PRELIMINARY REPORT

Of Hon. J. H. GRAY on the uniformity of the Statutory Laws of the Provinces of Ontario, New Brunswick and Nova Scotia.

OTTAWA, 9th February, 1871.

SIR,—Having been requested by you to examine the laws of the Provinces of Ontario, New Brunswick and Nova Scotia, with a view to preparing for a Commission, hereafter to be issued for the uniformity of the laws of those three provinces, under the 94th Section of the British North America Act of 1867, in accordance with the provision made by Parliament to that effect. I have the honor to enclose a report of the progress made with reference thereto.

The plan finally adopted has been to gather together the statutes in each Province, bearing upon any particular subject, omitting, as a general rule, those subjects on which the Dominion Parliament, under the Union Act, has an exclusive right to legislate, such as the Criminal Law, the Militia Law, Navigation and Shipping, &c., subjects on which uniformity could be secured without the action of the Local Legislatures, but, nevertheless, selecting even from those subjects, one, Bills of Exchange and Promissory Notes, as coming within the daily operations of the merchants and traders of the three provinces, for the purpose of illustrating the differences in some of the most ordinary branches of business.

The next step was to make a summary of the provisions in each Province bearing on the subject selected, placing the same in parallel columns, giving as nearly as possible the corresponding sections of the Acts of each Province, with the substance of each section, for facility of reference, and in a general column of remarks at the close, pointing out the difference. In some instances where the mode of legislation was so entirely dissimilar, as hardly to admit of a selection of corresponding sections, then to give a concise review of the main parts of the mode adopted in each Province.

In carrying out this plan it was found that while both in Nova Scotia and Ontario, the statutes had been revised up to a much later period, and that in both an available index to their statutes to within the last four or five years could be found, yet in New Brunswick there had been no revision since 1854, and no general index for sixteen or seventeen years.

First.—It became, therefore, necessary to prepare such an index. This was done. A copy is annexed.

Secondly.—As there were many of the Imperial Statutes, which affected the Dominion —were frequently referred to in the courts—governed the administration of justice, and bore upon the property and civil rights of the three provinces, of which statutes no collection had been made or existed in any compact form in any of the Provinces; it was thought advisable to make one, briefly referring to them by their titles and subject matter, when they were not of a character frequently to be cited; when they were, by giving the sections in full, as well as the title and subject matter; but omitting all parts of the statute not bearing upon British North America. This was done. A copy is annexed.

Thirdly.—Applications were made to the Provincial Secretaries of the Provinces of

Nova Scotia and New Brunswick, and to the Secretary of State for the Dominion, to obtain, if possible, a sufficient number of copies of the codified and uncodified laws of the two former provinces, and of old Canada—to be used for cutting out the extracts for the parallel columns—leaving simply the general remarks to be written, thus saving labor and time, and greatly facilitating the readiness with which the comparisons could be made.

From Nova Scotia no copy of the Consolidated Statutes was obtained, but one set of the Acts for five years, from 1864 to 1869, was sent.

From the Secretary of State for Canada, one copy of the Consolidated Statutes, and the Acts passed subsequently up to the time of Confederation.

From New Brunswick, nothing but the Acts passed since Confederation; of the laws of the latter province I had a perfect set of my own, which obviated the difficulty; and of those of Nova Scotia, I obtained the use of the Revised Statutes belonging to the Secretary of State for the Provinces.

Fourthly.—The statutory laws of Ontario, irrespective of any made by the Dominion Parliament, are found in the Consolidated Statutes of Canada, up to 1859; the statutes passed by the United Parliament of Canada, from 1859 to 1867; the Consolidated Statutes applicable to Upper Canada alone, passed by the United Parliament up to 1859, and similar statutes passed by the same Parliament from that period to 1867, and the statutes passed by the Legislature of Ontario since 1867, making an approximate total, in round numbers, of 1,600 Acts or chapters; but omitting those subjects that come exclusively within the scope of the Dominion Parliament, and have been legislated upon, and such Acts as were applicable to Quebec alone, about 1,100.

Fifthly.—The Statutory Law of Nova Scotia will be found in one volume. The revised Statutes, 3rd series, up to 1864, and in the Acts of the Local Legislature from that period, passed annually, comprising as above, about 700 Acts or chapters.

Sixthly.—In New Brunswick, the Statutory Law will be found in the 1st and 2nd volumes of the revised statutes up to 1854, and in the several Acts of the Local Legislature, annually passed since that period, comprising, excluding as above, and also those in the third volume, which are called private and local Acts, and which have not been at all referred to, about 1,200 Acts or chapters.

Seventhly.—Thus, in order to determine the Legislation on any particular point in Ontario, the search extends over a period of eleven years; in Nova Scotia of six years, and in New Brunswick of sixteen years, and for the purpose of determining the entire uniformity or differences between them on matters coming within the jurisdiction of their local legislatures, an examination of upwards of 3,000 Acts.

Eighthly.—The laws of Nova Scotia, as found in the Revised Statutes, are the simplest, best arranged and most easily understood. Those in Ontario, from the past position and history of that Province, as a part of old Canada, and the general and separate special local legislation that was necessary, and the changes that have been made by its Legislature since Confederation, are necessarily the most complicated and difficult to arrive at, assuming that information of the law on any subject is sought by one who, from previous knowledge, is not familiar with the legislation affecting that Province. In New Brunswick, the absence of any revision for sixteen years renders the search more intricate than in Nova Scotia, though less than in Ontario.

Ninthly.—The re-enactment in the Provinces of New Brunswick and Nova Scotia of many of the old English Statutes affecting the ordinary relations of life, such, for instance, as the Statute of Frauds, 29 Charles 2, chap. 3, and the adaptation of others, with special alterations, suited to the local wants and habits of the country, such, for instance, as with reference to distresses for rent, the recovery of rents by an action for use and occupation, &c., make a knowledge of the remedies within their power, attainable by the people, and by the local magistrates who administer justice in the rural districts.

In Ontario—while as in the other two provinces—those parts of the 9th Geo. 4, chap. 14, rendering a "written memorandum necessary to the validity of certain "promises and undertakings," which relate to taking a case out of the Statute of Limitations, the ratification of an infant's promise after coming of age, representations as to

the character and credit of a third party, being in writing, are specifically re-enacted; and a special reference is made to the Statute of Frauds, for the purpose of extending the 17th Section, which relates to the sale of goods of the value of £10 and upwards; yet the provisions of the Statute of Frauds, with reference to promises for the debts or defaults of another, or in consideration of marriage, or on the sale of an interest in lands, or as to an agreement not to be performed within a year, &c., &c., do not appear to have been legislated upon, and the law in regard thereto must be sought for under the authority of chap. 9, of the Consolidated Statutes of Upper Canada, "An Act "respecting property and civil rights," which declares, "that in all matters of controversy "relative to property and civil rights, resort shall be had to the Laws of England, as they "stood on the 15th October, 1792, as the rule of decision." So also with reference to distresses for rent, or actions for use and occupation, &c., &c.

Tenthly.—In some cases the Legislation on particular subjects appears to be more limited in some Provinces than in others, probably from inadvertence, perhaps from the nature of trade. For instance, in Ontario, with reference to Bills of Exchange, there is no provision whatever for the damages, interests, costs or protests on bills drawn on persons in Asia, Africa, Australia, New Zealand, Japan, Java, the Mauritius, Sandwich Islands, Cape of Good Hope; the East Indies with their great marts of trade, Bombay, Calcutta, Madras; or China, or Smyrna, or the other parts of the Eastern Mediterranean, or any places not coming under the designation of Europe, the West Indies, the United States, or other parts of America.

This omission, no doubt accidental, does not exist in the other two Provinces.

Eleventhly.—While New Brunswick and Nova Scotia long preceded Ontario in the adoption of that great legal reform which abolished the objection to witnesses on the ground of incapacity from crime or interest, and allowed parties to be witnesses in their own causes, leaving the question to be as to their credibility not their competency. (In New Brunswick as far back as 1856. In Ontario only in 1869). Yet, in several respects, the law in Ontario is in advance of New Brunswick, and in some degree of Nova Scotia, such, for instance as relates to imprisonment for debt, to recovery of landed property; to the discouragement of litigation by the difficulties thrown in the way of speculators in flaws in titles; by the powers that the courts and judges have of compelling a reference to arbitration in suits involving long and intricate accounts, the time occupied in the trial of which would operate as a denial of justice to other parties; by the clear and specific manner in which it disposes of the real estate of intestates, and others to which it is not necessary here to allude.

In many of these respects, the provisions of the law in Nova Scotia are equally excellent.

In New Brunswick, the law and its provisions relating to Juries, both for its simplicity, its economy, and the finality resulting from the delivery of the verdict by a majority after due time for consideration. The law relating to absconding debtors in dividing the estate fairly among the Creditors—instead of securing an absolute preference to the party, who puts the process of the law in motion—and some of the provisions of the laws both in Nova Scotia and New Brunswick relating to partnerships, executors and trustees, to seamen, to wills, to the property of married women, &c., might judiciously be imported into the law of Ontario.

Twelfthly.—With reference to the Courts, while an Admiralty jurisdiction and Court exist in each of the other Provinces, and under the extended powers given by a late act of the Imperial Parliament, 26 and 27 Vic., Chap. 24, is influencing the administration of justice in a vast number of cases of constant occurrence in a trading and maritime community, which were almost without remedy before, and the benefit of which, under that Act can be indefinitely extended to any of the Provinces. Ontario with its vast lake trade is entirely without any such tribunal.

Thirteenthly.—In the Supreme Courts of the three Provinces, the jurisdiction is to the same extent; but in the Maritime Provinces, the Court of Chancery has been nominally amalgamated with the Courts of Common Law, and its existence as a distinct

tribunal abolished. In New Brunswick its principles and mode of procedure remain as distinct as before the amalgamation with the Courts of Common Law, the change simply being that the Supreme Court has a Common Law side, and an Equity side. The same Judge may sit in Equity to-day and at Common Law to-morrow, and his decision at Common Law of to-day be restrained by his decision in Equity to-morrow.

He has no power, if in the progress of the cause at Common Law, it is found that the party would have a remedy or relief in Equity, to apply the remedy or give the relief, it must be sought for on the Equity side of the Court.

But though equitable defences in actions at Common Law are not provided for as in Ontario and Nova Scotia, yet, by Section 26 of the same Act, it is declared, "That "whenever a demurrer will lie to a Bill for want of equity, the Judge "on the argument may, if the facts warrant, instead of dismissing the "Bill, order the remedy as at Common Law, or he may make such "other order as to proceeding therein on the Common Law side of the "Supreme Court, and for the trial of the same on such terms as to payments of costs or "otherwise, as may appear to him just."

Sub. chap. 2, 2nd vol. Revd. Stats. Page 83.

In Nova Scotia the fusion was more complete. By chap. 123, Revd. Stats. of Nova Scotia, 3rd series, it is enacted that the Supreme Court shall have, within the Province, the same powers as are exercised by the Courts of Queen's Bench, Common Pleas, *Chancery* and Exchequer in England. By chap. 124, "Of proceedings in Equity," it was enacted —Revd. Stat. 431—that in that chapter the term "Supreme Court" should

Sect 1. "include the Equity Judge and his Courts; the term "the Court," "means "the Court of the Equity Judge, except otherwise expressed or clearly indicated; and "the jurisdiction expressed to be transferred to and to be exercised by the Supreme "Court means the jurisdiction and powers of the Judge in Equity, alone, or with the "associated Judges, and of the Judges of the Supreme Court on Circuit, and of the "Supreme Court Bench on appeals."

Sect. 2. "In the illness or absence of the Equity Judge, or in cases requiring "attention in the country, the duties imposed on him shall be exercised by the "other Judges, as the case may require.

Sect. 3. "The Supreme Court has jurisdiction in all cases formerly cognizable by the Court "of Chancery, and exercises the like powers and applies the same principles "of equity as justice may require, and as has formerly been administered in that "Court. In all cases in the Supreme Court in which matters of Law and Equity arise, "the Court before which they come for consideration, trial, or hearing, shall have power "to investigate and determine both the matters of Law and Equity, or either, as may be "necessary for the complete adjudication and decision of the whole matter according to "right and justice, and to order such proceedings as may be expedient and proper; and "all writs issuable out of Chancery now issue out of the Supreme Court.

Sect. 7. "The plaintiff may unite several causes of action in the same writ, whether they "be such as have heretofore been denominated legal or equitable, or both. The "causes of action so united must accrue in the same right, and affect all the parties "to the action, and must not require different places of trial."

When applicable, the practice of the Supreme Court was to be observed, when not, the practice of the English Court of Chancery, and by Section 10, "In the

Sect. 10. final decision of cases on equity principles, the Court shall give judgment "according as the very right of the cause and matter in Law shall appear to them, so as "to afford a complete remedy 'upon equitable principles applicable' to the case. And in Sect. 43, it is declared lawful for the "plaintiff in replevin or a defendant in

Sect. 43. "any cause in the Supreme Court, in which, if judgment were obtained, he "would be entitled to relief against such judgment, on equitable grounds, to plead the "facts which would entitle him to such relief." And the plaintiff may reply an avoidance of these facts on equitable grounds. And in ejectment, an equitable defence may be set up.

Immediately following this Act (by chapter 125), provision was, notwithstanding,

made for a distinct Equity Judge, who was to make rules to govern the practice in equity before him, and to hear and determine all matters of equity jurisdiction, and to preside in the Court when business required, and in the absence of the Judges of the Supreme Court from Halifax, to perform all the duties there that might be required of a Judge of the Supreme Court.

There was to be an appeal from his decisions to the Supreme Court, in which he was to sit as one of the Judges of Appeal. He was also to sit in Supreme Court in Banc., and at Chambers, but not to preside at trials or on circuit, except in case of illness of a Judge, or other sufficient cause.

In full Bench, in cases civil or criminal, legal or equitable, the Chief Justice was to preside; the Judge in Equity next to him, and, in case of the Chief Justice's absence, to preside.

Two years afterwards, in 1866, by 29 Vic., chap. 11, amending chapters 124 and 125, the above four sections, 1, 2, 3, 7, of chapter 124 were repealed, and the Equity Court and jurisdiction again re-established. Sect. 7 enacts, "That the 'Su-

29 Vict., ch. 11. Sect. 7.

"preme Court,' and 'the Court,' and the 'Judges' or 'Judge,' in such "chapter, except when herein otherwise expressed, or when inconsistent with the enact- "ments hereof, are confined, in all cases of exclusive chancery jurisdiction, to the Court "of the Equity Judge, or the Court or Judge occasionally exercising the equity jurisdic- "tion; and in all cases of concurrent jurisdiction, those terms apply alike to such Court "and Judge, and to the Supreme Court and its Judges; and in all cases purely at "Common Law, contradistinguished from Chancery jurisdiction, those terms mean the "Supreme Court and its Judges alone; and all suits or other proceedings for the "redemption or the foreclosure of mortgages under the 24th section, and for specific "performance under the 25th section; and in relation to real estates of infants, under the "sections from the 51st to the 55th, both inclusive, of said chap. (124); and all proceedings, "matters and things relating to the custody, care, and disposal of persons of unsound "mind, and their estate and effects, under the sections from 2 to 9, both inclusive, of "chap. 152 of the Revd. Statutes; and also, all proceedings under chap. 131 of the Revd. "Statutes, third series, 'of trusts and trustees,' are under the equity jurisdiction only, "and shall be prosecuted and conducted accordingly; and the terms, 'the Supreme Court,' "and 'the Court,' and the 'Judges' or 'Judge,' used in the said sections and chapter, "mean the Equity Judge, or the Equity Court, or the Court or Judge occasionally "exercising the equity jurisdiction.

"But nothing in either of the said chapters, 124 or 125, applies to or affects chapter "114 of the Revised Statutes, third series, 'Of the sale of lands under foreclosure of "mortgages,' the proceedings under which may continue to be in the Supreme Court and "before the Judges thereof.

"In case of the illness of the Equity Judge, or in case of his absence from Halifax,

Sect. 8.

"either within the Province on judicial duty, or for other cause, or abroad, "and also in cases requiring attention in the country on circuit, and when the "Equity Judge does not preside, the duties imposed on him may be exercised by the other "Judges, or any of them, as the cases may require."

"The Equity Judge has jurisdiction in all cases formerly cognizable by the Court

Sect. 9.

"of Chancery, and exercises the like powers, and applies the same principles "of equity as justice may require, which were formerly administered in that "Court."

Section 6 of chapter 124, which provided, that in the absence of the Judges of the Supreme Court from Halifax, the Equity Judge should perform all the duties of a Judge of the Supreme Court, was repealed; and in place of it, it was enacted in section 3 of said chapter 11, 29 Vic. that the Court of the Equity Judge should "be always open, "and the other Judges of the Supreme Court or any of them, in cases where empowered, "to exercise the functions of the Equity Judge, should have the full powers of the Court."

The right of the Supreme Court to admit of equitable defences, was still retained, section 10 says :—

Section 10. "But nevertheless in all actions at law in the Supreme Court, on the "trial or argument of which matters of equitable jurisdiction arise, that Court has power "to investigate and determine both the matters of law and of equity, or either, as may be "necessary for the complete adjudication and decision of the whole matter; and also, all "actions at law, to which equitable defences shall be set up in virtue of the sections of "this chapter, under the head "Equitable Defences," from section 43 to section 50, both "inclusive, are, and shall continue to be tried, considered, and adjudicated by the Supreme "Court and its Judges in the same manner as regards the said several cases respectively, "as the Supreme Court or the Judges thereof had power to do when the Act for appoint-'ing a Judge in Equity was passed."

"But it shall be lawful for the Supreme Court, or any Judge of that Court, before "whom the consideration, trial, or hearing of any question of equitable jurisdiction, or any "such mixed questions of law or equity may come, if they or he shall deem it expedient "and conducive to the ends of justice to do so, to order the case, or any subject matter "arising thereon, to be transferred to the jurisdiction of the equity Judge, to be dealt with "according to the principles of equitable jurisprudence, and the exigencies of the case."

By an Act passed, chap. 2, 1870, "To improve the Administration of Justice." It is enacted that the Supreme Court should hereafter be composed of a Chief Justice, a Judge in Equity, and five other puisne Judges, and that the Judge in Equity should not be required to attend the Circuits, or sit in Banc. to hear arguments, except on appeals from the Equity Court, when he shall sit with the others; and further, that in case of his continued absence from the Supreme Court sitting in Banc., from illness or other cause, appeals from his decisions may be heard, and judgment pronounced as if he were present.

In Ontario the court and judges of common law and chancery, with their principles and practice remain as separate and distinct as they ever were, save that, as in Nova Scotia, there is a provision that a defendant or plantiff, in replevin, in any case may plead or reply the facts, that on equitable grounds would afford relief in equity against the judgment at law if obtained, subject to the opinion and action of the judge, whether the same can or cannot be dealt with by a court of law so as to do justice between the parties.

Thus, in the absence of any knowledge as to what construction may have been put or may yet be put upon the first part of Section 10, 29 Vic., chap. 11, Nova Scotia Act of 1866, it would seem that Nova Scotia in this respect has come back to where Upper Canada had remained, except as to the sale of lands under the foreclosure of mortgages, chap. 114, Revised Statutes 403, and it is thought, that in New Brunswick some material modification of the present system will at an early day have to be adopted, either by a more complete separation or by a more complete fusion of the courts of common law and equity.

The latter, if judiciously accomplished, would probably be the most desirable, as those who are compelled to seek redress in litigation, expect to obtain, and ought to obtain justice full and complete, when it is admitted they are entitled to it, without being sent at great expense from law to equity, and from equity to law, to find it.

Fourteenthly.—In the Courts of limited jurisdiction the distinction is more nominal than real. Those in Ontario are the County Courts and the Division Courts, the former having jurisdiction, subject to certain exceptions, over personal actions not exceeding $200 unliquidated damages, and $400 when the damages are liquidated, and by 23 Vic., chap. 43, in actions of ejectment where the annual value of the premises does not exceed $200. The latter being sub-divisions of the county with certain exceptions to personal actions of $40, and money demands of $100.

In New Brunswick they are the County Courts and the Magistrates' Courts; the former having jurisdiction, subject to certain exceptions similar to those in Ontario, in actions *ex contractu* to $200, in *torts* to $100, but no right to try ejectment; the latter, or Magistrates' Courts, in actions *ex contractu* to $20, *torts* to $8. The City Court of St. John has an exceptional jurisdiction of its own.

In Nova Scotia there are no County Courts, but the Magistrates' Courts have juris-

diction for the recovery of debts—one Justice when the dealings do not exceed $20, two Justices when the whole does not exceed $80. The jurisdiction being confined to the county where the debt was contracted, or the defendant resides.

In both Nova Scotia and New Brunswick there is a "Court of Divorce and Matrimonial Causes," with full powers to dissolve marriages *a vinculo matrimonii*, to declare the same null and void, and to hear and determine all causes, suits, controversies, matters and questions touching and concerning marriages.

In both Provinces the Court is a branch of the Supreme Court and presided over by one of its Judges, specially appointed for that purpose in New Brunswick by commission under the Great Seal of the Province, and in Nova Scotia, *ex officio* by the Judge in Equity for the time being, who is for that purpose termed "the Judge Ordinary." A difficulty has arisen in New Brunswick from the Act constituting this Court, making no provision for the substitution or appointment of another Judge to act *pro hac vice* in case of the illness or absence of the Judge so appointed by commission, or his being prevented by other causes from presiding.

In Nova Scotia, the Act passed in 1866 with reference to this Court, provided that during the illness or temporary absence of the Judge Ordinary, the Governor in Council might appoint the Chief Justice or one of the Judges of the Supreme Court to act as Judge Ordinary, and by an Act passed in 1870, this last power was further extended to meet the case of his being prevented from presiding by any disqualifying cause. If this latter Act does not come within section 91 of the British North America Act, 1867, the difficulty in New Brunswick can be removed by local legislation. This difference, therefore, at present exists between those two Provinces on that subject. In both Provinces, powers are given to the Court to enforce its decreees, and in case of divorce on the ground of adultery, to determine whether the wife's right of dower, or the husband's tenancy by the courtesy shall be divested or not.

In New Brunswick the grounds of divorce, *a vinculo*, are limited to impotence, adultery, and consanguinity within the degrees prohibited by the 32 Henry VIII., touching marriages and precontracts.

In Nova Scotia they are extended to include cruelty and precontract.

In New Brunswick there is an express provision that the divorce *a vinculo* on the ground of adultery, shall not in any way affect the legitimacy of the issue. In Nova Scotia there is no such provision, prehaps not deemed necessary. In both Provinces provisions are made for appeal from the decision of the Judge to the Supreme Court, and in New Brunswick from the Supreme Court to the Privy Council in England.

In Ontario there is no statute constituting a Court of marriage and divorce.

In New Brunswick and Nova Scotia the Supreme Court being the sole Superior Court, there is no Court of appeal from its decisions, except to the Judicial Committee of the Privy Council in England, which, owing to the great expense attending any appellate proceedings therein, is practically of no avail to the great mass of the people in those two Provinces.

In Ontario a Court of Appeal is constituted, composed of the Judges for the time being of its Superior Courts, of Queen's Bench, Chancery, and Common Pleas, with power to the Governor General to appoint any retired Judge of one of the said Courts to be the Chief Justice, or an additional Judge of the said Court of Error and Appeal.

Thus Ontario is the only one of the three Provinces which affords to the litigants therein, without resort to a distant and most expensive tribunal, the opportunity of an appeal to a Court composed of Judges other than those of the particular Court in which the complainant may justly conceive that he has been condemned or deprived of his rights contrary to law.

In Ontario the Senior Judge of the County Court is, *ex officio*, Judge of the Surrogate Court.

In New Brunswick and Nova Scotia the Surrogate Judge of Probate is appointed directly to that office by the Governor in Council.

In Ontario, the Surrogate Court may order any question of fact, arising in any

proceeding before it, to be tried by a Jury before the Judge of the Court, when such trial would take place in the County Court in the ordinary manner.

In New Brunswick and Nova Scotia, the Probate Courts have no such power.

Fifteenthly.— With reference to executors and administrators, an important provision exists both in Ontario and Nova Scotia relative to the law of evidence in suits arising out of matters with deceased parties in which issue has been joined, and a trial, or any enquiry, is being had, namely, that it shall not be competent for the survivor or survivors, being a party or parties to the suit, or their wives, to give evidence on their own behalf, of any dealings, transactions, or agreements with the deceased, or of any statements or acknowledgements made, or words spoken by deceased, or any conversation with deceased; but such parties may be compelled to give evidence on behalf of deceased.

This apparently fair policy has not been adopted in New Brunswick, and is not in accordance with the law in England, perhaps because it is depriving one party, without any fault of his own, of an advantage which both possessed; and perhaps because the knowledge that such an advantage may be lost, induces parties more to reduce their agreements to writing, and thereby avoid unseemly conflicts of testimony.

In Nova Scotia, the proceedings against executors and administrators *cum testamento annexo* have been simplified on behalf of legatees by permitting actions at Common Law, and in the same Act, for enabling executors appointed trustees by a will, or trustees appointed by deed, to be relieved of their trusts or executorship by an application to the Supreme Court, or to be removed on an application in the same way by any one interested in the execution of the trust.

In the course of the work, Mr. Butler's Alphabetical Index of the Canadian Statutes, from 1859 to 1867, has been continued. So far as Ontario is concerned, from 1867 to the present day, and the New Brunswick index, first prepared and referred to above, has also been further continued to the present time.

There are many other differences which will be observed by an examination of the schedules annexed, but it is obvious that any review of a subject so comprehensive as the legislation of three Provinces must be more or less imperfect, unless made by persons familiar with the construction put upon the Statutes of each Province by the Courts of each Province. A knowledge of the decisions of the Courts in one Province alone might very erroneously lead a party to suppose that inadvertencies or omissions existed in the Statutory Laws of the other Provinces, which an acquaintance with the decisions of the Courts of those Provinces might show was not the case, but a knowledge of which could only be obtained by their being brought forward or quoted in the discussion on those differences themselves.

Opinions of the Statutes as found in the Statute Book, without knowing how far the practical operation of those Statutes may have been extended or narrowed by the critical examination to which they would be subjected in the process of judicial enquiry, must be subject to inaccuracies.

The instructions given to me being simply to prepare for a Commission hereafter to be issued—not to recommend or propose any form—I have confined my labor solely to pointing out the differences; but there can be no doubt that an excellent practical Code of Law, simple in its language, easily understood, expeditious and economical in its administration, could be formed from a judicious selection of the best of the Laws of each of the Provinces by men who were severally acquainted with each.

I beg to refer you for further information to the Schedules hereunto annexed, numbered 1, 2, and 3,

And have the honor to be, Sir,

Your obedient servant,

J. H. GRAY.

To the Honorable the Minister of Justice.