The Legal News.

Vol. XIII. NOVEMBER 29, 1890. No. 48.

An impression seems to exist that the administration of justice in this province, and the efficiency of the Court of appeal, do not receive the attention which the importance of the subject deserves. This impression, unfortunately, was strengthened when the Court assembled for the November term, with only half its members and one assistant judge, to face a roll of eighty-eight cases. The effects of a weak Court were soon apparent when, in one case requiring dispatch, the Court, after a long argument, was unable to render any judgment in consequence of an equal division of opinion, and the time occupied with the case was found to be so much abstracted to no purpose from the hours available for the dispatch of business. Then, too, there was a reluctance—a very natural reluctance—on the part of counsel, to proceed with the argument of important cases which might end in a similar division of opinion, and require another hearing. This was the result of a rather unusual conjunction of untoward circumstances—the fact that two of the members of the Court were disabled at the same time by illness, and that the Chief Justice was withdrawn from his Court in order to hold the Criminal Term. A supplementary judge, it is true, was named to take the place of Mr. Justice Tessier, but the appointment was not made in time to permit him to take his seat before the close of the term. Under these circumstances the intervention of the legislature is not surprising, and a bill, we understand, has been introduced, the features of which will doubtless receive fair consideration from the many able members of the bar who have seats in the legislative body. It seems to be matter for regret that the Chief Justice should be withdrawn from the more immediate duties of his Court during a whole month, to try criminal cases which might efficiently be disposed of by some other mode. The rapid growth of population in the city and district of Montreal inevitably brings with it a large increase of criminal business. It may be expected that this business will continue to increase. The question seems to be whether an additional judge shall be appointed to the Queen's Bench, so as to leave one member of the Court always available for the criminal terms, or whether a special criminal Court shall be created in this great centre of population, with a special judge free to devote his whole attention to the business. It is easy to suggest objections to any scheme put forward, but, in the interest of the great body of suitors, it is to be hoped that the difficulty will receive careful consideration, and that a way will be found to avoid the deadlock witnessed last month.

The authority of the schoolmaster has been somewhat restricted since the time of Dr. Johnson, if we may judge by the following extract (Boswell's Life of Johnson, vol. 2, pp. 89-90): "The government of the schoolmaster is somewhat of the nature of a military government—that is to say, it must be arbitrary; it must be exercised by the will of one man according to particular circumstances. A schoolmaster has a prescriptive right to beat; and an action of assault and battery cannot be admitted against him unless there be some great excess, some barbarity. In our schools in England many boys have been maimed, yet I never heard of an action against a schoolmaster on that account." That is not the accepted doctrine of the present age, nor is it the doctrine of our Civil Code (Art. 245). The recent case, in Montreal, of *Lefebvre* v. *Congrégativn des Petits Frères* (M.L.R., 6 S.C. 430) is an illustration. It was therein held by Davidson J., that a schoolmaster is not justified in seizing and holding a child of tender years by the ear, in order to compel him to kneel down, notwithstanding his efforts to free himself. All punishments are prohibited which may result in serious or permanent injury to the pupil. As Dr. Wharton, in his work on Criminal Law, puts it: "The law confides to schoolmasters and teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them respon-