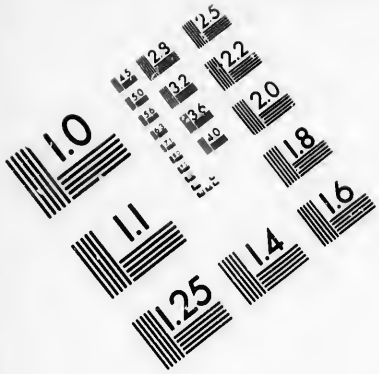

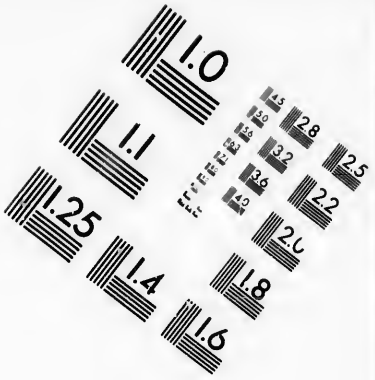

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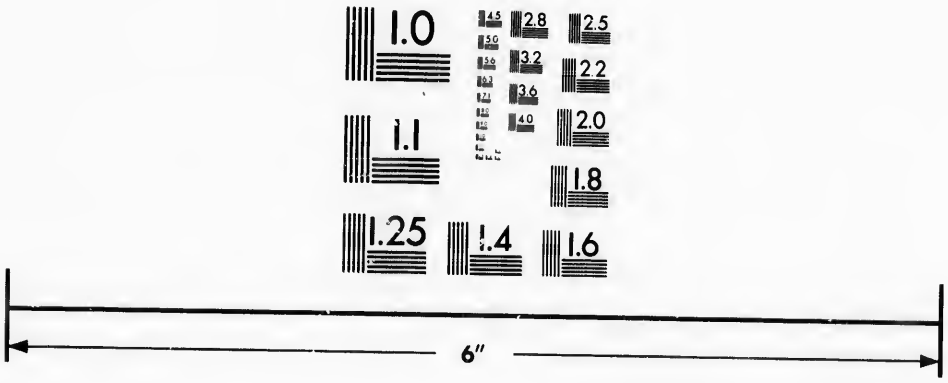

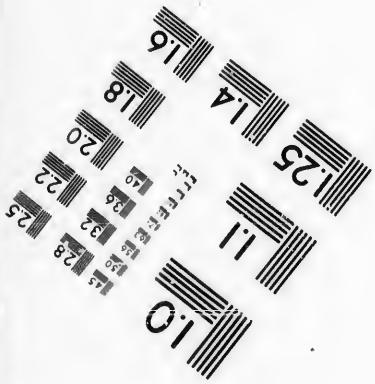

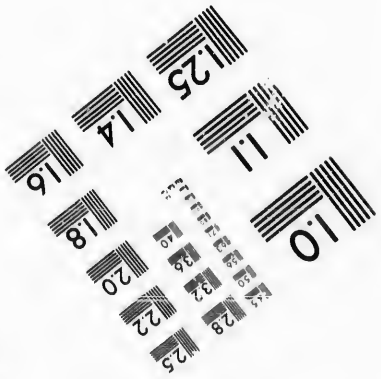

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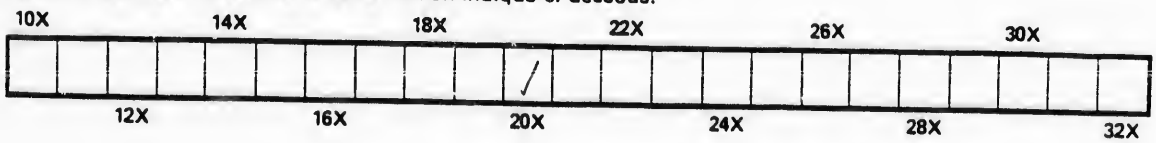

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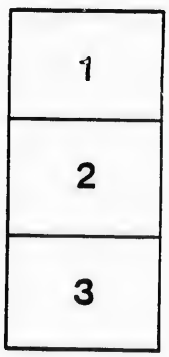

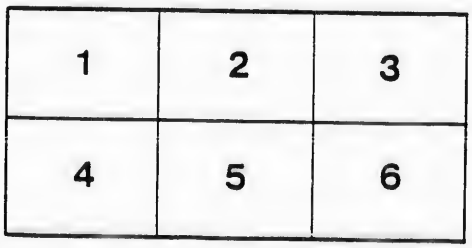

REPORT

ON THE STATE OF THE

ADMINISTRATION

OF

JUSTICE.

Montreal:
PRINTED BY LOUIS PERRAULT,
SAINT THÉRÈSE STREET.

1842.

CHAMBER OF THE ASSOCIATION OF THE BAR.

REPORT

ON THE STATE OF THE

ADMINISTRATION

OF

JUSTICE.

To the Members of the Association

OF THE

Bar of Montreal.

THE Committee whom you named on the 23d day of February last, have the honor to make the following report:—

At a meeting of the association held on that day, the following resolution, proposed by Mr. Lafontaine and seconded by Mr. M'Cord, was unanimously adopted, that is to say:

"That the state of the administration of justice "on the civil side of the Court of King's Bench for "the district of Montreal, and the number of cases "submitted for decision now in arrear, demand the "immediate consideration of the bar, that such sug- "gestions or representations may be made, as the "case may require."

In proceeding to discharge their duties, your committee have necessarily taken into consideration the general bearing of the foregoing resolution, as well as the objects contemplated by the association when it was proposed. But without exceeding the limits presented to them, your committee found the field too wide and the legitimate subjects of enquiry pressing upon their attention too numerous to be all embraced within the short vacation following the February term. Many important points being therefore, necessarily overlooked, the association will resume its labors in some future vacation.

We have discussed some grave questions connected with important reforms in the judiciary ; but we deemed it advisable to postpone their further consideration, that we might be enabled to meet the views of the association on points more especially concerning the present state of the administration of justice in civil matters. These questions being moreover connected with the whole judicial system of east Canada, we resolved to suspend our opinions until the members of the profession in the other districts could be consulted. With this view your committee would suggest the propriety of corresponding with them. In the opinion of your committee, this measure is calculated to unite the members of the noble profession to which we belong, and will enable us to sustain and vindicate its honor and its rights.

Having submitted these general considerations,

your committee will now record its opinions on the abuses which unhappily exist in the administration of justice in the Court of King's Bench.

This is not the first occasion on which the bar of Montreal, influenced by a sense of duty towards the public, has complained of the existence of evils which manifestly affect the whole community. About two years since, yielding to the rightful claims of our clients and of the public, we made a respectful representation to His Excellency the then governor general: a representation which, we regret to say, was attended by no results. We freely admit that the abuses for the relief of which it was made have increased: but the adoption of such a measure being all that it was competent to the bar to do for their repression, neither their existence or increase can be inputed to the profession.

Your committee are prepared to acknowledge that to a certain extent our judicial system was inadequate to the wants of this populous district. But having traced to their source the subjects of your reference, we have arrived at the conclusion that they spring at least as much from the actual incomplete, insufficient state of the Bench, and the consequent inefficient performance of the duties devolving on it. We are therefore compelled to bring this latter fact prominently under your notice.

In the first place, four judges are required by law for this district, as well as for that of Quebec. That district is less populous, yet it has four efficient

judges, while we have been long deprived of that advantage, although we need them more.

This flagrant violation of the law is productive of incalculable injury to the community, and has existed for a length of time. We are as yet however ignorant of the motives by which the executive government can have been induced to postpone the appointment of a judge in the place of the Honorable Michael O'Sullivan, who departed this life some three years back. Our district has suffered, and is daily suffering from this cause, and we should be grieved to find that this vacancy had been kept open under the advice of persons influenced by interested and selfish motives. Let the cause of this vacancy however be what it may, it amounts to a complete denial of justice to this district, and the authors of the measure have consequently incurred a great responsibility.

On the other hand, although there are actually three remaining judges, we cannot be said to have a corresponding number of efficient functionaries. Your committee would however forget alike their duty and a due regard for the feelings of justice and gratitude of the bar were they to omit, in the first place, to record their sense of the well known zeal of Mr. Justice Pyke in the discharge of his official functions. Accordingly, they willingly testify to the urbanity and benevolence with which that dignified magistrate has invariably acted towards the members of the profession. Having thus offered a tribute of regard for his good qualities, we are not the

less compelled to admit that from his advanced age, his infirmities and impaired health, he can no longer acquit himself of his official duties in the efficient manner which he is presumed to desire, and which is indispensable for the public good. His exertions are most laudable, yet his recent absence from chambers during nearly the whole vacation, and his presence in court during no more than six days of the last term, would seem to prove that the weak state of his health, aggravated by his daily labors, forbid his effecting the object which he has in view.

Zealous and animated by the best intentions, Mr. justice Pyke has undoubted claims to an honorable retired allowance. From the delicacy natural to him, he may shrink from soliciting that allowance, but your committee hold it to be the duty of the executive government not only spontaneously to grant it, but to respect in their fullest extent the claims on the consideration of the government, which, by his position and his services, he has acquired. When he thus retires from public life, Mr. Justice Pyke will carry with him the sincere assurance of the respect and esteem of the members of the bar.

The number of cases in arrear at various stages of litigation has been more or less considerable at different periods. Desirous of obtaining accurate data, your committee applied to the prothonotaries for information; but your committee have to regret, that from want of sufficient time, those officers have been unable to supply the documents essential to the at-

tainment of the desired end. Your committee feeling the necessity of reporting promptly, were consequently compelled to rest satisfied with a general reference to facts. Happily, however, the members of the bar have a personal knowledge of these facts, and they are for the most part matters of public notoriety

There have been complaints before this day of the state of the business in the Court of King's Bench of this district. At one time, the multitude of causes fixed for evidence in vacation was so prodigious, that the Legislature provided for the appointment of two *Commissaires Enquêteurs:* but on the termination of that office, there was a fresh accumulation of causes for enquêtes.

Subsequently the Court of Requests was created. This was considered insufficient, and it was deemed expedient to create a commissioner to hold the Inferior term of the Court of King's Bench, and to preside at the "enquêtes" of the Superior term, as well as at *assemblées de parents &c.*

From that period, the judges were exonerated from the performance of every duty, save that of hearing and of determining causes in the Superior term; and it was naturally expected that they would have decided upon those cases promptly, or at least within a reasonable delay. Unhappily, this just expectation has not been realized. We have to adduce as evidence of our disappointment, a multitude of causes fully heard, which have been submitted for

judgment, and have been kept under consideration by the judges not only for a period of a few months but for whole years. In point of fact, the members of the bar have been compelled by these circumstances, during entire terms, to abstain from arguing contested cases in order to afford the judges sufficient leisure to decide upon those previously submitted for judgment.

Yet notwithstanding the appointments thus made with a view to diminish the labors of the judges, the accumulation of causes in arrear in their hands has increased, and is now greater than it was before. These are not exaggerated statements. On the contrary, they are strictly true, and seeing as we have done the ruin in which these arrears have involved numbers of our clients, we deem it to be our bounden duty at length to disclose the truth.

Your committee would also direct your attention to the rules of practice. Obscure, vague and unconnected with each other, these rules are sometimes disregarded as a dead letter by a part of the bench, some times revived by another part, so as to arrest the course of proceedings, or to throw the whole into confusion. Endless discussions on mere points of form which could not otherwise arise necessarily ensue, and this your committee would observe is a great obstacle to the despatch of business.

The duties devolving respectively upon the judge and the advocate necessitate a daily intercourse, in relation to which the latter has no option, and

which your committee are desirous of placing upon a satisfactory footing. In dwelling upon this topic so far only as may be necessary to attain that end, your committee are not moved by considerations affecting themselves alone, but by the unquestionable influence which the nature of that intercourse must exercise over the despatch of public business and the character of the administration of justice.

In this latter point of view it cannot be denied that the temper and deportment of the judiciary are subjects of great public interest.

Your committee therefore cannot refrain from complaining of the habit of interrupting the members of the profession in which the judges indulge, a habit which your committee must characterize not only as injudicious and uncalled for, but as having dangerous tendencies. On this subject your committee submit the following extract from a recent publication of acknowledged merit.

" Si la profession d'avocat a ses honneurs, elle a " aussi ses désagrémens. Le plus sensible celui " contre lequel les avocats de tous les temps se sont " le plus recriés, et qui a parfois excité leur rencune " et leur animosité contre les magistrats, c'est d'être " interrompus mal à propos et *rabroués* à l'audience " sans l'avoir mérité.

" Ces interruptions sont d'autant plus facheuses " qu'elles amenent quelque fois entre l'avocat et le " juge, ou le ministère public des altercations au " milieu desquelles l'amour propre joue, de part et

" d'autre un si grand rôle qu'il est bien difficile que
" l'un ne manque de mesure en poussant le zèle
" trop loin ; et que l'autre n'abuse de son droit en
" devenant juge et vengeur dans sa propre cause.

" Elles ont encore un autre inconvénient.

" En matière civile, le client dont l'avocat a été
" interrompu croit toujours que si on l'avait entendu
" jusqu'au bout, il aurait gagné son procès ; et sou-
" vent il n'a pas tort de le penser ainsi.

" En matière criminelle, le public entier se sou-
" lève contre les interruptions qui tendent à favori-
" ser l'accusation, en affaiblissant sa défense, une
" condamnation surtout en matière politique passe
" toujours pour injuste quand la défense n'a pas été
" libre, et l'on se réfuse à croire à l'impartiabilité
" d'un juge qui n'a pas même eu la patience d'écou-
" ter."

But there are other subjects of complaint. Although in repelling aggression your committee might doubtless proceed to great lengths, they will not imitate what they consider reprehensible. They desire to convince, but they are unwilling, even in self defence, to mortify or offend. Accordingly, they will abstain from citing examples, neither will they specify facts or designate persons. But they must enter their protest against the tone of petulance and choler, heretofore assumed by a part of the judiciary; and as a matter of right, they claim for the bar, both in chambers and in the court entire immunity from offensive language and demeanor.

Having thus as they hope temperately as well as firmly enunciated their opinions, and asserted what they hold to be their rights, your committee would not be understood to mean to detract from the powers for preserving order justly entrusted to the judiciary, nor is it intended to countenance, much less to inculcate any course of conduct at variance with the respect due to the judicial office.

Owing in part to the above mentioned abuses, a great number of causes on the roll for hearing cannot be argued, and remain over from one term to the other. The last term furnished a proof of the existence of this evil. Indeed from the operation of the same causes, and from the fear that their cases would be kept so long under consideration as possibly to necessitate a rehearing, many advocates have foreborne from inscribing their cases for argument.

The want of uniformity in judicial decisions is also much and widely felt. Indeed they vary so much, so much uncertainty prevails upon this subject, that we may be said to be without any rule whatever. Your committee are of opinion, that were the judges held to record in every judgment the grounds of their decision, this evil might be corrected. We should thus have a series of precedents fixing our jurisprudence, an object conducive alike to the interests of the public, and of those who haved evoted themselves to the study of the law.

The constitution of the Court of Appeals is a grievance, as is also the uncertainty prevailing in the

organisation of the various civil courts, in consequence of late enactments The institution of Inferior District Courts is very recent; yet there are complaints not confined to the doubts and uncertainties necessarily arising from the appointment of one judge for several districts. There is however at least one evil relative to which no difference of opinion can exist, either among the public or among the members of the profession. It is the multitude of inferior local judges, adjudicating, unconnectedly and necessarily creating as many distinct systems of jurisprudence as there are individuals. Your committee freely grant the necessity of carrying justice into the rural districts at fixed periods. But they are of opinion that this end could have been more effectually attained, and the wants of the community more fully supplied by legislative modifications of the existing system, and without creating such a number of judges. Your committee would here remark, that in April 1840 the bar of this district published its views on this subject. Hence it is unnecessary to dwell more particularly thereon.

The tariff of fees has also engaged the attention of your committee. The mode of taxing costs which has hitherto obtained, has entailed much loss of time both on the judges and on the profession. Your committee are therefore opposed to the specification in the Bill of every item in detail, and they prefer a tariff upon the principle of a fixed remuneration adapted to each class of cases. The

present tariff, like the rules of practice with which it is connected, is susceptible of various interpretations, and the fatiguing as well as unpleasant disputes incident thereto, would thus be avoided. With this view, your committee have deemed it incumbent on them to prepare a new tariff, founded upon the principle of a fixed and determinate fee in all cases. It is in fact that which was presented to the judges for their approval in 1836, with such modifications as existing circumstances and recent enactments have rendered necessary. It accompanies the present report.

Your committee consider it incumbent on them to make a few observations on this subject. They have proceeded upon the principle that the Sheriff and the Prothonotaries should have a fixed salary. In the opinion of your committee, this salary should be less than that of a judge. The labors of these officers being purely mechanical, it is not fitting that they should be better paid than the judges, whose responsibility and whose duties are of a much more important nature. It has been long known that the amount of the several incomes of the Sheriff, of the Prothonotaries and even of the criers were excessive, and out of all proportion with the nature of their functions. The whole of the responsibility attending a case falls upon the advocate. The suitor has no relation with any other person, and the money needed for the prosecution of the suit is paid to the advocate. The suitor is thus led to believe that

these funds go into the pocket of his attorney, when in fact under the system now prevailing, the attorney is a mere collector for the prothonotaries, the sheriff, the criers and the Bailiffs. Then in the event of ultimate loss, these officers never suffer, and the whole burthen falls upon the attorney.

In the opinion of your committee, the salary of the criers should be fixed in the following proportions, namely : one hundred and twenty-five pounds for the first crier, and fifty pounds for each of the under criers. Your committee would also desire that these officers were not only acquainted with their duties, but strictly held to their performance, and that not towards the judges alone, but towards the members of the profession.

The salaries thus assigned to each of these subordinate officers are, in the opinion of your committee, reasonable and sufficient. Up to this day, considering the nature of the offices they have to perform, the incomes of the two criers have been enormous. This has been the subject of remonstrances, and it is a matter of astonishment that those who had the power of correcting this evil have failed to do so.

The office of Sheriff will be hereafter more particularly mentioned under a distinct head.

Some members of the profession suggested the propriety of instituting an enquiry into the costs incurred in the police office and in that of the [illegible] of the peace ; but while your committee admit the existence of sufficient cause for such enquiry, they

have been unable, from want of time, to adopt that measure. In their opinion it should hereafter engage the attention of the association.

INDEPENDENCE OF THE JUDGES.

The purity of the administration of justice is the safeguard of the rights, liberties and property of the subject. Profound legal information is not more necessary in a judge than that the public should repose confidence in his impartiality, in his rectitude and honor. In the absence of this confidence, his judgments have no moral force. They are consequently deficient in the most important requisite, the power of carrying conviction, and the judge is deprived of his most ennobling attribute from the instant that the suitor doubts whether the dispenser of justice "pronounces a decision or renders a service." To confer on the judiciary that moral power, seems to your committee to be one of the first objects of every good government; and your committee can perceive no other means of attaining this end than by rendering the judges independant at once of the court and of the people. A judge subject to the controul of the executive, and exposed to the loss of his commission if his decisions, however legal and conscientious, are unpalatable to the executive, is obnoxious to the suspicion of conferring benefits when he should be pronouncing decisions. As this suspicion is destructive of all

confidence in the purity of the motives of the judge, it is necessarily subversive of all respect for the administration of justice. To obviate consequences so deplorable, your committee suggest the propriety of making a change in the tenure of the judicial office, and of substituting the words "during good conduct," instead of "during pleasure," in their commissions. Your committee would conclude this part of their report, by expressing a hope that during the next session of the legislature, the independance of the judiciary will be placed upon a proper footing; not, however, without making adequate provision for their trial and punishment, in the event of misconduct.

In the opinion of your committee, however, no measure of this kind would be complete unless provision was also made for enabling a judge to claim and obtain a retiring allowance after fifteen years of service. Your committee further admit the justice of granting a due proportion of that allowance to any judge compelled by sickness or accident to resign his office before the expiration of fifteen years. Your committee, however, protest against the application of this principle to any other class of the public officers.

The attention of your committee has been called to another subject interesting alike to the profession and to the inhabitants of this colony. No doubt can be entertained of the right of the crown to nominate to office, but if this branch of the prerogative be ex-

ercised injudiciously, without regard to merit or to public opinion, it becomes a just subject of complaint. On such occasions, the bar is bound to assume such a position, to make such representations, and to take such steps as the circumstances of the case may require. It is indeed our duty to maintain our rights and those of the public, not only as members of the profession to which we belong, but as part and parcel of the people of Canada.

Whether we turn to the profession, or to any other species of industry, the prospects of the colonists are bounded by the colony. Their sphere of action is confined to the province; they can indulge in no hope of advancement unconnected with the affairs of their native country, and the form of colonial government under which they live. Your committee maintain that from reasons founded in justice and in public morality, in the appoi[illegible]ents to office, the colonists are of right entitled to a preference, and they regret that in departing from this rule in favor of recent immigrants necessarily unacquainted with our habits and wants, no other title can be discerned, no other claim set up than such as flow from mere court favor.

Your committee would further record their opinion that the superior offices connected with the administration of justice should be bestowed only on such members of the profession actually practising as have, in the course of their professional career, secured the esteem, respect and confidence of

their brethren and of the public. Such appointments are due, not to favor, but to professional merit alone: and the bar must suffer under the painful sense of the injustice done them, whenever such offices are conferred on persons who can only pretend to be members of the profession because they have a licence, and who have never had any relations with their practising brethren. The recent appointment of Mr. W. F. Coffin to the situation of joint Sheriff with Mr. Boston, is an example of this abuse. Mr. Coffin may not be without personal merit; but as a lawyer, he is, so to speak, professionally unknown. Your committee have consequently unanimously condemned his appointment as unjust, and subversive of the rights of the profession.

THE SHERIFF'S OFFICE.

For many reasons, this office necessarily attracted the attention of your committee. Connected as it at present is with our judicial system in civil matters, its existence is due to various provincial enactments, made, no doubt, to facilitate the administration of justice. It has, however, had a contrary result; and while it has been productive of delays, not only always unnecessary, but often injurious, it has had the effect of *imposing a tax* upon the public, and especially upon debtors, a class already but too unhappy. The burthen of the enormous charges, and in fact *impost* levied by the sheriff under the name of fees, is felt not only because its amount is

excessive, but because it bears no kind of proportion to the duties which that officer performs. This opinion is the result of the experience we have acquired during our respective professional careers but it is not new. It was recorded in the year 1836, in the second report of a committee of the House of Assembly of Lower Canada, named to inquire into the fees of the several officers connected with the administration of justice. The passage in question, is to the following effect:—

" Your committee also think themselves justified " in remarking, that the office of sheriff in this pro- " vince, as far as relates to civil matters, is a place " of new creation, which, instead of rendering the " administration of justice more easy and less ex- " pensive, has the contrary effect, by multiplying " the proceedings and the number of officers em- " ployed.

" Your committee are of opinion that these in- " conveniences would disappear (to the great ad- " vantage of the public) if the prothonotaries were " invested with the powers now assigned to the " sheriff with regard to civil matters."

Being entirely of that opinion, we do not hesitate to declare that the office of sheriff, in civil matters, should be abolished, and that the duties of that office should be performed by the prothonotaries. As a measure of economy, and as tending to remove a cause of unnecessary delay, such a change would be very beneficial.

The functions of the sheriff should, in the opinion of your committee, be confined to the criminal side of the court, and he should himself receive a fixed salary. Yet so long as the system at present in force exists, and so long as the sheriff continues to be an officer on the civil side of the court, your committee feel assured that one officer suffices for the discharge of all its duties. Indeed we have experienced greater difficulty in transacting business in that department, when there were two incumbents, than we have had since Mr. Boston filled the office alone. We have even known of well founded complaints originating as we believe in the mere fact of there being two incumbents, or in the division of labor between them for their own convenience. Your committee avail themselves of this occasion to acknowledge the urbanity and obliging deportment of Mr. Boston towards the members of the profession.

Having demonstrated the advantages flowing from the appointment of a single sheriff, your committee are confirmed in their view by the reasons assigned for the appointment of Mr. Coffin as joint sheriff. If it is true as has been said, that this appointment has originated in the enormous income now appertaining to that office, your committee would stigmatize as immoral, the countenance thus given to a serious and intolerable grievance; and they condemn it as being in fact the creation of a second grievance not less intolerable than the first.

Since one person is competent to fill the office of

sheriff, and since the revenues now attached to it are notoriously enormous, your committee are of opinion that the only remedy for this evil is to be found in a reduction of the fees heretofore charged by that officer, as well as of the commission of two and a half per cent allowed him on all sales of real property. They hold that this reduction should be made so as to ensure some proportion between the duties and the advantages of the office, and that at this crisis it is imperatively called for both by creditors and debtors.

The judges of the Court of King's Bench had the power to remedy this abuse by modifying the tariff, which they have failed to do. This is to be regretted more particularly as in the year 1836 they requested the profession to prepare for their approval a project of tariff which was accordingly submitted, and which, if sanctioned, would have produced the desired result. This fact has been recorded for the double purpose of protecting the bar from undeserved censure, and of placing the responsibility on those who, having had the power, and being bound to exercise it, neglected to do so.

It may be incumbent on the committee to anticipate an objection to the course which they recommend, founded on the probability of the sickness or death of the sheriff. Should either event take place, ample provision to obviate evil consequences might be made by the appointment of a deputy, with powers commensurate to the exigency of the case.

BANKRUPT COURT

Your committee, in the fulfilment of the duties imposed upon them, feel themselves imperatively called upon to advert to the Bankrupt law in force in this province, and to the constitution of the bankrupt court, in which so many and important interests are now at stake. Laying aside the many grave reflections which the uncertainty of the law itself forcibly suggests, and the indecision which prevails touching some of its most important enactments, your committee would advert to the total absence of any rules of practice concerning the course of procedure to be observed before that tribunal. Nothing can be more clear than that the total absence of rules to guide the practitioner or the suitor in that tribunal, is in its operation equal about to an absolute surrender of his most sacred and well established rights, as it is in the power of any commissioner to determine and adjudge all questions before him in such manner as the caprice or whim of the moment may dictate, leaving the litigant in matters appertaining to form, (well known by all practitioners to be in many respects paramount) wholly without remedy.

As this court is now constituted, it is therefore of the first importance, that certain rules of practice should be immediately established to guide the practitioner and suitor not only in the bankrupt court itself, but in the manner in which appeals from that court should be conducted.

Your committee more particularly regret the absence of this essential requisite, as the court of bankruptcy has now been in existence and in operation for a period of nearly two years, and those most interested in the proceedings before that tribunal, and the bar generally have been thus left in a state of the most absolute uncertainty than which your committee can conceive no greater evil. Your committee therefore consider that this subject calls for an immediate remedy, that the public may no longer suffer from the absence of properly settled and definite rules, which can alone render the bankrupt system efficient and beneficial. Another great want in the bankrupt court is to be found in the absence of a tariff of fees, although the law determines what shall be the fees of the commissioner and the persons employed by him in the necessary discharge of the duties of the officer, there is nothing to guide the practioner either in the court itself or in appeal to the court of King's Bench this your Committee consider a proper subject for the consideration of the bar with a view to a just and settled course of practice before that tribunal.

These suggestions your Committee would offer to the immediate consideration of the bar, as those which naturally present themselves—in viewing the Bankrupt Court as it is at present constituted. But your Committee would urge upon your attention the necessity of an immediate change in the constitution of this court itself.

The Court as at present constituted altogether fails to carry out the provisions of the law or the intention of the legislature in giving a system of Bankrupt law to this Province. Instead of a court of justice, where the rights and interests of so important a part of the community as that devoted to commercial pursuits is, are openly investigated there is substituted a private chamber divested altogether of the appearance even of a court of justice, where a Commissioner of Bankrupt with a power almost omnipotent disposes of the most vast and important interest which call for judicial investigation without any check whatsoever, and without those wholesome restraints, which even public investigations necessarily afford. This in the opinion of your Committee is an evil of the very greatest magnitude and calls for an immediate remedy. Although the bankrupt law has been in operation only a short time, it has existed long enough to demonstrate that the most important interests in this province will in future be there adjudged upon, and if the present system is allowed to continue, it will entail an evil upon this province which it will take years to remedy and which even legislature power may fail to remove. If it be allowed to grow and take root it will in spite of all obstacles become incorporated with our judicial system and mischeivous results arising therefrom may prove incalculable before a remedy adequate to that removal can be found. It is of infinily greater importance, and a task comparatively easy to alter or remodal the constitution

of the court in its present unsettled and plastic state than to wait until it has vigorously taken root and then be obliged to overturn the whole system in endeavouring to find a remedy.

In the opinion of your committee the Commission of Bankrupts ought to be a joint commission and ought to hold regular and public sessions, in a hall of Justice adequate to importance of the business before it. The powers conferred upon the Commissioners of Bankrupts are powers of a judicial nature. They hear and dispose of the causes brought before them and of the fortunes of individuals in a summary manner, and in many instances with uncontroled powers, and although, the law gives to the parties aggrieved an appeal to the Court of King's Bench, the forms necessary to be observed to obtain the benefit of an appeal, are so uncertain and undefined, as in the opinion of your committee, to render an appeal in many instances almost nugatory. A court held in the private chamber of a Commissioner of Bankrupts disposing of the fortunes of individuals might under other circumstances excite a smile; But your committee feel the subject to be too grave to be treated with levity, and would impress upon the Bar, the necessity of using the most energetic means to procure a change in the organization of a Court, destined at no distant day to exercise an almost exclusive jurisdiction over the affairs of an important branch of the community.

Your committee feel that the Court as at present constituted does not command public confidence, and must fail to do so, so long as it is allowed to exist with its present glaring defects.

Your committee would also express their opinion upon another defect of the Law involving very important consequences. By the present Law, the Bankrupt Commissioners are allowed to practice in all cases which do not relate to the matters in litigation before them. Although this to the framers of the Bankrupt Law may have been considered a sufficient protection to the public, in restricting the practice of the Commissioners to matters altogether distinct and apart from the business before the Bankrupt Court, your committee feel bound to dissent from this view and to declare that a more dangerous practice cannot be conceived. Without intending in the most remote manner to impugn the character of the gentlemen holding the situation of Bankrupt commissioners, your committee feel bound to declare that in their view, the Bankrupt Commissioners clothed as they are with judicial powers, ought not to practice in any Court whasoever. The most careless observation must point out the danger of allowing a Commissioner to adjudicate upon matters before his Court, upon which he may have been previously consulted by any cliant interested in the application of any Bankrupt before him. What security therefore exists for any individual whose whole fortune may be at stake, before a Bankrupt Commissioner whose

opinion may have been previously taken as a lawyer upon any questionable point, subsequently litigated before him as a Judge in Bankruptcy. That such may in reality happen it would be idle to doubt, and with the most anxious desire on the part of your committee to think favorably of human nature under such circumstances, our experience must necessarily lead us to the conclusion that such a permission is fraught with the most imminent danger and is too great a power to be safely confided to any person whatsoever. If the emoluments of the office are not sufficient to renumerate a professional gentleman for abandoning his practice, it would be more advantageous to the public interests to attach a fixed salary to the office suitable to the importance of the duties to be performed. This would elevate the character of the office, give dignity to the Court, and tend to restore public confidence.

Your committee feel bound to draw the attention of the Bar to the practice of paying the Bankrupt Commissioners by fees. This practice is another fruitful source of evil and destructive of the public interests by affording opportunities to spin out indifinitely the settlement of Bankrupt Estates, and thereby to multiply costs to an alarming extent. The chief object of a Bankrupt system is to afford facilities for the settlement of Bankrupt Estates and the relief of honest but unfortunate debtors. But a system which puts it in the power of any Commissioner to adjourn from time to time the investigation, to

lengthen the proceedings and to pay himself by means of fees, is calculated to produce results widely different from those sought to be obtained by the very introduction of the law itself.

Your Committee in thus adverting to the subject of the Bankrupt law feel bound to record their opinion that the defects of its administration are in a great degree attributable to the neglect of the judges of the Court of King's Bench on whose duty it was to have framed rules of practice for the guidance of those interested in proceedings before the commissioners: and in the observations which they have made, on this important topic, they desire to give the utmost credit to the commissioners in this City for upright honorable and urbane deportment to the profession and to the public.

MONTREAL COURT HOUSE.

Your committee before closing this report, think proper to record therein another fact which can admit of no doubt, namely that this Edifice no longer answers the purposes for which it was erected, not only does it require repairs as it now stands, but the number of appartments in the building is insufficient, and we conceive that the two wings should be extended to the Champ de Mars.

On motion of Mr. McKay seconded by F. G. Johnson, resolved,

That the Secretary be requested to have made in the English and French language a copy of the report on the administration of justice as adopted by the association of the bar, striking out of the report of the Committee what it has been determined shall be struck out, and inserting therein the amendments and additions agreed upon at the meetings of the association.

PROTEST.

Not having been afforded in our opinion an opportunity of voting on the entire report we are compelled to adopt the form of a protest and do hereby protest against the said report.

Signed, " W. BADGLEY. "
" A. P. HART. "
" W. C. MEREDITH. "
" E. MACGAURAN. "
" ROBT. EASTON. "

On motion of Mr. Johnson, seconded by Mr. Bleakley, resolved,

That three hundred copies of the report as adopted by the association be printed, under the signature of the President and Secretary one half of the said number in English and the other half in the French language.

On motion of Mr. Letourneux, seconded by Mr. Johnson, resolved,

That the thanks of the association be given to the Committee for their report on the administration of justice, which has been adopted.

(True Copy)

J. D. LACROIX,
PRESIDENT.

AGAPIT MORIN,
SECRETERY.