

the grounds on which that leave is granted, and knows also that light grounds would never satisfy the House that a high public functionary should be permitted to absent himself from his duties for six months in the year. The judge knew perfectly well the responsibility that devolved on the Minister of Justice. Having obtained leave of absence the very year before at his own solicitation, indicating that he desired to visit Europe, he knew perfectly well the grounds he had to offer in order to induce the Minister of Justice to accede to his request; and the letter of Mr. Justice Smith I regarded, and nobody could but regard it, as merely opening the correspondence which might lead to the statements which would sustain his request, if the request could reasonably be entertained. Now, let me call the attention of the House to the circumstances in which the court was placed at that time. By the law of Nova Scotia all the judges have to sit in full bench in January, February, March, and sometimes in April—at all events, until they finish the docket of appeal cases. The duties devolving on the judges during that term are very laborious while it lasts. We have seven judges in Nova Scotia. By the law of the Province four are required to constitute a quorum of that court. It is true, three may sit if a judge is necessarily absent from illness or on duty; but it is always desirable not to diminish the quorum established by law, and it is always a subject of complaint if the bench is reduced below four; and the judges themselves, when their numbers are so impaired, find their work largely increased. We had the obligation to have four judges sitting in appeal every day during the winter, and it was absolutely necessary that there should be another judge for the duties devolving on a single judge in the trial of cases, in dispatching chamber business, in the trial of suits in equity, and to relieve his brethren occasionally. We had the necessity, therefore, for five judges. One of those on the bench, who makes the sixth, as the hon. member for Halifax has just shown, was disqualified from sitting in, I am sure, nineteen out of the twenty cases that would be on that docket, so that his services were practically unavailable; and the only other judge who was available, if we had given leave of absence to Mr. Justice Smith, was Mr. Justice Macdonald, who had come from leave of absence with his health very seriously impaired. I had myself seen him in the summer, and knew him to be in a frail state of health. He was not asking for leave or holding out any indication that he would absent himself from his duty at all; but I knew, and all his friends knew, that while he would go to his duty like a man, he might be compelled by illness to leave his duty. Under these circumstances, if I had acceded to the request of Mr. Justice Smith, based on the ground that he was rather unwell, and had given him six months' leave of absence, I would have run the risk of depending upon Mr. Justice Macdonald's rather precarious state of health for the purpose of having a quorum, or the court would have had to reduce the quorum of judges to three. Otherwise, we would have had no judge in the Province to discharge the duties of a single judge. The hon. gentleman asks why I did not relieve myself of the responsibility of deciding the matter, by asking the Provincial Government what they thought of the subject. It is customary, and it is

most convenient, to apply to the Provincial Government to ascertain whether a judge can be spared from his duties or not, because the Minister of Justice cannot possibly be conversant with the state of affairs in each Province. But this happened to be my own Province, a Province I had just come from after a visit during the summer, and I was intimately acquainted with the state of business there in the courts, from conferences with the judges, from conferences with Mr. Justice Smith himself, and from conferences with members of the bar; and for me to have referred it to the Provincial Government, and asked them what they thought of the matter, and whether they were of the opinion that Mr. Justice Smith could be conveniently spared or not, would have been merely an excuse to relieve myself of the responsibility, but would not have been to discharge, conscientiously, the duties which I believe devolve upon me. Then the hon. gentleman suggested that the other course was to leave it to the other judges. I have been humbly endeavoring to discharge the duties of my present office for five or six years, and I never heard of such a course being followed, I have never followed it, and certainly I never will. If I know that a judge cannot be spared under the existing condition of affairs, I tell him so. If I do not know, I apply to the Local Government to ascertain whether he can be spared or not; but I do not leave it to the judges or throw upon them the responsibility of giving one of their brothers on the bench leave of absence or refusing it to him. But I had no ground for uncertainty in this respect at all. The House may remember that a question was asked here by the hon. member for Victoria (Mr. McDonald) last Session, as to the state of health of Mr. Justice James, and attention was then publicly called to the inconvenience which arose from Mr. Justice James' absence from his public duties, just as Mr. Justice Smith proposed to absent himself from his public duties. I then had letters from that Province, I think I had one from Mr. Justice James himself, stating that he would ask—as Mr. Justice Smith did at the end of the Session—for a prolonged leave of absence on account of ill-health; and just then I received a remonstrance from the council of the Bar Society of Nova Scotia, which was forwarded to me by way of protest against that leave being granted; and more, I had a protest from the judges, excepting the Chief Justice, but including and headed by Mr. Justice Smith, calling my attention to the inconvenience of the absence of a judge under such circumstances. If I had granted Mr. Justice Smith's application for leave of absence in the month of October, I would have been violating his protest and that of all his brethren made a few months before, and that under weaker circumstances from those of Mr. Justice James, who had been suffering from a lingering and malignant disease and was totally unfit for duty, while, in the other case, it was simply a judge stating that he was rather unwell and would like to go abroad for a few months. The hon. gentleman (Mr. Jones), stated that I was willing that the country should be saddled with a pension to Mr. Justice Smith. Well, Sir, I was, and the hon. gentleman knows why. He knows that for some time past Mr. Justice Smith had not been in a position to discharge his duties efficiently, but that he was prob-