

Report

To the Honorable René Edmond Caron
Lieutenant-Governor of the Province of Quebec

May it please Your Excellency:

The undersigned Commissioner
Appointed by Commission addressed to him
under the Seal of Your Excellency, bearing
date the seventh day of December one thousand
eight hundred and seventy five, to enquire
into the Management and working of the
Offices of the Prothonotary, Clerk of the Circuit
Court, Sheriff, Clerk of the Peace, Clerk of the
Court and Police Magistrate for the District of
Montreal,

It is the honor to Report :-

Preliminary Remarks - 1. That Your Commissioner received his
Commission on the thirteenth day of December last
while holding his Court at Oshkosh.

2. That on the twentieth of the same
month, being then free from his judicial duties,
Your Commissioner proceeded to Montreal for
the purpose of making the necessary preparations
for discharging the duties imposed upon him by
the said Commission, and to that end called
upon the Prothonotaries and the heads of the other
Offices to be enquired into, explaining to them
the nature of his Commission and requesting them
to prepare certain statistical returns which he
considered necessary. He also conferred with W. H.

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Keen by L.C. Battonnier of the Bar in Montreal,
as to the best manner of conducting the investiga-
tion.

3. Having arranged these preliminary matters
it was decided to commence the enquete imme-
diately after the holidays, namely on the fourth
day of January last, of all which due notice
was given to the parties interested as also to the
Honorable the Provincial Secretary.

4. On the fourth day of January last Your
Commissioner, after taking the oath of office, opened
his Commission in the Court House in Montreal,
and commenced the examination of witnesses,
and continued the investigation day by day
from that date (with the exception of one week
in the beginning of February during which Your
Commissioner returned to Drummondville for the
purpose of holding a term of the Maynooths Court
there, until the fourth day of March last, and
finally left Montreal for Drummondville (after
visiting at the request of the Sheriff, the Gaol,
Lunatic Asylum at Longue Pointe and the Reformatory
for Boys, Mignonne Street) with the materials
necessary for making the present Report, on the
month of the same month.

5. That during that period Your Commissioner
took the depositions in writing of forty one witnesses
in connection with the office of the Prothonotary and
Clerk of the Circuit Court - Compulsory the principal
Officials and employees - the Battonnier and other
leading members of the Bar, Official Assignees, Notaries,

Bailiff

Bailiffs and others interested — two witnesses in connection with the Sheriff's Office — one witness in connection with the Office of Clerk of the Crown and Clerk of the Peace — and thirty one witnesses in connection with the Office of the Police Magistrate. — Making in all eighty five depositions, which are annexed to the present Report together with the Statistical Returns furnished by the heads of the several Offices.

6. In conducting this investigation it was the intention of Your Commissioner, in order to prevent confusion, to investigate so far as possible each Office mentioned in his Commission separately, but he found that it was impossible to adhere to this rule in respect to the Offices of Parsonage and Clerk of the Circuit Court, these two Offices being too intimately connected to admit of such a course.

7. Your Commissioner has to acknowledge the assistance he received from the Bar of Montreal in conducting the investigation, the Council of the Bar having named Messrs Kerr, Wirtle & Archambault to represent the Bar and to cross-examine witnesses when deemed necessary in the interests of the Bar.

8. With respect to the examination of the witnesses Your Commissioner did not consider it his duty to attempt to make the witnesses implicate themselves, and always afforded an opportunity to anyone implicated to cross-examine the witness before closing the deposition. He also thought it right to give every facility to anyone interested to submit evidence in rebuttal.

9. In reading the evidence it will have
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to be borne in mind, that with very few exceptions, nearly all the persons examined were unwilling witnesses - the officials being directly interested in placing matters in the best light, and the Members of the Bar being naturally unwilling to say or do anything that might have a tendency to injure those with whom they were in daily official intercourse - So strongly did this feeling show itself at the Commencement of the investigation that the representatives of the Bar actually declared that the Bar did not intend to complain against anyone in particular - Had the Bar maintained this attitude to the end the object of the Commission must necessarily have been in great measure defeated, but fortunately on reflection they saw that a question of public duty was involved and receded from this position, and your Commissioner has much pleasure in acknowledging the frank and fearless manner in which some of the Members of the Bar afterwards fulfilled what must to them have been a duty of a very disagreeable nature; he was nevertheless unable in all cases to obtain full proof of the existence of certain irregularities of which he had secured private information from certain Members of the Bar under the condition that they should not be called upon to testify.

10. It will also be inferred from the evidence (B, 4, 5) that great efforts have evidently been made by the parties directly interested since the month of September last when the probability of the issue of a Commission

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of inquiry was just raised abroad, to remedy existing abuses.

11. Some dissatisfaction was expressed on the part of the Bar that the powers conferred upon your Commissioner did not enable him to enquire into the manner in which the Police Magistrate performed his judicial functions - (10, 3, 5, 16)

(N.B. The figures between parentheses in this report have reference to the numbers appended to the several dispositions as contained in the list of businesses) -

Offices of the Prothonotary and Clerk of the Circuit Court.

Your Commissioner proposes first to describe the state in which he found these Offices, 2^o the causes of their inefficient state & 3^o to suggest the means by which, in his opinion these Offices might be restored to a state of efficiency -

- Present state of these Offices -

Unsatisfactory state
of Offices -

12. Your Commissioner regrets that he has to report that he found the condition of these Offices to be anything but satisfactory. This was but too apparent at the very threshold of the inquiry, for the Prothonotaries, who were the first examined, frankly admitted the fact. (1, 2, 3) excusing themselves however for reasons that will have to be considered hereafter. As the investigation progressed a state of affairs was disclosed that was anything but creditable to those in charge of these Offices.

No effective head -

13. In the first place it is but too apparent that there was no effective head to these offices - the only way by which they could be properly governed under the present system of three joint Prothonotaries was by the Prothonotaries either agreeing to act in concert by the machinery of a Board or else by making a distinct division of the powers and duties to be exercised by each of them. This does not appear to have been done, and the three gentlemen holding the office of Prothonotary, while never acting together as a Board, do not appear to have come to any distinct understanding amongst themselves as to the manner that the duties of the office should be divided between them, although there seemed to have been a sort of an understanding that Mr. Hobart should have charge of the non-contentious proceedings in the Superior Court, Mr. Papineau of the Circuit Court and Mr. Strong (apart from his duties of Accountants) of the Staff of the Prothonotary Office, but this general understanding did not prevent "the general office business of both the Superior and Circuit Court from being common to all three Prothonotaries" (1) and as it but too clearly appears that they were not on the best of terms with one another (43, 2) it is not surprising that there should exist a want of vigor and system in administering the affairs of these offices.

Discipline -

14. The discipline in the Office seems to be very lax, and the Prothonotaries appear to be unable to keep the employees under proper control. One prominent Member of the Bar describes the scenes

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he has witnessed as having occurred between some of the Prothonotaries and the Clerks, as only to be likened to a 'Carter's Law' (17), This state of affairs is corroborated by other witnesses (18), and is fully admitted by Mr. Hubert (2), who however endeavours to cast the whole responsibility for the same upon Mr. Honey - Mr. Honey himself states (3) that 'the Employees actually refuse to remain after 5 P.M. no matter what the consequences may be' and also that some of them have for years refused to sign the Time Book although orders to that effect had been given by the three Prothonotaries.

want of supervision -

15. Then again it is evident that the Prothonotaries have not in the past exercised a proper supervision over their Clerks - The employed in the Circuit Court states 'that the Prothonotaries rarely visited his office - not once a month' (12), and that a similar lack of supervision prevailed in the Prothonotary's Office is but too certain, for not only has the fact been distinctly stated by one of the Deputy Prothonotaries of old standing (8) but it is scarcely credible that the Prothonotaries would have allowed the work of the office, in many instances, to get so much in arrears, without making some effort to remedy it, or at all events bringing the matter under the notice of the proper authorities, had they been aware of the existence of such arrears.

want of system -

16. The system heretofore followed in these offices, even on paper, is anything but perfect, there being no proper subdivision of the Clerks

under

recognized heads and no regular gradation of authority - Further are the Courts kept distinct one from the other not even the Superior Court from the Circuit Court. - It appears by the return furnished by Mr Honey and annexed to his deposition (3) that there are two Clerks in the Circuit Court, Messrs. Dagen and Bonacina, who are also Deputy Prothonotaries of the Superior Court and attend the sittings of this latter Court daily. Then there are two Deputy-Prothonotaries, one Mr. Terrence whose duties are exclusively in connection with the Superior Court and the other Mr. Pyke Sr, who are also named Deputy Clerks of the Circuit Court, neither of whom seem to attend its sittings or to ~~the~~ interfere in the office of the Circuit Court, except that Mr Pyke extends some of the judgments in this Court. - Mr. Dagen too is also named Deputy Clerk of the Circuit Court, but, strange to say, although belonging to the Circuit Court so far as his office duties are concerned, has no control or authority over the Clerks in the Circuit Court Office, but this authority is conferred upon Mr Bonacina as Chief Clerk, although subordinate in rank to Mr Dagen (7) and as Mr Bonacina is absent for the greater part of the day during half the month attending the Inquire sittings of the Superior Court, there is practically no one in charge of the office during his absence - In the Prothonotary's Office too there is no attempt made to keep the several divisions of the Superior Court separate and distinct - Mr Pyke who has charge of the Insolvent Court has likewise many other duties

to perform in connection with both the Superior and Circuit Courts. (2) In fact he appears to have far more to do than should be required of any one man - Then again Mr. Collard has been named Deputy Postmaster in charge of the Election Court, but when not occupied with that Court is supposed to be under the control of Mr. Kemick, though of like rank in the office (4)

'Dinner hour' -

17. Practically however matters are far worse, for in case of any temporary pressure the so-called system is apparently set aside and the Clerks may be called upon to do all kinds of work - So long as the 'Dinner Hour' as it was styled was in existence, that is permission to the Clerks to absent themselves from the office for a couple of hours ~~scarcely~~ during the middle of the day, covering a period of about three hours, it was necessarily impossible to carry out any system and Mr. Papineau characterized the confusion arising from that institution as something frightful and stated that in his opinion "most of the errors & inefficiency that might be complained of arose from this shifting of all hands from one work to another at midday, setting aside all possibility of a proper division or fixity of labor" (1) It is however only fair to add that since the commencement of the present investigation the Postmaster (much to the satisfaction of the Bar) have taken upon themselves to abolish the 'dinner hour', substituting in its place half an hour for lunch in the building (2) The time alone

saved

saved by this latter arrangement would be equivalent to the services of three or four extra Clerks, without taking into consideration the gain accruing from the avoidance of the confusion already referred to.

General Staff -

18. The staff of these offices taken as a whole may be considered to average that of other Public Offices, both as to Capacity and efficiency if properly superintended and disciplined; and when it is taken into consideration how greatly the business of these offices has increased from one cause and another during the last few years, without any equivalent increase of the staff, and also the absence of any proper system, it must be admitted that they are as a whole deserving of some credit for the amount of work they have got through, particularly during the last year. This is principally to be attributed to the zeal and energy of a few of the principal employees (among whom Mr. Kemble merits particular mention), they making up for the want of system and weakness of the staff by doing more than their share of the work; but this would not have sufficed had not the Bar in self defence come to the rescue by agreeing to fill up their own writs in the Circuit Court - By this means they were enabled to avoid the delay which otherwise must necessarily have ensued were they obliged to wait their turn. The Bar seem to be well satisfied with this system, although perhaps not strictly regular, and Mr. Gonzalez Donke even suggests that the same principle should be

extended

extended to all the Clerks (35).

19. There are three or four Clerks ~~known~~ on the Staff, however, who are addicted to intemperance and some of them to such a degree as to absent themselves from the Office for a fortnight or a time (25, 4). In any well disciplined Office these Clerks would probably have been dismissed long ago, but Your Commissioner does not consider it advisable to report their names, as by so doing the discipline of the Office would in the end probably suffer by such a course, as the impression would naturally get abroad that it required a Special Commission in order to have a Clerk dismissed, and such an impression could not fail to have a tendency to weaken the authority of the Postmaster-General. In the opinion of Your Commissioner Cases of this kind should be considered as matters of internal discipline. Complaint is also made that some of the Employees are far from punctual in their attendance or attentive to their duties (2, 4), but this also is a matter that should not require a Special Commission in order to have it remedied.

Case of P. J. Beaudry -

20. There is however one case which a sense of imperative duty compels Your Commissioner however reluctantly to bring under the notice of Your Excellency - he regrets this necessity the more as the Employee in question Pierre J. Beaudry, is with one exception, the oldest Clerk in the Office having served for a period of 46 years, during which time he was considered very efficient in the

performance of his duties, and is now practically
superannuated, as for some months past he has from
the infirmities of age been unable to attend the
office and probably will never again be in a
position to resume his duties - The grave irregu-
larity, to use the mildest term, ~~with~~ which he
is accused and which is but too clearly proved,
is one, which if allowed to pass unnoticed, could
not fail to have a most prejudicial effect upon
the morale of the whole office - It appears that the
Clerk in question is charged with the duty, among
others, of attending to the applications of such
parties as may be desirous of being received
as Bailiffs - and that taking advantage of his
official position he has for some years past been
in the habit of extorting money from such persons
over and above the fees and tax allowed by law
(47, 48, 49, 50) - As a general rule it is always extremely
difficult to obtain evidence of such unclandestine pro-
ceedings, and therefore when as in the present instance
a case is clearly proved, it becomes the more neces-
sary that it should not be passed over in silence,
particularly as from the evidence adduced before this
Commission^{ers} that the practice of paying Clerks in the
Purkhonday Office has already made some head-
way (50, 17)

Charge against Honey -

21. A charge was also brought against Mr. Honey
of appropriating a small sum of money belonging
to the Government, but your Commissioner does not
consider it necessary to enter into the particulars
as upon investigation he found that Mr. Honey

was

was able to give a perfectly satisfactory explanation of his action in that respect (44, 43, 17). The circumstances connected with this charge are however of interest as showing the want of harmony that existed between the Posthumans themselves and as explaining satisfactorily the reason why there could be no such thing as discipline in an office conducted on such principles - The charge against Mr. Honey was first made in a scurrilous anonymous letter published in the Star Newspaper, and it appeared afterwards in evidence that the writer was one of the Clerks in the office, and, if he is to be believed, that he published the same not only with the permission but with the express approbation of one of Mr. Honey's colleagues and that the other Posthumans did not, to say the least, disapprove of the action of the Clerk in question (43). A course more subversive of all proper discipline in a public office could not well be imagined -

Effect of want of system -

22. On looking more closely into the working of these offices, the effect of the state of affairs already described is but too apparent. In the Circuit Court the Register of Judgments is between two and three years in arrears (11). Not five per cent of the Judgments are entered in time and the writs of Execution have to be made out from the record itself (12). In the Tulsa office the register for the Probate of Wills is also between two and three years in arrears (13). In the Posthumans office the Placements are anything but regularly posted up, more particularly in the Insolvent Court division

Mr. Pyke who has charge of this division admitted that everything was very much in a mess, alleging as a cause that he had more than one man could attend to, (21) - One of the witnesses (30) testified that he had known cases to go to final judgment without their being ever entered in the Plaintiff - Other members of the Bar and Assignees complain of this state of affairs (16, 18, 32) and there seemed to be no one whose business it was to see that the official Assignees fulfilled their duty with respect to filing duplicate copies of proceedings before them and statement of accounts as required by law. (34) There are not even any Special Runners or Reporters for Insolvency Cases, but these cases were mixed up with ordinary Superior Court cases (21).

23. In Cases of Embezzlement, involving very large sums of money, matters are in the same state and the Reports of the Commissioners are homologated are never even entered in any register, so that the loss of a record, which has occurred in two or three instances, could not fail to cause great loss and injury to the parties interested (23)

24. Papers too are often lost or misplaced from the fact of there being no Clerk specially appointed to receive them when filed, they sometimes being merely thrown upon the counter by the person bringing them to the Court House (4) -

25. No better illustration of the loose way in which matters were conducted in the Prothonotary's Office could be afforded, than by the series

Montreal Centre Election Case -

Series of mishaps that happened in the now somewhat famous Montreal Centre Election Case - Every imaginable irregularity seems to have occurred in connection with this case. In the first place the day of the day fixed for the preliminary law hearing was never made in the proper Register - The order fixing the day and place of trial in the first instance was never extended as ordered by the Judge, or if extended the paper was lost, and in consequence the trial could not proceed to the great loss and inconvenience of the Petitioner who had summoned a great number of witnesses. On fresh application a new day was fixed for the trial and this time the order was extended and signed by the Judge himself and given to Mr Honey who thinks he gave it with the Petition & order thereon written to Mr Collard the Clerk in charge of Election matters - This Mr. Collard denies, but one thing is certain that on the second day fixed for the trial the extended order was again missing from the record, and has never since been found. It appears also in evidence that Mr Collard actually omitted to make any entry in the Plaintiff of the filing of such Petition and Order, - this being rectified about three weeks afterwards on the demand of the Petitioner's Attorney. It was also discovered that there was no Certificate of the posting of the notices of the trial in the record, and subsequently, on the Attorney for the Petitioner desiring to take

proceedings

proceedings against a very important witness who had made default it was discovered that the original subpoena was also missing - Now when it is considered that the Attorney for the Petitioner was closely watching the record of proceedings and constantly reminding the officials of their duties, it does seem inexplicable how these irregularities should have occurred, particularly in a case of such importance and which was exciting great public interest at the time. It is to be regretted that Mr. Pyke should have declined to cross examine ^{himself} when sent for expressly for that purpose and did not file a counter statement under oath. He merely contented himself with writing a letter to your Commissioner (annexed to Mr. Duncall's deposition) after the closing of the investigation - Mr. Duncall is evidently strongly of opinion that Mr. Pyke was acting in bad faith, but your Commissioner would be loath to entertain such an opinion except upon the clearest evidence. The three officials and Clerks who from their position in the office were directly responsible for this discreditable state of things were Messrs. Henry, Pyke and Cillard, but it is impossible to apportion the blame attaching to each by reason of the contradictory nature of the evidence (46, 3, 5, 10)

Time Book -

26. The system of keeping a Time Book recommended by the Civil Service Commission of 1889 has been in force for sometime, but as no one was placed in charge of it, has been practically

of little value, as it was scarcely to be expected that the Clerks would voluntarily condemn themselves - Indeed some of them have persistently refused to sign the book since the very Commencement. (3)

Record Department -

27. The Record Department ought be better kept - Papers and Records are constantly being lost either for a time or altogether, and the rules of practice in that behalf (XXVII & XXVIII L.C.) are very far from being strictly adhered to - The vaults too both of the Superior and Circuit Courts are more than full and the records are obliged to be placed upon the floor either in heaps or packing cases, and in the Tatell Department a year or two will suffice to completely fill the present vacant Room (2, 4, 5, 14, 23) Complaint too is made that it is impossible to keep members of the Bar and others from having access to the vaults.

Cancelling Stamps -

28. The system adopted for Cancelling Stamps in the Superior and Circuit Courts, although very elaborate and entailing a cost of \$1000 for the salaries of the two Clerks performing this duty, is still very far from perfect, notwithstanding the strong opinion expressed by Mr. Papineau to the Comptroller (1, 15, 4) - In support of this view it is only necessary to state that it appears by the evidence that in many cases money is still paid to the Clerks in lieu of stamps, (32) one witness also stating that he had seen stamps which had been affixed one or two years previously still uncancelled

uncancelled, and the same witness states that he does not believe that the Bar generally consider themselves bound to attend to the Cancellation of Stamps (30)

Book-keeping -

29. The system of Book-keeping established by Mr Army is, as already reported by the Civil Service Commission of 1889, very cumbersome, although the check may be perfect, and might be simplified with advantage, as the Bar complain greatly of the delay occasioned by the present system (18)

Want of accommodation -

30. The want of accommodation already referred to in connection with the Vaults applies equally to the offices and Court Rooms. With the exception of the Prothonotary's Office (which however is very badly arranged) all the offices are cramped for room. In the Judge's Office there is not sufficient standing room for two Family Councils at the same time, and they are compelled to occupy the passages. (5, 26, 28) The Clerk of the Insolvent Court is obliged to take up his quarters in the Prothonotary's Office for want of a room in connection with that Court, notwithstanding that such room was ordered to be provided by the Rules of practice made by the Judges of the Superior Court in matters of Insolvency (34) The insufficiency of the rooms accorded for the different divisions of the Superior Court now sitting daily, is greatly complained of both by the Bench and the Bar, and in order in some slight degree to remedy this inconvenience the Sheriff has lately had to turn the Stamp Distributors out of their office

Office, and put them at the end of the Corridor upstairs to the great inconvenience of those requiring Stamps.

Salaries -

31. The question of Salaries was brought prominently to the notice of your Commissioner, and a general increase to the Salaries of the various employees (including the Crier of the various Combs) is asked for by the Postholders, (3), (as also the creation of a Superannuation Fund (1)) based principally on the alleged increase in the cost of living during the last few years. That the cost of living is now considerably higher than it was a few years ago appears to be generally admitted and the annual bonus granted by the Dominion and Local Governments to its Civil Service employees expressly on this ground, would seem to place the fact beyond a doubt. At the same time your Commissioner feels that the question of Salaries is one that ought to be considered by the Government in relation to the whole Civil Service, and not with respect to any particular Department, and that the scale of Salaries should be based upon some well established principles after a due classification of the employees in the several Departments of the Civil Service - On comparing the average scale of Salaries in force in these Offices with those in other public Departments, such as the Civil Service Department, in Quebec, the Post Office Department in Montreal and the Salaries awarded by the Montreal Corporation (with a few exceptions) to their employees, your Commissioner does not find that the employees

in these Offices as a whole (although there may be individual cases of hardship) have any greater reason to complain than those in the departments just named. Indeed some of the Employees in the Postmaster's Office have already higher salaries than others who are now serving the public in this Province in positions involving far greater responsibility and requiring the possession of far higher attainments and the maintenance of a higher social position on the part of the occupants. But even supposing that the justice of the claim for an increase was admitted, it could scarcely with propriety be granted while these Offices are in their present inefficient state - When these Offices shall have been reorganized on some well recognized principle including a proper classification of the Employees, there would be the time for the Postmaster to submit to the Government a well digested scheme of the salaries to be attached to the several positions occupied by the respective Employees.

Criers -

32. As for the Criers they are not now under the control of the Postmaster and do not strictly belong to their department, they being merely the servants of the Judges, and any request for an increase of salary on their part should properly come directly from the Judges themselves, who alone are competent to decide whether such increase would be justified or not. Some seem to think that they are already too independent and that the suggestion of the Civil Service Commissioners in the 23rd section of

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their report namely that these employees should be placed under the control of the Postmen, should be carried out.

Salary of Postmen -

33. Although your Commissioner does not consider it advisable to recommend at the present time the general increase of salaries asked for, he begs however respectfully to call the attention of your Excellency to one anomaly in connection therewith, namely that the salaries attached to the office of Postman in Quebec is \$3000 a year each, while in Montreal where they necessarily have twice the responsibility and labor, and where the net revenue from these offices is so much larger, it is only \$2400 each. In suggesting that the salary attached to this latter office should at least be made equal to that in Quebec your Commissioner may say that he is merely reflecting the opinions expressed by the Judges of the Superior Court in Montreal -

Case of G. H. Kerrick -

34. There is also the case of George H. Kerrick, an employee of 39 years service and a Deputy Postman who as such has charge of the office work in the Postmen's office and has under him a more numerous staff than any other official, and yet he only receives \$1300 a year, while Messrs. Pyle and Ferris two other Deputy Postmen receive \$1000 each. It must be admitted that the position held by Mr. Kerrick is certainly as important to the well-being of the office, if not more so, than that of the other Deputy Postmen mentioned, and involves of anything a greater amount of responsibility, and

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every witness that has had occasion to refer to the manner in which he attends to his duties (including the Pastors and leading members of the Bar) has accorded to him the highest praise for his zeal and energy. It therefore seems only just and right that he should at all events be placed upon an equal footing with the two other Deputy Pastors.

Case of Mr. Marchand -

35. Mr. Marchand too seems to be inadequately remunerated for the important duties he fulfils in preparing the reports of distribution, and whose qualification for this duty and its important nature is testified to by one who is perhaps better qualified to form an opinion on this subject than most of his superiors at the Bar (17). It is true that he receives a larger salary in addition as Clerk of the Court of Appeals, but it is questionable whether this fact ought to be taken into consideration in deciding the amount of his salary as an employee in the Pastors' Office.

Court House Tax &
interest on deposits -

36. In concluding this portion of his report your Commissioner would also direct attention (although perhaps not strictly within the limits of his Commission) to the dissatisfaction expressed by the Bâtonnier (18) and other members of the Bar at the attention of the Court House Tax, after the object as they allege, for which it was imposed has ceased. And also at the refusal of the Government to allow interest on judicial deposits -

This system of judicial deposits was introduced on the suggestion of the Civil Service Commissioners

Commissioners

measures already agreed to, but more recommendation as to interest appears to have been overlooked - On page 2 of this second report the following suggestions in reference to this subject will be found.

"Thirdly - On presentation of the Certificate" (i.e. Certificate in favor of Auditor to be issued by Sheriff and Postmaster) "the Treasurer to grant a cheque for the amount due, together with interest for the period the money has been deposited at the rate of three per centum per annum" -

Schedules -

37. To Mr. Honey's disposition will be found annexed certain statistical returns in connection with these offices and to which special reference is directed - These returns comprise -

A. Statement of the number of deputies, clerks and permanent employees - in the office of the Superior Court, with their respective periods of service, salaries and duties for the year 1875.

B. ~~Statement~~ Similar statement for the Circuit Court.

C. Statement of the number of writs issued and returned in the Superior and Circuit Courts Provincial, - also the amount of receipts and expenses of these offices from 1866 to 1875 inclusive.

D. Statement of the money deposited in the hands of the Postmaster and of the amount paid out by them to litigants from 16 Jan'y 1866 to 31 Dec'r 1875 -

E. Statement of the amount of Court House duties received by Postmaster from 1 Jan'y 1866 to 31st

Dec'r

Dec: 1875.

F - Tabular Showing Terms of the Court and
domains of Superior Court for March 1876.

By Tables A. & B it appears that there are
at present in both Offices thirty three permanent
employees apart from the Prothonotaries - There are
however three supernumeraries employed in addition (4)
but on the other hand Peter J. Beaudry who appears
is practically superannuated.

It will also be remarked from Table C. the
wonderful increase of business that has taken place
within the last few years and consequent increase
of revenue. The surplus of receipts over expenditure
in these Offices for the year 1875 amounted to the
large sum of \$20537, apart from a nearly
like sum of \$20000 received for Court House duties
during that year.

Statement D shows that an amount of all
but Two Million dollars has been deposited in the
hands of the Prothonotaries during the last ten
years or an average of \$200,000 a year, and
showing at the same time the evident necessity of
having a regular Accountant appointed to take
charge of the financial transactions of these Offices.

By statement E it appears that the
Superior and Circuit Courts alone \$125000 has been
collected during the last ten years for Court House
duties - When to this sum the amounts collected
by the Registrar and the other Officers in the
Court House are added, it would seem that the
impression of the Bar, namely that the object
for

for which this tax had been imposed, was probably well founded. -

Causes of Inefficiency -

want of effective head -

38. The first and great cause of the present inefficient state of these offices is doubtless the want of an effective head with certain well defined duties and powers (16) To this may be attributed either directly or indirectly all the many irregularities which this investigation has shown to exist. This is in effect admitted by the Postmen themselves (1, 2) and consequently they must be held to be not only legally but to a great extent morally responsible for the present state of affairs. It is true that they claim to be relieved from all responsibility inasmuch as the Government appoints all their employees without reference to them and does not even accord them the power of dismissal for misconduct (1, 2, 16, 33); but this claim would have had far greater weight if they could have shown that they had fully exercised such powers as they admit they possess. This unfortunately they have not been in a position to do, but on the contrary they have to admit that ~~they~~ never inaugurated any thorough system by which either their own several duties or those of their subordinates were ever strictly defined (1) and they did not even report the many cases of insubordination that were from time to time occurring in the office (2, 3, 33)

but

but so far from this having been done it but too clearly appears that there was a want of harmony and proper understanding between the three Prothonotaries even on the subject of their apportioned duties (1, 2, 48) and they seem to be lacking in that force of character and decision of purpose which is so essential in order to enforce discipline on the part of those serving under them (2).

Manner of appointing
Prothonotaries —

39. At the same time it must be admitted that the manner of appointing both the Prothonotaries and their Employees by the Government has a strong tendency to weaken the power of the Prothonotaries and to subvert the discipline of the Office. For many years past it has been the custom of the Government to appoint three persons conjointly to the one and the same office of Prothonotary — without indicating by their Commissions (or even by Order in Council) what were to be the specific duties of each. By this means each Conjoint Prothonotary became legally responsible for all the official acts of his Colleagues, and being so responsible it can scarcely be wondered at that each should desire to carry out his own views with respect to the management of the Office — Such a course could not fail to produce a want of harmony in the governing body with its consequent disastrous effects upon the efficiency of the Office. It is true that of the three Prothonotaries so appointed should happen to have perfect confidence in one another they might consent to divide their powers and duties among themselves, but there

is nothing in the system followed to require them to do so.

manner of appointing
 Clerks.

40. Then again the appointment of the subordinate employees by the Government, or in other words under our parliamentary system, by certain Members of Parliament, has a strong tendency to make such employees feel that they are altogether independent of the control of the Postholders, as they would naturally consider that the same influence that placed them in office could maintain them there if necessary, particularly when as it appears the Postholders themselves are in some doubt as to the extent of their powers in matters of discipline - Moreover under the present system (no preliminary examination being required) it might happen, where strong influences could be brought to bear, that inefficient persons might occasionally get appointed - Mr. Sturt strongly charges the late Government with having appointed several such persons, but your Commissioner does not think it necessary to dwell upon this, inasmuch as Mr. Sturt did not consider it necessary to report their names to the Government and moreover his views on this point are not contradicted by Mr. Honey and are certainly not admitted by the late Premier (p. 3, 33)

Supernumeraries -

41. Another matter of complaint on the part of the Postholding against the Government is the difficulty and delay in getting Supernumeraries appointed - (p. 2, 4) And it would seem that there is some ground for this - Every one knows that Governments, however willing cannot, in such matters, move

with

the same celerity as private individuals - but a delay of a week or two (as to members of the spoken of by some of the business) might have a very prejudicial effect on the general work of the office, for in many instances, such as when a Register gets in arrears, it becomes almost an impossibility to make up these arrears where the fresh work accumulates so rapidly as to take up the time of one Clerk to enter it up. The only way in such a case would be to open a new Register, which in many cases would be inconvenient. Moreover when the whole staff is fully employed the absence of one or two Clerks for any length of time must necessarily throw the work of the rest into disorder and interfere with the carrying out of any well regulated system.

Want of proper system -

42. The want of a proper system has already been referred to as one of the causes of the inefficiency of these offices, and when the sudden increase of business during the last year, is taken into consideration, it is not perhaps to be wondered at that the so called system that has been in force for so many years past, should not have been found equal to the strain upon it.

Inadequacy of staff -

43. There is some reason to believe too that the present staff is not sufficiently numerous to perform in an efficient manner all that they are called upon to do. Not only do the Postholders themselves declare that they have need of extra assistance (2, 3) but of our former statements A & B annexed to Mr Stoney's deposition (3) with the

the

the statement of the strength of the staff of these offices (leaving out the Postmasters and Clerks) published in the second report of the Civil Service Commission, it will be found that in 1869 there were 26 employees in both offices and that at the present time there are 33. On referring however to Table C, it appears that the number of writs issued in both Courts in 1869 was 10,409 whereas in 1875 they amounted to 17,455. If the staff in these offices had been augmented in a like ratio as the increase of work (as indicated by the writs issued) the staff at the present time would have reached the figure of 43 employees for both Courts instead of 33 as already stated. It is true that there are now three supernumeraries employed since last December, in addition to the permanent staff mentioned in Tables A & B but Messrs J. Brandy, who is practically superannuated from old age, would have to be deducted, and the 26 employees referred to by the Civil Service Commission includes also one extra Clerk, so that the present calculation is correct enough for all practical purposes even when the present supernumeraries are included.

Our Commission, having no means of ascertaining whether or not the staff in 1869 was in excess of the requirements of the work to be performed, expresses no opinion on that point, but it must be confessed that there is strong ground for believing that the present staff is too weak in numbers. The Hon. Mr.

Prinsep

Change of system in
holding Court -

does not hesitate to express a like opinion (33,
44. Another cause may be attributed to the
change in the system of holding the Term of the
Court. - formerly there were but the two Courts the
Superior and Circuit and the Term consisted
of a few days each month. Now the Superior
Court alone is divided into three divisions and
the terms of these and the other Courts are so
multiplied as to necessitate the holding of
from six to nine Courts daily (in fact the number of
daily sittings seems now only limited by the
number of Judges available for that purpose).
This consequently requires the daily attendance
in Court of a like number of the head officials
in the office, who are thereby not only prevented
from attending to their special office duties, but
are likewise prevented from giving that superin-
tendence over their subordinates which is so
desirable in any well ordered office.

- Remedies suggested -

Remedy proposed by Bar.

45. The remedy suggested by the Bar, al-
most unanimously, and by a majority of the
Prothonotaries, for doing away with the evils arising
from the present want of unity and system in the
management of these offices, is that the office of
the Prothonotary and that of the Clerk of the Circuit
Court should be entirely separated and kept dis-
tinct the one from the other, and to that end
that only one Prothonotary of the Superior Court and

one

one Clerk of the Circuit Court should be appointed instead of the three joint Prothonotaries & Clerks of the Circuit Court as at present. This appeared such an obvious remedy for the divided Councils and authority at present existing among the three joint Prothonotaries, that Your Commissioner is free to admit that he was strongly impressed during the pendency of the investigation that this was the only true solution of the difficulty. On second thoughts however and after due reflection he has come to the conclusion that this proposed remedy while obviating some of the existing evils difficulties, would not have the effect of obviating all, but on the contrary would rather tend to perpetuate many of the evils now complained of. For instance, the Bar has expressed a very strong opinion that the Insolvent Court division of the Superior Court should be kept entirely distinct from the other divisions of that Court, but of the principle of having only one Prothonotary be adopted, it would necessarily follow that the Insolvency business would have to be placed under the control of a Deputy-Prothonotary, who of course would be subject to the orders of the Prothonotary, and in case of any sudden pressure of business the Prothonotary might be tempted to interfere with those employed in that division and might call them away to attend to other duties, thereby preventing that complete separation of the Insolvent Court from the Superior Court proper, so much desired by the Bar. Moreover under the suggested plan of one

Prothonotary

Prothonotary it is intended that such Prothonotary should be relieved from all attendance at Court, such attendance being supplied from the Deputy Prothonotaries, and should devote all his time to the duties of the Office and superintending the proper working of the same. Now this would be scarcely fair to the Judges as they would not be in communication with any one who would have the power of carrying out any suggestions or orders that they might think fit to make.

There is also reason to fear as suggested by Dr. Peck (18), "that no one Prothonotary could effectually superintend the various departments of the Office, which would be entirely under the direction of the Deputy of the department and the Prothonotary himself a man of straw."

46. Again if a Clerk of the Grant Court was appointed without having also the rank of Prothonotary, this would tend to degrade his office in the eyes of those under him and to lessen his authority over them, and at the same time would prevent his assisting in any of the non-contentious proceedings of the Superior Court, such as the Intelle Office, preparing Reports of distribution &c which it might be found desirable to place under his control.

Remedy suggested
by Commissioner -

47. All that is really required in order to do away with the evils arising from the existing equal and general powers of the three joint Prothonotaries, is to see that their powers duties and responsibilities are properly divided between

between them and Your Commissioner has therefore
 come to the conclusion to adopt the principle con-
 tained in the alternative proposition submitted by
 Mr. Bethune (16) namely that "if it be found
 necessary to continue the system of three joint
 Prothonotaries, to divide their duties and responsibilities
 in such a way that one of them would have the
 sole control and be responsible for the depart-
 ment of the Office connected with the Superior Court
 proper; the second have the same control and re-
 sponsibility with regard to the department of the
 Circuit Court proper; and the third should take
 charge of the Intelle department and of Insolvency
 proceedings and Election Cases."

48. Your Commissioner would therefore respect-
 fully beg leave to propose the following general
 scheme for the reorganization of these offices,
 avoiding as much as possible all matter of
 more detail:-

Separate Prothonotaries
 to be appointed -

49. That instead of appointing joint Prothonotaries
 as has been the custom heretofore, that each person
 be appointed a Prothonotary of the Superior Court,
 but with his powers duties and responsibilities restricted
 to certain divisions of said Court to be specified in
 his Commission, but in order to give the necessary
 elasticity, subject to such changes as might be
 made thereafter by order in Council, - one of such
 Prothonotaries to be also commissioned as Clerk of the
 Circuit Court.

50. If the present number of Prothonotaries should
 be considered sufficient, then the division suggested

leg

by Mr. Bethune might perhaps be followed with advantage, but whatever the number it should be understood (in fact it would necessarily follow) that each Prothonotary in his particular department should only sign his own name, and not those of his Colleagues as at present. This change alone would avoid some a vast amount of useless writing in signing writs &c and would moreover indicate as once the person responsible for the document signed.

Number of Prothonotaries

51. Your Commissioner is now strongly inclined to think that it would be preferable to name four Prothonotaries, in lieu of three as at present, provided it should be found practicable to keep their duties totally distinct. It is true that he was opposed to this when suggested by Mr. Strong and Mr. Pyke (3, 4) but Mr. Strong's proposition was to name four joint Prothonotaries which would only have made the present confusion worse compounded.

Their duties -

52. Should four be named he would suggest that their duties be as follows, say -
One office Prothonotary who should have charge of the office writs, and non-contentious proceedings, signing writs, checks & taking Affidavits &c in the Superior Court proper.

53. One Court Prothonotary who should attend the sittings of the Court and have charge of all the Deputy Prothonotaries whose duty it was to attend the sittings of the Superior Court proper and inquests.
Should receive orders and instructions from the Judges with respect to the Court and see that they were

Carried

Carried out - Insure orders and judgments and see that the roles for hearing and other reports of the sittings of the Court should be properly entered up day by day, and also have charge of the record department.

The Prothonotary to have charge of the Insolvency Court, Election Courts and Lessor & Lessee Cases -

The Prothonotary and Clerk of the Circuit Court to have sole charge of the office of said Court, attend the sittings of the same and to whom might perhaps be assigned the duty of preparing Reports of Distribution for both the Superior and Circuit Courts.

Deputy Prothonotaries -

54. The following Deputies should then be required: -

The Office Deputy

One Deputy in charge of Title Office.

Three Court Deputies for attending Superior Court proper and Ex parte sittings.

One Deputy for Insolvency and Election Courts and one Deputy Circuit Court Clerk.

being one more than ~~under~~ the present system; should however it be considered undesirable to appoint a fourth Prothonotary, in that case it would require an additional Deputy Prothonotary to attend the sittings of the Superior Court, which in that case would be attended only by Deputy Prothonotaries; but the Office Prothonotary could attend the Judges in Chambers every morning to take their orders and instructions -

55. In the opinion of your Commissioner it would however be preferable to appoint the four Prothonotaries

as already suggested, as the office Prothonotary could scarcely superintend properly both the office work and the Court business.

Chief Clerks -

56. Chief Clerks should be appointed to take charge in absence of Prothonotary and Deputy Prothonotary in all cases where necessary and the number of the staff would justify such appointment.

System proposed -

57. Under this system the offices of the several Courts and divisions of the Superior Court such as the Probate Court and Election Courts would be kept altogether distinct and independent of one another, each with its special Plaintiffs and Registers; and the Prothonotary in charge of each department would have complete and sole control over the employees in such department, and should be responsible not only for the conduct of the same but also that a proper system was established whereby ~~those~~ those in authority should be held responsible for those under their control, and that the work was so distributed, that in case of any complaint the person responsible might at once be ascertained, and to that end it might perhaps be advisable that the Clerk preparing the writ or other document should affix his initials thereto when completed and compared.

For matters of detail with reference to the strength of the staff required to perform efficiently the different kinds of work your Commissioner would refer to the expenditures of Messrs. Hubert, Honey, Pyke & Kenner (2, 3, & 4).

In addition to the general staff your

Commissioner

Accountant —

Commissioner would recommend the appointment of an Accountant who should be responsible to the several Prothonotaries for all the financial transactions of the several Offices of the Superior and Circuit Courts and properly enter the same on an approved system of book-keeping — He should give the necessary security for the due performance of his duty and should have under his orders the Clerks whose duty it was to cancel and record the Stamps used in these Offices. — This duty of Accountant has hitherto been performed by Mr. Honey, but everyone is agreed that he should be relieved from the same.

System for Cancelling
Stamps —

58. Your Commissioner would suggest the following modifications in the Stamp Cancelling Department. Under the present system two Clerks at a joint salary of \$1600 a year are specially entrusted with the duty of Cancelling all Stamps used in the Superior and Circuit Courts by stamping the date of cancellation and punching a hole in the stamps so cancelled, and afterwards of entering the same in a book kept for that purpose, dividing the office fees from the Court House duties (15) The inconvenience arising from this system is, that when as in the beginning of a term, there is a considerable pressure of business those paying papers are necessarily detained for some time while the entries are being made — Moreover there is no certain check for the preventing of fraud or error, and it appears that the Bar do not consider it compulsory upon them to see that the Stamps are cancelled by these

Clerks

Clerks (80, 32) To illustrate these difficulties Your
Commissioner would propose that these two Clerks
should be removed and that the Accountant should
be required to Cancel the stamps on all proceedings
(verifying that the amount was correct) by merely
stamping the date of Cancellation on each stamp
and keeping a memorandum of the amount of
stamps so cancelled, deducting the fees from the
Court House tax. This would take but comparatively
little time, but in order to keep a check on the
Accountants and also to prevent the stamps from
being used a second time. a Clerk should be
especially assigned to the duty of receiving and
distributing all papers in each of the different
divisions, such as the Probate Office, Insolvent
Court, Jailhouse Department and Circuit Court, and
these Clerks should punch a hole in each stamp
and then at his leisure he could enter the amount
of stamps cancelled in a book giving the number
of the cause and nature of the document filed.
The sum totals entered respectively by the Accountant
and these Clerks should of course agree at the
end of each day, and if they did not it would
be evident that some error had been committed.
This system of double and independent Cancelling
would almost prevent the possibility of fraud.
It may be said that the present system of
punching the stamps, supposing it was duly carried
out, must necessarily prevent the use of stamps
a second time, but although Your Commissioner
is willing to admit that so long as these en-
trusted

trusted with the cancelling of the stamps performed their duty honestly it would have this effect, yet it is possible, although perhaps not very probable supposing these Clerks to be dishonest, that fraud ought still be carried out to some extent.

Pecious frauds in
Connection with Stamps -

59. Some years ago before the present system was established, when the lawyers were in the habit of purchasing stamps in the Postmaster's Office, an extensive system of fraud with regard to stamps was discovered in the Postmaster's Office. It was ascertained that certain Clerks were in the habit of abstracting the stamps from the records, and that by some means or other they were able to obliterate the ink mark on the stamp, and they repaired the hole that was then merely punched through the stamp instead of punched out as at present, by pasting tissue paper on the back and then regumming the stamp, so that it had all the appearance of a new stamp unless closely examined, when a lawyer came either with money or stamps to be affixed, these Clerks would affix these renovated stamps instead of new ones, putting the new stamps or its value in their pocket. It was to prevent this that the system of punching was established, but even the punching would not prevent the cancelling Clerks under the present system from using again these punched stamps in any case when it was left to them to affix them, as all that they would have to do would be to substitute a punched stamp for the new
one

one received from the lawyer and then punch it again in the same place. Under the system proposed this would be impossible and the surest way to prevent fraud is to remove the temptation to commit it.

Papers not to be held
up before stamps
cancelled —

60. In order to compel the lawyers and others to have the stamps cancelled by the Accountant before paying them, all that would be necessary would be to have a rule of practice passed to the effect that no paper should be held to be paid or issued, notwithstanding the Certificate of the Postmaster, to that effect unless the stamp thereon had been cancelled by stamping the date thereon, and that the date of such paying or issuing should not in any case be ~~antedated~~ anterior to the date on which it appeared that the stamps had been cancelled. Should some such rule as this be made the Bar would have a direct interest in seeing that the stamps were duly cancelled, and stamps would no longer be allowed to remain sometimes one or two years uncanceled as mentioned by one of the witnesses (30), in the present investigation.

Receiving & distributing
Clerks —

61. Again the appointment of these receiving and distributing Clerks would remove another constant source of complaint. It is intended that they should be the sole means of communication between the public and the office so far as papers were concerned. — All papers issued out of or to be paid in the office are supposed to pass

through

through their hands, and it would be their duty to see that they were afterwards transferred to the person in charge of the office to be by him distributed to the Clerk whose duty it was to attend to the same. At present the Bars are often in the habit of going directly to the Clerk entrusted with the particular work such as Acts of Denunciations and Recutations, and to receive it when completed from him, and in the case of filing papers sometimes even to leave them on the Counter without speaking to any of the employees (4,35) and in consequence disputes often arise in the case of missing papers as to whether they had been filed or not. By the system proposed as these Clerks would have to keep a record of all the papers having stamps affixed either issued or received, it would in most cases be easy to ascertain who was in fault and on whom the responsibility for the loss should be laid, and the interruption of the general work of the office caused by the lawyers going among the Clerks, even behind the Counter, would be prevented.

Stenographers -

62. The suggestion of the Bâtonnier (18) that two English and two French Stenographers should be added to the staff of the Parliament's office is one entitled to the most favorable consideration. It does seem only right and proper that persons exercising such important functions should be made officers of the Court and thereby brought under the direct control of the Judges. If
these

Three Stenographers were paid, as proposed, by a yearly salary and a tariff of fees made for the cost of reporting to be paid in the same manner as other costs, it is probable that so far from entailing any extra expenses, it would add to the revenues of the office.

By this means too the delays and difficulties referred to by Mr. Tennant (4) in getting records ready for dilivie, occasioned by disputes between the Attorneys and Reporters, would be done away with.

Extra Clerks -

63. It is probable that when these offices are reorganized it will be found that some extra Clerks are needed. The Pastors and Ministers make an urgent demand for more assistance (2, 3, & 4) and Mr. Tennant endorses their views (33), and your Commissioner has already shown that this demand is probably well founded; but as it is very probable that the present increased business will not be maintained when the country shall have recovered from the present financial crisis, it might perhaps be as well to make only temporary appointments for the present, except where the necessity of a permanent appointment is apparent.

Appointments of staff -

64. With respect to the question of the manner of the appointment of the general staff, the Pastors and Ministers have strongly urged the necessity of their having the appointment of their subordinates placed in their hands, instead of that of the Government. (1, 2) Your Commissioner however

does

does not see any good reason for making a change in the present system, or that the public interest would benefit thereby. Under the old system when the Postholders paid the office fees and paid their Clarks it was right enough that they should have the appointment of their subordinates, and the public had then the guarantee of self interest that those appointed would be efficient and that they would not be in excess of the requirements of the work to be performed; but now that the Postholders have no pecuniary interest in the office they might be tempted unduly to increase the strength of the staff by giving situations to their relations and friends, and at the same time they have not the same inducement to see the Clarks appointed were thoroughly efficient; it is therefore only right that the Government who are directly responsible to the Country for the efficiency of the office should retain the power of appointing the Clarks.

Staff to be made and
 Senior Employees —

65. At the same time for ensuring the greater efficiency of those who might obtain appointments and in order to relieve Members of Parliament from the undue pressure that is sometimes brought to bear upon them your Commissioner is of opinion that the suggestion made by Mr Wintle (7) should be carried out, namely "that in the districts where the fees are funded the employees should be

made

Civil Service employees and should belong to
the department of the Law Officers of the Crown,
but as the qualification for employment would
be different from those of other Civil Service
employees, a board of examiners might
consist of the Deputy Lord, a Puisne Justice
and three Members of the Bar. The nomination
of the employees should be left with the go-
vernment, and no person should be appoint-
ed to any office without having previously
received a Certificate both as to character
and ability. Of course regulations would have
to be framed making different classes of
employees, and providing for the class in
which the candidate may have passed. A
slight amendment to the Statute 31 the 4th,
being an Act regulating the organization of
the Civil Service would be all that would
be necessary to carry out this suggestion. The
Judicial Department of the Civil Service should
be placed under the Attorney-General, and
all nominations should be made on his
recommendation of persons holding the proper
Certificate.

Board of Examiners.

66. Perhaps instead of the Board of Exami-
ners recommended by Mr. Wintle it would
be better to substitute all the Puisne Justices,
together with a certain number of lawyers
to be named by the Bar.

67. As however these offices are for the most
part at a great distance from the seat of
Government

Increased power of
discipline -

Government and the Attorney-General would not have that power of direct supervision that the other Heads of departments in the Civil Service possess at the seat of Government. Can exercise over their respective offices, it becomes highly desirable in the interests of discipline that the hands of the Prothonotaries or Deputy Heads should be strengthened as much as possible, and that, if anything, greater powers of discipline should be conferred upon them than to the other Deputy Heads. It appears from the evidence of the Honorable Mr. Olmsted (33) that the Prothonotaries are now considered to have the power of suspending those under their control, but not of dismissing them without the consent of the Government. Practically there is, or ought to be, scarcely any distinction between these two cases, for it would evidently be the duty of the Government to support the action of the Prothonotary unless a very glaring case of injustice presented itself, but in the latter case it would also be the duty of the Government to dismiss the Prothonotary for acting so unjustly, for otherwise were the suspended Clerk reinstated by the Government without the consent or in spite of the action of the Prothonotary it would necessarily follow that the discipline of the office would receive a severe blow, and the power of the Prothonotary in question to maintain discipline thereafter would be practically annulled, and therefore in the interest of the public service he should be relieved from his office - Your Commissioner therefore would respectfully suggest that

that the power of dismissal as well as suspension should be accorded to the Postholders; but in order to prevent the partial exercise of this power by the Postholders interested, he would further suggest that such power of dismissal should only be exercised by the whole of the Postholders sitting as a Board, and that they should immediately report their action and the reasons therefore to the Attorney-General.

Right to appoint super-
numeraries -

68. From the same reason of distance from the seat of government four Commissioners is also of opinion that the same Board of Postholders should have the right of appointing temporarily such supernumeraries as the exigencies of the public service might require, subject to reporting the same and the cause of their action forthwith to the Attorney-General, who may then upon either ratify their action or not, as he should deem right. This appears to be the only way of avoiding the delay that must necessarily occur when the consent of the Government has to be obtained in the first instance, and thereby avoiding the evils arising from such delay already referred to in this Report.

Board of Postholders -

69. The Postholders might also act as such Board in all matters where it was desirable that unity of action should be had in the office such as framing rules for the guidance of the employees in matters of discipline &c. The powers of such Board in this respect to be shortly defined by Order in Council.

The

To keep minutes -

70. The Board of Prothonotaries should be bound to keep correct minutes of all their proceedings while acting as such Board - In case of an equality of numbers on the Board a preponderating vote might be given to the Senior Prothonotary or to such other as the Government might indicate by Order in Council.

Graduation of Salaries -

71. Your Commissioner has already expressed his opinion on the request made for an increase of salaries, but in connection with this subject he aimed with to add that should the suggestion of incorporating the Employees in these offices into the Civil Service be carried out and the Clerks properly classified according to the manner they might pass their Examination, in that case it would be desirable that the Salaries should be graduated in accordance with such Classification; And he aimed also respectfully draw the attention of Your Excellency to the necessity of providing a Superannuation Fund for old and deserving public servants. - The present system, as exemplified by the case of the Clerk Brandy already referred to, of continuing to pay Employees their full salary after they have virtually left the office through the infirmities of age, is one that should certainly be discontinued.

Superannuation Fund -

Instructions to Prothonotaries -

72. Before the question of discipline and internal economy your Commissioner would suggest that full instructions be given to the Prothonotaries specifying their powers as to the removal of clerks that seem to exist at present

on

on this head, and that the Postholders should likewise cause to be printed and posted in the office such rules and regulations affecting the Clerks and the Public, as it was to their interest to know.

73. There some such rules and regulations as the following adopted and strictly enforced
Your Commissioner is of opinion that most if not all of the abuses and irregularities at present complained of would be effectually corrected

74. - Instructions to Postholders -

The Postholder in charge of any department to be alone responsible for the same, with power to make the necessary ^{arrangements} for its proper organization and working, and also with the concurrence of the other Postholders acting as a Board, to suspend temporarily or of necessity to dismiss such employees as may infringe these rules or otherwise misbehave himself, subject to reporting the same forthwith to the Government.

Each Postholder to see that there is a proper gradation of authority in the department under his control, and as far as possible such division of labor that in case of any irregularity the person responsible therefor may at once be ascertained.

In case of sickness or necessary absence of any employee or of sudden increase of business the Postholder of the department affected may refer the matter to the Board of Postholders and should such Board deem it necessary in the
interest

interest of the public service, they may appoint temporarily such supernumeraries as may be actually required, and shall report their action and the reasons therefor forthwith to the Attorney-General for his approval or otherwise.

No paper or document requiring stamps to be issued received or filed in the office unless the stamps have been cancelled in the ^{first} place by the Accountant by stamping the date of such cancellation thereon, and secondly by punching a hole therein by the Clerk appointed for that purpose - Such Clerk to be strictly prohibited from selling or receiving money for stamps -

Office Rules -

75. - Office Rules -

Clerks on arriving at office in the morning to report themselves to the officer having charge of the Time Book.

Not to absent themselves from the office during office hours without the express permission of their Superior Officers.

Not to receive money from members of the Bar or others for stamps, extra work or otherwise under pain of dismissal.

Clerks in charge of Plaintiffs - to remain in the office until the entries for the day are fully entered up.

Clerks or other employees not to leave at expiration of office hours without the permission of their Superior Officer just obtained, and of necessity to remain in the office after office hours should the exigencies of the public service require

it.

Clerks and other employees transgressing the Rules of Office or Committing acts of insubordination or otherwise misbehaving themselves to be liable to suspension or dismissal - such suspension to entail loss of pay.

7th. - Notice to the Public -

The Public are requested to take notice that the payment of money to any of the employees of this office for stamps or in lieu of stamps or for extra work or otherwise is strictly forbidden, and will subject the employee receiving the same to dismissal.

No paper or other document requiring stamps can be received or filed until such stamps have been duly cancelled by the Accountant and the Clerk appointed for that purpose, and the filing of any such paper or document can only legally take effect on the date of such cancellation notwithstanding any Certificate of the Prothonotary to the contrary.

All papers, pleadings and other documents excepting in matters of urgency, must be filed at or before 3. P. M. so as to enable the entries thereof to be made in the Plumetoff before closing the office. (17)

No person allowed to go behind the counter to speak to the Clerks or to go behind the railing in the vaults.

The public are requested to inform the Prothonotary of any ground of complaint that they

they may have against any of the employees of this office -

This notice to the public is necessary inasmuch as others besides lawyers such as Doctors and Official Assignees are in the habit of transacting business in these offices and filing papers therein.

Time Book -

77. The Time Book should be placed in charge of a Deputy Postmaster

Office hours -

78. Some difference of opinion was expressed as to the duration of the office hours, but the Bar was pretty unanimous in stating that during Term the office hours should be from 9 A.M. to 6 P.M.; but that during the summer vacation they ought close at 4 P.M. leaving however a Deputy Postmaster and a couple of clerks to transact any urgent business until 6 P.M. (18, 30)

When Popeman stated (1, 2) on the other hand contended that from 9 A.M. to 4 P.M. was amply sufficient, while Mr. Strong contended that it was absolutely necessary that the office should be kept open till 5 P.M. - (3)

Extra Accommodation -

79. With respect to the manifest want of accommodation both as regards the Court, Offices and Vaults Your Commissioner does not pretend to make any definite suggestion as this is a matter that would require the services of an Architect. He may state however that with a view of affording more accommodation for the Court and Offices, two courses have been suggested, one, to add another story to the building and another to build out wings

wings in the rear - Of the two it would seem that the latter, if practicable, would be the most convenient - The inconvenience of ascending an additional flight of stairs as contemplated by the first scheme being almost insuperable -

Vaults -

80. With respect to the vault there seems to be but one solution of the difficulty and that is the removal of the Registry Office from the Court House altogether and adding the space thus obtained to the vault accommodation - Should this view be carried out it has been suggested by the Sheriff that the St. Gabriel Street Church might probably be obtainable for a Registry Office for which in his opinion it is in every respect well adapted.

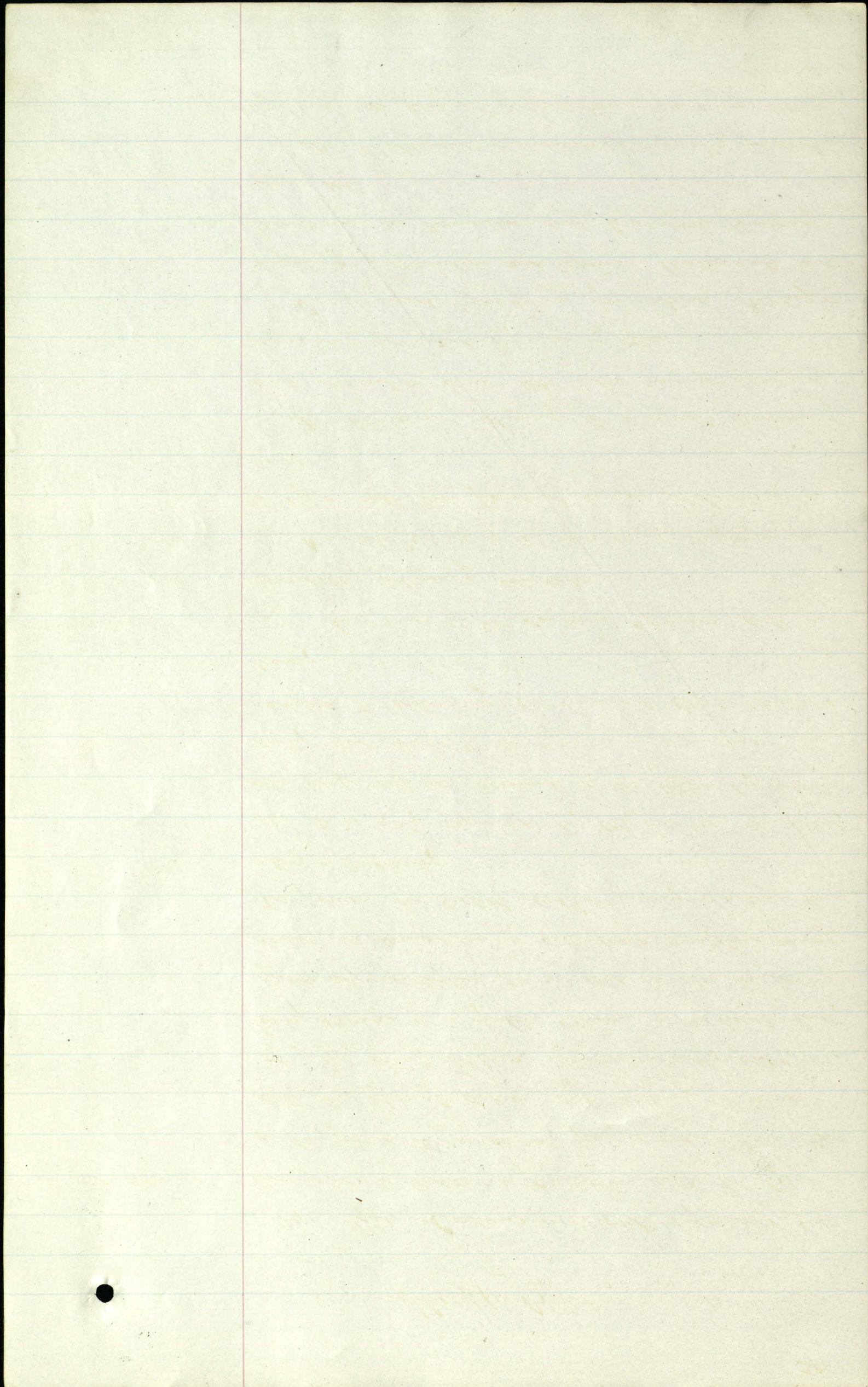
81. The method of greatly economizing the vault room in the future has been suggested (114) namely such a change in the law as might be necessary so as to enable the filing of a certificate of the necessary notices having been given in the news papers, instead of the newspapers themselves, these latter being very bulky and taking up considerable space in the vaults.

Liability of Prothonotaries
for records -

82. In connection with the subject of records it may be remarked that of the system of allowing lawyers to take the records to their offices on giving a receipt be continued (and this seems to be the general wish of the Bar) it would only be reasonable that the Prothonotary should be relieved from all

all responsibility therefor while holding such receipt and that the lawyer in possession of the record should also be held responsible for the same under the same penalties as now apply to the Ordinary namely Contumeli per Crps (17) -

23. If on the other hand Communication could only be had in the Court House it would be necessary to appoint an Extra Clerk whose duty it should be to see that the Record was complete after such Communication (1, 2, 4).



Sheriff's Office -

In good order -

84. Your Commissioner will have but few remarks to make in connection with this Office, as he found it in almost perfect order, East Clerk with his special duties, and nothing in arrears.

85. Mr Sheriff Liblane seems eminently fitted to have charge of a public Office, as he has evidently good administrative powers and has also the happy knack of maintaining order and discipline among those under his control without any undue display of authority.

86. He is ably seconded by Mr. Santorum his Deputy who keeps all the accounts of the Office by double entry and conducts the official correspondence in addition to attending the Criminal Court when necessary.

Schedules -

87. According to Mr. Santorum's deposition he has found the following schedules.

A - Statement of the number of employees in the Office with their period of service, salaries and duties.

B. Statement showing the annual number of writs executed since 1880, the amounts realized, amount of fees and expenses of Office.

C - Annual expenditure for salaries, heating & lighting, furniture and repairs, water rate and insurance in connection with Court House Building since 1886.

D. Statement of amount annually received by Sheriff on account of Court House Tax since 1886.

E. Statement of Receipts and disbursements on account of Building and Jury Fund, District of Montreal from 1862 to 31 Dec. 1875.

F. Return by favor of the State of the Govt at Montreal during the year 1875.

Decrease of Civil business -

88. On referring to Schedule B it is apparent that the business of the Sheriff's Office on the Civil side is evidently decreasing. This is to be attributed in part to recent legislation whereby many of the functions of the Sheriff in connection with writs of execution are now performed by Bailiffs; and also from the natural effect of the Insolvency Law. And as a consequence the Fees of Office do not nearly equal the expenses for Salaries &c., but it is to be borne in mind that a large portion of the time of the employees in this Office is taken up with matters connected with the administration of Criminal Justice, and which are yearly increasing in amount.

Increase of costs of

Maintaining Court House -

89 On referring to Schedule C. it will be noticed that there has been a considerable increase in the items of Salaries of those connected with the guardianship of the Court House, also for Heating and Lighting & Furniture and repairs during the last three years. The increase in the items of Heating and Lighting is accounted for by Mr. Santon by reason of an addition having been made to the heating apparatus and also by the fact of the charge for Gas being nearly doubled. The reason for this latter increase seems apparent to account for as your Commissioner is not aware that more Gas is con-

sumed

summed in the Building at present than in former years. The increase under the head Furniture and Repairs has been in great part occasioned by the change occasioned by the new system of holding the Superior Court in separate divisions requiring that an extra number of Court Rooms should be provided.

Court House Tax -

90. Schedule D. Shows that the amount received in the Sheriff's Office during the last ten years exceeded \$20000 say \$2000 a year for Court House tax.

Jury & Building Fund.

91. The Jury and Building Fund appears by Schedule E to have furnished a balance in favor of the Government, during the last fifteen years, of upwards of \$34000 after the payment of the Petty Jurors & Insurance as fixed or say \$2000 a year.

Cancelling Stamps -

92. The only change in the management of this Office which Your Commissioner has to suggest is in reference to Cancelling the Stamps used in the Office. It would appear from the evidence of Mr. Sanborn that they are cancelled by the several Clerks who officiate there and this by merely effacing the stamps without even punching a hole in them. In view of this system Your Commissioner would suggest that the same system be adopted in this Office as he has already recommended for the Post Office, Mr. Sanborn stating the plan of the Accountant. It is true that the amount of stamps used in this Office is comparatively small, but it is always an object to have, if possible, in a Public Office, such a

System

System as will do away with the temptation to
Commit even petty frauds.

defect in Jury Law.

93. A defect in the present Jury Law was
brought under the notice of your Commissioner by
Mr. Sanborn which causes a great deal of useless
expenditure in the summoning of Jurors, besides
inconveniencing many persons unnecessarily. It
appears that fully one half of those summoned
as Jurors in the District of Montreal, afterwards
claim exemption. It was intended by the law
that those disqualified or exempt should not be
included in the Extracts of the Assessments rolls
that the City Clerk or Secretary Treasurer are bound
to furnish to the Sheriff. And by Sec. 10 of 32 Vic c 22
they are expressly ordered not to knowingly include
any such persons on such Extracts. This section is
however and must remain a dead-letter so
long as the present system of making the assess-
ment rolls is continued, as the Clerk or Secretary
Treasurer can have no official knowledge of the
age or occupation of the persons comprised in
the Assessment roll. And they therefore necessarily
include every one whose assessment qualifies
him for acting as a Juror. In order to carry out
the intention of the Law all that would be necessary
would be to devolve the duty of ascertaining who
were exempt or disqualified from serving as Jurors
upon the Valuator or Assessors instead of the Clerk
or Secretary Treasurer - Commanders of Volunteer
Battalions might also be required to send in a list
of the men under their Command annually to the

Clerk

Clerk or Secretary Treasurer, feeling which description not to be allowed to the Wholesaler - Power might also be given to the Sheriff to grant remissions upon due proof by Affidavit.

94. Your Commissioner at the request of the Sheriff accompanied him on a visit of inspection of the Gaol, Lunatic Asylum at Longue Pointe and the Boys Reformatory, Piquinome Street. These institutions being more or less connected with his office of Sheriff.

Prisoners Gaol -

95. He found the Gaol in a very clean state, and the provisions as far as he could judge of first-rate quality, but the building seems very ill adapted for any proper classification of the Prisoners. The want of a proper system of ventilation was but too apparent over the whole building. And it appears that the system introduced some years ago by the late Dr. La Fosse is a complete failure. As to whether anything can be done to remedy the present unwholesome state of the Building Your Commissioner does not pretend to give an opinion, but if possible something ought to be done in that direction. Both the Sheriff and the Gaoler impressed upon Your Commissioner the necessity that existed for providing further accommodation for a Kitchen Laundry Room & particularly a dining room. At present every Prisoner has to take his meals separately in his cell, necessarily entailing a vast deal of extra labor upon the Officials and also causing a certain amount of waste which would be avoided

Wore

were the prisoners to dine in common. They suggested that this extra accommodation might easily be furnished at a comparatively small expense by means of a brick building to be built out in the rear of the present jail.

Singon Point Asylum -

96. Our Commissioner was greatly pleased with his visit to the Singon Point Asylum. The building seems to be in every respect well adapted for the purpose for which it was erected, and the appliances for heating, ventilation, prevention of fire, washing and general cleanliness seem to be perfect. It is impossible to speak too highly of the management of this institution by the Reverend Sisters and the Doctor in charge. Everything connected with the establishment was scrupulously clean and in the most perfect order. It was indeed difficult to realize the fact that there was at the time about four hundred persons in the building, so pure was the air and so perfect the neatness and order. Every where apparent.

Reformatory School -

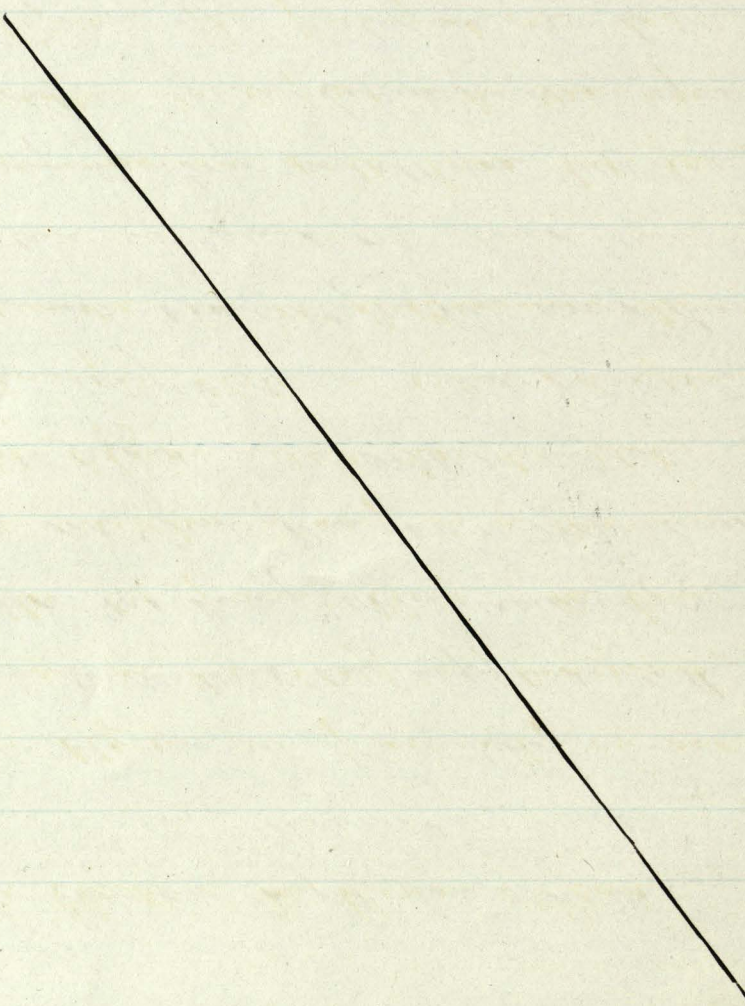
97. The Boys Reformatory School in Wycombe Street seems also to be under excellent management. The building was well ventilated with the exception of the closets in the basement where there was either a defective drain or a want of proper ventilation. The order and discipline maintained throughout the establishment was most satisfactory and all the boys appeared contented and very happy, evidently the result of an excellent system. In addition to the usual

School

School course the boys are taught some of the following trades - Tailor, Shoemaker, Printer, Cigar-maker, Hammer maker, and Carpenter and the various workshops are supplied with the most approved machinery then necessary - The work turned out from these work shops would in many cases do credit to a skilled artisan - The boys are also taught music and the school band performs most creditably - We would think that such a system so carried out, could not fail of reforming the boys in all cases where reform was possible. Some Commissioners repeat however that the boys of a Protestant faith should not have the same advantages conferred upon them. There does not appear to be any insurmountable difficulty in the way. Of course it would be impossible to organize a second establishment on the same scale for the comparatively few Protestant boys who could take advantage of it, and it must also be admitted that it is only right that the religious faith in which a boy has been brought up or to which he nominally belongs, should not be liable to be interfered with in any institution connected with the State; but there is no reason why Protestant boys should not work with Roman Catholic boys in the same manner as they will have to do when they become men, and therefore all that the Government has to provide for, is, that such working together shall not be used as a means of influencing their religious belief. - In the case of the present institution this difficulty might easily be

be overcome by simply providing that the Dormi-
-tory, Chapel and School room of the Protestant boys
should be in a separate building from that of the
Roman Catholic boys, and that such building should
be under the sole charge and control of Protestants.
Now there happens to be plenty of room on the
ground belonging to the present Reformatory in
Injuneau Street to permit of the construction of such
a building, with a covered way, of course, to the
main building. By some such means our young
Protestant criminals might enjoy the same
advantages as the Roman Catholics, from which
they are now seemingly in great measure obtained
while in the Goal at Sherbrooke.

Our Commissioner is aware that
perhaps he may be charged with exceeding
the limits of his Commission in discussing this
question, but he must plead its great importance
as his excuse -



- Offices of the Clerk of the Court & Peace -

98. These two Offices are practically one and the same so far as the Staff is concerned.

In good order -

99. Mr. Schiller the present Clerk of the Court and Peace it is needless to say is a most excellent public Officer and has his whole Office in a thorough state of order & discipline and is ably seconded by Mr. St. Beaumont his Deputy.

Cancelling Stamps -

100. Your Commissioner will have but few suggestions to make in respect to the Management of this Office. The principal one has reference to the Stamps. The remarks already made in connection with the Sheriff's Office with respect to this subject will apply to this Office and with even greater force, for the Clerk of the Peace while contenting himself like the Sheriff with merely writing the date of cancellation on the Stamps without otherwise defacing them, is at the same time in the habit of selling Stamps to parties requiring them in matters of Police. The reason for so doing is to facilitate business and to prevent the inconvenience that used often occur where parties (many of them unaccustomed to the ways of the Court House), sent away to the other end of the building in order to obtain the necessary Stamps from the Stamp Distributor. Considering that there are thousands of dollars worth of Stamps on the records of the Police Magistrate, now filed away and that such records are scarcely ever again

Referred

referred to, there is nothing to prevent the recurrence of the frauds already mentioned as having taken place in connection with the Postmaster's Office, should it unfortunately happen that any of the employees should be dishonestly disposed. — The selling or affixing stamps in any of these offices, except by an official specially named for that purpose and with such check as to furnishing as is suggested for the Postmaster's Office should not be allowed.

Sub-Office for selling
stamps suggested —

101. The Stamp Distributors might very well be required to have a sub-office in this End of the Court House for the purpose of selling stamps for use in the Police Office. This they could very well afford to do, as at present the two Stamp Distributors (with very little trouble or responsibility attached to their office) have a joint income exceeding \$5000 a year, as appears by the return furnished by Mr. Buckley of the stamps sold during the last year and attached to his deposition (22).

Income of Stamp
Distributors —

Amendment of
Stamp Act.

102. In connection with the subject of stamps Your Commissioner would also respectfully suggest the desirability of so amending the law as to enable the stamps to be affixed to the Warrant of Conviction instead of on the formal Conviction in Summary Matters. This ~~fact~~ is the practice followed by the Clerk of the Peace in Montreal though perhaps not strictly according to law, and should the formal Conviction be required to be sent to another Court by Certiorari the question might be raised as to the validity of such Conviction.

without

without having a stamp on the face of it. Under the law as it now stands it is impossible to affix the stamp on the formal Conviction at the time the Conviction is rendered, as the formal Convictions are never drawn up until some days after, and in the County are often never drawn up at all when the penalty and costs have been paid by the Defendant.

Amendment of
Sec 15 of Ch 109 of U.C.L. -

103. Your Commissioner would also suggest that Section 15 of Chapter 109 of the Consolidated Statutes of Lower Canada whereby the Building and Jury Fund is established should be so amended as to make the law accord with the facts as now existing. Certain of the Chapters therein referred to have since been repealed by 32, 33 Vic C 36 of the Statutes of Canada, and although Mr Schiller seems to think that the repeal in question does not affect the dispositions of the fines and penalties therein mentioned Your Commissioner is still inclined to think that there is room for doubt on this head, and that the law should be so amended as to refer to certain classes of offences & summary proceedings and not merely to the special Acts under which these offences may be designated or proceedings had.

Clk of the Peace to
represent Crown as
preliminary examination -

104. It will also be noticed from the recapitulation of the duties of the Clerk of the Peace as contained in the disposition of Mr. Schiller, that while the Clerk of the Peace represents the Crown at Quarter Sessions and in trials before the Judge of Sessions and Police Magistrate under the several

Summary

Summary Act. Yet in a matter of equal if not greater importance namely in the prosecution of preliminary examinations in cases of Felonies & Misdemeanors the Court is unrepresented except it should happen that the private prosecutor retains Counsel. It is of course presumed that the Magistrate takes this duty upon himself, but there is something incompatible in uniting the functions of justice prosecutor and Judge in one and the same person, the Magistrate being often called upon to act judicially in such matters, and as a matter of fact this duty is performed by the Chief Clerk in the Magistrate's Office; Your Commissioner would therefore respectfully suggest whether it would not be desirable that this latter duty should be also attached to the Office of Clerk of the Peace, thereby making him the representative of the Crown in all Criminal proceedings outside of the Queen's Bench. By attending to these preliminary investigations the Clerk of the Peace would become perfectly cognizant of all the circumstances connected with each case, which would assist him greatly when drawing up the Indictments, and would also enable him to give valuable assistance to the Crown Prosecutor appointed to conduct the business before the Court of Queen's Bench.

Schedules -

105. The following Schedules are annexed to the Report of Mr. Schiller.

1. Extract from an Order in Council of 22 Jan 1864
2. Statement showing the services performed by

by the Clerk of the Court for each of the last five years.

3. Statement of fines imposed in the Court of Queen's Bench (Common Side), and collected by the Clerk of the Court from 1871-5 inclusive -

4. Statement showing the Revenue and Expenditure of the Court Office for the year 1871-5 inclusive -

5. Statement showing the services performed by the Clerk of the Peace in connection with the general Sessions of the Peace - 1871-5 -

6. do before Judges of the Sessions of the Peace.

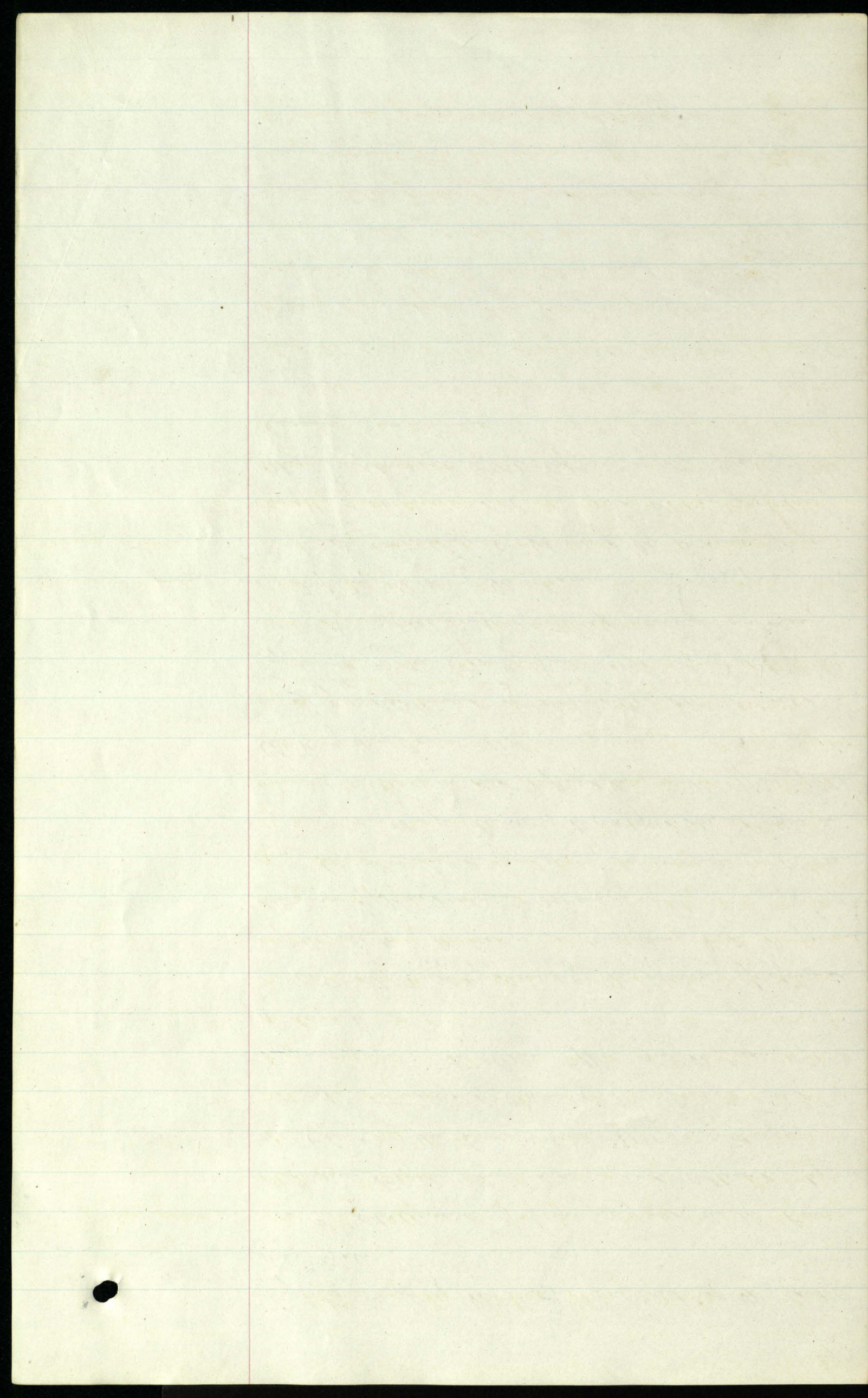
7. do in Courts of Weekly & Special Sessions.

8. Revenue and Expenditure of the Office of the Clerk of the Peace - 1871-5.

9. Statement of Fines & Penalties collected by Clerk of the Peace from 1871-5 inclusive.

A. Statement of duties, service & salary of Deputy Clerk of the Peace

B. Statement showing the names, ages, length of service, salaries and duties of the other employees in the Office of the Clerk of the Peace and Peace.



- Office of the Police Magistrate -

In bed order -

106. This Office is far from being in a satisfactory state (19) It appears from the evidence that Mr. Birkland considers that he has no means of enforcing discipline either by suspension or dismissal (1) - that there is no proper system or order maintained in the Office (9, 3, 23) - Mr. Chief the Chief Clerk declares that he is not responsible for the conduct of the other Clerks (2) and there is an attempt at making any division of labor among them, each one being independent of and on an equality with the others. And taking charge of such cases as may be given him by the Police Magistrate (23) - The want of punctuality among the Clerks is also justly complained of, they often not arriving at the Office by 10 A.M., although required by the Order in Council to be there at 9 A.M. (23, 2, 1) and an attempt has been made to keep a Train Book (11) -

107. The Police Magistrate must to a great extent be held responsible for this state of affairs

absence of dignity &
decorum in Court -

108. Apart from this want of order and system in the Office, complaint is also made of the absence of dignity and decorum in the manner that the Court business is conducted (10, 16) and that the present Police Magistrate is wanting in moral influence to maintain the respect due to his Office (16) - Admitting however that the present Police Magistrate does not possess in a very high degree those peculiar qualities which are requisite in order to constitute an efficient Police Magistrate, still it must be borne in mind that a person filling the Office of Police Magistrate has a very difficult task to perform - He is expected to be able to maintain proper order and decorum in his Court,

filled

filled as it is with the rougher portion of the community, and yet he does not as a rule receive that moral support either from the public or the Government, (which of course is a mere echo of the public feeling for the time being) which alone would enable him to do so effectually. There can be no doubt but that the office of Magistrate is looked down upon by the people in general and our legislators hitherto have certainly not done much to raise it in public esteem, but by keeping the salaries down at the lowest figure possible have thereby shown fully clearly the estimation in which they regard the office in question. The Press and the Bar too are both culpable to a certain extent for the prevalent feeling. Until quite recently the proceedings in a Police Court were considered a fit subject for the display of the wit of the local Reporter, and the Bar, while complaining of the want of dignity and decorum in these Courts, forget that they are greatly contributing to this result when they habitually appear in Court without being habited and in many cases even fail to show that respect and courtesy to the Bench which they would not hesitate to show in any other Court. It is true that the Magistrate has the power to punish any gross case of contempt, but not having the power of making any rules of practice for his Court, it is seldom that this power can be exercised.

109. The prevalent opinion seems to be that any one is good enough to administer the Criminal Law as a Magistrate, and even during the present investigation one of our leading Criminal lawyers (19) expressed the

opinion

opinion that a non-professional man would very well
 suffice to take charge of the Police Court & thereby assuage
 This feeling has probably arisen from the fact of our
 having introduced into this country the English practice
 of making non-professional men Justices of the Peace -
 It certainly does appear somewhat strange that it should
 in America require a Superior Court Judge with a salary
 of \$5000 a year to decide a case of \$100 in real matter,
 while in Criminal matters any two ordinary Justices of the
 Peace although utterly ignorant of the first principles of
 law are considered competent to decide matters up to
 one hundred dollars besides having the power of im-
 prisonment accorded them -

110. In England where they have a highly educated
 territorial class this practice has worked perhaps
 better than might have been expected, as the English
 Justices always had the good sense to employ some
 competent lawyer as their Clerk - In this Province,
 at all events, we have no such class and commissions
 are given in many, if not in a majority of cases to
 persons altogether unfit to fulfil the duties of the
 office and in many cases when they can scarcely
 sign their name. - All this could not fail of bringing
 Magisterial law into disrepute, and the Stipendiary
 Magistrates have had to suffer from the odium at-
 tached to the name -

Importance of office
 recognized -

111. I am Commissioner is glad to find however that
 a better feeling in this respect is beginning to prevail
 and that the importance of the office is beginning to
 be recognized. The Press no longer make the Police
 Court a butt for its wit, and the Bar are beginning
 to

to appreciate better the nature of the duties and responsibilities of a Police Magistrate. A leading Member of the Bar in his address before your Commission stated that in his opinion a "Police Magistrate should be a lawyer of high standing and well versed in Criminal Law and fit to be a Judge in any of our Courts in this Province". (10) When spoke of the mistake of only giving a bookkeeper's salary to an official exercising such important functions (21) There are men, it is true, of such strong will and force of character that they will cause themselves and their office to be respected, in whatever position they may be placed, but if such are able to maintain order and decorum in a Police Court, it is not by reason of their office but rather in spite of it - It should however be the aim of all governments to make the office, rather than the particular occupant of it for the time being, respected as much as possible, and the first step in that direction would be to see that none but persons with a well established reputation for legal ability and otherwise duly qualified were ever appointed to such offices. Of course to obtain the services of such persons it would be necessary to increase the salary attached to the office.

112. Your Commission has been led to make these remarks from a conviction that the practice that has been followed in the past with respect to the appointment of Magistrates has had a tendency to disgrace the office and to make the maintenance of order and decorum in the Court by the occupant today the least extremely difficult.

Yours

Police Magistrate
 who has been in Court
 & to make rules of
 practice -

Mr. Brabant -

113. Your Commissioner as a further remedy would suggest that the Police Magistrate should be required to be habited when sitting on the Bench and should also have the power of making such rules and regulations as might be necessary to ensure a due respect to their Office on the part of the Bar and others.

114. Mr. Brabant the Police Magistrate is a very old public Officer, having served the public in different capacities since 1838 and was appointed to his present Office in 1866 and although as already stated he may be deficient in some of the qualities necessary to make an efficient Police Magistrate, yet every one, even those personally hostile to him, give him credit for honestly trying to do his duty.

His health too is beginning to suffer from exposure to the fetid atmosphere for which the Police Court has been too long celebrated. And Your Commissioner believes that no one could be better satisfied than Mr Brabant could some other similar Office be found for him to which a sufficient salary was attached and the duties which were of a nature to be more congenial to him than his present Office. It would appear from the Memorial (a copy whereof is annexed to the Report of Mr Brabant (1)) which Your Commissioner believes has already been received by your Excellency that Mr Brabant has some just ground of complaint as to the manner he has been treated by past governments, and doubts his utility here, if it has not already, due consideration at the hands of your Excellency.

Staff -

115. The rest of the Staff taken as a whole

Case

Mr. Cohen -

Can scarcely be considered any efficient.

fraud charge against
him -

116. Mr. Cohen, the Chief Clerk with his long experience of upwards of 30 years is a very valuable officer in so far as his professional knowledge is concerned (4, 5, 19), but he does not seem to have much administrative power never having organized any proper system for the office during all that time. Moreover he at times lacks that courtesy which is so necessary on the part of public servants. (3, 11, 13, 14, 21, 16, 23, 12) and there is some reason for believing that this is caused by an occasional over indulgence in drinking (6). But a fraud charge, similar in its nature to that brought against Mr. Beaudry in the Postmaster's Office, has been brought home to him. Namely receiving money from persons for the use of his official influence. It appears, and Mr. Cohen does not deny it, that he has been in the habit of receiving sums of from \$20 to \$25 each from those desirous of obtaining Tavern Licenses, and in return besides perhaps sending them in preparing their papers, has used the influence derived from his official position of Chief Clerk with either Mr. Burdett (when he was a License Commissioner) or with Mr. Judah the present Chairman of the License Commissioners. From his position in the Office it was only natural that he should often be consulted on matters connected with the granting of licenses, or that in case of his volunteering any advice that it should have great weight with the License Commissioners, they not having known that he was paid for such advice. Such an irregularity should never be allowed in any

Pathe

taking information in connection with the hearing
of lunatics, which they do not choose to consider as
regular office work (6)

Office rules suggested -

121. Were some such rules as those suggested for
the Postmaster's Office enforced here and a Time Book
kept these irregularities would soon cease. Of
course the Office would require to be reorganized -
The Chief Clerk should be responsible for the con-
duct of the whole staff and see that the orders of
the Police Magistrate were duly carried out - A proper
division of the work among the Clerks should also
be made, the time of a Clerk competent to take
information should not be frittered away in
making out subpoenas, filling up bail bonds &c
as at present.

122. For further suggestions with reference to the
details of reorganizing this Office your Commissioner
would specially refer to the depositions of Edwin Schiller
and Judah (23, 9).

Salaries -

123. The question of salaries was brought prominently
before your Commissioner in connection with this Office,
but for the reasons already stated your Commissioner
does not think it expedient to make any recommend-
ation in reference thereto, at the present time, excepting
only as regards the salary attached to the Office of
Police Magistrate. As already intimated your Com-
missioner is strongly of opinion that the present salary
is far too low and has a tendency to lower the Office
in the eyes of the public. The Bar were unanimous in
their opinion that the salary to be attached to the
Office should not be less than \$3000 a year. It

does

does seem somewhat anomalous that the servant of a Corporation holding a like position in the same City, although with less responsibility attached to it, should receive \$3000 a year, while the Police Magistrate, as servant of the Province should only receive \$2000 a year. The lowness of the salary has already had a prejudicial effect upon the working of the office, for the Police Magistrate in order to be able to maintain that social position in a City like Montreal, which his official position requires, is obliged, for the sake of the extra salary, to perform other duties in connection with the Militia Department for the Federal Government. The holding of such double office should not be permitted but the salary attached to the office should be increased sufficiently to do away with the necessity of holding such double office.

Retiring allowance -

124. It is also highly desirable that provision should be made for a retiring allowance for such officials when disabled from the infirmities of age from further attendance to their duties (19)

Revenue of office -

125. In connection with this subject it may be remarked that the revenue of this office, derived from fines imposed by the Police Magistrate during the last year amounted to all but \$12000 (1) apart from the fees of office.

Appointments of second Magistrate -

126. The Police Magistrate complains of the amount of work he has to perform and asks for an Assistant (1) The Bar are also unanimous in stating that there is a necessity for the appointment of a second Magistrate, one to take charge of the

the Police Court — and weekly sessions and the other to have charge of the Preliminary Examinations in matters of Felonies and Misdemeanors. Mr. Judah & Mr. Schiller (both having great experience in the working of this office) are, on the other hand, of a contrary opinion and consider that one Police Magistrate could (with occasional assistance from other Justices with extended powers) satisfactorily perform all the duties required of him, provided that he was relieved from holding the weekly ~~sittings~~ (which however are held daily) and that the office hours were somewhat extended (23, 9)

127. Your Commissioner is inclined to coincide with these latter views, that is, if it should be deemed advisable to continue the present system of conducting preliminary examinations. Mr. Carter has however shown that there are, to say the least, grave doubts as to the ability of the present practice and that it is very doubtful, were the question raised, whether dispositions so taken could be made available in a higher Court (19). The practice now is to conduct all the different preliminary examinations pending, at one and the same time, in different rooms, the Police Magistrate going from one to the other to decide any questions that may be raised by Counsel. By law the Magistrate is obliged to be present and personally superintend the taking of the deposition. It would however be absolutely impossible for the Police Magistrate to obey the law in this respect under present circumstances. During the last year as appears

by

by the return B demand to Mr. Bahant's department (1) there were 713 settings in matters of preliminary examinations or on an average two a day. It often happens however that there are four or five going on at the same time, and as there are but two hours a day at present devoted to these examinations it would be impossible for the Police Magistrate to take them in rotation. I got over this difficulty Council have adopted the practice of proceeding in the absence of the Magistrate by consent, notwithstanding the illegality of such a course.

Stenography -

128. The use of stenography has been suggested by several as a partial remedy, but there are inconveniences attending its introduction in Criminal matters which would probably more than counter-balance the advantages to be derived from that system. (19, 23)

129. Should it be considered expedient to abolish this practice, then it would be absolutely necessary to appoint a second Magistrate (who in the opinion of the Bar should be an able Criminal lawyer) to have sole charge of these preliminary examinations, but if not your Commissioner is of opinion that one Police Magistrate is sufficient provided he be relieved from the weekly sessions which might very well be re-arranged to the Judge of Sessions, and that the office hours be fixed at from 9 to 5 in the forenoon and from 9-11 in the afternoon.

'Dinner Hours'

130. The 'dinner hours' if possible should be abolished as it is the cause of great irregularity

in the appie, but all seems to agree that it could not very well be abolished so long as this portion of the Court House remains in its present unhealthy state.

Sanating Condition
of Police Court -

131. The present condition of this portion of the Court House in a sanating point of view, is about as bad as it well can be, and as appears by the copies of the Certificate of the Doctor filed by Mr. Burkhardt is positively dangerous to the health of those who are compelled to occupy it. Your Commissioner was informed that an attempt was made some time ago by improving the drainage and ventilation, to remedy the existing evils, but the result was scarcely if at all perceptible. It is surmised that the drains have not sufficient fall. This is a matter which will require professional assistance to ascertain the cause and provide a remedy. The ventilation or rather want of ventilation in the Court room is something frightful (1, 2, 9). Perhaps the system noticed some time ago in the Montreal Gazette as having been successfully adopted in England in a like case, might, with some modifications so as to suit this climate, be adopted here, namely placing up light fresh hollow posts in connection with the outside air in different parts of the room by which a current of fresh air was continually being introduced - Of course this air would require to be heated during our winter season. It is necessary for an Architect to decide the proper course to pursue, but no time should be lost

in attempting a remedy for the present state of things.

want of accommodation - 132. Another crying grievance is the want of accommodation. The Court room is too small for the numbers that daily crowd the room, and there are no conveniences either for carrying on the ordinary business of the Ohio Court or the taking of preliminary examinations - Your Commissioner has actually seen the Counsel and others engaged in such examinations placed in the vaults for want of other accommodation. (5, 9, 10, 6) - Ladies and others are often detained from lodging complaints on account of there being no room in which they can be received without being mixed up with the lower class of characters, (6, 11) As to that security which is so essential in Criminal proceedings, at all events, before the arrest of the accused, it is altogether impossible under present arrangements to maintain it, and it often results that the accused is thereby enabled to defeat the ends of justice - Moreover in cases where an unimpeached change is brought, as is often the case, it is not right that the names of such parties so wrongfully accused should be made public, but under the present system it is almost impossible to prevent it. (5)

133. As a remedy Mr. Burkant suggests that wings be added to the rear of the building, but this is a matter that ought to be left to the decision of a professional architect after due consultation with the different officers in the Court House interested.

in the question.

Schedules —

134. The following schedules are annexed to the disposition of Mr. Brehan (1)

A. Copy of Memorial to His Excellency the Lieutenant Governor.

B. Return of the cases disposed of by the Police Magistrate for the year 1875, including the amount & nature of the fines imposed.

C. Order in Council respecting terms of attendance in Police Office dated 3rd July 1855.

and to the disposition of Mr. Collet (2)

1. Statement showing names of employees, kind of service, salaries & duties, in Police Magistrate Office

2. do. Duties of Chief Clerk.

Conclusion —

135. Your Commissioner has in the foregoing pages attempted to give a full and exhaustive report on the working and management of the several offices he was commissioned to inquire into, with such suggestions and conclusions as to the removal of existing abuses as to him seem justified by the evidence adduced, but in case he should have erred or have drawn conclusions that were not warranted or omitted to report on any matter that might be considered essential, he begs respectfully to report herewith the disposition of the several abuses examined by him in connection with this matter, together with the various schedules heretofore referred to.

— All of which is respectfully submitted —

Dunsmuir. 3rd May 1876 ?

J. H. H. H.
Commissioner —