

one of their leading barristers was obliged to admit; when impressed on him by a variety of cases in which our chancery following the English principles, would give adequate relief.—Here the learned member illustrated his position by several cases, that had occurred in actual practice, and descended on the nature and operation of the Equity law in the settling of property accounts, the restraining of mischiefs by injunction, and the rectifying of mistakes in a deed or policy. I have put these examples, Mr Chairman, as matters of daily occurrence, and which are only a small part of Equity jurisdiction, that its application to the business of life may be clearly apprehended, and no one may imagine that it could be abolished without the direct accompaniment of fraud, injustice, and oppression. Neither do I think, it could now be incorporated into our Supreme Court. The experiment has been tried in Massachusetts, Pennsylvania, and other of the old Colonies. They have not a distinct Equity Court like New York, or Carolina, and the consequence has been deviation from fixed principles, and uncertainty and fluctuation in their Judges bending the rules of the law to the exigencies of a particular case, which deprive their decisions of much of the authority the high character of their Judges would otherwise have conferred on them. And, Sir, when the decision of courts cease to be steadfast and sure guides amid the proverbial uncertainties of the law—no man knows what to advise, and the opinions of the Council, which settle far more disputes than the decrees of Judges, can no longer avert the evils of litigation. But Mr Chairman, while I would thus advocate the necessity of maintaining our Court of Equity, I must admit that there are some defects in its practice and mode of proceeding, worthy of the grave consideration of this Committee. And first of all, I think it indispensable to provide an easy and effectual appeal from the decision of the Master of the Rolls. I shall not urge this necessity, with any particular reference to the Judge by whom that office is at present held. His individual opinion upon questions of Equity law, I look upon as higher authority, of more intrinsic value, than that of any other single mind in Nova Scotia; he has devoted all the energies of a powerful understanding to this science, and confessedly master of it. Having practised much in his Court, I have always received from him the courtesy due to a Barrister, and have the less reason to be dissatisfied with his decisions, as for the most part they have been in favour of my clients. My views of an appeal, therefore, would be the same if the office was held by our honorable Speaker or the Solicitor General, or any of the leading minds at our Bar. And when we consider, Mr Chairman, the mere and importance of the questions that are occasionally decided at the Rolls, and the large amounts of property that pass through the Court—I think it indispensable, that a regard to its permanence and reputation, requires that suitors should have the power to appeal. As it now exists, it is the name only, and not the substance—under the English rule, as adapted as it is to this country a deposit of £20 is insisted on as a guarantee for costs. His excellency not being a lawyer is of course incompetent—though he is the Chancellor, to review the Master of the Rolls; if he call the Judges of the supreme Court to his aid, they need not attend unless they think fit, and when they do, they may be divided in opinions, and look upon it as no part of their regular duty. For these and other reasons it may be said, that in practice there is no appeal, and the decisions of a single Judge are acquiesced in, though in some instances parties would be most anxiously inquired in what way this difficulty may be surmounted, and can devise no

other plan, though by no means free from objections, than to allow an appeal in all cases to the Supreme Court. Delegates cannot be obtained within the Province, and any other Tribunal would be too remote and expensive. Now in the Supreme Court, we have four, of the first legal minds sitting as judges, and competent to understand and apply whatever argument may be addressed to them, whether on a point of equity or common law—where else can we resort but to these Judges? If an appeal is to be had here is the only practicable mode, and properly guarded as the suggestions attached to these resolutions propose, it would remove a fruitful topic of complaint, and lend a new sanction to the decrees of our Equity Court.

The second grand improvement I would aim at, is the submitting of material facts disputed under oath to the verdict of a jury. Nothing can be more cumbersome, expensive, and unsatisfactory, notwithstanding the late enactment, than the mode of taking evidence and investigating facts in a court of Equity. It costs three or four times as much, and never reaches the same precision or certainty as the verdict of a jury. (Here the learned member enlarged upon the two modes, contrasting them in various points of view, and contending feigned issues, as they are called, should be substituted for depositions in writing, and concluded the part of his subject, by a brief illustration of the laws as to injunctions, and the necessity of framing a body of rules to reduce the costs and prolixity of proceedings in equity.) He then went on—and now Mr Chairman, I shall touch very briefly on the resolutions as to the Court of marriage and divorce, and the sale of the real estate of persons dying insolvent. The Governor and Council have formed the Court of marriage and divorce from the first settlement of the Colony, since the most proper tribunal, while the Judges sat at the board. But now that they are entirely excluded it appears to me that the questions which sometimes arise in that court, should be decided by the first judicial minds in the Colony, to be commissioned by the Crown and assemble as cases may occur. This is no violent or radical change—the principles and practice of the court would remain untouched—and without expense we would have a more competent tribunal. For the same reason I would transfer the power of ordering the sale of insolvent estates to the Supreme Court. Under the old practice, though I will not assert that injustice, has been done, orders have been granted without due inquiry, and I am persuaded that a more rigorous scrutiny would introduce a greater degree of caution, and would sometimes save the inheritance for infant heirs and legatees.

And now, Sir, let us turn to the main question which comes directly home to the bosoms of the Committee, and will stir into activity a thousand interests and passions. One cannot look around these benches without perceiving all the evidences of conflicting opinion, and the influence of personal attachments and prepossessions, which are apt to warp and disturb the Judgement. The abolition of the Inferior Courts ought, I admit, to be thoroughly and maturely weighed. The consequence of so radical a change should be contemplated on every side, and if on a deliberate and full enquiry, and meeting the whole question in a manly, independent spirit, the house shall decide that it is proper to sustain these tribunals, let us say so to the country, and the public mind be set at rest. If the majority, again, shall think with me that their organization is radically defective and vicious, let us then apply ourselves to the remedies we have at hand, and, preserving the public faith, relieve the country from the greatest of all evils, an imperfect adminis-

tration of justice. These inferior Courts existed in their original shape from the first settling of the Colony. They are referred to in the first Session of our Legislature, were clothed with peculiar powers in 1766, and were the only tribunals out of Halifax till the establishment of circuits in 1774. So they continued, held before the resident Justices till the famous act of 1824 gave them the new character, by placing at their head the three Lawyers, who were then added to our civil list. I purposely abstain, sir, from inquiring into the secret history of that memorable transaction. It had been well for our constituents, well for the profession, had it never appeared in the Provincial annals. Enough, too much perhaps, has been said about it, and I can see no practical advantage in exciting anew, passions that are now dormant, and might turn aside the present debate from its legitimate object. It was on this rock that the discussion, led by my learned friend Mr Murdoch, split in 1829, and my intention now is, to deal with these tribunals as they are, and to inquire into their utility and actual operation. The grand objection that lies against them in my mind is the independent, uncontrolled jurisdiction of the Judges. Each of them is confined to his own circuit—they have no common head, no adequate check on their decisions, no uniform system of practice. What is law at Annapolis, may not be law at Kentville or Pictou. The writ of certiorari to the Supreme Court is found in practice to afford a very inadequate remedy. The rights of parties are affected by many decisions which it cannot reach, and to these which it can reach, it is often difficult to apply it. In point of practice, the granting or refusal of a continuance, the admission or rejection of evidence, affect the interests of suitors and determine the fate of the actions, as completely as a charge to a jury. Suppose one of these Judges decides, as must often happen, contrary to the opinion of the Council and to the law—where is the remedy. Sir, there is no effectual appeal, and these Inferior Court Judges exercise an authority more absolute than those of the Supreme Court. It is in the very nature of things that mischief and injustice must flow from so anomalous and defective a system. Fluctuating and inconsistent decisions from courts of justice are deprecated by every sound thinker, as involving the elements of mischief and decay. And here I cannot but advert to a striking illustration, not found, I will venture to say, in any other dependency of the British Empire, enjoying the privileges of freemen. We called, Sir, last Session, for a return of the fees taken by these first Justices of the common pleas. We had an immediate reply from Judge Ritchie, that he had received none; we knew that none were taken by Judge Haliburton—and it is equally notorious, that the fees are taken in the Eastern Division by Judge Sawers; he claims the right, and is said to vindicate himself under the practice of his predecessor, and a high legal opinion, in his possession; he that as it may, mark the anomaly. Under the same section of the Act which gave to these tribunals a legal existence—two, of the Three Judges conceive themselves not entitled to the fees which are demanded by the third, and when such is the case in a matter so deeply affecting the reputation and practical working of the system; how often and how widely must they differ, on points which settle the rights of suitors. With these views, I have no hesitation in publicly and boldly declaring that the legal rights of parties in these Inferior courts, are not guarded with the same sanction as in the Supreme—and therefore that the property, reputation and liberty of the subject, are less secure beyond Sackville Bridgetown in the metropolis. The