

PROVINCIAL LEGISLATURE.

FRIDAY, FEBRUARY 9.—*The Judiciary.*

The following speech was unavoidably omitted in our last paper; but it will still be read with interest.

Mr Howe rose and said that the wide field travelled over by the hon. and learned Speaker, and the Member from Inverness, in their very eloquent and interesting speeches on this subject, was far too extensive and technical for a layman to attempt to tread. He had gained much information by listening to them both, and he was glad to find a member of the legal profession taking a lead in a discussion, which he trusted would end in revision and improvement. It was my intention, Sir, to have remained silent until other members of the profession had expressed their opinions—knowing they are more competent to deal with the principles of Law, and the machinery of Courts; nor would I have risen now, but that I fear that much of what we have heard these two days but lightly touches the question on which the sense of this Assembly should be tried—and feel myself bound to justify the outcry, of which the learned Speaker has complained, in reference to the cost of our Judicial tribunal. In offering the few remarks, with which it is my intention to trouble the Committee, I will confess at once my incompetence to decide either for or against the blending the Chancery with the Supreme Court. Called as our attention is to that subject by one of these Resolutions, I wish that I possessed the knowledge and experience to grapple with it. It is one on which I have thought much—one on which lawyers are themselves divided; and though some may consider it treason, at this time, to borrow a good example or useful experience from our neighbors across the Bay, I cannot but believe that when Maine, Massachusetts, and Pennsylvania, some of the most enlightened, populous, and prosperous of the United States, have existed to this time without a distinct Chancery Court, that this little province might as well have born the evils—if evils there are—of the combined Jurisdiction and saved many thousands of pounds of comparatively useless expense. And although the learned member from Inverness has stated that in these States property is insecure, for the want of those remedies which Equity Courts supply, I think I could name to him some of the Southern and Western States, possessed of Equity Courts, where there is more of social confusion and legal uncertainty than in either Pennsylvania, Massachusetts or Maine. The hon. and learned Speaker has read to us the Message of Sir John Harvey, recommending to the Legislature of New Brunswick to make a provision for a Master of the Rolls.—Perhaps the recent relinquishment of the Crown Revenues in that province has poured such a stream of wealth into the Treasury, that the proposition may be adopted. But I should hope that, before passing an act which they may live to repent, the Legislature of that Province may weigh well the evils they suffer with those they may possibly inflict—and, turning to the experience of older Countries that surround them, pause before they adopt his Excellency's recommendation. But, Sir, as in this Province the two tribunals are distinct and separate—and as, whatever my impressions may be, there are doubts and difficulties which I cannot resolve, I abandon all present hope of such a combination—and, as regards the first resolution, am prepared to vote for so much of it as will simplify the process of the Chancery Court, without erecting the Supreme into a Court of Appeal—and I have only alluded to this branch of the question because it has occupied so much of our time, and is one of

those on which the Committee will have to pass.

The real questions, however, with which I am anxious to deal—with which the minds of members all around me are charged—which are felt by the house and by the country to be of paramount importance, are those which involve, not the conflicting Jurisdiction, but the enormous cost of our legal tribunals. With a view to satisfy my own mind, as to the necessity for 9 Judges in a little Colony like this, I sat down this morning to ascertain what amount of labor they had to perform, contrasted with the remuneration they receive, and, if my calculations are correct, the Committee will not be surprised if a cry does come up from the Country, demanding a revision of the system, and diminution of the expense. Let us turn to the Supreme Court. At present we have 16 Counties, in 9 of which the Courts are held but once a year—in 6, twice—in Halifax, 4 times—making 27 terms in all. Now, deduct 4 months for the 4 Halifax terms, (which seldom last a fortnight, and rarely if ever the time I have given,) where the four Judges are supposed to be in attendance, and there are 8 months, or 32 weeks, for Country business.—Allowing a week for each country term, and 1 Judge only to travel, (if one could be found with a frame and head of iron,) and he would be able to hold all the Courts, and have nine weeks to travel between the Counties. This is putting an extreme case—I contemplate nothing of the kind—but, Sir, if two Judges travel, one will have eleven, the other twelve days. If three travel (and bear in mind this leaves the Chief Justice always in the Capital) they will have not quite eight Courts each to hold, or about one a month, exclusive of Halifax.

I am well aware, Sir, that there two parties in this House, one which is in favor of the abolition of the Inferior Courts—the other anxious to strike off one of the judges from each tribunal. For my own part, I am wedded to neither of these plans. I have not had sufficient experience of the practical working of the Inferior Courts throughout the country, to say whether they can be safely dispensed with—I am afraid they cannot—in some Counties, I believe, they are more popular than the Supreme Court—but whether they are abolished or not, I am satisfied that the ultimate cost of three Judges may be saved to the Province; and shall be prepared to vote for that proposition, which, without impairing the justice of the Country, will strike from the Civil List, the greatest amount of expense. It has been shown that three Judges can hold all the Supreme Circuits, having a month for each country Court, (which seldom lasts but a few days) and four months for the four Halifax Terms; and this it must be allowed would give them a goodly proportion of time for rest, recreation, and leisure. But when we reflect that we have four Judges instead of three to perform this labor, is it surprising that an outcry has arisen over the length and breadth of the land? Let us now turn to the Inferior Courts. They are not wanted in Halifax at all—it having four Supreme, and twelve Commissioners' Courts, besides its Court of Sessions. They are held twice in each County, making thirty Courts in the year, which one Judge could hold, and have twenty-two weeks to pass from place to place. Two Judges would have fifteen courts each, and allowing every one to last six days, they would have 87 weeks for travelling and leisure—three would have ten each, and 42 weeks for travel and study. But, when we reflect that we for years have paid four—that each of these Gentlemen have had not quite eight courts to hold, or fifty days labor in the year—having 44 weeks for travel, study, and idleness, is it to be wondered that I should

complain—that the people of Nova Scotia have cried out, at the wasteful extravagance of such a system?

Though long dissatisfied with this system, I feel that we have never, perhaps, until now been in a situation to revise it. The removal of the Chief Justice from the Council, and the reconstruction of that Board, leads me to hope that measures of retrenchment will not be resisted, and that questions will be quieted which, for the good of the country—for the respectability of the Bench, ought to be forever set at rest. And, Sir, will any man say, that when I declare my conviction that the Judges of the Supreme Court might on the first death vacancy, be safely reduced to three—and the Judges of the Inferior Court to two, I am anxious to impose an amount of labour which these gentlemen cannot perform? I well know, by the experience of many toilsome days and sleepless nights—gentlemen all around these Benches, of every varied employment, know, how much labor the circumstances of this young country call on all its inhabitants to perform. Why should Judges be maintained in greater numbers than the business of the country requires? I have no desire to lower them in public estimation. I respect the profession of the law, more perhaps than some who have belonged to it; but I cannot tamely see the resources of this young country, so much required for internal improvement, squandered upon the privileged portion of the people—upon any particular profession. It appears to me, then, that five Judges, without touching the Chancery and Admiralty Courts, can do all the business of the country without disturbing either the Supreme or the Inferior Tribunals—leaving to the Judges of the former eight; to those of the latter, fifteen Circuit Courts to hold in twelve months, with ample leisure to look into cases—for business at Chambers and for recreation and rest.—For this reduction I would vote, because, while it materially reduced the expense, it would obviate all difficulties which are anticipated from the entire abolition of the Inferior Courts.—The system as it is, is ridiculous in the extreme; and, although I am willing to admit that charges too vague and general are often hazarded against law and lawyers—that, in the heat of argument, I may sometimes have charged them where they were not to blame, I cannot agree with my hon. and learned friend the speaker in his condemnation of the outcry which the anomalous and costly character of our Judiciary has raised. The people naturally contrast the cost with the utility of these Institutions, and seeing but feeble, if any, efforts made to reduce them, they shrewdly suspect that the profession are interested in keeping up a system which they feel to be useless and burthensome in the extreme. To do away with that impression—to give to the profession of the law its legitimate standing and influence—to elevate the Judges above clamour and reproach, is one of the objects which I have in view.

The hon. and learned Speaker has contrasted the expense of our Judiciary with that of New Brunswick—but it must be borne in mind that although that Province may not at this moment be more populous or wealthy than this, it is much more extensive in point of territory, and is capable of containing a great number of people, and has a most productive source of revenue in immense forests of pine. Besides, it should be borne in mind, that the Civil Lists in all these colonies are too costly—and that as respects New Brunswick, the Speaker of the Assembly of that Province recently declared that her's was fixed £3,500 too high. Let me not be misunderstood as charging upon our Speaker any interested motive in the expression of his opinions. An Infe-