# SOME DIFFERENCES BETWEEN THE LAW OF QUEBEC AND THE LAW AS ADMINISTERED IN THE OTHER PROVINCES OF CANADA.[1]

By The Honourable Mr. Justice Anglin.

During the past thirteen years, in the course of my work as a Judge of the Supreme Court of Canada, many striking differences between the law of the English-speaking provinces of Canada and the law of the Province of Quebec have come under my observation. Some of them may prove to be of at least passing interest. I shall take the liberty of discussing the several points on which I touch quite discursively, and without pretending to deal with them at all exhaustively.

When we consider the sources of English law and equity and those of the civil law as it exists in Quebec, the surprising thing is not that there are many marked differences between them to-day, but rather, perhaps, that the similarities are not more numerous.

Roman law has exercised an enormous influence in the development of both systems. It may, perhaps, be regarded as more distinctly the foundation of the civil law of France and Quebec; yet undoubtedly English common law judges derived from it the principles on which they decided cases for which the customary law of England did not provide. In *Lane* v. *Cotton* (12 Mod. 472, 482), decided in 1701, Chief Justice Holt is reported to have said:

> "It must be owned that the principles of our law are borrowed from the civil law, and therefore grounded upon the same reason in many things."

Mr. Justice Jones, another judge of comparative

[1] The substance of this article was delivered as an address to the members of the Canadian Bar Association at the last Annual Meeting of the Association. It comprises portions of a paper read in February last before the Junior Bar Association of the City of Quebec.

antiquity, is quoted in Irving's Civil Law as having said that

> "with all its imperfections the Digest is a valuable mine of judicial knowledge; it gives law at this hour to the greatest part of Europe, and, though few English lawyers dare make such an acknowledgment, it is the source of nearly all our English laws that are not of feudal origin."

Indeed, that learned writer on the English common law, Mr. Broom, has summarized much of it in his well-known work on Legal Maxims, of which many are taken from the Roman law.

English Equity, defined by Mr. Snell as

> "that portion of natural justice which, though of such a nature as properly to admit of being judicially enforced, was omitted to be enforced by the common law courts,"

owes even more to the civil law than does the English common law. It was in the civil law that the Chancellors generally sought for the principles, and upon it they grounded the remedies by which they supplemented deficiencies of the common law system.

Writing of the *Code Napoléon,* of which the genesis was so admirably outlined by M. Aubepin last evening, Sir Henry Maine says that it may without inaccuracy be described as a compendium of the rules of the Roman law then practised in France, but with extensions and interpretations ascribable to a few eminent French jurists, and particularly to Pothier. Indeed, it has been said of the *Code Napoléon,* as is undoubtedly true of the civil code of Quebec, that it is largely based on the text of Pothier. Of the authority of Pothier, an English Chief Justice, Best, said, in *Cox* v. *Troy* (5 B. & Ald. 480), it "is as high as can be had next to the decision of a court of justice in this country"; and another very eminent common law judge, Lord Blackburn, said in the House of Lords, in *McLean* v. *Clydesdale Banking Co.,* reported in 9 Appeal Cases, 105:

"We constantly in the English Courts, upon the question of what is the general law, cite Pothier."

A rather remarkable instance of this is presented by *Young* v. *Grote* (4 Bingham 253), decided in 1827. The question there was as to the liability of the drawer of a cheque, where his negligence in writing it had enabled a forger to raise it. The Court of Common Pleas held that the drawer must bear the loss, basing its judgment on a passage from Pothier's *Contrat de Change* (No. 100). For nearly 100 years *Young* v. *Grote* was much discussed in the English courts—sometimes approved, sometimes abused. In *Scholfield* v. *Londesborough,* decided as late as 1895 (1 Q. B. 538), where it was sought to hold the acceptor of a bill of exchange liable for an amount to which it had been raised after acceptance, falsification having been facilitated by the negligent manner in which the drawer had filled it in, Lord Esher, M.R., alluded to *Young* v. *Grote* as the "fount of bad argument." On appeal to the House of Lords (1896 A. C. 514), Lord Halsbury said of it:

> "That case has been pushed so far in argument that I think the time has come when it would be desirable for your lordships to deal with it authoritatively, and to examine how far it ought to be quoted as an authority for anything."

And he added,

> "I entirely concur with what Lindley, L.J., said in *Adelphi Bank* v. *Edwards* (unreported) that it was wrong to contend that there was negligence in signing a negotiable instrument so that somebody could tamper with it; and the wider proposition of Bovill, C.J., in a former case, *Société Générale* v. *Metropolitan Bank* (27 L.T. 849), that people are not supposed to commit forgery, and that the protection against forgery is not the vigilance of parties excluding the possibility of committing forgery, but the law of the land."

The question of the duty of the drawer of a cheque towards his banker came up for review, however, in

the House of Lords in 1918, in *London Joint Stock Bank* v. *McMillan and Arthur* (1918, A. C. 777). In a series of remarkable judgments, the authority of *Young* v. *Grote* was triumphantly vindicated. In the course of his elaborate speech, Viscount Finlay, then Lord Chancellor, said that the passage from Pothier to which I have just alluded, and which his lordship quoted, "appears to me . . . to embody the principles of English, as well as of the civil law."

Yet it was only a few years before, in 1891, that Lord Halsbury had spoken of *Young* v. *Grote* as a case of very doubtful authority, and Lord Esher had referred to it as "the fount of bad argument."

As was said by Tindal, C.J., in *Acton* v. *Blundell* (12 M. & W. 324-353), decided in the Exchequer Chamber in 1843:

> "The Roman law forms no rule, binding in itself, upon the subjects of these realms; but, in deciding a case upon principle, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived if it proves to be supported by that law, the fruit of the researches of the most learned men, the collective wisdom of ages, and the groundwork of the municipal law of most of the countries of Europe;"

and Mr. Broom says, in the introduction to his great work on the Common Law of England:

> "Our courts will listen to arguments drawn from the Institutes and Pandects of Justinian, and will rejoice if their conclusions are shown to be in conformity with that law."

We marvel, therefore, rather at the number and the extent of the disparities than of the similarities between the civil law and the English law as they exist to-day in the Province of Quebec and in the other provinces of Canada respectively. But that there are many such differences between the two systems—not

a few of major, others of minor importance—is a fact only too often forced upon our attention.

Apart from the complete and fundamental differences in the law of real property—the one system based on the civil law, and the other of feudal origin—differences which would open quite too wide a field of discussion and on which I shall therefore say nothing—perhaps the most noteworthy is the divergence of views as to the weight that should be given to judicial decisions as authority in subsequent cases. The existence of that difference has led to development along divergent lines, and is probably responsible for most of the minor and for some of the major dissimilarities we now encounter.

In the early days of English law, down to the time of Bracton—that is, in the 13th century—previous decisions were not held binding on the English judges. But the contrary rule had been well settled before Blackstone began to write his Commentaries in 1765. Blackstone says (I. 69):

> "It is an established rule to abide by former precedents where the same points come again into litigation; as well to keep the scale of justice even and steady and not likely to waver with every judge's new opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from according to his private sentiments."

As put by Sir Frederick Pollock,

> "The decisions of the superior courts of justice and the reasons given for them are treated as having eminent and all but exclusive authority."

Sir Frederick in his designation of the doctrine of *stare decisis*—a term by which the doctrine of adhesion to precedent is generally known—as "our modern—our very modern conception of rigorous case law" (*Jurisprudence,* 227-8) is speaking comparatively.

At all events, at the present day a decision of the House of Lords in England, or of the Privy Council in this Dominion, carries authority almost equal to that of an Act of Parliament.

Indeed, only by a statute can an erroneous decision of the House of Lords on a question of law be set right (*London Street Tramways* v. *London County Council,* 1898, A. C. 375-381). But the Judicial Committee, doubtless because it is not a court of law in the strict sense but a body advising the Sovereign, claims for itself greater freedom in dealing with its former decisions (*Tooth* v. *Power,* 1891, A. C. 284, 292; *Read* v. *Bishop of Lincoln,* 1892, A. C. 644, 655). In these two cases, their Lordships say definitely that not only are they not bound by previous decisions of the Board, but if in a case subsequently argued they were satisfied there had been mistake in a view formerly expressed, it would be their duty to give effect to their own view of the law.

While theoretically the function of the judge under the English system, as in Quebec, is "*jus dicere, non jus dare,*" in practice the courts have often found it necessary to make the law. "Judicial decisions," says Mr. Broom, "indeed afford the best—oftentimes the only evidence of what the law is."

There has been not a little criticism of *stare decisis* in English countries. "Why," said Lord Macnaghten, "should an obscure report be taken for gospel, merely because it is old?" That was in *Keighly* v. *Durant,* 1901 A. C. 248. This subject is seldom discussed without allusion being made to a witticism of Lord Gardenstone, another Scotch judge—

> "One decision is nothing. This puts me in mind of what Gulliver reports of the law of England, that if once judges go wrong they make it a rule never to come right."

President Bouhier, cited by Laurent, a leading text writer (I. 281), attributed to a Roman author the scathing remark that—I shall read it in the French because it is so much more pointed—

"il n'y a que les petits génies, les esprits plébéiens, qui se laissent entrainer par les exemples au lieu d'écouter la raison."

Translated freely—

"Only men of narrow vision—plebeian minds —allow themselves to be ruled by precedents instead of being guided by reason."

The following well known lines of the Laureate Tennyson are also frequently quoted:

"The lawless science of our law,
The codeless myriad of precedents,
The wilderness of single instances,
Through which a few, by wit or fortune led,
May beat a pathway out to wealth and fame."

Sometimes, however, the doctrine of *stare decisis* is overstated, and it is always well to bear in mind that a decision is authority only for the legal proposition on which it professes to be based.

In an oft-quoted passage from his judgment in *Quinn* v. *Leatham* (1901, A. C. at page 506) Lord Halsbury, several times Lord Chancellor, who died a short time ago, said,

"A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

Logical development, on the other hand, is the aspiration of civilians. The judges of Quebec, as of other civil law countries, are expected to carry the principles enunciated by the civil code to their ultimate logical consequences. Note, I say, the principles —not the principle—because the code must be construed and taken as a whole, and quite often it becomes necessary to restrict the operation of one principle in order to admit of the proper application of another.

Another feature of the doctrine of *stare decisis* is that where rules of law have prevailed for many years, especially those on which the validity of rights of property or of everyday transactions depends, even though a court clothed with power to overrule the cases on which they rest should regard them as having been wrongly decided, it is in the interest of certainty and permanency in the law that they should remain undisturbed. Yet our digest of overruled cases exhibits not a few instances of decisions, accepted and acted upon by lawyers for many years, having been eventually overruled by the House of Lords. A recent instance of this is to be found in the remarkable case of *Bourne* v. *Keane* (1919 Appeal Cases 815); and a study of that case I recommend to any lawyer who is interested in the application of the doctrine of *stare decisis*. The doctrine is there very beautifully stated and perfectly elucidated.

Occasionally courts and judges have rebelled against the compulsory authority of decisions of tribunals of co-ordinate jurisdiction. When this has happened uncertainty in the law has been the result. An acute situation of that kind at one time developed in Ontario and brought about legislative intervention. By the Ontario Judicature Act, sec. 32, all courts are required to follow implicitly known decisions of courts of superior or of co-ordinate jurisdiction. The older lawyers of Ontario, and some of you have no doubt come from that province, may recall a conflict which existed some years ago between two divisions of the High Court, one of which absolutely declined to recognize decisions of the other as binding upon it. The evil grew to such an extent that the legislature felt called upon to intervene. So in Ontario to-day it is not a mere matter of courtesy for a judge to follow decisions of a court of co-ordinate jurisdiction; he is bound absolutely by statute to do so. I know of no similar legislation elsewhere.

In France before the *Code Napoléon* the *Parlements*, when sitting as appellate tribunals, had

assumed for themselves a right, denied to the judges, of pronouncing *arrêts de règlement*, laying down general principles to be followed in all future cases by all courts within their jurisdiction. These *arrêts* were regarded as impinging on the principle of separation of the judicial from the legislative power—more sacred in France than in England, where the lords of appeal sit as legislators in the House of Lords, and the Lord Chancellor, the highest judicial officer of England, and a member of the Government, also presides over the deliberations of that house when it sits as a branch of Parliament, as the Speaker does in the Commons. He participates in its debates, as Lord Birkenhead recently did in the debate on the Irish question. In his person, therefore, are combined legislative, executive and judicial functions. No such combination of duties would be tolerated for a single instant in France. After the French revolution a law was enacted in 1790 which met with such general approbation that it was embodied in the Code Napoléon as article 5:

> "Il est défendu aux juges de prononcer par voie de disposition générale et réglementaire sur les causes qui leur sont soumises."

I will translate that:

> "In disposing of the cases submitted to them, judges are forbidden to enunciate rules of law of general application or of a regulative character."

This article and the Ontario statute to which I have alluded present the extremes of divergence in regard to the doctrine of *stare decisis*. In the one case the judges are forbidden to lay down anything in the nature of a rule by which subsequent cases are to be determined; while, in the other, the judges are absolutely required to follow decisions of a court of coordinate jurisdiction.

It is the established rule in France that the ground of decision in one case may not be cited as binding authority in another. "*La jurisprudence la plus con-*

*stante,*" say Aubry et Rau (I. s. 39), "*ne peut être considéré chez nous comme constituant un élément du droit.*"

In English:

> "With us, the most uniform jurisprudence can never be regarded as amounting to an intgral constituent of the law."

These two passages indicate to you how divergent are the views—the view of the civil lawyer and the view of the common law lawyer—as to the weight and authority which should be attached to judicial decisions.

Says Sir Frederick Pollock:

> "Exactly speaking, decisions have neither more nor less authority in France, Germany or Italy at the present day than the opinions of learned persons expressed in any other form."

Now coming to Quebec—in Quebec, the civil code contains no provision corresponding to Article 5 of the *Code Napoléon.* The status of *stare decisis* cannot be said to be quite settled, and individual judges and even courts of appeal, acting on the Justinian maxim. "*Non exemplis sed legibus judicandum est,*" occasionally consider themselves free to decline to follow decisions of tribunals of co-ordinate and even of superior jurisdiction when not satisfied with the reasoning on which such decisions were based. But, so far as my opportunities have enabled me to form an opinion, the modern tendency in Quebec seems to be in the direction of treating decisions of the courts which lay down principles of law as precedents to be followed when like questions again arise. This growing inclination to accord recognition to the authority of judicial decisions may be—no doubt is—in a large measure ascribable to the fact that in the Supreme Court of Canada and in the Privy Council—ultimate appellate courts for Quebec as for the other provinces of Canada—(subject to what I have said as to the

anomalous position of the Judicial Committee) the binding effect of judicial decisions is fully recognized.

This, of course, does not at all import that judicial decisions can control the plain letter or express provisions of the Code. These must always prevail, as was long ago recognized by the Privy Council in *Herse* v. *Dufaux* (L. R. 4 P. C. 468, 489) and again in the recent *Vandry* case (1920, A. C. 662).

But where the question is one of interpretation of an article susceptible of more than one reading, or of a deduction from a more or less cryptic text or of reconciling two articles of which the consistency is not obvious, or, if they be irreconcilable, determining which should dominate, the most ardent civilian would probably not deem it an irredeemably heretical suggestion that, in order to promote certain and scientific jurisprudence and to save litigants the expense of unnecessary appeals, the decisions of tribunals of superior and even of co-ordinate jurisdiction should be followed until set aside either by the legislature or by a court having the right to overrule them—the judge expressing his dissatisfaction, should he deem it proper to do so. Seldom, perhaps, is the wisdom of submission in such cases to the view taken by the higher appellate courts better illustrated than by *Vandry's* case (*ubi sup.*). Acceptance of the authority of precedents is no doubt more marked when Quebec courts are administering those portions of the law derived from English sources.

Let me pass to another kindred subject with the observation that whatever may be the respective merits of the two systems which we have been discussing, lawyers of both schools fully recognize the force of the maxim of the Institutes—*misera est servitus ubi jus est vagum aut incertum*—which has been freely rendered, "Obedience to law becomes a hardship when that law is unsettled or doubtful." The difference between them is not as to the desirability of fixity and certainty in our laws, but merely as to the best means of attaining that end. Our common object is to make

the administration of justice as nearly certain and scientific as it is possible that any human institution can become.

Akin to the weight of judicial decisions as authority in subsequent cases is the effect of a judgment upon the obligation which was the cause of action. Under English law—I quote from the judgment in *King* v. *Hoare* (13 M. & W. 494, 504)—

> "If there be a breach of contract, or a wrong done, or any other cause of action by one against another, and judgment be recovered in a court of record, the judgment is a bar to the original cause of action, because it is thereby reduced to a certainty, and the object of the suit attained so far as it can be at that stage; and it would be useless and vexatious to subject the defendant to another suit for the purpose of obtaining the same result. Hence the legal maxim, '*transit in rem judicatam*'; the cause of action is changed into matter of record which is of a higher nature, and the inferior remedy is merged in the higher. This appears to be equally true where there is but one cause of action, whether it be against a single person or several. The judgment of a court of record changes the nature of that cause of action and prevents it being the subject of another suit, and the cause of action being single cannot afterwards be divided into two."

An unsatisfied judgment recovered against one of two or more debtors or tort feasors, who are liable jointly, as understood in English law, affords a bar to all subsequent proceedings against the other or others —but only within the jurisdiction in which it was recovered, because only there is it accorded the status of a security of a higher order. That was the decision in *Davidson* v. *Sharpe*, 60 Can. S. C. R. 72, 81. It is otherwise where the liability is several as well as joint. In such a case there are two debts, and only satisfaction by the first defendant will preclude a second suit against the other obligor. The idea of merger of the

debt in a judgment obtained upon it is foreign to the Quebec system of jurisprudence. It was so decided in *Rocheleau* v. *Besette* (Q. R. 3 Q. B. 96, 98-9); and also in *Turner* v. *Mulligan* (*ibid* 523). In the former of these two cases, Mr. Justice Hall, delivering the judgment of the Court of King's Bench, said:

> "As the consensus of both minds was necessary to create the contract, so both must consent before its nature can be changed, although the creditor may be free, within the limits of the law, to exercise his own choice of remedies, and the jurisdiction in which he will enforce them. The judgment which he may obtain from a particular tribunal does not create the debt, but only declares its existence and orders its payment. That it has not extinguished the debt is apparent from the fact that the creditor may renounce it by notice only to the debtor, and without the latter's consent, and thereupon the original debt may be sued upon anew, either in the same or another jurisdiction. Clearly this could not be the case if the judgment had effected novation, and the original debt had been thereby extinguished. It is true that a judgment produces many of the effects of a new obligation.....but these are only in recognition and qualification and extension of the original and still existing debt, and not in substitution and extinguishment of it."

Now contrast that judgment with what was said in the *Hoare* case and you have two divergent lines of opinion as to the effect of a judgment upon the cause of action very distinctly marked. Nevertheless, the maxim, *Nemo debet bis vexari pro eadem causa* is recognized in Quebec in so far that, speaking generally, a defendant against whom a plaintiff holds a judgment cannot be again sued by him for the same cause while that judgment stands.

But by Article 548 of the Code of Civil Procedure, it is expressly provided that

> "A party may, on giving notice to the opposite party, renounce either a part only or the whole of any judgment rendered in his favor, and have such renunciation recorded by the prothonotary; and in the latter case the cause is placed in the same state as it was in before the judgment."

That would be quite impossible under English law since the recovery of judgment upon it extinguishes the cause of action upon the debt. This subject was fully considered in *Desrosiers* v. *The King,* reported in 60 Can. S. C. Reports 105, where the question was whether an unsatisfied judgment recovered in Quebec against an agent who had contracted in his own name prevented the creditor pursuing the principal, when subsequently discovered, in the Exchequer Court of Canada. It was held that it did not.

Some interesting differences in the law of principal and agent are also discussed in the Desrosiers case. In England the undisclosed principal of an agent who has contracted in his own name is liable to the creditor and is correlatively held entitled to recover on the contract. Under the *Code Napoléon* when the agent has contracted in his own name the principal can neither sue nor be sued directly upon the contract (23 Laurent 62). In Quebec, where the provisions of the Civil Code are based on Pothier (*Obligations,* Nos. 82, 447-8, Mandate No. 88), the principal may be sued, but it is at least doubtful whether he can maintain an action. On this point it would be interesting to compare the decisions of the courts in *Hudon Cotton Co.* v. *Quebec Shipping Co.*, 13 Can. S. C. R. 401, 409, 414; 2 Dor. Q. B. 356, 362-363, with *Fortin* v. *Caron*, Q. O. R. 7 S. C. 109; and *Mackill* v. *Morgan*, Q. O. R. 1 S. C. 535. Again, in English law, liability of the principal and of the agent is alternative; under the Quebec Code it is cumulative; that is to say, if under the English system you sue either the principal or the agent you are taken to have elected, and you cannot sue the other; under the Quebec system, if you fail to recover against the one you can turn around and sue the other.

In one the liability is alternative and in the other it is cumulative.

In the same volume of the Supreme Court Reports immediately following the Desrosiers case comes *Curley* v. *Latreille,* where the issue was as to the liability of a master for injury caused by the recklessness of his chauffeur while "joyriding" at night. That is a case of interest to us all. The chauffeur had taken his master's car out of the garage to which he had brought it, as instructed, when relieved from further attendance until the next day. The crucial question was whether at the time he caused the injury the chauffeur was engaged in the performance of the work for which he was employed. This case affords an example of opposite results being reached in different countries in the application of a principle of law enunciated in terms not distinguishable. Wherein does the "out of, and in the course of, the servant's employment" of the English cases differ from the *"dans l'exécution des fonctions auxquelles ces derniers sont employés"*—"in the performance of the work for which they are employed"—of the Quebec Code (Art. 1054 C. C.), or the *dans les fonctions auxquelles ils les ont employés"* of the *Code Napoléon* (Art. 1384) which Pothier renders *"dans l'exercice des fonctions,"* etc. (*Obligations* No. 121)? But the tendency of the French decisions undoubtedly is to extend the responsibility of the master to cases in which in England and in Quebec the servant is regarded as acting *"en dehors de ses fonctions"*—"beyond the scope of his duties." *In Curley* v. *Latreille* the master was held not liable; in *Picon* c. *Pelletier* (D. 1908, 1,351), under circumstances not substantially distinguishable, the *Cour de Cassation* upheld a judgment condemning a French master.

The same difference of view is illustrated by the English case of *Williams* v. *Jones* (3 H. & C. 602), followed in *Woodman* v. *Joiner* (10 Jur. N. S. 852), and the French case of *Chibon* c. *Delafontaine* (S. 1847, 2,283; see also s. 1896, 1, 91, 2° esp.). In both

cases a fire had been caused by the carelessness of a workman in throwing a live match on the floor while smoking at his work. In France the master was held responsible for the resultant injury to the plaintiff. In England he was held not liable. The English view was that the lighting of the pipe was not connected with the work for which the man was employed; the French, that it was so connected and that the workman's fault was committed *à l'occasion de son ouvrage.*

Consideration of the liability of the master to strangers naturally leads to that of his responsibility to his own workmen. The English doctrine of common employment—that a master is not responsible to his servant for injuries sustained through the fault of a fellow-employee, not due to incompetence which the master should have discovered—to the civilian savors of barbarism. The harshness of the common employment doctrine was first mitigated by the Employers' Liability Acts, which render the master responsible, to a limited extent, for the faults of superintendents, foremen, and other persons placed by him in authority resulting in injury to servants under them. Now we have the English and Provincial Workmen's Compensation Acts, and the French and Quebec Statutes concerning *les accidents du travail,* which, while differing in detail, are framed on similar principles. They all recognize indemnity for the *risque professionel* as properly forming a part of the overhead charges of every industrial undertaking. But where his case does not fall within the benevolent provisions of these acts and the employee is driven to seek redress by the ordinary action, he is still subject in England, though not in some of the English-speaking provinces of Canada, to the doctrine of common employment in cases in which Quebec law, like that of France, presents no such obstacle to his obtaining redress.

Another interesting feature of personal injury cases in which there is a marked difference is presented by the English law of contributory negligence, and the civil law doctrine of *faute commune.* The

English law excluding all relief where the plaintiff has been guilty of contributory negligence, however slight, has always seemed to me much less equitable than the provision of the civil law that where there is *faute commune* there should be an apportionment of damages according to the degree of blame attributable to each party. This feature of the civil law has been adopted by the English Courts of Admiralty. The day may come when the Imperial Parliament may incorporate it in the law of England and their respective legislatures in the laws of the Provinces of Canada, other than Quebec.

To many other notable differences, time permits only the briefest allusion. For instance, the right to revoke an offer before acceptance is accorded by English law in cases where the civil law denies it. A man having made an offer is by the law of Quebec in many cases required to abide by it where under the English law he may revoke it before acceptance.

Sales of expectant rights of inheritance, which the civil law prohibits for reasons of public policy and morality, English law permits. And I know of few evils greater, although perhaps not very widespread, than that which allows a grasping money-lender to obtain from an expectant heir who is in difficulties a concession of his rights of inheritance. French law prevents that.

Then another striking difference. Under English law the truth of a defamatory statement is an absolute defence to a civil action upon it. In Quebec, more in conformity with the Christian ideal, the detractor is civilly liable as well as the calumniator. The truth of an imputation cannot be pleaded as justification (5 Mignault 355). And therein it appears to me the civil law is superior to our English law, because if a man has committed some fault which is not generally known, why should a detractor be at liberty to publish it to the world? Why should a man who has repented not be allowed a chance to redeem his character with-

out being exposed to attack by the despicable backbiter?

Husbands and wives, as a general rule, cannot testify against each other in Quebec (Art. 314, C. C. P.). Under English law there is no such disability.

The normal status in regard to property rights of married persons under Quebec law is that of community. Under modern English law, separation as to property prevails, and the wife enjoys the status of a *femme sole.*

Marriage under the law of England revokes a will previously made; in Quebec it has not that effect (Art. 892, C. C.).

The holograph and notarial wills of Quebec are unknown under English law.

The carrying out of a will in Quebec, if testamentary executors be not named (Art. 905), appertains to the legatee, as the administration of the estate of an intestate belongs to the heir. Under English law an administrator *cum testamento annexo* must be named by the probate court where a will omits to appoint executors, or they predecease the testator or renounce office. Testamentary executors must obtain letters probate from that court before their right to administer is complete; and on intestacy no title can be made to the property of the deceased except through an administrator appointed by it. Formerly it was different with regard to real estate. The title of the devisee or heir devolved directly from the deceased owner, much as under the French maxim, "*le mort saisit le vif.*" But, since the Devolution of Estates Acts have made the devolution of real property the same as that of personalty, the management and administration of an estate or succession consisting wholly of realty requires the authority of letters probate or letters of administration from the Court of Probate, as was always necessary where it consisted of, or included, personalty. In Quebec it is quite otherwise. The legal heirs of an intestate are seized by law of the succession (Art. 607 C. C.). The

testator's death vests title directly in legatees (Art. 891 C. C.); and executors require no authority from a court (Art. 918 C. C.). I am, of course, speaking of the normal Quebec will—that made before the notary. The chief office of the probate, prescribed for holograph wills and for those made in the English form (Art. 857 C. C.), appears to be to enable authentic copies of such wills to be issued by the court for registration and other like purposes. It does not create even a presumption in favour of the will if it be contested (*St. George's Society* v. *Nichols*, Q. R. 5 S. C. 274).

Another matter upon which there are many important differences is that of limitations or prescription. But this field is large. I shall merely note in passing that whereas the English Statute of James merely bars the remedy without extinguishing the debt, under the short prescriptions of the Civil Code there is a presumption of payment *juris et de jure*, and the obligation is fully discharged.

The courts of Quebec are bound to take judicial notice of short prescriptions; under English law a Statute of Limitations must be pleaded: if not, it is deemed to be waived.

But time presses, and many other differences must pass unnoticed. Lawyers of Quebec and lawyers from the other provinces of Canada may differ quite sincerely in their views as to the means best adapted to achieve their common purpose. But of the existence of a purpose common to us all, and that its attainment is worthy of our best efforts, there is no room for doubt. That purpose is to promote the perfecting and to diffuse knowledge of a system of laws, which, while leaving human liberty untrammelled by unnecessary prohibitions and restrictions, will protect to the utmost every right of person and of property recognized by our civilization. Let it be our pride and our delight to co-operate, as far as in us lies, in aiding and improving the administration of justice in order that throughout this Dominion the juristic ideal may be fully realized—*ubi jus ibi remedium*.