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THE DAILY BEE.

Saturday Morning, March 10, 1855.

THE CIVIL CODE.

Some parts of our code are positively repugnant to common justice as well as common sense; and it is quite astonishing how such principles ever found admission into it. We can only explain the fact on the ground, that in the hurried preparation of the code, such blemishes escaped the authority of the profound legists who were charged with the framing of it, or that the progress of science has shed more light upon jurisprudence than existed at the time of our codification.

The article 1927 of the code permits damages for the inexecution of an obligation to be recovered, with but a few exceptions, only in the event of the defaulting party being put in delay, before the institution of the action. The mode of putting in default a party to an obligation is specified in another article of the same code. A written demand is usually required, or a verbal one in the presence of two witnesses. In order to present to our readers a clear and distinct idea of the practical effect of the rule enunciated by the code, and to expose its signal absurdity, we will imagine a supposititious case:

A contracts with B to deliver to him a flock of sheep, or a thousand bottles of wine, for a specified sum. But when the period arrives for the execution of the contract, A fails to comply with his engagements; in other words A commits a passive or negative violation of the contract. Before he can be sued and coerced into a performance, it is imperative on B to put him in delay, that is to make on him a written demand to comply, or to make on him a verbal one in the presence of two witnesses, or the contract itself must contain a stipulation that the non-compliance of A should be equivalent to putting in default. The expiration of the time granted for the performance is not of itself sufficient, because it was nothing more than an inexecution of a contract, and not an active contravention of it. Can any paradox be conceived greater than this? Can any legislator be fraught with greater practical injustice, or more grievous wrong? An unsophisticated man, uninitiated in the mysteries of legal law, would naturally conclude that when the period specified by a contract for its execution had arrived, the party bound, who was charged with the performance of the obligation specified therein, would possess all the necessary knowledge of his duties and be at standing from their fulfilment would expose him immediately to a suit to compel him to comply. But as we have seen, he would be undeceived. Our Supreme Court in the system may longer. They also have forced to yield to a principle which few can be found to justify and approve. Judge Preston, we remember, some years before he retired from the bench, upheld the rule, which at the same time expressing his repugnance to it, and his regret that it had been introduced upon the code. He intimated that the Court was powerless to remove this evil, and deferred it to the Legislature to be remedied.

It is then solely within legislative competence to modify or repeal this article, and to that department we appeal, to expunge from our code a principle so novel, so extraordinary and so at variance with the principles of all other codes, among their sisters, in the main instance of a law which has been condemned by the most eminent jurisconsults in the State, as product rule of mistaken judgment and expediency. To exact of an injured creditor the fulfilment of such a ceremony, is vain, futile and ridiculous. Whether it has been fulfilled, it has never, itself, exact an execution of the vitiated obligation. It is left upon its mother earth the as a step preparatory to the commencement of a suit to compel compliance. In our opinion and in the opinion of every individual of common sagacity, such formula is unknown, and is considered a solemn mockery, a travesty of social justice and discreditable to the intelligence of the State. It has done no good, and its repeal will do no evil.

It would be gratifying to any advocate of legislation to see our codes purged of the blemishes, and to see said Codes, as they stand, free from other crudities, proceeding at the times in which they were prepared. Thirty years have elapsed since their establishment, and it is folly to say that a benefit involves time, and the lapse of experience, have made dispel many errors, and have not even introduced many improvements in every code. Nothing is perfect human, and we are daily reminded of our shortcomings, and we are daily reminded of our shortcomings, and we are daily reminded of our shortcomings