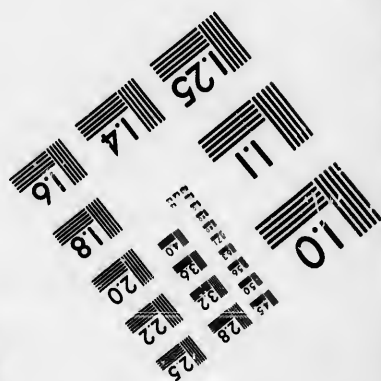
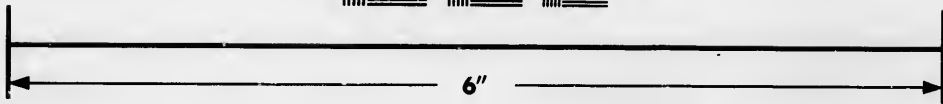
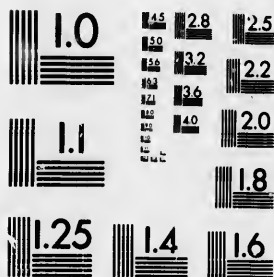


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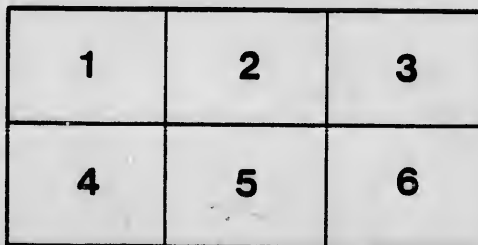
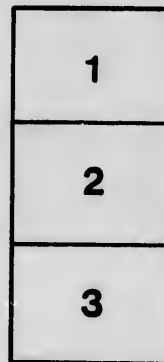
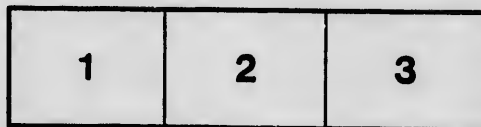
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A PROPOSAL
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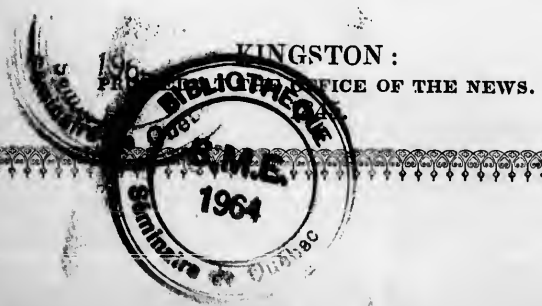


IN UPPER CANADA,
AND
ESTABLISHING A COURT OF APPEAL:
IN A LETTER TO

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HONORABLE WILLIAM HENRY DRAPER,
ATTORNEY-GENERAL OF UPPER CANADA, ETC., ETC., ETC.

BY A MEMBER OF THE KINGSTON BAR.



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AT

A PROPOSAL

FOR

DIVIDING THE JURISDICTION

OF THE

COURT OF QUEEN'S BENCH

IN UPPER CANADA,

AND

ESTABLISHING A COURT OF APPEAL:

IN A LETTER TO THE

HONORABLE WILLIAM HENRY DRAPER,

ATTORNEY-GENERAL OF UPPER CANADA, ETC., ETC., ETC.

BY A MEMBER OF THE KINGSTON BAR.

KINGSTON :

PRINTED AT THE OFFICE OF THE NEWS.

1845.

A PROLOGUE

DECLARING THE JURISDICTION

OF THE

COURT OF QUEBEC

IN UPPER CANADA

ESTABLISHED A COURT OF APPEAL

IN A BILL TO

AMEND THE ACTS RELATIVE TO THE

APPEALS FROM THE COURTS OF THE PROVINCE OF QUEBEC

AND TO AMEND THE ACTS RELATIVE TO

THE

APPEALS FROM THE COURTS OF THE PROVINCE OF QUEBEC

1871

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TO THE
HONORABLE WILLIAM HENRY DRAPER,
ATTORNEY GENERAL OF UPPER CANADA;

SIR:

Entertaining a high respect for your distinguished abilities, and hoping that your candour and good judgment will induce you to lend your Parliamentary influence to the scheme which is proposed in the following pages, and which in its essential principles may be claimed as the proposition of the Kingston Bar, I take the liberty of addressing the following remarks to you.

The fact that those who propose a counter scheme are already in the field will I hope excuse any apparent want of courtesy on my part in not first addressing you privately on this subject.

In addressing you, while I have felt the full importance which the *sanction* of your name would give to any professional scheme, I must avow that I have *not* obtained that sanction. But to you, more than to any other member of the Bar, now practising, ought of *right* to be awarded the highest honours which the profession can throw open to you. If Canada may feel proud, as she does, in the possession of JOHN BEVERLY ROBINSON, as her Chief Justice, permit me to add that when we shall see you also at the head of one of her Courts, we will have secured an amount of commanding talent in the distribution of Justice which will do the utmost credit to so young a Country.

I have the honor to be,

Sir, your obedient servant,

A MEMBER OF THE KINGSTON BAR.

THE NATIONAL ASSOCIATION OF THE DEAF
OFFICE OF THE SECRETARY
WASHINGTON, D. C.

Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed amendments to the National Association of the Deaf, and in reply to inform you that the same have been forwarded to the Executive Committee for their consideration. It is the policy of the Association to consider all such proposals, and it is hoped that the same will be favorably received. Very respectfully,
Secretary

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Two Petitions are now before Parliament, the one advocating the establishment of a Court of Common Pleas at Toronto, the other the establishment of a Court of Queen's Bench at Kingston, giving each Court of Queen's Bench jurisdiction over one half of the Districts, on the same principle that the jurisdiction is now divided in Lower Canada. In Appendix, Table H, will be found the Kingston Petition and the prayer of the Toronto Petition.

A Pamphlet from the pen of the Law Professor of King's College has appeared advocating the establishment of the Court of Common Pleas at Toronto. With that object which is first touched upon in the pamphlet of Mr BLAKE, and with many of the arguments advanced in support of the advantage to be gained by the formation of a Court of Appeal out of the other two Courts, I entirely concur.

One of the arguments, however, of Mr BLAKE, I cannot concur with.

"Not only the counsel and attorneys, the agents by whom business is conducted in our courts, but in truth the principal inhabitants of the country, a great proportion of those whose affairs are under adjudication, are more or less, *personally* known to the judges. It is hardly possible, under such circumstances, but that numerous occasions must occur, in which a suspicion at least may arise, that political bias, or personal feelings, have intruded themselves into the judgment seat. Neither must we flatter ourselves into a belief, that such suspicions are so wholly groundless, as to entitle us to

treat them with entire disregard. If an eloquent and learned lord, in speaking of that august Court which decides in the last resort, in England, could remark with truth, 'That even the noble Judges of that high tribunal are clothed beneath their ermine with the common infirmities of human nature,' we should certainly condescend to the frailties of those who yield to some slight suspicion concerning men who are sometimes selected (or at least supposed to be selected) for the important trust of administering the law, not from any peculiar fitness for the discharge of that duty which has been discovered in them, but because their political opinions happen to coincide with those of the governor of the day."

These are the words of Mr BLAKE. The words convey a *suspicion* of the possible want of integrity of the Judges of the present Court, when *politica* or *personal* feelings intervene. To remedy, therefore, the wrong which any such political or personal bias might effect to the interests of litigants, Mr BLAKE raises from these premises the idea of a Court of Appeal, to be formed by the establishment of a Court of Common Pleas, and the union of the superior Courts.

But first, with reference to the political or personal feelings of the court of Queen's Bench, how is the constitution of the Court of Common Pleas to be formed so as to be an antidote to the poison? Because a once Tory Attorney General is Chief Justice of the Court of Queen's Bench, is therefore the Chief Justice of the Court of Common Pleas to be a Radical, in order to effect an antagonism which may act as a check to political bias? We hope so monstrous a doctrine is not advocated by our Law Professor. We do not believe in the first place the premises on which he builds his argument. We do not believe that one single case can be adduced in the previous juridical history of Upper Canada, to shew

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that the ends of justice have ever been strained to suit the party purposes or personal feelings of the Judges. We know that Mr BLAKE disclaims the intention of making any such direct charge, but the insinuation alone is as bad. But *even if it were true*, the supposition that the infusion of opposing politics into different Courts, would remedy the evil, is absurd. Let the two Courts be framed with a view to this, and what would be the result? We can imagine the Hon. ROBERT BALDWIN presiding on one side of Osgoode Hall; and Chief Justice ROBINSON on the other. These Courts have concurrent jurisdiction. If the premises, which are the foundation of Mr BLAKE'S argument, are correct; if the shadow of a suspicion of political bias is justly entertained, Radicals will flock to one Court, Tories to the other; and in the Court of Appeal formed from these antagonistic partialities, justice is to be obtained!

A judicial system founded on such a distorted view of the motives of the human heart, would be a disgrace to the society which tolerated it. Such is not the system in England. It is true that amid the changes which constantly take place in the English Bench, men of different political views are often the reviewers of judgments of their brethren in the other Courts, on cases where political feeling has been excited on the question at issue. Such was the appeal to the House of Lords in the O'Connell case, where two Whig law Peers, Lords COTTENHAM and CAMPBELL, together with Lord DENMAN overthrew a judgment established by the almost unanimous opinion of the Judges of all the courts.

But this is perhaps an isolated instance of such an unhappy event. The occurrence of it has raised indignant murmurings among professional men in England. But the gist of Mr BLAKE'S attempt—the reason for the insinuation of the suspicion of political bias, above

quoted—is to urge the introduction of a system in which such events will be a necessary consequence of it.

Is it not more in accordance, not alone with charitable judgment, but with true human wisdom, to believe that when a man has bound himself by a most solemn obligation to act in his judicial capacity, with impartiality, to administer *justice* to the best of his ability, there is a fearful responsibility for the performance of the trust, that would prevent any but the most vitiated from violating the sacred duty? In our day, and country, thank God, such is the liberty of the Press, and so intangible the independence of the Bar, that an act of political partizanship in his judicial capacity, could not be perpetrated by a Judge of the Canadian Bench, without instant exposure, and immediate ruin.

No! the true reason for the necessity of a well-constituted court of appeal, consists in this:—Human judgment is liable to err; and the greater variety of talent you can bring to bear upon a disputed point, the more nearly you will arrive at the solution of it.

Mr BLAKE's assertion that both Barristers and suitors become known to the judges, and that as it were insensibly, their decisions are moulded by the feelings consequent on such an intimacy, may be in some degree true. We cannot believe it is to the sweeping extent which he asserts. But, for the sake of argument, suppose it is true—how is the establishment of a court of Common Pleas with concurrent jurisdiction to remedy the evil? Is it because then *suitors* can choose the Court where *they* have the advantage of such an intimacy? But what would become then of the poor defendant, who *nolens volens*, must accept the adjudication of the tribunal selected by his opponent? He must appeal to both courts conjointly, and then would come justice out of these contending principles!

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Now, if on the other hand the jurisdiction of the Court of Queen's Bench should be divided, as suggested in the petition of the Kingston Bar, when an appeal would take place from a decision of either Court, this intimacy of suitors with the Judges would be completely neutralized by the fact, that the Judges of one section would have no intimacy in the course of their circuits with the suitors whose cases would come before them in appeal from the other jurisdiction. Thus supposing corruption to creep into the administration of justice in the inferior tribunals, it would find its ready antidote in the appellate jurisdiction.

There is nothing in the remaining remarks of Mr BLAKE which can militate against the object of the Kingston Bar; but on the other hand, while we acknowledge their justice, undoubted in reference to the necessity of a Court of Appeal, and its constitution, and also the formation of a fee-fund, which will cover the additional charge on the Revenue, we find his arguments strengthened by changing his plan from a Court of Common Pleas at Toronto, to a divided jurisdiction, and two Courts of Queen's Bench; because, while we secure all the advantages which the Toronto plan could by possibility effect, we at the same time do not incur one-seventh of the expense, as will be seen by referring to the latter part of this letter, and the appendix.

But I will now proceed, as far as in my power lies, to point out the strong and urgent reasons which recommend the petition of the Kingston Bar to the favorable consideration of the Legislature.

It is true that there is not alone (as Mr BLAKE argues) an absolute necessity for a well constituted Court of Appeal, but the population of the country is increasing in such a rapid progression, and the number of new districts has so augmented the labor of the Judges, that when we add to this the notorious fact, that

lately some one or other of the present Judges has been occasionally withdrawn from the performance of the duties of his office, by the common infirmities of human nature, we may safely assert, that there exists an absolute necessity for the establishment of an additional Court of Common Law jurisdiction.

With reference, for instance, to the number of new Districts, a Bill has been introduced into the popular branch of the Legislature by the Hon. Mr Solicitor General SHERWOOD to decrease the labors of the judges, consequent upon the creation of such new districts, by giving to some of the smaller Districts only one commission of Assize, *Nisi Prius*, Oyer and Terminer, &c., in the year, instead of two, as there are at present. The reason which will probably be advanced in favor of this, is, that in those minor districts, the average amount of business is so small that it does not justify the withdrawal of the Judges for the trial of a few cases in such districts from the mass of business which pours in upon them from the more populous districts. But in answer to this we would remark, the *delay* of justice to any claimant of its relief is a thing abhorrent to the principles of a free people. The words of Magna Charta are "nulli differemus aut negabimus rectam aut justitiam." The legislation of civilized countries has latterly tended to effectuate a *speedy* as well as correct distribution of justice. Upon this principle, a few years ago, the Canadian circuits were doubled, giving us two in the year in each district instead of one. And why? Because the length of time which elapsed before a recovery could, under that old system, be had, even in matters of debt, had been found to be productive of the greatest injustice and loss to suitors. But now, in the minor districts, the old system is sought to be revived. Why? Principally for the relief of the Judges; to, enable them to attend to the

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But see the injustice this works. Because the writer of these remarks might happen to live in the Brock District, with a comparatively small population, is he therefore to be delayed as long again in the recovery of his debt as his neighbor is who, in the adjoining district, is only divided from him by an imaginary and arbitrary line? Such would be the effect, of the proposed measure of Mr SHERWOOD.

It need hardly be said that this would be a glaring injustice, a serious defect in the Juridical system.

Is there no method more consonant with common justice, of effecting both the relief of the Judges, and insuring a due degree of attention to the business of the larger districts? There is! The remedy for the existing evils, and the method which would obviate the perhaps plausible reason for creating the new evil above alluded to, and apparently about to be introduced, will be found in carrying out the petition of the Kingston Bar. There are now *twenty* Districts, and *five* Judges. Carry out the suggestion of the Kingston Bar: let the jurisdiction of the present Court of Queen's Bench extend no farther eastward than the eastern limit of the Newcastle District: establish a Court of Queen's Bench for the eastern part of Upper Canada with three Judges, one withdrawn from Toronto. What result have you? You get *twenty* Districts with *seven* Judges. You have then Judges enough to get through all the business of the country without throwing any unjust burden on them: at the same time you keep up in *every part* of the country that *speedy* and equable distribution of justice which we boldly assert is a matter of *common right*, the privilege of the meanest subject.

At the same time, be it remembered, we secure all the advantages of an indigenous Court of Appeal, by joining the two Common Law Courts and the one Equity

Court together, under the name, if that is worth anything, of the Exchequer Chamber, for the necessity of which Mr BLAKE has advanced many able arguments.

Is there no other advantage which would arise from carrying out the suggestions of the Kingston Bar? Yes! Delay is not the only thing to be guarded against in the administration of justice. Useless expense ought also to be avoided; and this not alone to litigants, but to the members of the profession. Now, what is the case under the existing administration of justice? Why, from the Ottawa to Sandwich, a distance of about 700 miles, lawyers and their suitors must at Term time repair to Toronto, through a country as yet wretchedly provided with the means of communication, and where the expense consequent on these at least semiannual migrations is enormous. Or if (which is often the case) the lawyers and their clients cannot afford this outlay, they must entrust their cases, at the acme of their importance, at the critical hour, to the hands of agents (for instance on motions for new trial); and then those agents, in nine cases out of ten unfamiliar with the niceties of the cases, without the advantage of direct communication with the clients whose interests are involved, are the unsafe medium through which a solemn adjudication is obtained. Far be it from us to attack the reputation for ability of the Toronto Bar: we all must acknowledge their superiority, but that superiority is immensely exaggerated by the superior advantages which they possess. Again, viewing the difficulties and outlays which thus surround the country practitioner, let us ask what is the practical result? An irreparable loss to his clients. How? In this country professional men are both Barristers and Attorneys. Barristers are remunerated by fees. Well, the Attorney, being also a Barrister, practising in the country, knows that a certain amount of his business will be conducted, either with the

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reduction of the personal expenses necessary when he brings it to a conclusion himself at Toronto, or to a reduction consequent upon his agent's charges. He reasons thus (and let the outlay of the best country practice in Canada be looked at, and the truth of his reasoning will be apparent): the emoluments of the profession (the Attorney part of it) have been reduced to the minimum at which one would be warranted in going to the expense of a liberal collegiate education and a library necessary to qualify him for the practice of his profession. Even those emoluments are reduced one-fifth by agency charges, or travelling expenses. What is he to do? Why he is also a Barrister. He can if he chooses, demand a retaining fee. This his clients pay to him as a Barrister: but it is an honorary thing, courteously supposed to be the spontaneous gift of the client, but not recoverable as an item of taxed costs from the unsuccessful party.

It will doubtless be said, in the true spirit of the age, given to angry declamation against, and clever satire of the profession, that fees will be taken by lawyers under any circumstances. But mankind will perhaps in the end learn the lesson, that the more lawyers are treated as a body of gentlemen, with fairness, and relieved from the pressure of an unjust decimation of their business, the more will they as a body endeavor to carry on their practice with that strict integrity which, while it ennobles the profession, secures the interests of the clients; and will make them the most esteemed, as they are already the most influential, class in the community. We are aware that there is no method by which country practitioners can be enabled alone to profit by the business which they gain. The system of centralization of the Courts is in some respects necessary, a result in the English system attained by a gradual process, the wisdom of which no man can deny. Had every district

in the Province its own separate independent jurisdiction, each district would be "a law unto itself," and a continuous clashing of judicial determinations would be the consequence, the evil of which has already been partially felt, in the constitution of the District and Quarter Session Courts, up to this time. But nothing of this kind is demanded. We profess only to offer such a suggestion as will remedy, *as far as can be*, the pre-existing evils above mentioned. If the Petition of the Kingston Bar should be favorably considered by the Legislature, one half at least of the lawyers, who now never attend Term, but entrust their cases to agents, would be enabled to do so, at one half the expense. And, be it always remembered, one Court of Appeal, the supreme arbiter of the law, the regulator of both inferior Courts and of the Court of Chancery too, would be open to the suitors of all the Courts, a *cheap* and *final* jurisdiction, a medium for assimilating the laws of both sections.

The answer of the Toronto Bar to this we can foresee. For, being immensely interested in the result of these counter-petitions, it is not to be supposed but that they will with their usual energy put their shoulders to the wheel. They will say, there will be greater danger of contending decisions if one Court sits at Kingston than there would if both should remain at Toronto; for, in the latter place, the Judges would have the benefit of intercommunication before each made their decision in their own Courts. This seems at first plausible enough; but it is in truth most absurd; for, is it to be supposed that one Chief Justice would run to the other to find out his opinion, or that the Judges of either Court would thus, out of the scope of their authority, *not sitting in appeal*, assume the labors of both Courts. Does Mr Baron Parke, after hearing counsel in the Exchequer, run to Sir Nicholas Tindall in the Common Pleas, when

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he has to deal with the decision of a knotty question? Would it not be foreign to his office, derogatory to his character, that he should do so? If such were the practice, would not one Judge be as good as three? Would it not render unnecessary any Court of Appeal, and tend to establish the law upon hasty opinions, instead of upon solemn adjudication? Therefore, there being a medium for the publication of the decisions of all the Courts—the *Jurist*—there is no difference *where* the Courts sit with reference to the object of preserving uniformity in their decisions. But there is this immense advantage to be gained by fixing one Court at Kingston, the other at Toronto; that you throw open the door to a much larger number of the profession than at present—in fact nearly to all—to sharpen, and whet, and display for the public advantage whatever forensic abilities they possess. Thus opening the door to a greater variety of talents, you throw a greater amount of labor upon, and consequently give better chance of ultimate correctness in arriving at the decision of, mooted questions. Besides, people, as we said before, are in the habit of calling law and lawyers necessary evils: if so, let them make as much good out of the evil as possible. But there is one great evil in the present system which gives to the central Court at Toronto jurisdiction over such a vast extent of country, and which will be doubled by fixing a Court of Common Pleas at Toronto.

The country part of the profession are literally almost altogether excluded from the immense advantage of constant attendance at Term, of hearing the arguments of counsel, the decisions of the Judges given in open Court, and of being themselves engaged in those discussions. They have been, moreover, until lately, kept wholly in ignorance of the decisions of the Courts, and although they now receive them through the pages of

the *Jurist*, it is only by slow degrees, and even then without the elucidation which is always given to the report of a case by the *arguments of counsel*. These are not given even in the *Jurist*. Now, such is the mania for new laws which pervades our Canadian society; so incessant are the changes in our Statute law, that immense numbers of adjudicated cases are constantly arising. With reference to these, the country profession practise in the dark. Unassisted by the advantages of forensic discussion, they very frequently repeat in their practice, by taking a certain view of the construction of an Act, an error which *one* decision of the court in Banc has served to guard the Toronto Barristers from falling into. Thus a vast amount of litigation is entailed upon the outer districts which would be nipped in the bud by throwing greater facilities for information in the way of the country practitioner.

Both Mr CAMERON'S *Digests* and his *Jurists* have proved very inadequate to remedy these evils. For the memory of the ear—of a thing argued and decided in your hearing in open Court—is much more strong than that of the eye. The writer is glad to be able to adduce the opinion of Judge Macaulay to support this argument. The writer, being a student at the time, was arguing his first case before him in Chambers. "Well, Mr —," said the Judge, "How do you like the law?" Of course he liked it immensely. "Well," said the Judge, "for my part I found it very opaque: let me recommend you not to pay so much attention to elementary reading, as to the careful preparation and thorough understanding of the cases which come under your hands; then watch them to the last stage when you hear them argued and decided in Court, and the principle or point decided will fix itself irrevocably on your mind; whereas you may pore very long over elementary treatises, and rise from them after all with a

very indifferent understanding of what you have read."

Again, new points of practice, an acquaintance with which is of vast importance to the professional man, are continually arising, and are decided before the Judges in Chambers. Of these (the *Jurist* being barely sufficiently large to publish the current reports) the country practitioner is left in total ignorance until his agent informs him that his writ has been set aside or his judgment upset for some new fangled irregularity. Mr BOULTON'S "Imprisonment for Debt Bill" was prolific of these events.

Now, all this entails expense upon clients. The evil is one which we will not say can be *wholly* remedied; for, as we said before, some degree of *centralization* in the final proceedings of litigation is essential. But that the evil can be remedied in a great degree, we know. The sitting of two Courts, one at Toronto, the other at Kingston, would throw open to nearly the whole Bar the easy means of attending the Courts in Banc themselves instead of employing agents. At present, the lawyers West of Toronto attend Term much oftener and in much greater numbers than those to the Eastward of the Newcastle District. Let it not be forgotten that while we gain the advantages above enumerated by fixing one Court at Kingston, we secure the Court of Appeal; and secure, moreover, the same laws for both sections of the country.

Again, let us view the Toronto plan, with reference to the fact that the two Courts they desire to have would have a concurrent jurisdiction. We need hardly mention even to unprofessional readers that in England the Court of Common Pleas was the Court, out of all those now existing, originally having jurisdiction over all *Common Pleas*, or suits between subjects of a civil nature. The Court of Queen's Bench had criminal jurisdiction; the

Exchequer, jurisdiction in revenue and prerogative matters, and the Chancery, Equity jurisdiction. And it is perhaps unnecessary to add that the Queen's Bench crept upon the Common Pleas jurisdiction in time, by a lawyer-like trick, and the Exchequer became a Court of Equity by force of the fact that the business of the Common Pleas and Chancery had immensely swelled; necessity being the mother of invention. And why, if it was a wise measure, did not the Legislature create a divided jurisdiction, and add Judges for a new Common Pleas, to sit at some other place, as we now propose? The answer is that the lawyers created the increase of the jurisdiction of the Queen's Bench, without Legislative interference, by a subtle invention. The relief of the Common Pleas was a public benefit, and was acquiesced in. It grew into a system so wedded into the history of the law, that it could not be eradicated. Besides this, England is a country comparatively small in extent of territory with our own, although of course immensely more populous. The means of communication from one end of it to the other have, as it were, brought London and Edinburgh together. The increase of litigation was satisfied by the increase of jurisdiction. There were no such difficulties as we have to contend against in centralizing all the Courts. Nor have we any reason for imitating what was done in England; on the contrary we have a new country; its geographical position, its means of communication, its society, essentially different, with examples enough in our past history, and law to prove to us, that we must not blindly follow an English custom or law, or institution, because it is English. But we must adapt it to the circumstances of the country in which we live. *Nolumus leges Angliæ mutari.* In their first principles, if capable of being moulded to the best interests of a new country, we would wish to see the English laws

remain unchanged. But let us not again, with the same reckless haste, which has entailed upon us the cumbrous machinery of the Court of Chancery, run our heads into a noose.

Of what advantage then can the *concurrent* jurisdiction of two Courts, both sitting at Toronto, be to the country?

We have already shewn that with reference to the relief of the Judges or the fear of political bias, or the necessity of review, there is a better plan. The concurrent jurisdiction would not be understood, or work well here: one Court might, and probably would be overloaded with business, while the other would be unoccupied. Thus the new Court would be cumbrous, useless, expensive. Whereas by carrying out the petition of the Kingston Bar, there would be but the same jurisdiction as now existing, except that the labors of it would be divided among a greater number, and that thereby its business would be better and more easily disposed of.

Now let us view the Toronto plan with reference to *patronage* and expense. There would have to be,—1st, a Clerk of the Crown, as at present,—2nd, a clerk of the Common Pleas; both at Toronto. Now, Mr BLAKE proposes to meet this by a fixed salary for each, and a fee-fund. He says the fees of the present clerk are very high, and that fixing the salaries at £500 each, and leaving the fees to go into a fund, the salaries would not only be paid, but there would be a surplus sufficient to cover the extra salaries for the new Judges. Now, in the first place, the funding of the fees, and fixing salaries, can just as well be done under the system proposed by the Kingston Bar as under the other: the benefit, if any may be expected from it, is not peculiar to the Toronto plan alone. Secondly, did Mr BLAKE take into consideration the fact that in the present

Crown Office there are five or six salaried clerks constantly employed, all of whom have to be paid out of the pocket of the Clerk of the Crown? Did he remember also, that instead of *one* Deputy Clerk in each district, there must be *two*; for the clerk of each Court at Toronto being responsible for any misconduct of his deputies or servants, would of course have the appointment of whom he pleased to trust? Did he make any enquiries into the emoluments of the deputies, through whose hands in each district now passes the whole mass of business proposed to be divided between *two* Courts? If he did, he would find that even £100 in the most populous districts would be more than the average annual salary of the deputy? Suppose, then, both the Courts under the Toronto plan do an equal amount of business in all the districts; you must give salaries averaging £50 to each clerk, for continual labor, in an office for which he must pay rent, and then tell him to live! Or, the only other two alternatives, you must either *double the fees in both Courts, and of course in doing so double the disbursements of every man who goes to law!* Or you must fix the salaries of the deputies at some decent remuneration, and for fear of bringing the country about your ears, leave the fees which suitors have to pay, to stand as they are; and so, eat up with twenty deficiencies from the twenty districts the one surplus at Toronto which was intended to cover the expense of the Judges' salaries! Now, be it remembered, by carrying out the petition of the Kingston Bar this difficulty in the financial part of the matter could not occur, for the deputies would be no more, and no other than they now are, and the new Clerk of the Crown would be withdrawn from the Clerk of the Crown at Toronto, in consequence of the removal of one half the business; or both these superior clerks might be paid

by salaries, would go to off the new there would make up; well as they Let the r the respect they will the funded Toronto plan und. Wh £1200, the on; the tion plan Table £12 dent on the number of plan, and o by more t Kingston p work *ad in* increase a when comp Toronto p the appoin Answer; i plurality of ductive of officers for while (vid obliged to clerk's fee of fees at £1200, un III.) if yo

by salaries, as suggested by Mr BLAKE, and the fees would go to pay them, and the surplus, if any, to wipe off the new salaries of new Judges; for under this plan there would be no deficiencies in the other districts to make up; the deputy clerks being remunerated just as well as they are now.

Let the reader turn to the Appendix, Tables F and G, the respective plans of the Toronto and Kingston Bar—they will see that where the Kingston plan equalizes the funded fees, and the charges against the fund, the Toronto plan leaves a deficiency of £1600 in the fund. Where the Kingston gives the fund a surplus of £1200, the Toronto leaves a deficiency of £400, and so on; the highest surplus in the Table of the Kingston plan being £2000; the highest in the Toronto Table £1200! This is accounted for by the fact, evident on the face of the Tables referred to, that the number of deputy offices is doubled by the Toronto plan, and of course the chances of a surplus diminished by more than one half more than they are by the Kingston plan. And of course so these figures would work *ad infinitum*. The Kingston plan would always increase a surplus or diminish a deficiency by one half when compared to the Toronto plan. Now, under the Toronto plan, with reference to the question whether the appointment of 19 new deputies could be avoided? Answer; it could not, for independent of the fact that plurality of offices is an unjust thing, it would be productive of great confusion and evil to have the same officers for both the Courts. Add to this the fact that while (vide Appendix, Table G, 4th view) you are obliged to place, under the Toronto plan, the deputy clerk's fees at the minimum rate, and the possible total of fees at the highest rate, in order to get a surplus of £1200, under the Kingston plan (vide Table F. Part III.) if you place the whole fees at the highest rate, and

the deputies' emoluments also at the highest rate (an added a average of £80 to each), you get the same surplus of sittings of £1200! And even placing the possible total of fees We mu of Clerks Now, the deducting which or situation

Now, we contend that an average of £80 is not too high to fix the deputies' emoluments, for even then you could not have more than three appointments as high as £150, and there are more than three districts where the duties are *bona fide* worth this. We ha benefit to of the K similarly a questio

The result then is, that with any degree of justice to the deputies, you cannot follow up the Toronto plan without having a deficiency in the fund, even placing the whole fees at £4000, the highest mark—(vide the calculation carried out in Table G, 2d view.) districts long sinc why we

After you have arrived at this conclusion, you must turn to Tables D and E and you will find that the Toronto institution ously in and she Doubt would b the cour have tw would b effect c agency sequent Queen's pittance the con to keep his own they w not pou plan as to Judges, makes a nett deficiency of £3300; and she add to this the deficiency caused by deputies from Table G, 2d view, and you have £3700 as the additional charge on the revenue by the Toronto plan! Whereas, (vide again Tables C and E), the Kingston plan, as to Doubt would b the cour have tw would b effect c agency sequent Queen's pittance the con to keep his own they w not pou Judges, leaves an additional charge on the revenue of only £1700—and giving us the same advantage we have given them, of the supposition that the whole fees of the office of the Clerk of the Crown are £4000 (vide Table F, Part III), you must deduct £1200 surplus from this £1700—leaving the nett additional charge on the revenue by the Kingston plan only £500, while at the same time you remunerate the deputies at the highest rate mentioned in any of the Tables!

Our Tables we think sufficiently elucidate the financial position of the question. In Table II. we have

est rate (and added a short synopsis of the arrangement for the sittings of the Courts according to our plan.

the surplus of total of fees II.) and the of Clerks of Assize, or marshals, would be necessary. We must not forget that by the Toronto plan a new set of Clerks of Assize, or marshals, would be necessary. Now, the present emoluments of these gentlemen, deducting travelling expense, are small; and if that which one enjoys, two are hereafter to enjoy, the situation will hardly be a fair remuneration.

00 is not too We have based our arguments wholly upon the public benefit to be obtained by carrying out the suggestions of the Kingston Bar. In Lower Canada, a country similarly situated with our own with reference to such a question, the system of divided jurisdiction for the districts of Quebec, Montreal, and Three Rivers, has long since been established, and we are unable to see why we should not follow a good example.

en then you Toronto has had enough of monopolies out of public institutions. She can afford to come forward generously in a plan calculated to promote public welfare, and she ought to do so.

ts as high as the Toronto Doubtless the plan proposed by the Toronto Bar would be advantageous to them, but would it be so to the country? Instead of one agency, they would then have two; their charges on the country profession would be doubled; and when we add to this that by the effect of Mr SHERWOOD's new District Court Bill, agency business will be increased by the charges consequent upon getting issues &c., directed out of the Queen's Bench to the District Court, a miserable pittance will be left to the country practitioner. On the contrary, our plan will in every point of view tend to keep to the country practitioner the emoluments of his own business. If men must give money to lawyers, they will see it expended again at their own doors and not poured into Toronto.

districts where of justice to Toronto plan even placing k—(vide the v.) you must turn the Toronto y of £3300; eputies from he additional ! Whereas, n plan, as to e revenue of tage we have whole fees of £4000 (vide 1200 surplus al charge on 500, while at outies at the es! te the finan- II. we have

With an earnest desire to see our proposition treated with that fairness, candor, and attention, which its importance demands, we leave it to its fate.

APPENDIX.

TABLE A.

PART I.

Statement of probable nett emoluments of the Clerk of the Crown, at present, supposing the grand total of fees of the principal and subordinate offices to be 2,800l.

| | |
|---|-----------------------------------|
| There are 20 Districts in the Province, one Deputy in each; taking one with the other, the Deputies' salaries actually average about 40l. each; say in round numbers 20 Deputies—this, at the above mentioned, average to | £800 |
| There are in the Crown Office at Toronto, 6 subordinate salaried clerks, at an average salary, say 50l.—average is probably much higher, Mr Coxwell we feel sure gets at least 200l., | 300 |
| Balance of fees, being nett emoluments, | 1700 |
| Total, | <hr style="width: 100%;"/> £2,800 |

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PART II.

Statement of nett emoluments of same office, supposing grand total of fees of principal and subordinate offices to be 4,000l.—the highest amount which it is reasonable to suppose they would reach.

| | |
|---|--------|
| 20 Districts, each one Deputy—probable amount of nett emoluments of all the Deputies after paying half fees to Clerk Crown 1000l.—to an average of 50l. to each Deputy, | 1000 |
| 6 Clerks, say 100l. each, | 600 |
| Balance of fees, being nett emoluments, | 2400 |
| | <hr/> |
| Total, | £4,000 |

TABLE B.

System of Judicature as at present in force, with reference to salaries.

| | |
|---|--------|
| 1 Vice Chancellor, | £1,500 |
| 1 Chief Justice, | 1,000 |
| 4 Puisne Judges, at 900l. each, | 3,600 |
| | <hr/> |
| Grand total, | £6,100 |

TABLE C.

Plan of Judicial system proposed by the Kingston Bar, with reference to salaries of Judges.

At Toronto.

| | |
|---|--------|
| 1 Chancellor, | £1,000 |
| 1 Vice Chancellor, | 800 |
| | <hr/> |
| Total, Court of Chancery, | £1,800 |
| | <hr/> |
| 1 Chief Justice Queen's Bench, | 1,000 |
| 3 Puisne Judges at 800l. each, | 2,400 |
| | <hr/> |
| Total Court of Queen's Bench, at Toronto, | £3,400 |

At Kingston.

| | |
|---|--------|
| 1 Chief Justice Court Queen's Bench, | 1,000 |
| 2 Puisne Judges at 800 <i>l.</i> each, | 1,600 |
| | <hr/> |
| Total Court of Queen's Bench, Kingston, | £2,600 |
| | <hr/> |
| Grand total, Judges' Salaries, | £7,800 |

TABLE D.

Plan of Judicial system proposed by the Toronto Bar, with reference to salaries of Judges.

At Toronto.

| | |
|--|--------|
| 1 Chancellor, | 1,000 |
| 2 other Equity Judges at 800 <i>l.</i> each, | 1,600 |
| | <hr/> |
| Total, Chancery, | £2,600 |
| | <hr/> |
| 1 Chief Justice Queen's Bench, | 1,000 |
| 4 Puisne Judges at 800 <i>l.</i> each, | 3,200 |
| | <hr/> |
| Total, Queen's Bench, | £4,200 |
| | <hr/> |
| 1 Chief Justice Common Pleas, | 1,000 |
| 2 Puisne Judges at 800 <i>l.</i> each, | 1,600 |
| | <hr/> |
| Total, Court of Common Pleas, | 2,600 |
| | <hr/> |
| Total amount, | £9,400 |

TABLE E.

Shewing the difference of cost between the present system, and each of the above plans:

| | |
|---|-----------------|
| Cost of Toronto plan, | 9,400 <i>l.</i> |
| Present system, | 6,100 |
| | <hr/> |
| Additional charge on the Revenue, | 3,300 <i>l.</i> |

| | |
|--|---------|
| Cost of Kingston plan, | 7,800/. |
| Present system, | 6,100 |
| Additional Charge, | 1,700/. |
| Charge on Revenue over and above what Kingston plan would cause, by adopting the Toronto plan, | 1,600/. |

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nto Bar,

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£2,600

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£4,200

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1,600

2,600

£9,400

ystem,

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TABLE F.

Plan of Judicial system, proposed by the Kingston Bar, with reference to the office of Clerk of the Crown.

PART I.

A new Clerk of the Crown to be stationed at Kingston; with the emoluments which would fall to him by the fees arising on the present tariffs, within the Division over which his Court would have jurisdiction—say 1,400/., or 2,000/., as the case may be; subject to the reduction of his deputies, which would leave everything as it now is; creating no new office, but only dividing an old one, the emoluments of which have hitherto been too large.

PART II.

| | <i>Fund.</i> | <i>Charges.</i> |
|---|--------------|-----------------|
| If total fees 2,800/., fund them, | 2,800 | |
| Charge against the fund 450/ for Clerk of the Crown in each Division, | | 900 |
| To each Chief Clerk for subordinates, 150/., | | 300 |
| To each Deputy a salary averaging 80/ a year, to be apportioned among them by the Executive Government according to the ratio of population, 20 Deputies, | | 1,600 |
| | <hr/> £2,800 | <hr/> £2,800 |

PART III.

| | | |
|---|---------------|---------------|
| If total fees 4,000 <i>l.</i> , fund them . . . | 4,000 | |
| Charge for 2 chief clerks as before, . . . | | 900 |
| For subordinates as before, . . . | | 300 |
| To deputies as before, . . . | | 1,600 |
| | <u>£4,000</u> | <u>£2,800</u> |
| Deduct, . . . | 2,800 | |

Surplus fund, . . . £1,200

PART IV.

| | | |
|--|---------------|---------------|
| 1st—If total fees 2,800 <i>l.</i> fund, . . . | 2,800 | |
| 2d. Principal Clerks as before, . . . | | 900 |
| 3d. Assistants as before, . . . | | 300 |
| 4th. 20 Deputies at 40 <i>l.</i> each, average . . . | | 800 |
| Total, . . . | <u>£2,800</u> | <u>£2,000</u> |
| Surplus fund, . . . | <u>£800</u> | |

PART V.

| | | |
|--|---------------|--------------|
| 1st. If total Fees 4000 <i>l.</i> , fund, . . . | £4,000 | |
| 2d. Principal and assistants as before, charge . . . | | 1,200 |
| 3d. 20 Deputies, average 40 <i>l.</i> each, . . . | | 800 |
| Total, . . . | <u>£4,000</u> | <u>2,000</u> |
| Surplus fund, . . . | <u>£2,000</u> | |

TABLE G.

Shewing effect of system proposed by the Toronto Bar, with reference to office of Clerk of the Crown.

1st VIEW.

| | <i>Fund.</i> | <i>Charges.</i> |
|---|--------------|-----------------|
| 1st. If total fees 2,800 <i>l.</i> fund them . . . | 2,800 | |
| 2d. Two principal Clerks' nett salaries, say 450 <i>l.</i> each as before, charge . . . | | 900 |

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| 3d. To each for assistants as before, in his own office, 150 <i>l.</i> , charge | 300 |
| 4th. 40 Deputies in round numbers, at average salary of 80 <i>l.</i> each, to be appointed as mentioned in Table F, part 2, whole charge, | 3,200 |
| Total, | <u>£2,800</u> <u>£4,400</u> |
| Deficiency in fund, | <u>£1,600</u> |

2d VIEW.

| | |
|--|-----------------------------|
| 1st. If total fees 4,000 <i>l.</i> fund them, £4,000 | |
| 2d. 2 Principal Clerks as before, | 900 |
| 3d. To each for assistants as before, | 300 |
| 4th. 40 Deputies as before, | 3,200 |
| Total, | <u>£4,000</u> <u>£4,400</u> |
| Deficiency in fund, | <u>400</u> |

N. B. Refer to Table F; these deficiencies occur by making the same charges which in Table F, Part II. balance the account, and in Table F, Part III. leave a surplus fund of £1,200!

3d VIEW.

| | <i>Fund.</i> | <i>Charges.</i> |
|---|---------------|-----------------|
| 1st. If total fees 2,800 <i>l.</i> fund, | 2,800 | |
| 2d. 2 principal Clerks' nett salary, | | 900 |
| 3d. Assistants as before, | | 300 |
| 4th. 40 Deputies, average salary say 40 <i>l.</i> each, to be appointed as before, | | 1,600 |
| Total, | <u>£2,800</u> | <u>£2,800</u> |

4th VIEW.

| | | |
|--|--------|--------|
| 1st. If total fees 4,000 <i>l.</i> fund, | 4,000 | |
| 2d. Principal Clerks' nett salary as before, | | 900 |
| 3d. For assistants, | | 300 |
| 4th. 40 Deputies at 40 <i>l.</i> , average, | | 1,600 |
| <hr/> | | |
| Total, | £4,000 | £2,800 |
| Surplus fund, | £1,200 | |

N. B. Although the principle on which these figures would work *ad infinitum* in favor of the Kingston plan, is perfectly plain, and alluded to in the body of the letter, we have adduced the tables to shew the advantage of that plan in every point of view to the meanest comprehension.

TABLE H.

Kingston Plan with reference to sittings of Courts, &c.

- 1 Court of Q. B. *Toronto*, 4 Judges.
- 1 " Chancery, *Toronto*, 2 Judges.
- 1 " Q. B. *Kingston*, 3 Judges.
- 1 " of Appeal, *Toronto*—JUDGES—the nine Judges of the other Courts.

The question of Term sittings, and sittings in Appeal, are questions of detail so easily settled they need not be mentioned here.

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PETITION.

*To the Honourable the Legislative Assembly of the
Province of Canada, the Petition of the undersigned
Members of the Bar in the Midland District,*

HUMBLY SHEWETH:

THAT your Petitioners understanding that the present state of the Judicature of the Province of Upper Canada has been brought before the notice of your honorable House with the view of creating an additional Court therein, and for other amendments in the constitution of the existing tribunals, beg leave respectfully to state to your honorable House their views on this subject.

They fully concur with the opinions expressed by other members of the legal profession that the present Court of Appeal is wholly inadequate to afford speedy and cheap justice to the suitor, and they equally feel the necessity of the formation of a tribunal in which the decision of the several Superior Courts of the Province shall be promptly reviewed.

They are also aware that great and perhaps just outcry has been made in all parts of the Province, and among all classes of the community, against the excessive delays and enormous expenses attendant upon the Court of Chancery as at present constituted.

They perceive that the plan suggested for the remedying of these evils is the formation of an additional Court of Common Law Jurisdiction, and the increase of the Judges of the Court of Chancery.

Without discussing the merits of this proposal, your Petitioners beg leave respectfully to state to your honorable House, that they, residing in the eastern portion of the Province of Upper Canada, have felt great inconvenience, and their clients and the public at large have sustained great injury and loss, in consequence of the great distance from their residences to the seat of the present Courts—the attendant delay and expense in all matters requiring reference thereto.

Your Petitioners fear that the formation of a Court having concurrent Jurisdiction with the present Court of Queen's Bench

would create a rivalry subversive of the ends of Justice—while the principal objects sought to be obtained would be ensured by the creation of one having local Jurisdiction in the eastern section of the Province: The union of these Courts would form a Court of Appeal from every inferior Court, which would ensure uniformity in their decisions and establish a permanent system of Jurisprudence.

In addition to the fact that the object of the Toronto Petitioners, —a Court of Appeal formed upon a sound and practicable basis— will then be obtained, your Petitioners would urge upon your Honorable House the obvious justice of their proposal with reference, not alone to the members of the Bar, but to their clients in the Eastern Section of the Province; they would also call the attention of your Honorable House to the fact that by the establishment of a Court of Common Pleas at Toronto with three new Judges, an additional expense of three thousand pounds would be entailed on the Province; while by withdrawing one of the Puisne Judges from the Toronto Court, and appointing a new Chief Justice, and one more Puisne Judge, for the Court of Queen's Bench of the Eastern Division of Upper Canada, with Salaries as follows,

| | |
|-------------------|--------|
| Chief Justice, | £1000. |
| New Puisne Judge, | 800. |
| Removed do. | 800. |

an additional expense of only £1700 per annum will be incurred; and at the same time the vast delays which have hitherto taken place, will be avoided.

Humbly praying that your Honorable House may take this subject into serious consideration at your earliest convenience,

Your Petitioners, as in duty bound, will ever pray.

EXTRACT FROM TORONTO PETITION.

“Your Petitioners would propose two Superior Courts of Common Law Jurisdiction should be erected, in lieu of the one which now exists, in each of which three Judges should preside; and that the Court of Chancery should also be presided over by three Judges. This simple alteration would be attended with but little expense to the public. It would, indeed, in our estimation, result in a saving to the public, regard being had to the extent of litigation which would thereby be avoided. Possibly your honourable House will be enabled to combine these advantages with such other alteration as may render the plan, on the whole, effectuate a retrenchment.”

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