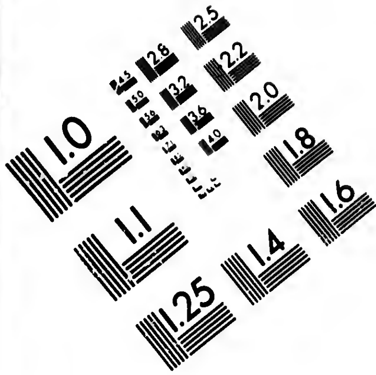
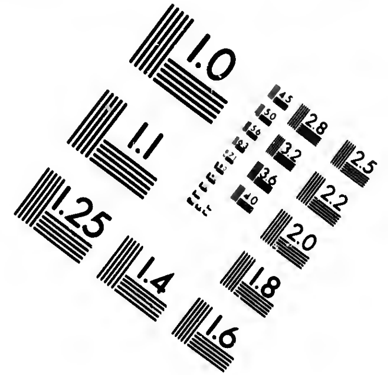

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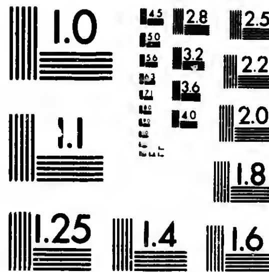
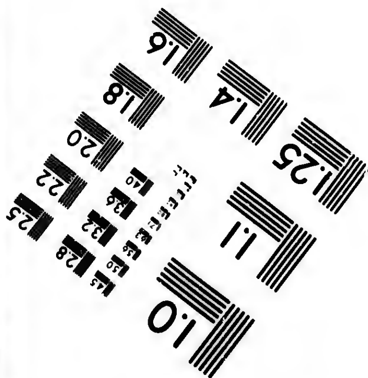
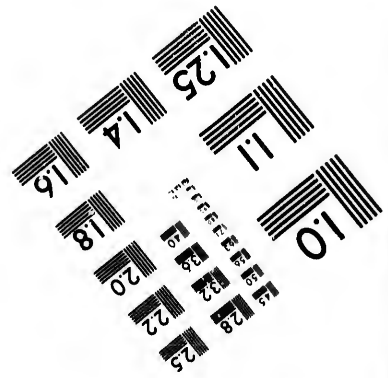

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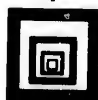

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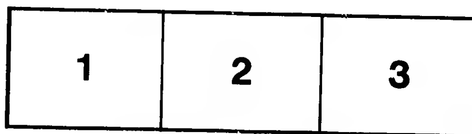

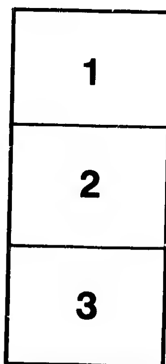

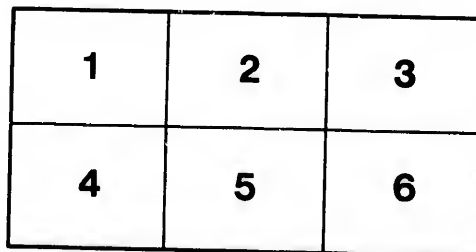

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THE COURTS OF QUEBEC.

MR. CASGRAIN'S MEASURE FOR THEIR RE-ORGANIZATION.

ITS PROVISION DISCUSSED.

The need of improvement urgent. How the proposed law will meet the wants of the case.

REPRINTED FROM "THE GAZETTE," MONTREAL, DECEMBER 26th, 1893.

In the Legislative assembly on the 12th December, Hon. T. Chase Casgrain, in moving the reference of the Judicature bill to the committee on Legislation, said :—

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.

ACTION OF THE BAR.

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

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rovince as well as the members of the Bar of the leading cities of the province id me the ... 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.

IN FAVOR OF THE BILL.

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. Liniere 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.

WHAT PETITIONERS THINK.

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 ... in the province, asking us to have ... passed. There is a reason which, a... 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 Civ... Procedure so long and so anxiously expected, has been laid, in both languages, on the members' desks, and they have observed that that bill contains, in its first articles, provisions respecting the organization of the courts in 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 re-

cess, 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 [illegible] of thoroughly discussing the [illegible] 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, Gaspe, 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.

THE CENTRALIZATION CRY.

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.

THE TERMS OF THE COURT.

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 various *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 9 in the morning nor end after 6 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 QUESTION OF APPEAL.

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 COURTS.

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 of issue does not exceed $400. Hitherto it was the Superior coust 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 res'de in or near the city of Quebec and, with the exception of the district of Saguenay which is served by the judge of the dist 'ct 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.

OBJECT OF THE CHANGE.

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.

WILL REDUCE COSTS.

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 pro-

pose 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 Appeals 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.

A WEAKNESS OF THE JUDGES

At present it is often said—I do not say rightly said—but the impression is rather general, that the Court of Review is more a court of confirmation than of revision; that is to say, that, owing to I know not what chain of circumstances, the judges of the Court of Review are much more led to confirm the judgments of their colleagues than to reverse or modify them. Now, when an appeal is taken from the judgment of a District court judge to the Court of Review, there will no longer be amongst the members of the various courts that fraternity, if I may so express myself, which exists between those who compose the same court. There will perhaps not be more independence but, at least, there will perhaps, be a little more independent action when judgments rendered by District court judges have to be reversed or modified. It is true that the Court of Appeal so constituted by the bill consists of only three judges. But let us see what happens in the province of Ontario, which is often quoted as a model province and which, in many respects, is admirably managed in all public and judicial matters. In Ontario the Court of Appeals for cases in which the largest amount is at issue consists of only four members, and I say that, for cases of $400 or less, a Court of Appeals consisting of three judges constituting an independent tribunal is sufficient.

AN APPEAL FROM REVIEW.

When the judgment of the Court of Review sitting in appeal from a judgment of a District court is not unanimous, an appeal may be taken from the Court of Review to the Court of Queen's Bench. I admit that I had some hesitation in introducing this amendment. I am not yet decided to state—I am not yet sufficiently convinced to be able to say—that this is a wise provision, because I am of the opinion of many authors who have writ on on this subject, and who say that the number of appeals and the number of the degrees of appeal should be reduced. But that is a question on which there may be a difference of opinion, a question on which something may be said both for and against; it is a question which I submit for the serious consideration of those who will have to study the bill. I say that, not only in virtue of the bill which I have just explained will the appeals from the District court render a service to suitors, but the law will have the effect of greatly reducing the number of appeals now taken before the Court of Queen's Bench, and will give greater efficiency to the Court of Queen's Bench, and will allow it to better fill the role which it is called upon to fill in the judicial organization of this province.

DISTRICT JUDGES IN CRIMINAL MATTERS.

Now there is, in the constitution of the District court, another very important matter to which I specially call the attention of the members of this House. According to section 47 of the bill the District judges have jurisdiction throughout the whole province of Quebec, but exercise their ordinary judicial functions in the districts assigned to them by their commissions; and they further have all the powers and exercise all the functions mentioned in articles 2485 to 2544 inclusively of the Revised Statutes of the province of Quebec. If you refer to section 107 you will see this: "As district judges are appointed in the different districts, the judges of the sessions of the peace, district magistrates and stipendary magistrates shall

cease to exercise their functions." That is to say, sir, that I give the district judges all the powers of district magistrates in criminal matters and all the powers of judges of the sessions of the peace in Quebec and Montreal. A considerable economy will result from this. At present the expenses of the province for district magistrates, travelling expenses, etc., for the salaries of judges of the sessions of the peace amount to $30,000. But what happens? Every day I receive petitions and letters asking me to establish magistrates' courts, asking me even to appoint other magistrates for regions distant from the *chef lieu*, like those I mentioned just now, and I have no hesitation in saying that if the present system continues, in three or four years we will be obliged to appoint other district magistrates, and to give them further powers, to meet the ever increasing wants of the public; and the expenditure under this head will amount to $50,000 per annum, at least, and will go on increasing. There is also another consideration, and that is that the present salary of the district magistrates is not sufficient.

ILL PAID SERVANTS.

The salary of these magistrates who, after all, are called upon to exercise important judicial functions in criminal matters, is not sufficient. It is only $1,200, and this has been so understood that for seven or eight years it has been necessary to indirectly increase the salary of the District Magistrates by giving them travelling expenses of from ten to five dollars a day, which greatly increases the expense of the administration of justice. I do not say that it was wrong to do so. I believe, on the contrary, that it is impossible to get a competent man to perform judicial duties of such importance for the small salary of $1,200 per annum. We will therefore be assuredly compelled to increase the salary of these magistrates if they are to continue to exist, or we will be obliged to replace them by other magistrates or other judges and I think the plan I propose is the best. Now, if this expenditure is to be $50,000 per annum, as it will soon be, I ask myself why the province of Quebec should pay the expenditure in question. We complain so much of the expense we incur. We clamor so much for economy. We endeavor by every means to reduce our expenditure. Now, here is a favorable opportunity of reducing the expense of the administration of justice by $50,000; because, as everyone knows, sections 96 and 100 of the British North America act say that it is the Federal parliament which appoints the judges and pays their salary. I therefore ask myself why, in view of that provision of the British North America act, the province of Quebec should be obliged to pay $50,000 for the administration of criminal justice. Thus, those who are in favor of economy cannot but say that, in this respect at least, the bill is a good one. (Hear, hear.)

PUTTING THE MEASURE INTO FORCE.

Now we have to consider how the bill is to be put into effect. In 1857, when the great statesman whom everyone admires, Sir George Etienne Cartier, introduced his measure for the reorganization of the law courts, it was comparatively easy to put the reform into practice. At that time the question was to appoint new judges, and, as everyone is aware, candidates for judgeships were not wanting any more in 1857 than they are now. Consequently, it was rather easy to appoint new judges. At the present time the question is to reduce the number of Superior court judges from 30 to 16. If we wish to put the law into execution we would have to decapitate 14 of those genlemen. Now, it is quite sure that they will not submit to decapitation without making considerable resistance. It is for that reason that one of the provisions of the bill, sec. 112, says that the act shall come into force by proclamation of the Lieutenant-Governor-in-council. As soon as the proclamation is issued, this is what will happen: In the districts of Montreal, Quebec and Sherbrooke, as well as in the district of Terrebonne, whose judge will be transferred to Montreal, and in one of the districts near Quebec, whose judge will be transferred to Quebec, the law will come into force at once. District judges will have to be appointed at Quebec and Montreal, who will at once commence to perform their judicial duties. The district judges at Montreal and the district judge at Quebec will replace the judges of the Sessions as the Peace and exercise

the same functions of the judges of the Circuit court exercised at Montreal and at Quebec, which functions are, by the bill, assigned to the district judges, as well as in the district of Terrebonne, and in one of the districts of the Quebec division, whose judge shall be transferred to the city of Quebec. The number of judges in Montreal will be considerable for some time; but it must not be imagined that it will take long for the law to come into force everywhere. Every one knows that, from ordinary causes, judges, like others, disappear pretty rapidly. Thus, the other day, a judge said to me: "I was appointed judge seven years ago, and already the majority of the judges are my juniors." As only twelve judges will remain, the law will come into force pretty soon. Now, while the ten judges of the Superior court sit in Montreal they will not be obliged to go on circuit in many districts, and this will, in consequence of the increased number of judges, remove the congestion which now exists in the Enquete and Merits court in Montreal, where considerable delay occurs at present

THE COURT OF QUEEN'S BENCH.

In virtue of the bill which I will introduce, the Court of Queen's Bench may sit with the assistance of some of the judges ad hoc or as assistant judges. As this court may sit in two different places, this will remove the congestion which exists in the Court of Queen's Bench, because if the Court of Queen's Bench were to sit at Montreal for two years it would barely be able to get rid of all the cases now inscribed before that court. Now, when in each district a vacancy occurs in the bench of the Superior court, such vacancy shall not be filled up, but the district shall at once come under the operation of the law which appoints district judges. Thus let us take, for instance, the district of Montmagny. Let us suppose that the judge in the district of Montmagny, for one reason or another, ceases to exercise his functions there, either because he is removed by death or is promoted to a higher position. Immediately, under the law, the federal Government will be obliged to appoint a district judge for Montmagny, and the Superior court of Montmagny shall be served by one of the judges of the Superior court residing in Quebec. Meanwhile, as soon as the proclamation is issued, the principle of the law comes into force everywhere throughout the province, so that the judges of the Superior court now [illegible]sting and exercising their functions in each district shall continue to exercise their functions as judges of the Superior court for cases of $400 over, and the district judges shall have jurisdiction for all cases under $400, except as regards the functions of district magistrates, which shall remain the same until district judges are appointed.

Mr. Stephens—Why not give District court judges the jurisdiction of Superior court judges?

Hon. Mr. Casgrain—My honorable friend asks me why I do not make of the district judge a Superior court judge with all the jurisdiction required to an amount of, let us say, $100,000,000. But, Mr. Speaker, the principle of the bill is just the opposite. If the idea of my honorable friend were to prevail the law would have to be left as it now stands.

Mr. Stephens—Then you make two judges instead of one.

Hon. Mr. Casgrain—No, not at all; not for the same object. That is to say, that there will be in each district a district judge who will judge cases up to $400, but there will be sixteen Superior court judges who will judge the cases of over $400, and these judges will be obliged to go on circuit, as it is called, that is to say, go to the *chef lieu* of each district for the trial and hearing of cases and rendering judgment therein.

MAJORITY OF CASES UNDER $400.

I would observe, in passing, that cases for over $400 do not represent one-fifth of the work of the judges, while cases of $400 and under represent four-fifths of the work. I give four-fifths of the work to the district judges, whose number is greater; on the other hand for cases over $400, which represent only one-fifth of the work, there are sixteen Superior court judges. Otherwise we would be obliged, if we followed the idea of the honorable member, to appoint a Superior court judge in each district. Now, in some districts there is not work for more than two months in the year, while in other districts there is work for

the whole year and more. This is why, on the one hand, the number of judges for cases under $400 must be increased, while, on the other hand, a special court must be established for cases of $400 and over, a court which, sitting in review, shall be a court of appeals for the District court.

PROVISION FOR SUMMARY MATTERS.

But I was forgetting a very important provision of the law referring to the jurisdiction of district courts. I spoke a moment ago of judicial centralization and decentralization, and I said that all cases under $400, which, up to the present were pleaded and judged at the *chef lieu* of the district, would so continue to be in future. But the answer may be made, as it actually was in a memorial addressed to me: "There are cases which come daily before the courts, motions, peremptory exceptions, defenses en droit, business in chambers, writs of prerogatives, summary affairs, etc. What are you going to do about them?" I admit that in the most of the rural districts, writs of prerogatives, questions between lessors and lessees, actions under the law of summary procedure are pretty rare; but nevertheless, in order that nobody may accuse me of at all encroaching upon this question of judicial centralization, I declare in section 48 that in all these matters that I have mentioned, and which are enumerated in this section the district judge has jurisdiction, subject to appeal to the Superior court. This question is rather one of procedure, and more the subject of an article of the Code of Procedure. It may therefore be seen what a disadvantage it would be to pass this act without at the same time adopting the Code of Procedure.

A voice—In summary affairs will the district judge have absolute jurisdiction, and will there be an appeal?

Hon. Mr. Casgrain—The appeal will be before the Superior court sitting in review and before the Court of Appeal as now constituted, or before both, according to the rules which at present exist in the Code of Procedure.

CHANGES SINCE LAST YEAR.

I have indicated so far, in making the general expose of the bill, the principal changes which are proposed in the measure that I have to present. But to enable the House to better understand and more fully seize the difference between the measure originally submitted, and that which I will have the honor to lay before the House, and in order to show the care that I have taken to listen to the complaints and representations that have been made to me, I believe that it will be well to give in a succinct and definite manner the changes which exist between the original bill and that now submitted. There is first and foremost in the present bill, as I have already declared, a complete elimination of everything regarding the administration of criminal justice. In last year's bill, at the suggestion of parties who were well informed, and who had at heart the perfect administration of justice, the province had been divided into six districts for the purpose of the administration of criminal justice. But the remark has been made to me that it would not be just to bring witnesses from a distance to a chef lieu for a criminal case, on account of the cost and the inconvenience, and that neither would it be just to drag a criminal from a distance to a chef lieu in another county, there to stand his trial, where he might not perhaps be judged by his peers. I understood the justice of this observation, and that the bill in this respect was erroneous, and this year I have left the administration of criminal justice exactly as it was under the old law. That is the first change contained in the new bill and a very considerable one it is.

JUDGES AND TERMS OF THE COURTS.

Now the complaint was also made that according to the bill of last year the terms of the court were fixed, not by proclamation of the Lieutenant-Governor-in-council, as proposed by the present bill, but by a rule of practice made by the judges themselves. It was said, with some reason, that the judges, not always consulting the public needs, might fix the terms to suit their own convenience rather than that of litigants. This objection is a strong one, and in this year's bill it is provided that the terms of all the courts will be fixed by proclamation of the Lieutenant-Governor-in-council. It was also said in last year's bill that the district judges would be ap-

pointed from amongst the lawyers of not less than five years' practice. It was thought by some that this was not a sufficient guarantee of the qualifications of men charged with important judicial functions, and it is now provided that ten years of practice must be one of the qualifications required of those lawyers who are to be named judges of the District courts. Another notable change and one which relates particularly to procedure, is that which I explained a moment ago, namely, that the District court judge has all the powers of a Superior court judge in chambers; that it is to say that he may decide all questions between lessors and lessees, all those under the act of summary procedure, writs of prerogative, in a word all the questions that I had the honor of mentioning to the House a moment ago.

DISTRICT OF ST. FRANCIS.

There will be sixteen judges of the Superior court instead of fifteen. There will be ten at Montreal, five at Quebec and one at Sherbrooke. It was considered that the district of St. Francis was of such importance, and that so much business was transacted there, that it was necessary to leave a judge there. And besides, Mr. Speaker, the bill provides that when there is too much work for a judge in any district, another judge by proclamation of the Lieutenant-Governor-in-council may be sent by the Chief Justice to sit there. The number of District court judges for the city of Montreal is also increased. Another important change that I have already pointed out to the House is this: That in virtue of article 1054 of the Code of Civil Procedure as amended by section 75 of the present bill, the District court, in whatever locality it sits, has jurisdiction up to the sum of $400. Last year we said that outside of the chef lieu the court would only have jurisdiction to the amount of $100. This year we increase it to $400 wherever it sits, even though it may be in two different localities in the same county, in order to give courts to the regions of which I spoke a moment ago, where they may bring their judicial affairs with the economy which they have a right to expect. There is, further, an appeal from the judgments of the District court. Last year we said that the judgment of the Court of Review would be final and without appeal, when pronounced upon an appeal from a judgment of the District court; but now, when the judgment of the Court of Review is not unanimous, the appellant may go to the court of Queen's Bench. I have already pointed out this change.

CITY AND RURAL JUDGES.

And, finally, the last change in the bill has been made at the suggestion of the Bar of Quebec, and also of that of certain lawyers and judges who have written me on the subject. Last year, in the case of the death of one of the Quebec or Montreal judges, or of his disappearance for any cause, he was necessarily replaced by one of the country judges—a judge from the rural districts. That is to say that if, for instance, a judge died at Quebec, a judge was taken from one of the districts of the Quebec division and brought in the city. It has been represented to me that for the reason that will be understood by those who are familiar with the administration of justice in this province, it was not altogether just that the Federal Government should be forced to name certain gentlemen judges in the cities. I have fallen in with this suggestion, and now, when the judges of Quebec or of Montreal will disappear, the Federal Government may name the one that they may deem proper to fill the gap. Besides, Mr. Speaker, in thinking of it a little, I am not sure that I am able, under the constitution that governs us, to impose upon the Federal Government the obligation of naming such or such judge to such or such locality.

OBJECTIONS TO THE BILL.

I now come to the most interesting portion—if I may say that there is an interesting part—of my speech. It is that which concerns the objections made to the bill. These objections were naturally based on the bill which was presented to the House last session, which was that which was given publicity to. It could not be otherwise. People could only criticize what they had before them. The objections made were of two kinds. There was a general

objection to the principle of the bill, and there were objections to certain details. I will say, without, I believe, flattering myself too much, that I have replied to all the objections of details that are made to the bill. I will go even further and say that I have incorporated in the bill all the suggestions contained in the memorials which have been sent me by the different sections of the Bar opposed to the measure. The bill has been corrected; it has been amended upon the strength of the memorials sent me, and I believe that all the remarks that have been made upon it have been taken into consideration. Now, the great question, that upon which opponents of the measure have fallen back in order to fight the bill,—the question above all upon which the opposition is made, is this:—They say that judical decentralization was established in 1857, and that this decentralization ought to continue; that my bill destroys it; that it strikes a blow at the principle of decentralization, that it overthrows the tribunals of the country and unites in the large cities the different judicial jurisdictions, and that in consequence the measure is not acceptable to the litigants of the province, and above all to those of them who live in the rural districts. I believe that after the explanation that I have made of the general plan of the bill, nobody will any longer be of the opinion that I am striking a blow at the principle of judicial decentralization. I have proved that the Superior court will sit, according to the bill in question, in each chef lieu of district where it now sits, and I draw the attention of the members to this fact. Finally, I say this: Judicial decentralization does not consist in the residence or non-residence of the judges. Decentralization does not consist in the fact that you send a judge to reside in each district. The system may possess some advantages, but, Mr. Speaker, judicial decentralization consists in the fact that the judge goes, so to speak, to the home of the pleader, visits his home, to hear there his complaints and the claims that he has to prefer.

DECENTRALIZATION CONSISTS IN DISSEMINATING

as much as possible, in all parts of the province, the administration of justice. Decentralization consists in the hearing of cases in the chef lieu of the district of the litigant, in the chef lieu of his county, in the parish in which he resides, even if that is possible. This is what should be understood by judicial decentralization. Now, it is not because I say in the bill that the sixteen judges of the Superior court shall reside in the city of Montreal, or of Quebec or of Sherbrooke, that I interfere with the principle of judicial decentralization. No, because I respect the principle of the bill of 1857, in virtue of which it is said that the judges must hear cases, hear witnesses, hear the pleadings and render judgment in the chef lieu of each district. I go further. Not only will we have a Superior court in each chef lieu of a district or county, but in large counties like Ottawa, Terrebonne, Nicolet and Rimouski we will have district courts which will have jurisdiction up to the sum of $400. And I ask those who are in favor of judicial decentralization to aid me in pronouncing in favor of the bill, if they are really in favor of the dissemination of the administration of justice in all parts of the province that have a right to it. There are interesting figures to be given on this question of judicial decentralization and of the residence of the judges. There are today thirty judges of the Superior court in the province of Quebec. The residence of ten of these judges is fixed at Montreal, as everybody knows, and the residence of four others is fixed at Quebec. There remain then sixteen judges for the eighteen other districts. Now the following districts have no resident judges, namely, Terrebonne, Joliette, Beauce, Montmagny, Rimouski, Saguenay and Richelieu, in all seven. There are then seven districts which have no resident judge at all, and there are only eleven districts that have resident judges, and again, of these eleven, my friend, Mr. Globensky, who has written such interesting letters on the question, says that five of these judges sit almost continuously in Montreal. There only remain, then, under the operation of the actual law, six judges who reside actually and effectively in their respective districts.

CASES IN POINT.

Thus, then, Mr. Speaker, in requiring these judges of the Superior court to reside at Quebec, at Montreal and at Sherbrooke, I do not destroy what is to-day existing and I do not lay a sacrilegious hand upon the principle of judicial decentralization, because if people are satisfied with the present system—only six judges residing effectively in their districts—and consequently if people do not complain of it, it is a sign that judicial decentralization does not essentially consist in the residence of the judges at the *chef lieu* of their districts.

Mr. Tellier—In Joliette and in Richelieu, as a matter of fact, the judge does not remain in the district, though the law obliges him to reside there.

Hon. Mr. Casgrain—I am glad to hear the remark of my learned friend from Joliette, but I will ask him if he is able to imagine a law which will force the judge to reside effectively in a district. Can he imagine a law with which the judge will comply? It is well known that in the case of certain judges—I do not speak of these existing to-day, I speak of those who have disappeared from the scene—an attempt was made to compel them to remain in their district. Well, what happened? They rented a house in the district in which they should reside and put their name on the door, but they lived for the greater part of the year either at Quebec or Montreal. The law, as it at present stands, obliges the judge to reside in his district; but ever since it has been in our statutes it has been a dead letter and incapable of being applied in practice. Those who preceded us have tried to apply this law, but they never succeeded, and I don't think that any one ever will succeed in doing so, because it is one of those laws which, although they may be written in the statutes, no one can ever expect to see observed.

A voice—"Then it will only amount to the same thing."

WILL GIVE RURAL LAWYERS A CHANCE.

Hon. Mr. Casgrain—It will not amount to the same thing with my law, and for this reason: That the judges of the Superior court in rural districts tell us to-day:—"We have not much work in our districts, while there is much work in Montreal, and, besides, we usually come from the great cities, from Montreal or from Quebec." As a matter of fact, it is true that for one reason or another the judges of the Superior court have been chosen from Montreal and Quebec. But I take this ground. Judges of the District court receiving a salary of $3,000, being named specially for rural districts, and being chosen generally from among the members of the Bar of rural districts, would have every interest in remaining in their districts, because their salaries would not be large enough to allow them to live at Quebec or Montreal, and in addition to this their tastes and their habits will cause them to live in the centre to which they have been appointed. There will no longer exist the pretext which to-day permits those who do not wish to remain in their districts to go to sit at Montreal or at Quebec. The pretext that the Superior courts are encumbered will vanish, because I pretend that after the adoption of this bill there will no longer be any encumbrance either at Quebec or at Montreal, neither before the Superior court nor before the Court of Appeals, and thus there will be no longer this pretext for country judges to go to Quebec or Montreal to sit. I know that to-day it is not only a pretext but a weighty reason and one cannot attack these judges because five or six of them sit at Montreal when they should reside in their district. They are called there by the Chief Justice and they are almost obliged to go, they must go for the despatch of business. This reason, then, will no longer exist. You will have in each district what you cannot have at present, that is to say a resident judge who will judge all cases brought before him

COMPLAINTS AGAINST THE PRESENT SYSTEM.

It is also said, Mr. Speaker, that there is no complaint against the present system, that no one complains of it and that no one asks a change in it. I have heard this reasoning used by men who were certainly capable of criticizing the bill, who by their legal knowledge could study it with advantage, and who by the suggestions they made might improve it; but I must say that I cannot understand how this assertion could be made. Since I

have been in the House, since 1886, I have always heard complaints against the administration of justice as at present carried on, especially in the district of Montreal. I have always heard it said that the present system, however well it might have served in 1857, did not now meet the wants of the people or of those having business before the courts. I have always heard this said. The law has been amended almost every session. Law upon law has been introduced into the statutes to improve the position complained of. To-day there are still complaints. There are newspapers in Montreal which are not favorable to the bill, and which said at the beginning of the session that there were complaints and serious ones against the administration of justice. Some said that it was the fault of the Code of Civil Procedure ; others that it was the fault of the judges. They may or may not have been right, but I say that there are excellent judges at Montreal and at Quebec. There are perhaps some who are not what they should be. Take, for example, the ten judges of Montreal. I say that they are a good average and what men in general are, and I say that if you take ten men, I don't care from where, you will not find a better average than that of the ten judges of Montreal. I believe that certain judges do not do all the work they might do. I do not know this personally, myself, I am only repeating what is usually said. Nevertheless, I profess the greatest respect for the judges of Montreal, and I believe that whatever anyone may say no ten other men would do more work than the ten judges of Montreal. The judges are men, and men are always men whatever may be the bills we may introduce and have adopted by this House.

MONTREAL'S INTEREST.

As to the Civil Procedure, the bill, as I have said, is already distributed. We will try to remedy, as far as possible, the abuses which actually exist. But with the best code of civil procedure in the world you could not cause the disappearance of the trouble that exists at Montreal, namely, the obstruction of the courts. There are not enough judges at Montreal, while in other parts of the province there are far too many. Now some one may say: " You have no right to legislate only for the city of Montreal. You must not take into consideration only the wants of the great metropolis of Canada, whatever its importance." To a certain point I differ from those who think thus. I do not mean to say that the legislation of this country should be subordinated to the interests of Montreal, but I do say that Montreal, from a financial standpoint, from a commercial standpoint, from the point of view of the population and from the point of view of the judicial business of the country has a right to all the solicitude of the Legislature. Now, sir, above all, from the point of view of the administration of justice, I say that we are obliged, if not to subordinate the administration of justice of all the province to that of the city of Montreal, at least to give to the city of Montreal the part which she deserves by the important position which she occupies in judicial annals. I will give the House some figures which will show to what a degree our solicitude for the city of Montreal in this important affair should actuate us.

WHERE LEGAL BUSINESS CENTRES.

Here are statistics for the past ten years made, not by persons under the control of the Government, but by officers who are absolutely free to do their duty, and who are obliged to do it. During the last ten years there were issued from the Superior court for the whole of the province of Quebec 52,331 writs. Thus in all the province of Quebec there were issued from the Superior court 52,331 writs. Now how many do you think out of this number were issued from the Superior court of Montreal? I was surprised and astonished at the number of writs issued from the Superior court of Montreal, and this inclines me more than ever to say that I should come to the aid of the city which suffers the most from the existing state of affairs. The number of writs issued from the Superior court of Montreal was 29,269. That is to say, that more than half the writs of all the province of Quebec were issued from the Superior court of Montreal. Now, let us take the judgments in contested cases. The Su-

perior court judgments in contested cases for the province of Quebec amount to 16,220. Now for the city of Montreal alone, in the district of Montreal, out of this total number of 16,220 judgments there are 7,708. That is to say, again, the half of the judgments rendered in the province of Quebec in contested cases. Now it is easily seen that if in certain districts the judges have hardly one, two or three months' work to do a year, the judges of Montreal district are so overcrowded with work that they cannot do it all and are obliged to call to their assistance the judges of the surrounding country districts and even to call the judges of country districts lower down in the river than Quebec, and the obstruction is such in the Court of Appeals at Montreal, that, as I said a moment ago, if you to-day inscribe a case at the Court of Appeals at Montreal you would be obliged to wait two years before being able to plead it. I say that this state of things cannot continue to exist. If you inscribe a case at Enquetes et Merites at Montreal to-day,—by this procedure which ought to give you judgment as quickly as possible—you are obliged, if our information is correct, to wait nine months before you can have your case heard.

IMPROVEMENT DEMANDED.

I ask you, can we tolerate such a system in this advanced age? Is this the despatch which litigation must expect in our province of Quebec? I ask myself if we are not much more behind the times than all the countries surrounding us, and the European countries too on this question? I say that these abuses and this obstruction which exist in Montreal cannot continue, and, as long as I am Attorney-General, in view of the importance of the city of Montreal, I will work with all my might to make our judicial system the equal of others, the equal of the system of the surrounding countries. Now, sir, I declare that for twenty years there have been complaints of the system which at present exists in this province, and not only in Montreal but all over the province I repeat that at least in a dozen districts there are judges who have not more than three months' work a year, while in the districts of Montreal, Quebec and Sherbrooke, the judges have more to do than they can accomplish. This is still another thing which must not continue to exist. This inequality in the distribution of work is an anomaly which whoever is solicitous for the best administration of justice in this country cannot permit to continue.

PAST REPRESENTATIONS IN POINT.

In 1880 Judge Pagnuelo, who was not then a judge, who, consequently, had not then the interest in the matter that might be attributed to him to-day, in common with the other judges, wrote in letters which have remained famous, that for ten years past the existing system had been complained of, and he proposed another system, he proposed a reform in the judicial adminis[illegible] of the country. Then in 1880, the [illegible] had already existed for ten years and he demanded a remedy. In 1880 the Bar of Montreal itself passed a resolution asking the two Governments, those of Ottawa and Quebec, to modify the present system, because it did not give satisfaction. A committee w[illegible] formed to meet the members of the local and Federal Governments, but fo[illegible] some reason or other, the Governments did not agree, and the proposition fell to the ground. In 1882 Mr. Larue, whom we all knew, wrote some letters in the same sense. In 1888 a commission consisting of Mr. Justice Jette and Messrs. Lorrain and Weir said what follows in their report to the Prime Minister and the Attorney-General, and I would draw the special attention of the honorable members to this report, which is very well drawn up. It will be seen at the 22nd page of this report that the commissioners insist on judicial reorganization, and I quote it in reply to those who said that no complaints had been made and that no reform had been demanded, and for the benefit of those who say that all is running smoothly and that no one is complaining of the existing system, I quote it in order to prevent my passing as an innovator who wishes to reform everything, for the pleasure of reforming, and in order to prove that I am sustained by authorities, who are authorities both for myself and for the House.

WHAT A COMMISSION FOUND.

This is what the report of Hon.

Judge Jette and Messrs. Lorrain and Weir says at page 22 :—

"It will be said, perhaps, that judicial organization has no connection with procedure. The contrary is the case. Even if the procedure were excellent; if the organization which should put it into execution is defective, the evil will still exist, or rather the remedy will be inefficacious

"Good administration," says Mr. Bertrand, councillor to the Court of Appeals, of Paris, "depends in a great measure upon the organganization of judicial bodies.

"With most nations this organization is different. With all there are complaints of imperfections and abuses. All demand reforms

"The problem to be solved is to find an organization which while respecting the rules of justice and equity can dispose of the greatest amount of business in the simplest, most expeditious, most efficient and least costly manner for all concerned

"This reorganization, then, is in the front rank of [illegible] ms to be introduced."

Here, then, is a report which emanates neither from the Government nor from myself, but from a body of distinguished men completely independent of the Government, and which says:— "This reorganization, then, is in the front rank of the reforms to be introduced." Already the late Mr. Justice T. J. J. Loranger, in the report presented in 1882 by the first commission appointed for the consolidatien of the Code of Procedure, insisted upon this capital point. Mr. Pagnuelo in his excellent work entitled : "Letter on Judicial Reform," published in 1880, had also pointed out this reorganization as necessary. Hon. Mr. Laflamme and Mr. Edmond Larue, in brochures published in 1882, equally mention it as the compeer with reform in the Code of Procedure. There is no doubt that of all the reforms which we may attempt these, wisely combined, would produce the most considerable results."

MR. LAFLAMME'S VIEWS.

I cannot better terminate these remarks than in supporting myself upon the authority of an eminent man who has recently been taken from us. I mean the Hon. Mr. Rodolphe Laflamme, who in 1882 wrote on the question of judicial reform. The opinion of Mr. Laflamme is one that everybody respects. As a lawyer he was at the head of his profession. I had lately charged him to represent in England the interests of the province of Quebec in a case of the highest importance which he pleaded with so much of ability, so much of science, so much of zeal, that Sir Horace Davy, one of the most distinguished members of the English Bar, paid me the compliment of thanking me for having sent Hon. Mr. Laflamme to give him the assistance of his legal talents. To-day the eminent lawyer, the frank friend, so loyal and large hearted, the former minister of justice and attorney-general of the Dominion, has disappeared, and I profit by the occasion of so important a question as that which I am now discussing, and which he had so well studied, to render to his talents, to his merits, and above all, to the act of courage and of faith which illuminated his death, a public and solemn testimony.

The honorable gentleman resumed his seat amid a storm of applause from both sides of the House.