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THE

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CURRENT TOPICS AND CASES.

There are many who would refuse to apply to public persons a term so well understood as "thief," who yet do not hesitate to refer to them as "boodlers," a slang expression, "affecting," as the learned Chief Justice of the Superior Court happily expressed it, "to harmonize the comical and the infamous." Yet, it being proved that this term, so freely used in the newspapers and in private conversation, has acquired a definite meaning, and that "boodling" actually designates a species of thieving—the filching, by some means or other, by the "boodler" of that which does not belong to him—the Courts cannot refuse to recognize the defamatory character of the term, nor hesitate to hold that an action lies for the use of it. Such was the decision of the Court of Review at Montreal, Nov. 4, 1893, in *Marchand* v. *Molleur*, unanimously affirming the judgment of Gill, J., in the Superior Court, which awarded $500 damages for the unjustifiable application of this term to the leader of the Opposition in the Legislative Assembly of Quebec.

Oscillatory legislation, it need hardly be observed, does not add to the dignity of the legislative body, or to its reputation for wisdom. The period of study prescribed

to a student who was also a graduate in law, for a long time was three years, which term was usually co-extensive with the curriculum of the law faculties. Then the term was extended to four years. This, we are disposed to think, was a change beneficial in its effects. But during the last session of the Quebec Legislature, it appears that the term has been shortened once more to three years. When it is considered that the student of to-day has a much greater field to traverse than his predecessor of half a century ago, it is hard to believe, in the majority of cases, that he can, in so brief a period, come adequately prepared to the portal which admits him to practice. The experience of many advocates of distinction might be cited, all pointing to the conclusion that young men usually come to the bar too soon. The impatience of youth is natural enough, but the result of yielding to it is beneficial neither to them nor to their clients. At present, with four years' preparation, only fifty per cent. of the candidates pass the examinations. Does this state of things justify a reduction of the term of study?

One of the facts which strongly arrest popular attention is the hardship of a bill of costs added to a petty debt of a few dollars which the debtor, through sickness or otherwise, is unable to pay. At one time we were disposed to think it would be better to deny the right of action for any sum under five or ten dollars. This would stop credit orders, and tend to establish the habit among the poor of buying only for cash. It is obvious, however, that such a rule would produce much embarrassment in its application, and that numerous exceptions would have to be made in regard to unpaid balances of larger debts, interest on loans, constituted rents, and the like. It is doubtful, moreover, whether it might not, on the other hand, encourage the giving of credit to an amount sufficient to enable the creditor to bring an action. In some cases, too, it would prevent a person temporarily

distressed from getting a necessary credit, though he might be able on the morrow to acquit the debt. Another proposition, submitted in a bill to the Quebec Legislature last session, is to abolish attorneys' fees in cases under $25 or $50. This would mean, in most instances, that the creditor, who frequently, in point of wealth, is but a little better off than the debtor, would have to pay his own attorney, and the hardship would simply be shifted from one to the other. The obvious inference is, that we must not expect to cure every evil by statute. Legislation can never supersede nor render superfluous the suggestions of kindness and charity in human relations. In uncontested actions for small amounts, however, the fees and disbursements have been too large, and should be reduced, and the expenses attending executions and the attachment of wages should be made as light as possible.

We notice that the work of Mr. J. J. Maclaren, Q.C., on "Bills and Notes" has been substituted for Chalmers on Bills in the curriculum of the Toronto Law School. This is a merited recognition of the value of Mr. Maclaren's work.

Jones' Constables' Manual is the title of a little work issued by the Carswell Company (Ltd.), Toronto, the second edition of which, compiled from the new Criminal Code, is now presented to the public. In alphabetical order of subjects, it states the law in regard to the offences with which constables have most frequently to deal. Montreal policemen should be furnished with a manual of this sort.

The University Law Review is a new college monthly, conducted at the University of the City of New York, under the supervision of Mr. Austin Abbott. The work is carefully edited, and the numbers already issued have a very neat appearance.

The measure for the re-organization of the Courts in Quebec has been deferred till next year. The Attorney-General, in announcing the postponement, delivered a speech in which the subject is discussed in a very fair spirit. A portion of these observations will be found in the present issue.

FRASER v. MAGOR—SALE—APPARENT DEFECT—DELAY FOR INSPECTION OF GOODS—REASONABLE DILIGENCE.

The following notes and authorities of Mr. Justice Pagnuelo in the case of *Fraser v. Magor*, R.J.Q., 1 C.S. 543, were not received until after the report had gone to press. As the case involves an interesting question of mercantile law, the text of the learned judge's opinion is inserted here. The Court held that the defect complained of (rust on herring) was an apparent defect, and that the buyer had not made an examination of the goods within a reasonable time.

PAGNUELO, J.:—The plaintiff claims from the defendant the value of 49 barrels of No. 1 Labrador herring which he found, after inspection, rusty and unmerchantable, out of a lot of 187 barrels delivered to him, and which formed part of 321 barrels, bought by plaintiff from defendant on the 18th November, 1891, through a broker; while defendant denies all responsibility for the quality of the fish, were it unmerchantable at the time of the sale, which he denies; alleging in effect that the fish was sold without guarantee as to quality or condition and subject to inspection; that the plaintiff was negligent and late in his inspection of it, thereby assuming all the risk as to quality or soundness; that the terms were spot cash, meaning immediate payment, and that all claims for shortage or unsoundness should have been made, according to the custom of the produce trade, within two days from the date of delivery, while plaintiff remained for twelve days, from the 18th to the 30th November, without inspecting, and until the following day without complaining.

From the evidence and correspondence adduced, the following facts have been proven, namely: By the bought and sold note, the defendant sold to plaintiff, on the 18th November, 1891,

through John Smith, broker, 173 barrels No. 1 Labrador herrings at $5.50; 29 barrels at $5.50; 20 barrels No. 1 shore herrings at $5; 32 barrels Sept. shore at $5; and 67 barrels T. P. No. 1 shore at $5, the whole stored in M. Davis' warehouses; terms, spot cash, less 2 per cent. On the same day, three delivery orders on M. Davis were given by defendant to plaintiff for the full amount of 321 barrels of above-described herrings; an invoice was also sent for the same; on the 24th November plaintiff wrote defendant asking his patience for the settling of the account and for the examination of the fish, saying he had had no time yet to make such examination. Defendant replied that if he had not examined the fish bought, it was his own fault; and although he might wait a day or two for the payment, he would recognize no claim for quality after this; requesting also a cheque on the next day for $1,000 on account.

On the following days the plaintiff made three payments to defendant on account of said sale, namely, on 26th November, $500; on 28th November, $250; on the 30th November, $250. On this last date, 30th November, plaintiff had seven barrels examined, and on 1st December he wrote defendant that out of seven barrels examined, three were found to be far from No. 1 fish; he would take no rusty or tainted fish; he would examine every barrel and leave out objectionable ones; however, he would return orders on payment of the $1,000 already paid. In his answer of same date, defendant protested that the quality, condition and size were out of the question. The sale had been had on 18th November, and should have been repudiated at the most within two days; the sale was not made subject to selection; plaintiff was therefore requested to pay the balance, otherwise the defendant would protect himself by disposing of the fish and charging plaintiff with the loss, deducting the $1,000 in question. Another letter from each party was sent on the same and following day, reiterating their pretentions, and defendant wrote Moses Davis suspending the delivery orders given to plaintiff, on account, as he says, of difficulties between them as to the payment. Defendant began to sell, as intimated, on the 2nd December, and continued to sell by small lots until 18th January. The balance of 33 barrels was not sold until April, and had to be sent to Chicago, netting only $13. Coming back, on the 10th December, plaintiff protested defendant, tendering $706, balance of purchase price, demanding delivery according to

the terms of the broker's note, of sound, clear fish, or the refunding of the $1,000.

On the next day, the 11th December, defendant delivered to plaintiff a warehouse receipt for 187 barrels, to cover the amount paid, offering to deliver the balance, on payment of the purchase price, less any barrels that might have been sold. At this time only 20 barrels had been disposed of. Plaintiff's firm accepted and kept the warehouse receipt, notifying defendant that the survey would be delayed until the return of plaintiff from his brother's funeral in Chicago. On the 12th December, defendant again refused to recognize any claim on account of the quality of the fish, and informed plaintiff that he would continue to sell on his account. On the 19th December, the day following his return from Chicago, plaintiff caused an examination to be made of the 187 barrels in Moses Davis' store, by a cooper named Coté, who only finished on the 29th December, finding 47 barrels rusty, one tainted, and one containing only salt and pickle, of which fact he apprised defendant by a letter of 30th December. On the 4th January plaintiff notified defendant that a survey would be made the following day of the 49 barrels by two merchants of Montreal, who did so, in the absence of defendant, with the same result as Coté.

As to the custom of the fish dealers in Montreal it seems to be that the intending purchaser examines the fish before closing the bargain and accepting the bought note from the broker, for which purpose a short delay of a couple of days is allowed; or that he examines the fish within a short delay after delivery, no fixed time being determined; the delay is longer between dealers or wholesale merchants and retailers than between consignees and wholesale merchants; the time allowed is a reasonable but short delay on account of the perishable nature of the goods.

Some wholesale merchants, while dealing with retailers, are very lenient as to time; in fact, some will make an allowance whenever they are satisfied that the claim is fair and honest, even after three or four weeks or months; but this is rather with them a matter of policy than of right, and cannot be accepted as a rule for the court.

The principle is, that the inspection must be made within a reasonable but short delay, according to circumstances. The good faith of the seller may be taken into consideration, if he were the packer and knew of the inferior quality of his goods. The

lateness of the season, should it seriously interfere with business, might, perhaps, be considered also, although we read that a buyer "cannot relieve himself and charge the seller on the ground that the examination will occupy time, and is attended with labor and inconvenience. If it is practicable, no matter how inconvenient, the rule applies."[1] We may also mention the forbearance of the vendor, were he disposed to wait or had he waived all objection to delay. There is no saying how circumstances may shorten or prolong the time; but forbearance, as a matter of friendship or policy, cannot be accepted as a criterion, when a merchant stands on his strict rights, and the buyer is informed of such intention. The custom is also to examine a few barrels, say about one in ten of a large lot, and to take the chance of the inferior barrels that might be found in the lot; in other words, the sale is not made subject to selection of the good fish and rejection of the inferior fish, unless so agreed, or unless a guarantee be stipulated or be implied by the terms of the contract. It is accepted that four or five barrels in 100 may be under the mark, but 49 out of 187 is beyond all proportion.

The herring sold was open to inspection by plaintiff at the time of the sale; delivery orders were handed to him at the same time by defendant. Plaintiff delayed until the 30th November before making any inspection, without any other cause than want of funds to pay and press of business, although aware of the custom of trade to the contrary, and although formally notified by defendant, on the 24th November, that no claim on account of the condition or quality of the fish would be entertained by him. The forbearance asked by plaintiff on the 24th November for payment and inspection was denied by defendant, acting strictly on his legal rights. As for the press of business, plaintiff desired to have one Holland, cooper, to act for him. Holland was engaged otherwise, but any cooper would have done as well, and I don't see that there was such a press of business as to interfere with the inspection.

It must also be remarked, further, that the defendant had not packed said herring; he had only received it as consignee, and had reason to believe it good and sound at the time of the sale. Ten barrels had been sent as sample, five of Labrador No. 1, and

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[1] Per Justice *Davis*, in *Barnard & Kellogg*, Wallace's Rep. U. S. S. C., X., 388.

five of Shore No. 1. They were first-class fish. After the consignment had arrived, and while on the wharf, some four or five barrels had been opened for Mr. Robert P. McLea and examined by him; some fish showed signs of oil, which is preliminary to rust, and he declined to buy, as it would not suit his trade. This was a few days prior to 18th November. It is possible that the rust may have developed shortly after, between the 18th and 30th November, and specially between the 18th November and the end of December, when the 187 barrels were examined. At the time that the barrels were brought into the warehouse some hoops were found faulty; the barrels were mended and pickle added to some, as it is generally the case. No. 1 Labrador herring being fat, is more liable than other herring to show sign of oil and to rust, and it requires more care and looking after.

Sign of oil is not rust, and rust might yet have been prevented by adding good pickle. Côté found many barrels wanting in pickle; the barrels had been unattended to from the 18th November up to the 19th December, a time long enough to greatly injure fat herring, short of salt.

On the 30th November, out of seven barrels opened, two were found rusty and one short of salt. Had the two become rusty since Mr. McLea had opened four or five barrels on the wharf? No one can tell. The opinions of traders vary on this, as men's opinions do in most things, and we are left in the greatest uncertainty.

Again, forty nine barrels, opened between the 19th and 30th December, were left open, standing on end, until this action was instituted, on the 3rd March following. They are there yet.

All herring left open standing on end, especially fat herring, will depreciate in a very short time; although the evidence is contradictory on this point as on all others. There is no doubt, though, that it will, should it be left short of pickle.

On the whole I find, as a jury would do, that the herring was open to inspection at the time of the sale; that six days after the sale and delivery plaintiff asked for delay to pay and inspect, and was denied time to inspect and requested to pay; that he made three partial payments after this without inspection; that he only complained about the quality of the herring on the 1st of December; that in the meantime the fish may have deteriorated, and the complaint was late and tardy and beyond a reasonable time.

Coming to the terms of the bought note, and to the question of selection raised by plaintiff in his correspondence, and that of guarantee on which it hinges, I find that there was no express or implied guarantee as to every barrel in the bought note. The words used—"Labrador No. 1," "Shore No. 1"—are only descriptive of the class of goods; and although they imply a guarantee that the herring is good and merchantable, that guarantee is exhausted by the neglect of the buyer to examine at the time of delivery or within a reasonable short delay afterwards. If he chose to buy without examination, he must take the chance of his course.

An important consideration for us is that rust on fish is an apparent defect, which might have been discovered had the fish been examined, and that the vendor is not responsible for apparent defects which the buyer might have known of himself. (Art. 1523 C. C.)

The principle laid down in this article of our Civil Code is plain; it says: *caveat emptor*. Before buying see what you buy; if you choose to buy without looking, it is your own business. The law supposes that the buyer has seen the article sold, and that he buys it as it is. Should fraud be used to deceive the buyer as to the quality of the goods, or should latent and unapparent defects depreciate the value of the article, the law will protect the buyer; but he who buys without seeing when he has an opportunity to do so, buys at his own risk; *caveat emptor*. This doctrine is based upon common sense, and is the law of all nations.

When a delay is allowed for examination after the bargain is struck, advantage must be taken of that delay with all due diligence, as commercial transactions cannot be held in suspense for a long time, especially when they relate to perishable goods. The uncertainty, in this case, as to the condition of the herring on the 18th November, and whether rust has not developed afterwards, either of itself or through absence of proper care and attention, shows the full force and value of the rule, that he who neglects to act must suffer rather than he who can be reproached with no act or omission.

Finally, after all these delays, from the 18th November down to 5th January, 1892, when the last survey was made, plaintiff remained inactive for two months more, and it was not until the 3rd March following that he took out the present action, leaving in the meantime the barrels open, standing on end, and rotting

very probably. This is not showing due diligence, and on the whole, I feel no hesitation in dismissing this action with costs.

I refer the parties to the following authorities and precedents :—*Buntin & Hibbard*, 10 L. C. J. 1, in appeal ; *Vipond & Findlay*, M. L. R., 7 S.C., 242 ; *Lewis & Jeffrey*, M. L. R., 7 Q. B. 141 ; *Barnard & Kellogg*, 10 Wallace's Rep. S.C. of U.S., 388.

THE RE-ORGANIZATION OF THE COURTS.

The following observations were made by Attorney-General Casgrain in the Legislative Assembly of Quebec, on the 12th December, in moving the reference of the Judicature Bill to the Committee on Legislation :—

Mr. Speaker,—The motion which I intend to propose to-day is not the one which is entered on the orders of the day. The motion on the orders of the day is for the second reading of the bill. When I will have concluded the few remarks I have to make, I will move that the order of the House for the second reading of the bill be discharged, and that the bill be referred to the Committee on Legislation. Last year, Mr. Speaker, I stated that I hoped the bill which I presented would not be considered as a party bill, but that the House would study it with the greatest attention, so as to see whether the measure not only meets the approval of the House and of the country, but also if it is sufficient to relieve those who complain of the present system. I regret that an illness of nearly a fortnight has prevented me from bringing the question before the House until to-day, and thereby giving the House an opportunity of more deeply studying the measure which I had the honor to submit.

The invitation which we made last year to the bar, the magistracy and the boards of trade to study the bill, has been accepted, it is true, but accepted very late. I had asked here in the House that the invitation be accepted at least before the first of July, 1893, so as to give us time between that date and the beginning of the session to study the suggestions which might be made, and put into practice the observations which might be submitted to us on the bill in question. The fact is that the discussion on the bill commenced only about the beginning of the session. Seeing that the various sections of the Bar, the majority of these sections, had not studied the bill, the Government deemed it advisable to convene here the delegates of all the sections of the Bar and the members of the Bar of the principal cities of the province to study the bill with me. This invitation was accepted, and all the sections of the province, as well as the members of the Bar of the leading cities of the province, did me the honor of meeting me here. We studied the bill for a whole day, a day very laboriously filled, and we were enabled to see what

the general feeling was, at least that of the legal profession. It has been stated that the entire legal profession is opposed to the measure. I cannot allow that statement to go uncontradicted.

We had here, for instance, the authorized representative of the section of the Bar of the district of Quebec, Hon. Mr. Langelier. There was only one detail in the whole bill to which the Quebec Bar objected. This was the provision which said that when the city judges would disappear, they would be replaced by those appointed to perform their duties in the country. With that exception, Mr. Langelier gave his adhesion to the bill, and in that he represented, as I have already said, the section of the Bar of the district of Quebec. We had also the Bar of Rimouski, represented by Mr. Pouliot, and the Bar of the district of Beauce, represented by Mr. Linière Taschereau. These gentlemen declared themselves in favor of the bill. It is true that the sections of Three Rivers, St. Francis, Bedford, St. Hyacinthe and St. Johns were opposed to the bill, and the Montreal Bar was represented by a gentleman who said he was authorized to oppose the bill. But I would like to call the attention of the House to what happened at the Montreal Bar.

The question was discussed for some time, and one of the most distinguished advocates of Montreal, a gentleman whom I am glad to count amongst my friends, Mr. Globensky, was instructed to draw up a report against the bill, that is to say, *on* the bill, and not *against* it; because at the first meeting of the Montreal Bar, if I am properly informed, the question was considered without any decision being come to either for or against the measure. Mr. Globensky, who was instructed by the council to draft a report, made a report against the bill. When the Montreal Bar was convened to take Mr. Globensky's report into consideration, there were only twenty-three members present out of over three hundred, and the vote stood thirteen against and ten in favor of the measure. I am pleased to be able to tell the House that distinguished men such as Mr. Geoffrion, Mr. Gustave Lamothe, Mr. Demers, Mr. Eugene Lafontaine, whom we have known to such advantage in this House, have declared themselves in favor of the bill. I say this merely to remove the impression that the whole Bar is opposed to the bill. I am still, at present, receiving letters from everywhere from my brother advocates, asking me not to refer the bill to the Committee on Legislation, but to have it passed this session.

Moreover, amongst the resolutions and petitions laid on the table of the House as supplementary to the return to an order of the House for copies of all correspondence on the subject, we laid on the table a great many petitions lately received from ratepayers of the province, from ratepayers of certain *chefs lieux*, from important localities in the province, asking us to have the bill passed. There is a reason which, above all others, favors the proposal I now make, viz., to refer the bill to the Committee on Legislation for further study. The honorable the members of the House have observed that the draft of the Revised Code of Civil Procedure, so long and so anxiously expected, has been laid, in both lan-

guages, on the members' desks, and they have observed that that bill contains, in its first articles, provisions respecting the organization of the courts of the Province of Quebec. It could not be otherwise with a code of procedure, because a code of procedure cannot be complete, nor can it contain all that it should contain, if it do not contain the organization of the courts of the Province of Quebec. Now, we have reached, in the labor of revising the Code of Procedure, which we are now doing, about half the work, and the other half, as I will state in a few days, will be laid before this House at the beginning of next session. I even hope, if the House will permit, to be able to distribute the other half of the Code of Civil Procedure during the recess, so that it would not be possible, or, at least, it would not be prudent, to pass a bill this year reorganizing the courts of the Province of Quebec without, at the same time, passing the Code of Civil Procedure, because both bills are co-relative, are closely connected with each other. And when we come to discuss a proposition affecting the organization of the courts, it will be seen that it at once connects itself with another provision of the Code of Civil Procedure which deals purely and simply with civil procedure. As we cannot hope that the code of civil procedure will be adopted this session, I say that this is another reason why the bill should be referred to the Committee on Legislation so that the Committee may study it, if deemed advisable, or defer its consideration to next year—in a word so that it may do what the speech from the throne said we would do this year, that is, study the bill in question. After these few remarks, I have not much to add to what I said in my speech of last year. Nevertheless, as some of my brother advocates, some sections of the Bar and some newspapers have done me the honor of thoroughly discussing the bill, I consider that it would not be proper for me to allow to pass unnoticed the remarks kindly made to me in the very best spirit, without discussing them and seeking to ascertain their value.

The Plan of the Bill.

But before proceeding to these remarks I think it is but right that I should at present once more explain the general plan of the bill, so that the House may fully understand the question, may fully understand the principle at stake, may fully understand the outline of the bill, and be then in a position to study it with a full knowledge of the subject. If we refer to section 2 of the bill it will be seen that the courts of the province in civil, criminal and mixed matters are:

1. The Court of Queen's Bench:
   (a) Sitting in criminal matters:
   (b) Sitting in appeal.
2. The Superior Court.
3. The District Court.
4. The Commissioners' Court.
5. The Court of Sessions of the Peace.
6. The Court of Justices of the Peace.

7. The Recorder's Court.

I wish to call the attention of this House only to the first three courts, viz., the Court of Queen's Bench, the Superior Court, the District Court.

The Superior Court.

What is the constitution of the Superior Court and what is its jurisdiction? The answer to this question will be found in sections 26, 27, 28 and 76 of the bill. Here are sections 26 and 27, which deal with the constitution of the Court. I will read them. I would first observe to the House that there is a printer's error in both these sections, a mistake in the figures. Thus, instead of 15 in the second line of section 26 we should have 16, and in the first line of section 27 instead of 9 we must put 10, so that the sections read as follows:

26. The Superior Court, which is a court of record, consists of fifteen (should be sixteen) judges, having jurisdiction throughout the province; that is to say, of the chief justice and fourteen puisne judges.

For the purposes of the administration of justice for the Superior Court, the Province of Quebec is divided into three parts:

1. The Montreal division, comprising the nine following districts:—Montreal, Ottawa, Terrebonne, Joliette, Richelieu, Beauharnois, Bedford, Iberville and St. Hyacinthe;

2. The Quebec division, comprising the ten following districts: Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska;

3 The St. Francis division, comprising the district of St. Francis.

27. Nine (should be ten) judges of the Superior Court reside in or near the city of Montreal, and exercise their ordinary judicial functions in the Montreal division; five of the said judges reside in or near the city of Quebec, and exercise their ordinary judicial functions in the Quebec division; and one of the said judges residing in or near the city of Sherbrooke, and exercising his ordinary judicial functions in the St. Francis division.

Now, Mr. Speaker, it will perhaps be said: "That is the commencement of judicial centralization." I say no. I say that judicial centralization or decentralization does not result from the residence or non-residence of the judge, and I will explain later on what I mean by judicial centralization. If we refer to section 76 it will be seen that there is nothing in the constitution of the Superior Court to lead to the belief that I wished for an instant to centralize the administration of justice in the Province of Quebec. Section 38 of the bill reads as follows:

38. There shall be terms and sittings of the Superior Court and of the judges of this court, as often as the due despatch of business and the public convenience may require, at the *chef lieu* of each of the judicial districts of the province, at the dates and during the periods appointed by order of the Lieutenant-Governor-in-Council.

The sittings of the Superior Court cannot commence before nine of the clock in the forenoon, nor end after six of the clock in the afternoon.

Articles 21 and 22 of this act apply *mutatis mutandis* to the Superior Court.

The terms and sittings of the Superior Court and of the judges of that court shall be presided over by the chief justice or by one of the other judges of the court selected by the chief justice, and, in the division in which the chief justice does not reside, by the judge performing the duties of chief justice therein. R. S. O., c. 44, s. 94.

So that Mr. Speaker, the organization of the Superior Court is this: You have sixteen judges of the Superior Court, ten of whom reside in Montreal, five in Quebec and one in the district of St. Francis. But all the cases which hitherto were heard in the various *chefs lieux*, all the cases which were argued in the *chefs lieux*, and which were decided there, will be heard, argued and decided there as they are at present. The terms of the Superior Court will be fixed, not by a rule of practice on which the judges will agree amongst themselves, as was the case under the old law; but they shall be fixed by the Lieutenant-Governor-in-Council according to public requirements. So that the judges will no longer sit for a few days when they please, but they will be compelled by a proclamation of the Lieutenant-Governor-in-Council which will state that on such and such a day they will be obliged to go and hear the cases at the *chef lieu* of each district. There is a paragraph in section 38 which may appear singular. It is the one which says that the court cannot commence before nine in the morning nor end after six in the afternoon. This paragraph was inserted at the request of several country advocates, who said to me: "If you compel a judge who resides in Quebec to come and hear cases at a country *chef lieu*, he will hurry through his cases as fast as possible so as to have done with them and get back to Quebec as soon as possible. He will sit until midnight if necessary to be able to get home by the next train, and by that means we will not be able to get that justice which we have a right to expect." The paragraph in question says that the court cannot commence to sit before nine in the forenoon nor end after six in the afternoon. In this manner the advocates are sure to have time to argue their cases, the witnesses will have all the time required to give their evidence, and the cases will be heard as justice requires them to be heard.

The Court of Review.

Now, as to the judgments of the Superior Court, the Court of Review continues as it now exists. The Court of Review is a court of review for Superior Court judgments. I was about to forget to say what I should have said at the very beginning, and that is that the Superior Court, as it exists according to the bill in question, is a Superior Court having jurisdiction in all cases in which the amount exceeds $400. Thus, in all cases for an amount over $400, the Superior Court, as it now exists, will have jurisdiction, and as regards the judgments of that court, the judges of the Superior Court so constituted, the Court of Review will continue to exist as at present. As everyone knows, according to the rules

of the Code of Procedure, one cannot go into appeal if the judgment of the Superior Court is confirmed by the Court of Review. I have retained this provision in the bill, but suitors are free to choose between the Court of Review and the Court of Appeal, and the judgment of the Superior Court may be taken at once into review or into appeal. If the judgment is reversed by the Court of Review, the appeal still lies under the rule which at present exists in the Code of Civil Procedure. So much for the Superior Court. To resume, and I specially call the attention of the members of this honorable House to this point, there is no judicial centralization. Judicial centralization would consist in the fact of our having in Quebec and Montreal, in the large centres, the hearing and trial of cases, and compelling suitors to come to the large centres. But under the bill as I submit it, it is the judges who, as it were, go to the suitors. They go to the *chefs lieux* as they do now and justice goes to the suitors.

The District Court.

I now come to the District Court. Sections 45, 46, 47, 48, 49, 50, 54 and 56 give us the constitution and jurisdiction of the District Court. It has jurisdiction in all cases where the amount at issue does not exceed $400. Hitherto it was the Superior Court which had jurisdiction in all cases from $100 to $400; now in all cases in which the amount does not exceed $400, it is the District Court which has such jurisdiction. Where does this court sit, and how is it composed? The District Court, says section 45, has and exercises the same jurisdiction, functions and powers as the Circuit Court had, and in cases not exceeding $400, which were within the jurisdiction of the Superior Court, it has the same jurisdiction, functions and powers as the Superior Court, to the exclusion of the latter. The District Court consists of twenty-six judges, who are distributed throughout the province as follows: Seven of the District Court judges reside in or near the city of Montreal; three reside in or near the city of Quebec, and, with the exception of the district of Saguenay, which is served by the judge of the district of Chicoutimi and Saguenay, each *chef lieu* has a resident district judge. Thus, in every district *chef lieu*, as it now exists, there will be a resident district judge having jurisdiction to the amount of $400 inclusively. Consequently, it may at once be seen that if it could, by accident, be said that there is judicial centralization in the constitution of the Superior Court, there is decentralization in the case of the District Court; and I would add that there is even greater decentralization than now exists. If we refer to sections 54 and 56 of the bill, it will be seen that, with the exception of the counties of Hochelaga, Jacques Cartier, Laval, St. Maurice and Quebec, the District Court may be established not only in each county *chef lieu* or county seat, not only in each place where the Circuit Court now sits, because it is well known that in some counties there is more than one Circuit Court, but under these sections of the bill in question the District Court may sit in more than one place in the same county.

What is the object of this provision? At present you have extensive

tracts of country which were not inhabited when the Act of 1857 was passed. You have, for instance, the vast region of Lake St. John. You have the great region to the north of Montreal, and you have other regions in the province where there are no courts, where there is not even a circuit court, and where witnesses and suitors have to come at great expense to the county *chef lieu*. Thus, Mr. Speaker, you have, for instance, in the District of Three Rivers, the important county of Nicolet, which is separated from the remainder of the District of Three Rivers by the River St. Lawrence, and for many weeks in the spring and autumn these people cannot cross over to Three Rivers to attend to their law business. You have, likewise, other regions in the county of Ottawa which are similarly situated. I am constantly requested to establish Circuit Courts in these places, but with the law as it now stands the Circuit Court cannot be established there, because not more than one Circuit Court can be established in a county. Consequently I was right when I said that under my bill there is more judicial decentralization than there was under the old system.

Appeals from the District Court.

I now come to appeals from the District Court. Complaints have been often made that in our system of organization of the law courts there are too many appeals and too many degrees of appeal. Thus, to give an example, at present a case of $100 is taken out before the Superior Court. This case goes into review. Let us say that the judgment is reversed; the losing party can take the case into appeal. Matters are such that in the smallest case, in a case of $100, the costs, when there are no witnesses, amount to $600, and may amount to $800, and all this when the amount at issue is only $100. I say that we must protect the suitors against themselves. The ratepayers of the Province of Quebec must be protected against the perhaps too strongly developed desire which animates them to plead and plead until their means are exhausted. That is why I propose to reduce the number of appeals and the number of degrees of appeal. Now, there is another drawback arising from the too great number of appeals. It is what has happened in Montreal, where the Court of Appeals is so encumbered that if a case is inscribed to-day for hearing it cannot be heard for two years. The result of this is that the dishonest suitor is protected when he wishes to plead and to carry the case into appeal. If I am well informed, cases are taken into appeal —a number of cases are taken before the Court of Queen's Bench— merely to obtain delay, to avoid paying just debts which are due. The Court of Appeal for the District Court would be the Court of Review, consisting of three judges of the Superior Court as at present. These cases would therefore be taken into appeal before the Court of Review, which would be a court entirely distinct from and independent of the District Court.

[*To be continued.*]