PAGES

MANQUANTES

LA THÉMIS

REVUE DE LÉGISLATION, DE DROIT ET DE JURISPRUDENCE.

DIRECTEURS :

L'HON. T. J. J. LORANGER, L.L.D. | CHS C. DE LORIMIER, C.R., L.L.D.
B. A. T. DE MONTIGNY, Recorder. | EDOUARD A. BEAUDRY, Notaire
E. LEF. DE BELLEFEUILLE, Avocat | JOSEPH DESROSIERS, Avct. B C. L.

VOL. IV. JUIN 1882. No. 5.

RÉFORME JUDICIAIRE.

TRAVAUX DE LA COMMISSION DE CODIFICATION DES STATUTS.

(*Suite et fin.*)

Encore, si l'on avait quelque garantie que le choix correspondrait, quant aux qualités intellectuelles et morales, à l'importance et à la responsabilité d'une telle charge. Le pouvoir absolu confié à un homme de premier mérite est certainement le plus efficace et susceptible de produire les résultats les plus prompts et les plus satisfaisants ; mais comment obtiendra-t-on ces garanties ?

Les motifs qui dictent et inspirent les nominations des représentants de la couronne auprès des tribunaux civils et criminels, qui imposent à nos ministres mêmes le choix des juges, domineront encore avec plus de pression la nomination d'un officier de cette importance et désigneront, comme toujours, un ami politique, embarrassant ou incapable, pour

faciliter une combinaison politique nécessitée par les circonstances.

Le public sait, et l'histoire des partis en Canada démontre, surtout depuis quelques années, que ce ne sont pas les capacités, l'expérience ou les aptitudes qui assurent les nominations aux emplois les plus importants, mais uniquement les exigences politiques. Nous aurons donc un avocat-général, choisi par un parti politique, qui pourra être plus ou moin compétent, suivant que le hasard ou la Providence aura placé un individu plus ou moins qualifié, de manière à permettre à ses amis influents de réclamer la position.

Il y aurait au moins une consolation dans le fait que des changements politiques pourraient faire espérer un soulagement dans le changement du mal, en faisant dépendre la durée de son règne de celui du procureur-général qui l'aurai nommé ; mais alors pourquoi ne pas laisser la responsabilité de ses fonctions tout entière au ministre de la justice ? S'il peut, avec l'aide de ses collègues, choisir un avocat-général perpétuel, pourquoi n'en choisirait-il pas un temporaire ? Le public aurait une garantie que l'individu, ainsi placé, ferait des efforts pour justifier de sa capacité et mériter la confiance du public en vue d'obtenir la continuation de sa charge ou de démontrer ses titres à un autre office.

Mais cette mission est-elle nécessaire ? Cet officier ne pourra pas représenter la couronne dans tous les districts ; alors il faudra nécessairement des substituts ou diviser l'office et multiplier les avocats-généraux. Où est la différence entre laisser le choix des substituts au ministre, ou à son délégué perpétuel, cet avocat général ? On ne voudra pas dire qu'il fera un meilleur choix que le procureur-général lui-même ; alors pourquoi déléguer le droit de faire ces nominations ?

Maintenant, quant aux autres attributions, par exemple, surveiller l'administration de la justice et l'exécution des lois de judicature, quels seront ses pouvoirs, son autorité, son initiative, ses moyens d'action ? Tout est dans le domaine du vague, de l'indéfini, sinon de l'impossible.

L'administration de la justice est, par notre constitution,

laissée à la magistrature sous la surveillance du public. En matière civile surtout, la loi définit les droits, prescrit et commande, et c'est aux parties de réclamer l'exercice de leurs droits et d'invoquer auprès des tribunaux l'application des dispositions du droit. Personne ne peut le faire pour eux, et personne ne peut le faire mieux qu'eux. Les juges sont tenus de suivre les injonctions de la loi. Si les tribunaux inférieurs ne les suivent pas, le remède et le mode de surveillance suivi dans tous les pays est l'appel aux tribunaux supérieurs. Il est difficile de supposer un cas où l'intervention de l'avocat-général pût apporter quelque amélioration dans ce système. Ou bien le juge a refusé d'appliquer la loi ou il l'a mal appliquée. Dans le premier cas (et c'est chose inouïe en Canada) il est sujet à destitution sur plainte au parlement par voie d'*impeachment*. Quel rôle l'avocat-général doit-il jouer en pareille matière ? Et dans le second cas, l'avocat-général sera-t-il juge du mérite, et sera-t-il constitué censeur des tribunaux ?

Cette prétendue surveillance des tribunaux attribuée à l'avocat-général est donc vaine, illusoire, inutile et contraire à la liberté du sujet et à la dignité et l'indépendance du juge.

La commission veut que cet officier veille à la tenue régulière des tribunaux de première instance et d'appel, à la nomination des juges suppléants, etc.

Lorsque la loi fixe la tenue des tribunaux et statue qu'ils siégeront en permanence, il ne peut guère être nécessaire de voir à ce qu'ils soient tenus régulièrement. S'ils ne le sont pas, les juges sont responsables du défaut et obligés de se justifier.

Qu'est-ce que l'avocat-général pourra faire pour y remédier, sinon rapporter aux autorités le fait déjà connu du public : ou bien il faut lui donner la mission de punir les juges, pour donner une sanction à son autorité et pour la rendre efficace.

La commission lui confère, en outre, le soin de maintenir la dignité judiciaire et ses prérogatives, sans indication des moyens laissés à sa disposition pour y parvenir. La dignité judiciaire est la conséquence de l'importance des fonctions de

juge. On ne peut la maintenir que par la meilleure manière de les remplir ; et à moins qu'on ne donne à cet avocat-général le pouvoir d'instruire un juge ignorant et de remplacer un incapable, il sera sans ressource pour maintenir la dignité judiciaire. Les prérogatives de la magistrature sont des droits accordés par la constitution et la loi, pour garantir la dignité et assurer l'autorité des tribunaux. Ces prérogatives sont essentiellement l'apanage des tribunaux et des juges,—ils en sont assez jaloux, sont assez disposés et en même temps sont assez capables de les revendiquer et de les exercer pour n'avoir pas besoin d'un officier public pour les mettre en réquisition. Pour assigner un rôle aussi nouveau et extraordinaire que celui de protecteur et gardien des prérogatives des tribunaux, on devrait indiquer quelques cas où l'utilité s'en ferait sentir.

Les autres devoirs que cet officier aurait à remplir seraient d'occuper pour la couronne dans les causes criminelles, et dans les causes où la question de la constitutionalité d'une loi fédérale ou provinciale serait soulevée. Il a déjà été démontré qu'un seul avocat ne pouvait représenter la couronne dans les causes criminelles ; il en faudrait nommer encore, et pour un seul, parmi ceux déjà employés, qu'il remplacerait, la raison de créer cet emploi extraordinaire ne peut valoir.

Pour la question de constitutionalité des statuts, rien ne peut justifier cette nomination. Ces questions sont laissées à la décision des tribunaux qui n'ont pas ni ne doivent avoir besoin d'autres arguments que ceux que les parties intéressées peuvent fournir. En outre, comme officier provincial, il croira de son devoir de maintenir et de défendre seulement la juridiction provinciale, et elle devra en définitive être déterminée par la cour suprême, en dernier ressort.

Les fonctions assignées à l'avocat-général seul sont celles du ministère public en France ; mais là, le ministère public est composé du garde des sceaux, du président de la cour de cassation, des procureurs-généraux, etc., etc.

COUR D'APPEL.

Le rapport prend en considération les plaintes sérieuses et bien fondées qui existent depuis bien des années au sujet de

l'administration de la cour d'appel, et principalement à raison des délais interminables apportés dans l'audition et la décision des causes.

Le seul fait qu'une cause ne peut être entendue et décidée que dix-huit mois après l'appel interjeté, suffit pour condamner sans plus de discussion le système suivi.

M. Pagnuelo a signalé ces abus et indiqué des remèdes qui produiraient des résultats satisfaisants s'ils eussent été adoptés, suggérant en même temps la simplification des procédés et la réduction des taxes énormes et injustes qui sont prélevées sur les plaideurs.

La commission suggère encore ici, pour faire disparaître l'encombrement des rôles à Montréal, l'intervention des juges suppléants. M. Pagnuelo voudrait un nombre additionnel de juges permanents, afin que la cour puisse siéger sans interruption à Québec et à Montréal.

Il n'existe réellement aucune raison d'avoir recours à des juges suppléants où même à des nominations additionnelles Les objections aux juges suppléants s'appliquent avec plus de force dans la composition d'une cour de cette importance. On ne peut accepter de diviser cette cour, qui est, à proprement parler, pour la presque totalité des causes, le dernier ressort.

Un tribunal de cette espèce doit être unique et tous ses membres solidaires de ses décisions; autrement on s'exposerait à voir chaque section prononcer des jugements différents et les avocats ajourner la plaidoierie pour attendre une composition plus conforme à leur goût, comme cela se pratique souvent en cour inférieure, et le tribunal tomberait bientôt dans un discrédit complet.

La plus importante modification requise pour le faire fonctionner d'une manière satisfaisante est de le rendre fixe et de lui enlever son caractère ambulant. Les juges devraient tous résider à l'endroit fixé, afin d'assurer des délibérations complètes et non précipitées par le désir de regagner son domicile Il serait mieux d'augmenter leur rétribution et la mettre au niveau de leur position pour ne leur laisser aucune excuse de consacrer le temps nécessaire pour le parfait accomplis-

sement de leurs fonctions. Il est tout-à-fait indifférent pour les plaideurs que cette cour siége à Québec ou à Montréal, il n'y a que les avocats et les dossiers qui auront à voyager, et la distance n'est aujourd'hui que de quatre heures en toute saison. Il est important au contraire dans l'intérêt public que le tribunal soit en permanence et en présence d'un auditoire nombreux et éclairé. Le barreau aurait, en outre, la certitude que chaque cause serait plaidée à l'heure même, sans aucun retard et serait mieux jugée.

Cette cour n'a pas à décider plus de 200 causes par an. En restreignant leurs fonctions à ce seul travail, il ne peut être considéré comme excessif. Il est grandement facilité par la production de factums et l'impression de la preuve. En suivant la méthode suggérée par M. Pagnuelo, et en partie mise en usage aujourd'hui, de n'inscrire qu'un nombre limité de causes, l'expédition des jugements est plus prompte.

La raison donnée pour l'encombrement des rôles et l'impossibilité de les vider, en étendant ou multipliant les termes, est que les juges sont occupés pour une partie considérable de temps à administrer la justice criminelle. Rien de plus facile que d'enlever cette difficulté. Les juges de la cour supérieure (dont le nombre sera de trente, suivant le rapport) sont ou doivent être aussi capables de s'acquitter de ces fonctions au criminel, et la preuve en est dans les districts ruraux où ils sont tenus de le faire et le font généralement. Le droit criminel est fort simple. Les crimes et la procédure pour les atteindre ne sont pas plus compliqués dans les villes que dans les campagnes, et un juge qui condamne un individu à mort à Aylmer ou à Rimouski peut bien le faire également à Québec et à Montréal. Ceux d'entr'eux qui voudraient s'en exempter peuvent aisément trouver un confrère pour les remplacer. Assurément, sur ces 30 juges dont plusieurs sont fort peu occupés, deux pourraient tenir la cour criminelle à Montréal et à Québec deux fois par an, afin de laisser les juges de la cour du banc de la Reine accomplir les devoirs qui leur sont plus particulièrement assignés en appel, au civil et au criminel, et que personne autre qu'eux doit remplir.

Il y a aujourd'hui environ 100 causes sur le rôle. Combien faut-il de jours de séance pour les terminer ? La cour peut en moyenne expédier au moins trois causes par jour. 140 jours de séance pourraient donc suffire pour effaçer tous les arrérages. En consacrant 12 jours de séance par mois, on disposerait de 36 causes par mois et en moins de trois mois on mettrait fin à ce criant abus de ne pouvoir espérer une décision en appel que dix-huit mois après l'appel interjeté.

On peut ainsi réaliser combien il serait facile après avoir disposé de cet arriéré, de procéder régulièrement et promptement à la décision des causes lorsque la cour n'aurait en tout que dix-neuf causes à entendre par mois tant à Montréal qu'à Québec. Il est constaté que trois juges de la cour supérieure, siégeant à Montréal en révision, ont entendu et jugé 180 causes après 36 jours de séance, et ceci comme hors d'œuvre, en sus de 800 causes jugées en cour supérieure après enquête et mérite, et 2,500 causes en cour de circuit et à part, en outre, les affaires ministérielles et de pratique dont chacun de ses juges a eu sa proportion. Cependant ces juges en révision avaient à décider du mérite de la preuve sur manuscrit ; ils n'avaient pas l'avantage d'un factum imprimé, soigneusement préparé, et les causes étaient en grande partie aussi compliquées que celles soumises à la cour d'appel. Il est donc impossible de prétendre sérieusement que les 6 juges de la cour d'appel ne peuvent, avec un peu de système, disposer avec la plus grande facilité et promptement de 180 causes par année et même deux fois ce chiffre, et qu'il faille nous imposer des juges d'occasion.

Il est certain néanmoins que l'administration de la justice en cour d'appel ne peut être régulière et efficace qu'en fixant son siége dans un seul centre, où devront résider tous les juges et où elle siégerait presqu'en permanence. Les membres du barreau de toute la province, en s'y rendant pour les affaires confiées à leur soins, trouveraient par là un point de ralliement nécessaire, un théâtre plus grand, un auditoire plus nombreux, capable d'apprécier leur mérite. Il en résulterait une association plus intime, une vraie confraternité et

une opinion indépendante de l'esprit de localité, garantissant une influence légitime qui assurerait les réformes que le barreau uni jugerait utiles dans la législation et l'administration de la justice.

La composition de la cour d'appel intéresse au plus haut degré la société et le barreau. L'importance de ses fonctions exige qu'elle soit faite avec le plus grand soin, et que l'opinion du barreau ne soit pas méconnue dans le choix des juges ; car le barreau seul peut déterminer la valeur respective de ses membres. Les qualifications des juges d'appel devraient être nécessairement d'un ordre plus élevé que celles des juges de première instance.

Le rapport de la commission reconnaît ce principe, tout en regrettant qu'il ne soit pas suivi et pour y remédier on veut donner à la majorité des juges, en comptant les opinions de ceux de première instance, la solution des questions portées en appel. Il sémble plus logique de constituer le tribunal de manière à obtenir la garantie de la supériorité des juges d'appel. Autrement la cour d'appel est parfaitement inutile. Il ne s'agirait que de composer le tribunal inférieur d'un nombre égal à celui de la cour d'appel et on n'aurait plus besoin d'un tribunal supérieur.

Répétons le, ce n'est pas le nombre mais le mérite seul, les qualités incontestables qui devraient assurer la nomination à cette position et qui peuvent donner au tribunal l'autorité qu'il lui faut. Dans bien des cas, le nombre, au lieu de donner des garanties, les diminue. Supposons le tribunal composé de trois juges,—deux sont des hommes de premier mérite,—ajoutez-y deux juges inférieurs en qualifications, les trois moins capables prononcent le jugement contre l'opinion bien fondée des deux, est-ce que les trois premiers juges n'offraient pas plus de garanties que les cinq ?

En matière d'appréciation de preuve, la sagesse des lois veut que les témoins ne soient pas comptés mais pesés. *Testes non numerantur sed ponderantur* et l'on applique le principe contraire en matière bien plus délicate et plus difficile de l'inter-

prétation des lois en donnant au nombre des experts la prépondérance sur la qualité.

Qu'on donne en pâture aux politiciens les nominations des tribunaux de première instance, s'il faut accepter ce malheur comme nécessité, mais au moins qu'on s'arrête lorsqu'il s'agit de nommer les régulateurs de tous les tribunaux, les interprètes en dernier ressort de nos lois, les arbitres souverains de la vie, de l'honneur et de la fortune des citoyens. Comment peut-on suppléer par le nombre à la qualité qui manque, que signifie-t-il en pareil cas, sinon l'incertitude et l'erreur multipliée.

Le meilleur moyen, et le plus efficace de remédier à tous les abus dont on se plaint, est d'exiger que les nominations de juges ne soient pas subordonnées aux exigences politiques Que l'opinion du barreau soit une fois arrêtée et bien prononcée sur ce point, et qu'il fasse comprendre clairement à tous les partis que la carrière politique ne doit pas être le chemin qui conduise aux plus hautes fonctions de la magistrature, et qu'elles ne doivent pas être la rémunération de services rendus à un parti, et vous assainirez l'atmosphère politique, en même temps que vous assurerez une bonne administration de la justice. Dans tous les pays du monde civilisé, le barreau contrôle et dirige l'opinion publique, et dans aucun autre pays cette influence pourrait être aussi grande que dans notre province, s'il y avait entente, concert et esprit de corps. La décentralisation a pu contribuer à cet affaiblissement de la profession, en isolant un grand nombre de ses membres ; mais en les réunissant dans les grands centres par les besoins de soutenir et défendre les intérêts qui leur sont confiés, vous rétablissez la confraternité et vous offrez un théâtre où les capacités peuvent se faire jour, et où le mérite s'affirme et peut être dignement apprécié par les confrères et par un public éclairé.

Les sentiments et les idées ne se renouvellent et l'esprit humain ne se développe que par l'action réciproque des hommes les uns sur les autres et c'est ce que les associations seules peuvent faire.

La meilleure surveillance à exercer sur les tribunaux, la plus sûre et celle qui produit les meilleurs résultats, est un auditoire nombreux et intelligent, appuyé d'une presse qui rend compte des procédés de tous les jours et les critique sous l'œil d'un barreau nombreux et éclairé ; et lorsqu'il s'agit pour eux de décider un grand nombre de causes importantes, les juges réalisent mieux la nécessité de bien s'acquitter de leurs fonctions ; ils sentent qu'il leur faut rendre un compte satisfaisant de leurs décisions, et qu'une erreur n'est pas plutôt énoncée qu'elle trouve un tribunal aussi éclairé qu'eux, prêt à la saisir et à les condamner.

Avec ce système, chaque individu jouant un rôle dans ce drame sera apprécié à sa juste, valeur et la voix publique indiquera d'une manière irrésistible, appuyée par le sentiment du barreau, ceux des juges qui offriraient toutes les conditions voulues pour remplir une position plus élevée ; et nous aurions ainsi la garantie que ceux qui seraient promus à ces fonctions auraient des titres incontestables à la considération, au respect et à la confiance universelle.

R. LAFLAMME, C. R.

RÉFORME JUDICIAIRE.

MONTREAL, 1882.

SIR,

In compliance with the request of your circular of the 1st May last, I have examined the first report of the Commissioner for the codification of the Statutes, comprising a proposed law for the re-organisation of the Courts and the consolidation of the Code of Procedure, with all the care circumstances would permit of.

Criticism of such a work must necessarily appear somewhat ungracious, and its utility may possibly bear no fair proportion to the labour it entails.

In the remarks I deem it my duty to make, I do not purpose entering into the merits of the *redaction* of the various clauses of the proposed legislation ; but shall confine myself to considerations which appear to me to involve questions of general principle.

The chief objects sought to be attained by all systems of legal procedure are so obvious, that little or no difference of opinion exists as to them ; but the modes of arriving at the desired result are very various. Few subjects have attracted greater attention, and every system hitherto produced has been exposed to almost clamorous denunciation. Lawyers gain by protracted legislation, and the delays of justice, it is said,

are due to their sordid speculations. I do not feel called upon to answer these wild accusations, which contain just that semblance of truth which is sufficient to capture the most foolish fish. Sham philosophers prose, and rhetoricians rave about the delays of justice. They might about as well expatiate on the time it takes to ripen an ear of corn. In theory, every impediment put between the creditor and the recovery of his lawful debt is a tortious delay. Forms of procedure are the penalty we have to pay to avoid surprise and ensure justice. Celerity in legal proceedings is therefore simply a question of degree.

In organizing a judicial system, while it is evidently wise to have before one's eyes the highest conceivable form of excellence, it is important not to be led away by abstractions, often fallacious, and even when theoretically right, too difficult of application. The new system should differ from the old as little as possible. All unnecessary changes in the law are bad, and before making a change it is proper not only to be sure that the old law is defective, but that there is a tolerably strong presumption that the proposed alteration is an amendment (1). By thus keeping up the traditions of civilisation, alone, can true progress be secured. Obedience and respect are more willingly accorded to an old law than to a new one.

The report contains some useful suggestions; but, as a whole, it seems to me to have been dictated by ideas totally at variance with the rule of amendment just mentioned. It is a radical change of all our present notions—it introduces a system of procedure so different from the one existing, that lawyers will have to learn their profession anew, at the expense of their clients, it introduces some forms of absolutism totally foreign to the habits of the people of this country, and

(1) The danger of making changes of a radical kind is very real. This is particularly true as to matters of legal procedure. All changes untried by experience are little more than groping in the dark, and what, at first sight, seems a desirable simplification too often can be turned into a cause of delay, or it works injustice.

subversive of individual rights, and it alters the position held by the Judges in every British country, introducing a sort of subordinate surveillance over them, borrowed from some revolutionary source or other. Whether this up-turn of all our judicial system is the out-come of the Commissioner's own mind, whether he has copied it from any system actually in force, or whether he borrowed it from the writings of others, we know not. Hardly an authority is cited, and the occasional references to the English law show a very imperfect knowledge of that system, while the old French law is discarded as being unsuitable to our times and circumstances.

This compendious mode of discarding existing institutions is much in vogue with radical reformers in these days. It is easier to dogmatize than to reason, and those who fabricate new schemes rarely suffer from the almost invariable failure of their social experiments. Intuitively these philosophers recognize the wisdom of the fable.

What we have to expect from the heated imaginations of radical reformers we know very well from experience. The least we ought to exact from them, as a preliminary instalment, is a precise account of the source whence they obtain their novelties. The test of actual and successful trial is the best reason for introducing a new institution. The next is the concurrent opinion of writers of repute and of practical experience. A writer on the Roman bar says : "*Si les citations sont une sorte d'épouvantail pour une certaine classe de lecteurs, aux yeux des hommes d'étude elles passent pour la meilleure garantie de la conscience de l'écrivain.* (Grellet Dumazeau, Barreau Romain, VIII.)

For my part I have very little faith in complete systems either of law or politics, concocted in the retirement of the closet. Constitutions and systems of law are the accumulated growth of ages, and except under the pressure of the most imperious necessity, the attempt to remodel them, so as to turn them out spick and span new, appears to me to be an

evidence of that presumptuous folly, which is the most common indication of intellectual decay. (1)

The introductory chapter of the report deals *seriatim* with the following subjects : " Administration of Justice," " Decentralisation," " Court of Review," " Superior Court," " County Courts," " Advocate General." " The appointment of a second Chief Justice," " Appeal," " Privy Council," and " Trial by Jury." So far as possible I purpose following the order thus mapped out, and I shall conclude with some remarks on the proposed changes in procedure, and by the suggestion in outline of some modifications of our present system which, I think, might perhaps be advantageously adopted.

The delays of justice are the proverbial reproach to the administration of the law ; but those acquainted with the subject, know what insurmountable obstacles prevent expedition in legal proceedings. The fault is not that of any particular system. The first impediment arises from the bad faith of one or other party: In the great multitude of cases the defendant does not desire a speedy termination of the proceedings, and by disingenuous appeals to unquestionable

(1) The mania of remodelling is alarmingly exhibited in the love of law-making. Not only does it seem necessary to temper constantly with all the dispositions of the statutory law, a legitimate field of labour, under proper restrictions, but it is thought that no rule of the common law can be secure till it has appeared in the form of a Statute. This disposition to trust to only what is written i.e. to a text, as in primitive legislation, has been popularized by the French code, in one sense a great success. But people seem to forget that a general exposition of the leading subjects of the civil law had become very desirable in France, in order to destroy the multitude of provincial and local customs, and that the Revolution had rendered such a change possible. Its being copied in other countries, not similarly situated, does not say much for the discernment of their inhabitants. It is well to bear in mind the following passage from Bacon : " And sure I am, there are more doubts that rise upon our Statutes which are a text law, than upon the common law which is no text law." The sententious brevity inseparable from wholesale codification must be often ambiguous. This leads to doctrine burthened with a crabbed text.

principles, he readily obtains the temporary relief he seeks, and thus justice is, to some extent, defeated.

Inexperience cries out, why not put a stop to these dishonest manœuvres? The answer is plain ; it is only by the trial that it can be known which litigant is in bad faith.

The next cause of delay is the difficulty of establishing the fact.

Many plans have been tried, and countless ones have been suggested, to remedy these evils, but without much success or prospect of improvement. Extreme technicality, and the greatest latitude have proved equally unavailing, and it is probable that the least sum of evil will be found in the vigilant repression of each form of abuse as it arises.

The third cause of delay is the accumulation of cases which cannot be disposed of. This is an evil which, I conceive, it is easy to remedy by the most ordinary care and attention, and by the application of the plainest and most obvious dictates of common sense.

I am inclined to concur with the Commissioner as to the decentralisation of justice. It seems to me the measure of 1857 was greeted with an applause it did not deserve, and that it was far in advance of the wants and the means of the country. But after all, the extent to which decentralisation should be carried is a question of expediency, and, as the Commissioner justly remarks, the evil of over decentralisation is gradually being cured. Another reason for not abolishing an institution once created, is that it interferes with the stability of positions, on which people have some right to count, and to acquire which, they may have made great sacrifices. Without placing such positions exactly in the category of vested rights, they have much analogy with them.

I cannot agree with the Commissioner in his hostility to the Court of Review. His objections seem to be, that it has all the inconvenience of an additional appeal, that it is not really an appeal, and that it is a retrograde step in restoring centralisation.

It is not absolutely correct to say that the Court of Review

adds an extra step to litigation. It only does so when there is a conflict between the Court of first instance and the Court of Review. It has been a Court of appeal to all intents and purposes for nearly ten years. Even before that time, the judges, out of deference to the wishes of the bar, did not sit in Review on their own judgments, and since 1872 the judge *a quo* is by law disqualified to sit.

The last objection sounds strangely coming immediately after the following vivid picture of the evils of the decentralization of 1857 :

"But the excessive increase of these courts created too many jurisdictions, and placed the judges exercising their functions therein, in an isolated position which was prejudicial to uniformity in jurisprudence.

"This isolation was also prejudicial to the advocates, divided into numerous sections of the bar, strangers to each other, and without professional intercourse or any interest in common. It retarded the rise of the legal profession and deprived the country parts of that social influence which they had a right to expect from it. Thus, by disseminating beyond measure the operations of the judicial power, decentralization diminished its vigor and loosened its ties."

The Report suggests no remedy for these evils. The isolation of the judges would not be diminished by the adoption of any of its suggestions, nor can I understand what in anything proposed is to raise the legal profession, or to augment that social influence which it has not yet wielded, it appears, in the country parts. To speak of the domination of the great centres, and the interference with the judicial autonomy of the new districts, as being abuses, is declamation, misplaced in a work of this kind. There are the same reasons for the Court of Review sitting in Montreal and Quebec as exist for the Court of Appeals sitting there, and it is no more interference with the judicial autonomy (whatever that may mean) of the new districts in one case than in the other.

The embarrassment in enacting scientific laws, owing to the prejudices of the great mass of the people, who cannot

possibly comprehend their recondite meaning, is the great danger to be apprehended from popular legislatures, and a commission to be useful, must carefully abstain from demagogic appeals.

If it is intended by the note to article 5 to intimate that the judges sitting in Montreal were more merciful to their judgments than to those of their country colleagues, the insinuation is gratuitous, and unsustained by anything but gossip. General appreciations of this sort ought to have no weight, particularly where it is so easy to show by results whether the rumour is founded, or is only the oft-repeated grievance of a disappointed lawyer or a chagrined judge. Nor would it justify such an insinuation to show that proportionately more country cases were reversed in Review than those from the Districts of Quebec and Montreal. It is antecedently probable that the decisions arrived at by a judge in a great centre will be more often correct than those delivered by the same judge in the isolation of the country. And this the Commissioner seems to admit.

The practical results of the Court of Review are the best answer to the objections of the report. Its main object is to give opportunity to all unsuccessful suitors to be heard by three judges for a very moderate outlay. The Court certainly answers that end. Last year there were in Montreal of cases inscribed 195, of which 143 were finally terminated by confirmation. In Quebec there were 74 inscribed, of which 46 were confirmed. There were thus 189 cases finally disposed of, all of which might have come to the Court of Appeal. If even half of these cases had been appealed, the Court of Appeal would have been unable to prevent the arrears from increasing. An experiment which may have the effect of increasing those arrears is too dangerous to be thought of without dismay. During the last seven years, we have been only able to affect in a very slight degree the multitude of arrears which had then accumulated.

From what I have said of the Court of Review, it will be readily understood that I disapprove of the return to the

three judge system. For the immense majority of cases the opinion of one judge is just as good as that of three, and the parties having the right to test in Review the correctness of the opinion of the singls judge, it is difficult to understand what would be gained by occupying the time of three, until it is specially required.

The most obvious objection to the three judge system is its expense. This is a matter of moment to the whole country. It becomes impossible to pay a large body of judges salaries sufficient for their position, and unless the judicial office is to be run into the ground here, as it is in France, some means must be devised to raise the salaries of the judges of the Superior Courts of Law. This has been so strongly felt that in Ontario the local legislature has taken upon itself the charge of adding $1,000 a year to the salaries of the judges of that Province. This is open to serious objection, and the *constitutionality*, if I may use such a word, of the measure, has been vigorously attacked.

A wise legislator will bear in mind that the idea of our judicial position is English and not French, and so are the ideas and habits of expenditure. This has always been the case under the English rule, and it is somewhat curious to know that the judicial salaries were fixed, one hundred years ago, almost exactly at the rate they stand now.

In France there is no great respect for the individual judge. He is not trusted as he is in England, and society seeks to protect itself by numbers. I am strongly persuaded that numbers do not augment the chances of good judgments. I do not believe that any tribunal ever gained force by a number exceeding three or four judges. The reasons for this are very prosaic, and will at once be recognized by those whose duty it has been to deliberate with a greater number. Numbers stop deliberation and render the result shaky and uncertain. This is not peculiar to Canada. The same will be found in all countries in the world. If any one will scan with care the opinions of "all the judges" in England, he will see how intolerable would be the nuisance of such a combination of

talents if it were frequent. The Seigniorial Court was, it is true, somewhat of a subterfuge—a tub to the political whale—and therefore little attention was paid to its composition; but I remember the late Chief Justice Rolland saying to me that it reminded him rather of a Committee passing resolutions than of a Court of Justice.

The very fact of judges being few in number adds to the chances of their being circumspect. The members of a select body are invariably more careful of their reputations than those of a numerous one. The thirty judges of England are known to every educated person in the country, and they have a reputation and a name to earn or to preserve. In France, except in the highest Courts, the thousands of judges are unknown, and none of them can expect to gain judicial celebrity.

Since the judges' salaries were first fixed in this country, their work, as a general rule, has enormously increased, and the cost of all the necessaries of life has augmented in quite as great a proportion. So have the habits of living — those things that come to be necessaries—and so also has taxation. Ministers have discovered this fact so far as they are personally concerned; they have greatly increased their own salaries, and have added to their surroundings everything that luxury could suggest. While the legislative branches of government have been stimulated, I might almost say, to extravagance, the judicial branch has been starved and inconvenienced in every shape and way. A reflecting mind will hardly come to the conclusion that this condition expresses the relative value of the two institutions. We probably could better afford to make no more new laws than to leave unexecuted those we have.

The number of judges of the Superior Courts of Law is immense for the population — two judges in the Supreme Court (our supposed representation), six judges of appeal, and 27 judges of the Superior Court, give a total of 35, five more than for England, if you leave out of reckoning the Lords

Ordinary, and the four paid members of the Judicial Committee of the Privy Council.

The augmentation of this mass of judges by a judge for each District of Lower Canada is appalling, and to give him something to do it becomes necessary to treble the judges at every point, and to oblige three to hear the evidence. What control can three have on the admission of evidence? The latitude allowed will be in the measure of the least quick-witted on every question, and thus one of the most formidable difficulties in the expedition of cases will be largely increased.

The pomp and circumstance, which should perhaps surround the judicial dignity, is the substantial return we are to have for all this expense and confusion. I do not think any thing in this direction will be gained by sending three judges instead of one to obscure villages where there is no decent accommodation to be procured, and where the whole *mise en scène* is the reverse of imposing. Before setting up a Court in any locality it would be perhaps a wise precaution to enquire whether there is a proper place of residence for the judge and advocates. When acting for the Attorney-General on one occasion, I discovered that I was to dine at the same table with a man I was going to prosecute for murder, and it was with some difficulty I avoided this impropriety. When an assistant judge of the Superior Court, I frequently experienced difficulty in making suitable arrangements, without rendering them conspicuous, and consequently offensive.

Again, it is not easy to understand how the three judge system is to overcome the evils of isolation, since the judges are to remain constantly (and this is vigorously insisted on) in their respective Districts, except while holding their Courts elsewhere. But the best answer to the objection to the three judge system is to be found in the report itself. It is noted that a great number of cases will still be left to the decision of one judge. In addition to this the judges have the power to send any case before one judge, when they think the interests of justice will not suffer. That is, the law gives the

suitor a tribunal of three judges, and allows the judges to convert it into a Court of one judge. If the judges, to lighten their own work, may do just what the law now does, what is to become of the effect supposed to be produced by the three cocked hats on the Bench?

The novelty of such a free and easy system is not more striking than its imperfections. Tossing about a case from one jurisdiction to another would give opportunity for endless confusion.

We have pompous allusions to *l'hiérarchie judiciaire*, as though it were of importance to observe it, yet the whole scheme of the proposed code seems to be devised in order to mutilate or destroy it. One of the means to be adopted is to give the County Court judge a right to sit as a judge of the Superior Court. This appears to me to be highly objectionable. If he is considered fit to do the Superior Court work one day, he is so the next, and it is to set at nought all ideas of judicial hierarchy to put him for an instant on a level with the judge of the higher Court.

It is quite possible the judge of the inferior Court may be an abler man, and a better lawyer, than the other, but this is not the presumption of the law, or the view usually sought to be impressed on the public mind, neither as a general rule will it be found to be correct. Men who accept inferior positions do so because they feel themselves unequal to greater fortunes, or, because they have got a timely hint that the public opinion points that way.

The objection to allow lawyers to hold civil Courts appears to me to be still greater. I am not aware that it is done in England, and an English example in this direction would be no guide to us. An English lawyer is a barrister, he has no permanent client; the lawyer here is advocate and attorney, and consequently he might be called on at any moment to decide an important question affecting some one from whom he had great favours to expect. However, it is hardly necessary to discuss this matter in dealing with the report. The appointment of judges cannot be regulated by a local law,

and the device of giving the matter the appearance of a regulation of procedure does not alter the question.

I confess to a sense of bewilderment in reading the latter part of the Commissioner's commentary on Art. 1. Where does he find more than two degrees of jurisdiction besides the appeal to the Supreme Court and to the P. C. ? As I have already shown, the appeal from the decision of the Court of Review is only conditional, the condition being that the judgment of the Court of first instance is reversed. Evocation has no resemblance to appeal. Evocation does not increase the degrees of jurisdiction in number. It simply carries on in a higher court what has begun in a lower one. As well might it be called an augmentation in the number of degrees of jurisdiction to pass a case from the first to the second chamber, as is proposed by the report. It is impossible to conceive how so thoroughly trained a lawyer as the Commissioner should have confounded two things so dissimilar as evocation and appeal, and I can only account for it by supposing that he was carried away by his indignation that there should be tribunals to deal with particular matters exclusively. He exclaims —" The time has long passed in which certain Courts had privileged jurisdiction over special matters, outside of their pecuniary interest. " The word *privilege* has a peculiarly exciting influence on some minds, owing to some, to me, inexplicable cause. My simplicity leads me to think that we are one and all living on privilege. But if privilege is so obnoxious, why, may I ask, should there be any privileged jurisdiction owing to pecuniary interest ? In my weak abstractions I am inclined to think that the poor man's penny deserves as much protection (but absolutely and very particularly *no more*) as the rich man's pound. But there is the unattainable, and my *à priori* philosophy fails in the same way as does the theory of perpetual motion. The attainable is for society and not for the individual. Were there no friction we should all slip from our stools.

Soberly, the criterion is always interest, and money is not the perfect measure of interest. It is a conventional and a

convenient one, but it does not furnish a measure for our tastes and for our affections. This is the principal reason why one rule is established for a small promissory note and another for real estate. The note states its value on its face, the land or the future right does not. These exceptions to the money value, if that be looked upon as the *general* instead of the *common* rule, stand therefore on principles identical to that of the Commissioner's sole exception, namely, when there is a question as to the constitutionality of a general or a local law.

Although the Commissioner thinks it undeniable, that where the capital of a rent or the interest in real estate is estimated at an amount within the jurisdiction of the County Court, that Court ought to have jurisdiction without evocation or appeal, still, he admits, there is difficulty when the capital is beyond the jurisdiction of the lower court.

His mode of getting over the difficulty is somewhat curious He would leave the jurisdiction of the arrears to the local court, if within its jurisdiction, reckoned by the amount of the action, but he would have it declared by statute, that the thing should not be *chose jugée* as to the principal. So, having a rent of $60 on a capital of $1000, the plaintiff might perpetually be defeated of his interest without being able ever to bring his case before a Superior Court of Law. The distinction made for fees of office and sums due to the Sovereign stands on quite a different ground. It is not a protection to the right of the Sovereign or of the office-holder. It is established in jealousy of their rights, so that they may not impose small exactions on the authority of a subaltern judge, without appeal. I am, perhaps, less jealous of the rights of the Sovereign than most people in this country, but I trust this very wholesome safeguard of private rights will not be disturbed.

The title of the Court of Appeal, " Court of Queen's Bench," is historically not very well founded. Probably the name was given, without any very critical examination, and principally from an amiable desire to conciliate the English mi-

nority, when substituting the name of " Cour Supérieure " for that of " Court of Queen's Bench," for the great civil law court of the Province. Any change in the name would likely give rise to misinterpretation, and even if it were more open to objection than it is it would not be worth while. Besides, the proposed name of " Court of Appeal " would as little express all the functions of the court as the present one. It is the great criminal court of the country, and so far is as properly styled " Court of Queen's Bench " as " Court of Appeal." The reformer of nomenclature must therefore show more ingenuity than is exhibited in Article 2, before disassociating the name of the Sovereign completely from the administration of justice.

The County Court system, or what is analogous to it, already subsists ; and if change for change's sake gives a feeling of satisfaction to anyone, I know no less dangerous mode of gratifying that taste than calling the Circuit Court henceforward " the County Court. " I also think the jurisdiction should be enlarged and that its cases should only be subject to revision by three judges of the Superior Court. If County Court judges are to be named, I think it should only be gradually, and as the Superior Court judgeships are diminished in number. The Superior Court judges might then become resident in the great centres ; and their deplorable isolation, which has sometimes caused scandal, and almost always annoyance, would be obviated.

When one comes to the proposition to create the office of Advocate-General, the exclamation of Napoleon when he heard Sieyes' proposition for the office of 1st Consul, is forcibly called to mind. For whose benefit, we cannot fail to ask, is this anomalous position created ? We are twice assured it existed before the Union of 1841. In fact, no such office ever existed in British territory. There has often been an Advocate-General, and there is no reason why there may not be one now. The Advocate-General was the Sovereign's Attorney in Chancery. But the officer the Commissioner desires to originate has powers very different from those of an Attorney-

General. The new officer is to confer with the judges, and he is to have the initiation of the conference. The explanations are so worded at times, as to leave the impression that the judges are to be the principal parties at the conference, but it is evident that this circumlocution is only in deference to the well known and well-founded jealousy of official interference in judicial matters, and that the Advocate-General will be the real *arbitre.* The existence of this functionary is not necessary in order to allow the Provincial Government to intervene in cases where there is a question affecting the local legislative powers. But to make a rule that the Advocate-General is to be notified whenever a question affecting the validity of a local or federal act (for it must go so far) arises, is to invent the most perfect manner of creating obstructions and delays possible. If the local authority is to be admitted a party it is quite evident the Minister of Justice must also be notified, and private parties will be delayed in the prosecution of their rights. Besides, who is to divine that the constitutional question is to be raised ? It arises incidentally in many cases.

The assurance that this office of Advocate-General will not add to the public charges will hardly obtain credence when we read Section 5 which is as follows :

" The annual salary of the Advocate-General shall not exceed the average amount of the fees paid yearly, during the five years previous to his appointment, to the advocates charged with the duty of representing the Crown before the Courts before which the Advocate-General shall himself represent it. "

How can it be known beforehand in what Courts he shall appear ? If he is to be paid by an " annual salary " it must be fixed when he takes office.

It is evidently intended that he is to take the place of the Grand Jury, or to control it, so that the initiation of prosecution is to be transferred from a popular to an official source, and to be confided to one subaltern officer—a sort of deputy Attorney-General. Did it ever occur to the learned persons

who eagerly seek to destroy the Grand Jury, powerfully aided by the thoughtless or unpatriotic, who would joyfully sell an institution constituting a popular right in its truest sense, for a mess of pottage, that even judicial systems have their limits, and that if we destroy the Grand Jury, with any approach to consistency, the Coroner's Jury must also disappear. In countries like Scotland, where the prosecution is official, there is no Coroner. Perhaps the Commissioner desires the Advocate-General to absorb the functions of that " ancient officer. " Such an interference with the criminal law is probably beyond the jurisdiction of the local legislature, and, therefore the Commissioner's recommendation need not be discussed at greater length.

It is not improbable that for reasons, not avowed, this, till now, unheard of office may be created by Statute ; but if so I venture to prophesy two things :—1st, that its creation will be immediately followed by the nomination of a staff of secretaries and clerks to enable him to get through his labours ; 2nd, that the judges will not take part in his conferences, in which they are only to enjoy a formal preeminence.

And here I may take occasion to meet an aspersion gratuitously thrown out against the judges, that they habitually refrain from mixing themselves up in matters affecting their own position and the law, and particularly that they dit not offer suggestions on the project of the civil code.

In the first place, the charge is not altogether founded. The judges have ceased, to a great extent, to offer suggestions, because when they have done so their suggestions have been received, if not with absolute discourtesy, at all events with an official reserve almost offensive. For my own part, in spite of the cooling influence of official manners, I have three or four times, within the last few years, urged on the attention of the Attorney-General of the day, a change as to hearing cases in appeal in the district of Montreal, which could have been operated by the enactment of a very few words, but without producing any apparent effect, although the plan was approved of by the bar. I shall allude to the scheme later, in

speaking of the Court of Appeals, as to some extent it is adopted by the report.

The particular charge as to the code seems to me to be specially ill-chosen. The judges had no opportunity afforded them to enter on a critical examination of a work of that kind. The work of the judges in the great towns was even then sufficient to prevent any of them undertaking the arduous manual labour of writing critical notes on the code. I have heard the work of the English judges compared with ours. It is well the attention of these statists, who delight in comparative depreciation, should be directed to the fact that the judges in this country have no assistance in the way of secretaries or clerks, as they have in England and Scotland. The Chief Justice of the Queen's Bench Division in England has a secretary and two clerks, at the cost of £1,000 sterling a year, and each of the other judges has two clerks. Each minister, not only of the Dominion Government but of the local Government, has found it necessary to have a private secretary in addition to the regular staff of his department. I wonder if it ever occurred to any of these gentlemen that our work, by comparison with that of our predecessors, has increased quite as much as theirs ? In the country districts the judges had not the books necessary to enable them to criticize the draft of the code, if they had the leisure. On this point then the habitual amusement of carping at the judges fails. General accusations may be more successful. They have a double advantage ; they look less vicious, and they are less easily answered. I have no objection that the judge should be called to as strict an account as any other official, but the Bench cannot control bungling laws. Burke says : "Where there is an abuse of office, the first thing that occurs in heat is to censure the officer. Our natural disposition leads all our enquiries rather to persons than to things." And so, perhaps, our national freak in this respect may be referred back to a human weakness, freely indulged.

There is a note beginning at p. 135, which it may be as well to notice here. It is as to the formation of family coun-

cils, and the mode of dealing with all such questions as the appointment of tutors and curators and granting authorisations to deal with the property of minors, absentees and incapables.

What the Commissioner says is strictly true. All those who have had to deal with these cases must have felt how dangerous were the powers to be exercised. But this may be said with equal truth of almost all non-contentious proceedings. The most vigilant judge can do little in such matters. Of course, he may exact, as the Commissioner suggests, an account of the family, and demand an explanation of the absence or presence of this or that person ; but to do this effectively he must institute some sort of enquiry. In doing this he may ruin a small estate in his well-intentioned efforts to preserve it. It will be observed that it is the small estates that are most open to dilapidation. In the management of great ones the relations relieve the judge of all solicitude.

But all these alarms are as old as the hills. It is the cure that it is difficult to discover, and I doubt much whether we can mend our present system. In England the Chancery system, perfect in theory, became often disastrous in practice, and it fell, overwhelmed by the jeers and denunciations of satirists and of the public.

So far as I know, allowing the Prothonotary to act in the absence of the judge, has not given rise to any abuse we had not before, and the pretension that the judge is never to be absent from his District is one in which the Commissioner can hardly be serious. No respectable person would accept an office which subjected him to the necessity of becoming a prisoner on parol, and those already appointed would have good reason to resist so monstrous an interference with their individual rights.

The report next proposes the appointment of a second Chief Justice for the Superior Court. This is deemed necessary because of the stupendously difficult and important duty of appointing *ad hoc* judges—a duty rendered still more onerous, we are told, by the proposed changes of the code.

The displeasure this arrangement might cause the present

Chief Justice is deprecated with care. Having calmed any susceptibilities he might be supposed to have, the Commissioner sees no objection to his measure but that it might appear contradictory to have two Chief Justices for one Court, and he sets himself gravely to explain the futility of this objection. A more formidable objection is that one Chief Justice is too much, as he, seriously speaking, has no special functions to perform. His appointments of *ad hoc* judges are generally supplied to the clerk in blank to be filled up as occasion may require. He is not even " Sir Oracle, " and his privileges consist of precedence not acquired by seniority, and the pleasing douceur of $1,000 a year extra pay. Recently in England it was proposed to abolish the invidious and unnecessary distinction, but it was retained by Parliament, apparently to afford the Ministry of the day an opportunity to reward the ambition of retiring law officers. As we are assured by the Commissioner that it is necessary to have an Advocate-General because the time of the law officers here is absorbed by politics, there can be no sort of pretext for giving them judicial preferment (1).

When the Commissioner comes to deal with appeal, he is so beset by conflicting views that it is almost impossible to know what plan he recommends. We are impressively assured that faith in the counsel of a majority of judges has so possessed the public mind, that the possibility of a minority opinion prevailing diminishes confidence in the Courts. Having communicated this observation as to the mental condition of the public (without a shadow of proof), the Commissioner exclaims : " Despite legal fictions and abstract theses on the hierarchical relations of the Courts to each other, on the pre-eminence of the higher tribunals over the inferior ones, the public will never be convinced that, of the eight judges

(1) It is hardly necessary for me to add that the force of my remarks is not very apparent at the present moment, both Chief-Justiceships being occupied by men who, in a very special degree, merit the honours they enjoy. But it has not always been so, nor have we any guarantee that in the future these dignities may not be conferred for very insufficient reasons.

who render judgment, three can be better than five and that the party who has the least number of judges in his favour should gain his case against him who has the greater number. "

Mr. Veuillot says—" *un point d'exclamation ne saurait tenir lieu d'une pointe d'esprit.* " I know very well the learned Commissioner does not require that it should ; but seriously will he tell us in what country the law exacts that the judges of appeal should be selected from a different body and under different conditions as to moral and legal fitness than the judges of the other superior courts of law ? The truth is, that in the few sentences dealing with appeal, the essential vice of the whole of the Commissioner's system crops out. He sets forth on a revolutionary basis, and he denies the influence of authority. To him the authority of a Court of Appeal to reverse the decision of an Inferior Tribunal is based on a fiction and an abstract thesis. How can it be based on both I am not sufficiently a philosopher to understand. Left to my own intelligence, I should describe authority as a postulate in establishing the problem of civilization, and it is just as much required in support of the judgment of five or eight as of one. The right of a tribunal to condemn depends exactly on the same principle as the right of the governing body to legislate —that is on authority—and this is equally true whether the power be derived from an honest vote, a ballot-box fraud or inheritance.

Under the pressure of his heterodox and discontented ideas the Commissioner is evidently much perplexed. One curious device he suggests to disarm public opinion, is to silence the dissenting judges. Those who do not agree with the judgment are not only to say nothing, they are to conceal for ever their difference of opinion, and I presume, as it is necessary for the complete success of the plan, they are forever to affect to hold an opinion in which they don't believe. But if the opinion of the minority becomes that of the majority in another case, as may very well happen in a court of six judges, with a quorum of five, perhaps the Commissioner will inform us how the

two dissenting judges in the first case are to act in the second? Are they to conceal their real opinion from the sixth judge? Another scheme is that the opinions of the judges of the Superior Court should be counted with those in Appeal. The result of this might be that the judges would be divided four and four, and the three judges in appeal be thus overruled by two. But the Commissioner suggests, that in such a case weight might be given to the judgment in Appeal. How is this to be accomplished without violating the rule as to silence? On what portion of these suggestions the Commissioner intends to insist does not appear, but it is plain they cannot all live together.

For a Court that is not final, the scheme of silence of the minority, besides its manifest dishonesty, misleads the final Court as to the gravity of the question. The result will be universal distrust; and as no one knows whether the case is carried by a bare majority, it will be supposed that all doubtful cases have been so. One of the great advantages of the English system of government over those of the Continental nations of Europe, is its publicity. By avoiding mystery, we escape suspicion. No fact, decisive of the interests of individuals, or of the state, should be permanently concealed.

The difficulty of having the decision of a majority of judges over-ruled by a minority, is much increased by the three judge system and by raising the quorum in appeal to five judges, and I purpose explaining later how it may be reduced to its smallest expression so far as the Court of Queen's Bench is concerned.

The question of appeal for this Province is one of great difficulty, and we may almost say that we cannot expect ever to have a satisfactory final appeal. The *raison d'être* of the Privy Council is not that given by the Commissioner. It is not founded on the right to petition at all, notwithstanding its forms. It is a recognition of the authority of the Imperial Parliament to legislate for all the Queen's Dominions. Having a right to make the law for them, it follows necessarily that

there must be a Court of final appeal named by Imperial authority to give such law effect.

So far as principle goes, doing away with the statutory appeal to the Queen in Council is of no importance ; practically it is open to this objection that it would nearly double the expense of the reference to a Court, the principal fault of which is its expense. The sole effects then of the proposed petulant legislation, would be to make it, more than it is now, a luxury, and a means of oppression, for the very rich.

The same reason that requires the existence of the P. C. as a constitutional and legal mode of giving effect to the Imperial authority dictated the idea of the Supreme Court in the Dominion organisation, and a narrow jealousy, similar to that expressed in the report before us, suggested the suppression of the statutory appeal to the P. C. It nevertheless subsists, and the appeal not being organized, as reasonably it should have been, the anomaly of simultaneous appeals to two different Courts was produced.

T. K. Ramsay.

(A continuer.)