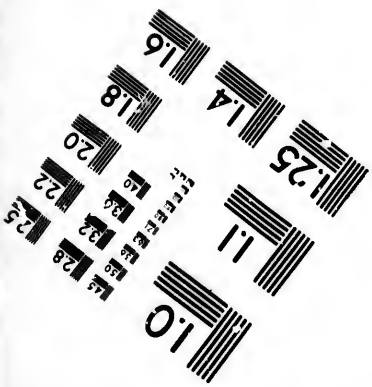

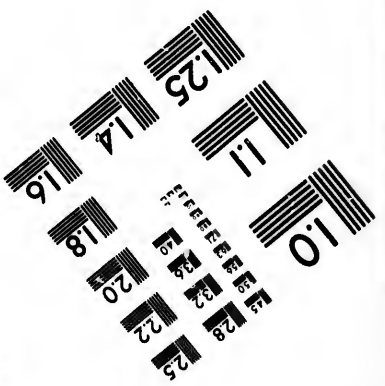

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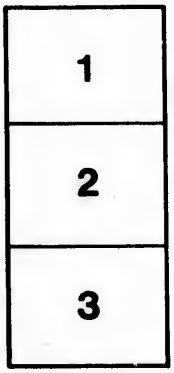

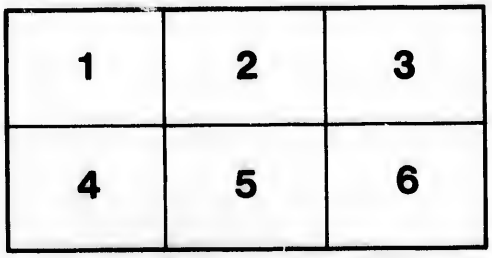

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A LETTER

ON THE SUBJECT OF THE

COURTS OF LAW,

OF

UPPER CANADA,

ADDRESSED TO THE

Attorney General and Solicitor General,

TORONTO:
PRINTED BY SCOBIE & BALFOUR, ADELAIDE BUILDINGS,
KING STREET.
1847.

TO THE

Attorney General and Solicitor General

OF

UPPER CANADA.

GENTLEMEN,—

I beg leave to address you, as Chief Law Officers of the Crown for Upper Canada, and as old professional friends, upon a subject interesting alike to the profession and to the country,—the due administration of justice; a subject which should always engage the attention of those who make, and of those who are concerned in administering the law.

At this time, when changes appear to be contemplated in some of our courts of justice, the subject is peculiarly interesting; certainly none of more real importance can engage the attention of members of the Legislature; and it is to be hoped that they will bear in mind that good laws, well administered, have an immediate and important bearing upon the welfare of the people.

The construction and working of all our superior courts of justice have been brought prominently before the public eye, and more particularly of the Court of Chancery and the Court of Appeal. I purpose addressing myself first to the consideration of that

which is admitted by all to require, and by all thinking men to deserve, early and serious attention—the Court of Chancery; and in view of the sweeping changes in our law advocated by some, involving no less than the abolition not of the Court of Chancery only, but of equitable jurisdiction itself, I will quote from a work of high authority, "Story's Equity Jurisprudence," a maxim which should be engraven on the minds of those whose duty it is to amend the law: "Changes, in law, to be safe must be slowly and cautiously introduced and thoroughly examined. He who is ill-read in the history of any law, must be ill prepared to know its reasons, as well as its effects." The advocates for the abolition of equity jurisdiction are not few within the walls of Parliament, I fear, as well as without, and therefore I make no apology for entering upon the enquiry of what a Court of Equity is, its nature and its functions, and showing how miserable a mutilation of English law would be the consequence of its abolition.

Lord Bacon says: "All nations have equity; but some have law and equity mixed in the same court, which is worse; and some have it distinguished in several courts, which is better."

Upon the same point, I will quote the opinion of Lord Eldon:—

Lord Mansfield had said, in the Court of King's Bench, that "he never liked law so well as when it was like equity;" and Lord Chief Justice DeGrey,

in consequence, took occasion to declare from the Bench shortly afterwards, that "he never liked equity so well as when it was like law;" and Lord Eldon, in allusion to these remarks has this entry in his anecdote book: "With all deference to these great men, law and equity ought to be considered as distinct systems; and that they are so considered and kept apart in England is, perhaps, one of the best provisions of our constitution."

In another place, in allusion to a phrase of Lord Chief Justice Kenyon, *abi in malam rem*, when he found that a party to a suit at law had justice in his case, but no relief at law, and therefore referred him to Chancery, Lord Eldon remarks: "I have heard dozens of common lawyers flippantly abusing Courts of Equity upon the authority of this piece of Latin of Lord Kenyon, and it is much to be lamented, perhaps, that the authority of so great a lawyer (who so thoroughly well knew how defective and insufficient the common law would be to answer the exigencies of complete justice, and how absolutely necessary the jurisdiction exercised in the Court of Chancery is,) can be resorted to in support of that abuse of such a court by those who may know the practice of courts of law, but who are certainly most astonishingly ignorant of the nature and principles of the jurisprudence of this country taken altogether, and of the necessity of that separation of courts of law and equity, which so mainly contributes to the complete and effectual administration of justice in this country,

and secures to the people an administration of justice to an extent and in a degree such as are unknown, and must be ever unknown, where that separation is not effectually made and observed."

In pursuing this point, I shall give the language (or the substance of it,) of others also, whose opinion is entitled to weight—Blackstone, Lord Redesdale, Story and others, whose works are emphatically *authority*:—

"Equity jurisdiction was originally established upon the same ground which now constitutes the principal reason for its interference, viz., that a wrong is done for which there is no plain, adequate and complete remedy in the Courts of Common Law.

Equity jurisdiction arose from the necessity of the thing in the actual administration of justice, and from the deficiencies of the positive law *(the lex Scripta)*, or from the inadequacy of the remedies in the prescribed forms to meet the full exigency of the particular case. It was not an assumption for the purpose of acquiring and exercising power; but a beneficial interposition to correct gross injustice, and redress aggravated and intolerable grievances.

The remedies for the redress of wrongs, and for the enforcement of rights, are distinguished into two classes: first, those which are administered in Courts of Common Law, and secondly, those which are administered in Courts of Equity; rights which are

recognised and protected, and wrongs which are redressed by the former courts are called legal rights and legal injuries; rights which are recognised and protected, and wrongs which are redressed by the latter courts only, are called equitable rights and equitable injuries. Equity jurisprudence may therefore properly be said to be that portion of remedial justice which is exclusively administered by a Court of Equity, as contradistinguished from that portion of remedial justice which is exclusively administered by a Court of Common Law.

Remedies at law are confined to particular forms of action, and if there be no prescribed form to reach a case, the party is at law *remediless*.

There are many cases in which a simple judgment for either party, without qualifications, or conditions, or peculiar arrangements, will not do entire justice *ex æquo et bono* to either party; some modification of rights; some restraints on one side or the other, or on both; some adjustments involving reciprocal obligations or duties; some compensatory, or preliminary, or concurrent proceedings to fix, control, or equalise rights; some qualifications or conditions, present or future, temporary or permanent, to be annexed to the exercise of rights or the redress of injuries. *In all these cases, Courts of Common Law cannot give the desired relief.* They have no forms of remedy adapted to the objects. They can entertain suits, and can give judgments only in a prescribed form. From their very character and organization, they are

incapable of the remedy which the mutual rights and relative situations of the parties, under the circumstances, positively require.

But Courts of Equity are not so restrained; they may mould their decrees so as to meet these exigencies; they may vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, controlling equities, and the real and substantial rights of all the parties interested, and adjust the rights of all, however numerous, while Courts of Common Law are compelled to limit their inquiry to the very parties in the litigation before them, although other persons may have the deepest interest in the event of the suit.

Further, there are rights of parties which Courts of Common Law do not recognise at all: trusts and confidences are among these, and the abuses of them are beyond the reach of any legal process; but in equity an ample remedy is given in such cases, whether the wrong arise from negligence or misconduct. There are also many cases of losses and injuries by mistake, accident and fraud; many cases of penalties and forfeitures; many cases of impending irreparable injuries or meditated mischiefs; and many cases of oppressive proceedings, undue advantages and impositions, betrayals of confidence and unconscionable bargains; in all of which, Courts of Equity will interfere and grant redress; *but which the Common Law takes no notice of, or silently disregards.*"

Extracts like the above might be multiplied: those I have given will, I trust, be sufficient to show how very important a branch is equity in the system of English jurisprudence. Let any one who doubts it run his eye over the "Table of Contents" of any work on equity jurisdiction, Fonblanque or Story for instance, and ask himself if the doing away of all this would be a benefit, or a vast and incalculable injury; if "that portion of remedial justice which is exclusively administered by Courts of Equity" can wisely be blotted out, leaving parties remediless in the many cases in which there is no remedy at law. The laws of Upper Canada, in such a case, would be infinitely inferior to the jurisprudence of those countries where the civil law obtains, or whose laws are founded upon the civil law, because theirs is a system complete in itself, administered by one court, whereas the system of English jurisprudence is built upon the principle that there are two classes of civil rights and civil wrongs, the one class administered in Courts of Common Law, the other administered in Courts of Equity. What a spectacle would be presented of rights without means to enforce them, and of wrongs without redress, of innumerable instances of parties *remediless* in courts of justice, if one of the courts where one whole class is administered were swept away!

Nor (and I crave attention to the consideration,) would that be all. The laws of a country exercise an important, a positive, and immediate influence

upon the *morals* of the people; men are apt to square their conduct, not so much by what is right and wrong, as by what the law of the land holds and recognises as right or wrong; and in the relations of life, and the transactions of men one with another, they often do right or abstain from wrong when there is a law to enforce the one and redress the other, when, but for such a law, the right would be withheld and the wrong committed. In time, the law becomes a part of their habits of thought. When they see the law reach and punish fraud, oppressive or over-reaching conduct, deceit, unconscientious dealing, breach of trust, or other such wrongs, it exercises upon their minds an influence the reverse of that which is produced by a successful commission of wrong, the law is respected, and honest and fair dealing are respected with it. Reverse all this; lop off that arm of the law which has been wont to reach and correct these abuses, and let them go "unwhipt of justice," and the consequence will be a demoralization of the public mind. The man that, in a sound and wholesome state of the law would be the punished wrong-doer, would, in a maimed and crippled state of the law, be looked upon, to use a familiar phrase, as a smart and successful fellow, who deserved some credit for his adroitness in out-witting and over-reaching his neighbours; unjust dealing between man and man would soon come to be viewed lightly, men's perception of right and wrong would thus be blunted, and injustice and wrong would be increased ten-fold. How important, then, is it that the law itself should present a

high standard in its own recognition of right and wrong; and it is this standard that is peculiarly presented in a Court of Equity.

The usefulness of a Court of Equity should not be estimated by the number of cases brought before it for adjudication. For one case adjudicated upon, there are probably fifty where the wrong is not committed, or where reparation is made, because such a tribunal exists. The mere circumstance of its existence exercises a restraining influence upon the incipient injury, or forces a perhaps reluctant reparation for the injury done.

A Court of Equity, to do all this, to fulfil its high duties and accomplish all the good of which it is capable, should be so constituted as to possess the confidence and respect of the country. Its decrees should be the result of patient investigation, learning, research and love of justice; and great, indeed, is the responsibility of those who, from apathy, lack of industry, "fear, favour, prejudice or partiality," are unfaithful to the high trust confided to them. A Court of Equity, if justice be well administered therein, cannot be otherwise than a blessing to a country: if ill administered, it may become almost a curse.

It need scarcely be added that, to make a court as useful as it ought to be, it should be *accessible*. Its organization should be such that men of moderate

means may be suitors in it without the danger of ruin. It should not be a court where the poor man dare not come, thus enabling the man of wealth to do wrong, and leaving to his poorer neighbour the *theory* only of equity. I am far from saying that such is the case with the Court of Chancery here; that a good deal has been done to simplify the practice and diminish expense, any one can convince himself who will read the general orders of the court; but I am also satisfied that a great deal may yet be done to improve the organization and practice of the court; and I sincerely hope that it will be accomplished.

There are those who say we may safely abolish equity jurisdiction, for we did very well without it before the Court of Chancery was established. I take leave to deny both the conclusion and the premises. The want of equity jurisdiction was much felt, and considering the many cases in which remedial justice is administered in equity, it is impossible that it could be otherwise. No stronger evidence is needful of the want of such a jurisdiction having been felt than the circumstance of an act being passed to introduce it, as a part of the law which without it was imperfect, and in many instances worked injustice. It was from no love of a Court of Chancery that it was introduced, but in spite of many and strong prejudices.

Its introduction was necessary for another reason, viz., to preserve the common law. The common law

was never meant, nor is it calculated, by itself to form the jurisprudence of a country. Without being tempered by equity law, it would often work injustice, and in its actual operation in this country the application of its rules did work injustice, until a language began to be used in our Court of King's Bench which would have sounded strangely in the ear of a common lawyer in England. What was called the equitable jurisdiction of the court was not unfrequently appealed to as absolutely necessary, in the absence of a Court of Equity, to correct the rigour of the common law: a more dangerous doctrine could scarcely be broached, or one more calculated to subvert the common law itself. There are judges whose *bent* of mind would incline them to strain the common law rather than that a flagrant injustice should be committed, by applying its rules in their integrity to the case before them—"to do a great good, do a little wrong." The temptation to do so flowing from a love of justice and a hatred of wrong, would not always be resisted. Thus, by degrees the common law would cease to be what it is and ought to be—a system of law built up upon precedent and authority—so that a man may, with reasonable certainty, know what the law is, and govern himself accordingly; but it would degenerate into an uncertain hybrid system, neither common law nor equity, but an incongruous compound of both, so that no man could tell what his rights were, inasmuch as they would, in so great a measure, depend upon the half-legal half-equitable view which the judge or judges might take of them.

The law would soon deserve a reproach such as Selden applied to the Court of Chancery in his time: "In law we have a measure, and know what to trust to. Equity is according to the conscience of him that is Chancellor; and as that is larger or narrower so is equity. 'Tis all one, as if they should make the standard for the measure, the Chancellor's foot. What an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot. It is the same thing with the Chancellor's conscience." For the word equity, substitute law, and for the word Chancellor, substitute judges, and you have a quaint but forcible and true description of what our law would become.

Would any man in his senses desire such a lamentable state of things? Yet, such a state of things would, it appears to me, be inevitable in the continued absence of a Court of Equity. The whole matter, as it presents itself to my mind, stands thus:—We cannot have a half-system of jurisprudence; we must, then, have English law, a combined system of law and equity, or we must *abrogate* English law; throw our whole system of law to the winds, and adopt the civil law. But, were so mad a scheme proposed, methinks Upper Canada would answer as with one voice, "*nolumus leges Angliæ mutari.*"

Thus far I have addressed myself to the advocacy of a Court of Equity, as a necessary and beneficial part of the system of English jurisprudence. Of the

past history of the Court of Chancery of Upper Canada I have said but little. That it has been unsatisfactory is admitted on all hands, and I will merely remark that it is bad logic to argue against the use of a thing, from its abuse.

I hope I have demonstrated that, to abolish it, or at all events, to abolish equity jurisprudence, the remedy would be worse than the disease.

I assume now that equity must be preserved, and the next question is, how it can be best administered, whether in a court, properly a Court of Equity, or in a court combining legal and equitable jurisdiction. It is quite certain that it cannot be administered through the forms, remedies and proceedings of a Court of Common Law; this was at one time attempted in Pennsylvania; *an anomaly*, as Story calls it, remedied by subsequent enactments. Any one at all acquainted with the subject will have no doubt upon the point. If, then, equity be administered in a court combining legal and equitable powers, the court must have separate *machinery* for each,—a common law side of the court, and an equity side of the court, as was formerly the case in the Court of Exchequer in England.

Upon this point, what says experience? In England, the equity side of the Exchequer has been abolished, and new judges in equity have been provided, to meet the increased business thereby thrown

into Chancery. This arose from the general feeling that the two systems of law and equity are not conveniently administered in the same court; and the change has been found to be an improvement; the Court of Exchequer did not attain to the high reputation either in common law, or equity law, which was enjoyed by those courts respectively who had exclusive jurisdiction in each; and for this plain reason, among others, that the Judges of the Exchequer, having constantly to decide questions both at law and in equity, were less perfect in their knowledge of either than those whose learning was devoted almost exclusively to one only. The principle of division of labour was found as applicable in law as in any other branch of human knowledge or skill.

I would not be understood to mean that a judge in either court can properly be ignorant of the law administered in the other; and judges in equity especially should have a good knowledge of common law; Lord Eldon, in pointing out a course of study for the Chancery Bar, says,—"I know, from long personal observation and experience, that the great defect of the Chancery Bar is its ignorance of common law and common law practice; and strange as it should seem, yet, almost without exception, it is that gentlemen go to a Bar where they are to modify, qualify and soften the rigour of the common law, with very little notion of its doctrines or practice."

The quotations I have before made from Lord Eldon are not without their force upon the question

of the administration of law and equity in separate courts.

One of the various projects started in relation to this question has been to abolish the Court of Chancery, and transfer its jurisdiction to the Court of Queen's Bench. I am not aware whether the projectors of this scheme propose that the Court of Queen's Bench should administer equity through the forms and proceedings of that Court; if so, it would be found as in Pennsylvania, utterly impracticable. If, on the other hand, they propose, with the jurisdiction to transfer the *machinery* of a Court of Equity, what would be gained by it? It would only be committing the two systems of law and equity, ***still separate***, to the administration of one judicature.

I have never heard one sound reason given in favour of this scheme, or indeed in favour of any scheme of administering law and equity in one court; while reason and experience are both against it.

If equity jurisdiction were transferred to the Court of Queen's Bench, it would be imposing great additional duties upon judges whose duties are already sufficiently onerous. It would be difficult to show how or when they could sit as Equity Judges, what with Term, Circuit, Chamber and other business. They were on the Common Law Bench before a Court of Equity was established here, and how they could be expected satisfactorily to dispose of all the

common law and equity business of the country, I am at a loss to conjecture; and besides there are other reasons connected with that great desideratum, the formation of a good Court of Appeal, in Upper Canada, which should weigh strongly against such a proposition.

I have endeavoured to prove, I hope successfully, that equity jurisdiction, as a necessary part of our system of jurisprudence, must be preserved, and further that it is best administered in a separate court. I purpose now to offer a few observations upon a point which has excited some attention in Upper Canada, viz., that equity law, like common law, should be administered by more than one judge. This point, indeed, was one of the prominent subjects brought to the attention of the Legislature by a petition numerously signed by the profession two years ago, and was one of the leading points to which the inquiries of the Committee of the Assembly, to whom that petition was referred, were directed.

The question is a very interesting one. On the one hand, it is argued that the matters submitted for the adjudication of Courts of Equity are best decided by one mind; that the questions in issue being often complicated, involving various and frequently numerous and distinct interests, all of which are to be dealt with in one suit, and adjudicated upon in one decree; such questions, it is urged, are better disposed of by one clear, laborious and vigorous mind, adjusting the

various interests of the parties, than by several, between whom it might perhaps be rather a mutual compromise of opinions in order to agree upon a decree, than a comprehensive and well-principled decision upon the equitable rights of all the parties. On the other hand, it is said, and I think with great truth and reason, that each interest being represented by its own advocate or counsel, and the equitable rights of each not resting for decision upon the individual opinion of the judge or judges, but upon precedent and authority to be found in adjudged cases, the decision upon those rights may be as safely and as well entrusted to several judges as to one; that the reasons which make it desirable that questions of common law should be adjudged upon by several judges, apply with equal force to questions of equity law, and that the decisions of a Court of Equity presided over by three would carry with them more weight, and would be more satisfactory to suitors, and to the profession and the country, than the decisions of an individual judge.

There are some who imagine that Courts of Equity are not, and ought not to be bound by precedent, but that every case is decided upon circumstances according to the discretion of the judge, acting in each case according to his own notions of what is just, equitable and right. It is manifest that such a rule of decision (or rather want of rule,) would place equity judges above all law; that there would be no uniformity of decision, and that equity would vary with the varying

consciences of different equity judges. I need hardly say that such an idea is erroneous. Sir William Blackstone says,—"The system of our Courts of Equity is a laboured connected system, governed by established rules, and bound down by precedents from which they do not depart, although the reason of some of them may perhaps be liable to objection." Again, he says,—"The system of jurisprudence in our Courts of Law and Equity are now equally artificial systems, founded on the same principles of justice and positive law, but varied by different usages in the forms and mode of their proceedings."

So, Lord Redesdale: "There are," he says, "certain principles on which Courts of Equity act, which are very well settled. The cases which occur are various, but they are decided on fixed principles. Courts of Equity have, in this respect, no more discretionary power than Courts of Law. They decide new cases as they arise by the principles on which former cases have been decided; and may thus illustrate or enlarge the operation of those principles; but the principles are as fixed and certain as the principles on which the Courts of Common Law proceed."

I have selected the above from among many similar authorities, to show that Courts of Equity decide upon fixed principles gathered from precedent and authority, to be found in adjudged cases, just as is the case in Courts of Common Law; and I infer that

there would be no anomaly in equity law being expounded by more than one judge, any more than in common law being so expounded.

It may be added, in favour of our Court of Equity being composed of more than one judge, that, unless it is so, the judge is left to his own unassisted judgment upon every question, however difficult and important, which may arise before him; whereas in England, although the judges in equity do not sit together, yet there are several of them, and they have the advantage of consulting together if they think proper to do so.

Upon the whole, I think that in this country equity law would be better administered, and would possess more of the confidence of the people, if the court were presided over by three judges, than if presided over by one.

This further advantage would result from the change, that the mode of taking evidence might be greatly improved. The *issues in fact*, arising in suits, might, whenever either party desired it, be tried by a jury upon Circuit, before one of the judges of the court. The evidence is now brought before the Court only upon depositions; a mode of ascertaining the truth which is very unsatisfactory.

Before quitting the subject of the law and practice

of Courts of Equity, I beg to observe, that in the complaints which have been made of expense and delay in the conduct of suits (without denying that there has been some cause for complaint,) still sufficient consideration has not been given to the nature of the suits brought before a Court of Equity. Chancery suits are in general more complicated and special, and between a greater number of parties, than even the more special suits at common law, and yet it is often proposed to measure them by the costs of suits at common law. Every practitioner is aware that were it not for the routine business of common law, business could not be conducted at the present costs, and it is unreasonable to expect that the special and complicated cases of Chancery can be conducted at the same expense as suits at common law. It should be remembered, too, that suits in equity are of a nature which the forms and remedies of the common law cannot reach. The *machinery* of the common law is inadequate and unsuitable, and affords no measure for the costs of a suit in equity, nor for the time it may occupy. Still, I say, at the risk of repetition, a Court of Equity should be made as accessible, and its proceedings as cheap and as simple as practicable.

The Court of Queen's Bench of Upper Canada has been so long established and is so well known, not to the profession only, but to the country generally, that any lengthened commentary upon its nature or functions is unnecessary. It has, moreover, so far

gained respect and confidence, that its decisions are *generally* quietly acquiesced in as sound interpretations of the law. I say generally, but certainly not universally. Cases arise, and not unfrequently, where parties are advised by counsel of ability and learning that decisions of the court adverse to them are at least doubtful, and in their opinion erroneous, and then it is that our system of jurisprudence is felt to be defective, in the want of a good Court of Appeal in Upper Canada.

Suitors in the Court of Queen's Bench are *in effect* without appeal. The Court of Appeal, as at present constituted, is, to the Court of Queen's Bench, rather a Court of Re-hearing, than of Appeal, while it forms, in effect, the Court of Appeal from the Court of Chancery, so that it is, what it certainly ought not to be, a court of last resort both at law and in equity. I believe no one feels more than the judges of the court themselves the anomaly of their position. It is every way a *false position*, and a defect in our system which it would be unstatesmanlike to overlook, while revising the judicature of the country.

I do not lose sight of the right of appeal, in certain cases, to the Queen in Council, but it is expensive and unsatisfactory. It is scarcely looked upon as an appeal to a legal tribunal, (few knowing how the court is composed.) The case appealed is committed to the hands of counsel of whom the suitors know nothing, and is heard before a court of which they have a con-

fused and probably a false idea; they, consequently, have no confidence that their interests are well looked after, or their rights solemnl, and judicially investigated, and they look upon the result as a piece of good or ill fortune, according as they lose or gain, rather than as a solemn judgment of a superior court where their rights have been thoroughly investigated, and deliberately and solemnly decided upon. Few can appeal at all, and those few have but little confidence in the court appealed to.

It is right, that we should have here, in Upper Canada, a good Court of Appeal from the Courts both of Law and Equity; not an appeal in name only, but in reality; a court in which the profession and the people would have confidence, and composed of the best *materials* which the country will afford.

A good Court of Appeal for Upper Canada may, I think, be composed of the judges of the two superior Courts of Law and Equity, with the addition of one or more to be appointed by the Crown, who would probably be retired judges, or the appointment might be limited to retired judges; the whole together to form a Court of Appeal from both courts. I would so constitute the court, whether the Court of Queen's Bench be composed of four judges (as was suggested by myself to the Judicature Committee of the Assembly,) or retain its present number. I think that no sound objection can exist to the judges of a court appealed from, sitting and giving judgment along with

other judges upon the case appealed; they are, of course, wholly disinterested; and the matter appealed being a matter of legal learning and judgment, upon which they, equally with the other members of the Court of Appeal, are competent to form a sound legal opinion, there is no good reason why they should be excluded.

In a court constituted as I propose, the practical working in Appeals from the Court of Queen's Bench would be, that the cause appealed would be heard for the first time by the three Equity Judges, the additional members of the court, and by the Judge of the Court of Queen's Bench, who, during the argument of the cause in *banc*, presided in the practice court. Thus, out of a court composed probably of eight or nine judges, it would be new to the majority of them. In Appeals from Chancery there would be a like result, and the three Equity Judges sitting in the Court of Appeal with the other members of that court would divest such Court of Appeal of the character of an Appeal from a Court of Equity to a Court of Common Law.

The plan I have suggested would, I verily believe, if carried out, give to Upper Canada a good Court of Appeal, which the present one is not; and an accessible one, which the Appeal to the Queen in Council (with rare exceptions) is not. I am not, however, bigotted in my opinion. I shall rejoice to see any measure adopted which may attain the same end.

To those who may object that the changes proposed will involve considerable expense to the country, I would say, that it is the duty of the State to make proper and sufficient provision for the due administration of justice; and that it is the worst economy to grudge what is necessary for such a purpose.

They who take the cost of the administration of justice to be the salaries paid to judges and other disbursements for the purpose, out of the public purse, take a narrow, and, as I conceive, an erroneous view of the matter; because they leave out of view the costs paid by suitors, the time lost to parties, witnesses, jurors, and others, (to say nothing of the ill-feeling engendered by litigation). The amount paid out of the public purse bears but a small proportion to all this; yet all is equally the cost of the administration of justice. The better our laws are administered, the less will litigation prevail; because their uncertainty, a fruitful source of litigation, will be diminished. Where the law is badly administered, and consequently uncertain and unsettled, men cannot ascertain their rights without suit; counsel cannot advise suitors with safety; and some men, with more means than honesty, are apt to speculate upon the chance of a decision in their favour, against law.

These, of course, are only some of the evils incident to a bad administration of the law. I have adduced these to shew that litigation is thereby increased, and, consequently, that any measure which may

diminish litigation, although it may entail some additional expense upon the country, will, upon the whole, diminish the amount expended in the administration of justice.

But even were it not so; is an improved administration of the law a matter of small importance, that what is necessary for such a purpose should be doled out with a niggardly hand?

The highest interests of the country, and the moral condition of the people are bound up with it. Let any one picture to himself Courts of Justice where the law is badly administered, and which enjoy not the respect or confidence of the profession or the country, with all the evils resulting from such a state of things,—a train of evils, the bare enumeration of which would occupy no small space. Then let him reverse the picture; let him mark the contrast, and say whether the blessings attendant upon a pure and sound administration of justice are not cheaply bought at any expense that may be requisite to place the jurisprudence of the country upon a good and satisfactory footing. Lower Canada acted wisely in the provision she made for the like purpose. She did not grudge the expense of nine judges of superior courts; because she rightly estimated the advantages of a good administration of her laws at a high rate, though not above their true value. Let us hope that a miserable parsimonious spirit will not stand in the way of the accomplishment of so

great an object as the improvement of our laws, and their administration.

The objects which I proposed to myself in penning this letter, (which has grown to a greater length than I anticipated), were to preserve from mutilation our system of English jurisprudence, and to place it upon a sound and more satisfactory basis. If what I have written shall have any effect in accomplishing so great a good, I shall feel happy in having been instrumental in effecting it. Would that Legislators, when they come to the discussion of matters of this nature, would discard prejudice and party, and meet upon common ground, "the peace, welfare, and good government of the country" closely interwoven, with all of which is the pure administration of justice.

I have the honour to be,
Gentlemen,
Your most obed't humble Serv't,
J. G. SPRAGGE.

TORONTO, 2nd *June*, 1847.

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