

use, but which, when the occasion passed, were unworthy of further notice.

The Committee then reported a Bill for the relief of the American loyalists, &c. which was read the first time, and ordered for a second reading the next day.

TUESDAY, February 25.

Mr. D. Macdonald, from the Committee appointed to prepare and bring in a Bill for the regulation of the Fishery Reserves in this Island, presented to the House a Bill, as prepared by the Committee; and the same was read the first time, and ordered to be read a second time on Thursday next.

A petition of Thomas Robinson, and others, styling themselves members of a Committee appointed by the loyal American Refugees, the provincial disbanded Troops, and the representatives of such persons, was presented to the House by Mr. Rae, and the same was received and read—praying for a Bill calculated to put the said parties into the possession of such unoccupied wilderness lands as had been previously surrendered for their benefit, and which still remain in the possession of the proprietors by whom the surrender was made; and further praying the House to address the Throne, for a right to locate the petitioners, and those whom they represent, on the aforesaid lands, or on such lands as may be at the disposal of the Crown in this Colony; or for such other mode of relief as to the House may appear meet.

LOYALIST BILL.

The House then went into Committee of the whole, to take into consideration the Bill for the relief of the American Loyalists, &c. together with the above petition.

Mr. RAE, when the preamble of the bill was under consideration, said, it was scarcely so long as the preamble of the Loyalist Bill of last session, and did not contain all the allegations against proprietors which facts would warrant. There were facts referred to in the preamble, there was a reference to Colonial Records, which would put it out of the power of the Colonial Secretary again to say that the claims of the loyalists had been dormant for fifty-six years. The present bill, he said, was not liable to another objection which had been made to their former one. It did away with that which respected the impossibility of getting former locations; and also that about the extraordinary power given to Commissioners. Mr. Rae referred to Colonial documents of the years 1790, 1793, and 1809, to show that the claims of the loyalists had not been dormant for 56, nor 50, nor 30 years; and, for the same purpose, he read an affidavit of Thomas Haszard, sworn in 1812. It could no longer, he observed, be said that claims were remote and dormant. It might be difficult, he said, to persuade the loyalists that the House had done all in its power for them; however, sound judgments would see in this bill all that could be wisely attempted. If more had been aimed at, they would have lost the opportunity of putting their claims on record. That done, they or their descendants, would, some time or other, get all that had been promised them, though not all to which they were now entitled.

The different clauses having been gone through—Mr. Speaker resumed the chair, and the Chairman of the Committee reported, that the Committee had gone through the Bill without making any amendment thereto. The report was received, and the bill was ordered to be engrossed.

It was then resolved, that an humble Address be presented to Her Majesty, in support of the Bill for the relief of the American loyalists and disbanded provincial troops, or their representatives—and that the Committee who prepared the bill be a Committee to prepare the Address.

The House then adjourned.

WEDNESDAY, February 26.

The Hon. Mr. Pope moved the second reading of the Bill to enable Commissioners of Small Debt and Justices of the Peace to appoint Clerks.

Mr. MACINTOSH said, it did not appear that the honourable gentleman who had brought in the bill was very anxious about it. It would be better to delay the measure until it was called for. One objection he had to it was, that it would be establishing a school in which to train up Magistrates. Magistrates were complained of as they were, but if Clerks were allowed them, he expected the reasons to complain of them would soon be greater.

The Hon. Mr. POPE asked, whom does the honourable member (Mr. Macintosh) expect to ask for such a measure? Were they to wait till they had ascertained whether or not a majority of the people were in favour of any new measure before they proceeded to carry it into law? He was happy that the honourable member (Mr. Macintosh) had no weightier objection to bring against the bill, than that it would establish a school for the training up of magistrates. In that light he (the hon. Mr. Pope) thought it would be very useful. A person after having acted for some time as a Clerk to Commissioners of Small Debt, would certainly be better qualified to act as a Commissioner himself, than if he had never filled such a situation. The appointment of Clerks would leave Magistrates or Commissioners unbiassed. It was known to be compulsory in other provinces, as in Canada, Nova Scotia and New Brunswick. It was the case in all Courts of Session and in all Courts of conscience. It was the practice elsewhere, and no evil was found to arise from it. It would frequently be found a convenience to suitors; for magistrates, like others, were not always to be found in the way of those who might want them. The bill would not prevent a magistrate's doing his own business as heretofore, it would merely make it lawful for him to appoint a Clerk, should he think it proper to do so. As for himself, he could see no objection to the bill, but every thing in its favour. The honourable member (Mr. Macintosh) was mistaken when he represented him (Mr. Pope) as not favourable to the bill. He was not personally interested in it, but he considered it a good measure, and, therefore supported it. He was open to conviction, and if it could be shewn that the bill had an evil tendency he would abandon it.

Mr. PALMER suggested that the bill should be read, that the principle on which it was founded might be before the House.

The question was then put, and carried in the affirmative. The Bill was read a second time accordingly.

Mr. CLARK said, he was as willing as any one to consult the convenience of magistrates and Commissioners, but he thought such an Act as that now proposed would operate very badly. It would, in a great measure, do away with the responsibility of magistrates. If such Clerks were to be appointed, they should be men of conscience, and not encouragers of litigation. For the increasing of their fees, magistrates might appoint creatures of their own to hunt out and encourage law suits. He hoped to see a Society formed for the suppression of law suits, and the protection of the poor idiots who would otherwise throw themselves into the rapacious grasp of the law; and to the formation of such a society he would gladly lend his assistance. All that magistrates were required to do, he thought they might very well do themselves.

Mr. D. MACDONALD intended to oppose the bill in every stage. The only thing which had been advanced in its favour was, that it would prevent suitors having access to magistrates. That good was far more than counterbalanced by the power which would be possessed by the Clerks to hunt out law suits.

Mr. LE LACHEUR could see no utility in the measure. The magistrates might well enough attend to their own duties. By the bill, all would devolve upon the Clerks, who would be irresponsible alike to country, clients, and magistrates. In the part of the country from which he came, no Clerks were wanted. In Charlottetown, if a clerk were appointed by the magistrates, he would doubtless be a lawyer. But if the Charlottetown magistrates wanted a Clerk, could they not appoint one, on their own responsibility, without a law to that effect? Honourable members were told that this bill would entail no additional expense upon the country, as the clerks would have to be paid out of the fees already allowed to magistrates. In one way, it was true, no additional expense would immediately fall upon the country in the shape of extra fees; but let it once get into play, and they would soon find it could not work without some additional allowance to clerks. His impression was, that let the magistrates then get in the little finger and they would soon get in the whole hand. In pleading for this bill, its friends might say, "spare it, it is not a little one!" But what would the consequence be? In two or three years, on the plea that business had increased, and other pleas of the same nature, salaries would be demanded for the clerks. Magistrates at first might do a little, and, in the end, the country would have to do a great deal.

Mr. THOMSON could not tell what honourable members meant by their opposition at that stage. Did not see why a magistrate should not be allowed to keep a clerk at his own residence; but saw no necessity for a general clerk. By the present law an act of a magistrate's clerk, in his capacity of clerk, was binding upon his principal. Hoped honourable gentlemen would allow the bill to go to Committee. If Clerks were allowed to Commissioners of Small Debts, he thought they should, when a summons was applied for, give the defendant notice thereof, by letter, for which a shilling might be charged, that he (the defendant) might have an opportunity to settle matters without further expense. Such a plan would prevent hundreds of suits, within even a short period.

Mr. GORMAN said, magistrates in his part of the country were so poor, that, if they were to pay clerks themselves, there would be no danger of their keeping any.

The Hon. Mr. POPE explained, that since his having become a member of the Executive, he had ceased to act as a Commissioner of Small Debts; he had, therefore, no direct interest in the fate of the bill. He was surprised that no more valid objection was all taken to the bill than that it would relieve the magistrates from all responsibility. Was the Judge, he said, relieved from all responsibility by the appointment and acting of a clerk to the Supreme Court? No inconvenience arose from such an appointment.

Mr. RAE thought the Bill was intended for the accommodation of a few. He hoped the country was not come to that pass that Commissioners of Small Debt had so many summonses to issue, that the Bill could not do the business without the assistance of clerks. The Bill was brought in as a gift to the country. Such gifts, however, he could not regard without suspicion. A snake might be presented, concealed in a basket of roses. The responsibility was best with the magistrates; they were generally persons who had settlements in the country; but a man dropping in from New Brunswick, the United States, or elsewhere, might be appointed a magistrate's clerk, and, in that capacity, might issue summonses, capias, &c., and suddenly disappear with all the records. No magistrate in this colony, but one who had much private business to transact, could be in any want of a clerk, and few other magistrates than such could afford to keep clerks. He thought there were only ten or twelve magistrates in the colony who could afford to keep clerks; and such clerks, to increase their own fees, it was not unreasonable to suppose, would be diligent in hunting out suits, to be tried by those who had appointed them (the clerks). Had the Bill gone to the cutting down of fees, instead of rendering it probable that it would subject the people to still further exactions, it would have been worthy the support of the House—it would have been a measure not uncalled for.

Mr. ARBUCKLE said he did not intend to say much upon the subject. He would observe, however, that he thought no inconvenience could arise from assimilating the inferior to the superior Courts.

Mr. PALMER said it was always for the benefit of a country to facilitate the operation of justice. The appointment of clerks would no doubt be a convenience to some of the magistrates, but it would be a greater to suitors. A suitor might not always be able to procure a summons direct from a Commissioner—he might be put off; but if he had to apply to a clerk, he would get it without excuse. At present, a magistrate, from a relation of a case made to him in private, was liable to imbibe a prejudice which might affect his public judgment in the matter. That this was the case, he (Mr. Palmer) himself knew from his having been concerned in cases of appeal from the Magistrates' Court. A magistrate, before granting a summons, might have made up his mind upon the subject, and, on hearing the case, would not give way. This, by the bill, would be got rid of. Cases would come before three Commissioners who might judge without partiality. It appeared to be thought that if the bill passed into a law, it would not, at present, or for a long time, be acted upon any where but in Charlottetown; and that if the magistrates in Charlottetown were to appoint a Clerk, he would be one of those reprobates of society, as some honourable members appeared to consider them, one of those long fingered gentry, as they were described, the lawyers. But he maintained that the appointment of a lawyer to such an office, instead of being likely to multiply suits, would prevent many. Every man applying for a summons had not a good cause. If a man with a bad cause applied to a Commissioner's Clerk who was a lawyer, he might very likely explain his case to the Clerk, and as he (the Clerk) would be a disinterested party, and able to judge of the merits of the man's case, on finding it a bad one, he would, most probably, advise him to desist. Thus, the Clerk, if a lawyer, might prevent many bad causes from going before the Commissioners at all, and consequently prevent litigation. It has been stated by an honourable member (Mr. Clark), that he hoped to see the day when there would be no necessity for law, that is, he (Mr. Palmer) supposed, when such miscreants as lawyers would be banished from the face of the earth. The millennium, in the opinion of the honourable gentleman (Mr. Clark), appeared to be much nearer than he (Mr. Palmer) thought it was. Since he (Mr. P.) had been in the House, objections had always been made to the enacting of law. No law! no law at all! was almost the cry. He thought if any code of laws could suit some people, it would be no other than Judge Lynch's. He had always understood that the laws were a protection to the people. Honourable gentlemen should recollect, that if they were to have no laws there would be no need of legislators. The responsibility under the bill, as it appeared to him, would rest upon the magistrate. The clerk, on the authority of the magistrate, would sign for the magistrate, and affix his seal. If honourable members thought the measure uncalled for, with respect to country Commissioners, let them try poor unfortunate Charlottetown; let them not destroy the bill entirely; let it pass for Charlottetown alone.

Mr. D. Macdonald then moved, that the further consideration of the Bill be deferred until this day three months.

The Hon. J. S. MACDONALD had listened to all that had been said for and against the bill. He had heard no arguments against it which at all weighed with him. If, as a law, it would not be a benefit to the country, it would certainly do it no injury. Very few magistrates, he believed, would have clerks.

The Hon. Mr. POPE moved, in amendment, that the Bill be now committed to a Committee of the whole House.

The House divided on the motion of amendment—Yeas, 14. Nays, 8.

The House accordingly resolved itself into the said Committee.

Mr. FRASER observed, that Commissioners were not by the Bill made liable for the official acts of their Clerks; and he proposed an amendment to remedy the defect.

Mr. RAE said the Governor was in some degree responsible for the magistrates. According to this Bill, an individual might be appointed by two or three magistrates by whom he was to be privately paid—he might even have a commission upon the amount of fees, a mode of payment which would be a highly improper one: it would then become the interest of the Clerk to encourage litigation. If magistrates were to be allowed Clerks, a magistrate ought to be made responsible for every act of his Clerk in which the latter acted as the vice of the former.

The Hon. Mr. POPE would willingly second any amendment which was likely to protect the public and to prevent delinquency.

Mr. LE LACHEUR said they were required to permit the appointment of an apparently irresponsible body who were to issue summonses, subpoenas, and processes, who were to be omnipotent in power, but for whose misdeeds they who appointed them were not to be held responsible. If magistrates overstepped their jurisdiction, the party aggrieved could appeal to the Supreme Court. But by the Bill before them, if a person should be aggrieved by any mistake or error, wilful or otherwise, of the Magistrate's Clerk, there was to be no redress. If the Bill passed, provision should be made for ample restitution and amends in such a case as he had just supposed.

The Hon. Mr. POPE said this was a key to the common sense of the House. The honourable member (Mr. Le Lacheur) had told them that a man could remove his case, papers, judgment and all out of the hands of the magistrates, but Clerks were not included! He (Mr. Pope) would not impose upon the Committee by stopping to answer such arguments. Such clerks as should be really requisite might be imposed; a security might be exacted from the Clerk. Still he did not see how any particular delinquency on the part of the Clerk could occur. The fees were certain, and judgment was recorded, and should be read. If it were said the Clerk might receive money and run away with it; so, it might be answered, might the magistrate.

Mr. RAE again spoke against the measure. He observed a magistrate having to go hither and thither, might appoint his son, a youth of eighteen years of age, to act as his deputy. No restrictions were to be imposed upon the magistrates as to whom they should or should not appoint. The Bill might create a very useful school for the rearing of magistrates, but he should not like the country to have to pay so dearly for it.

Mr. PALMER said one objection was no sooner got rid of than another was started. He had no objection to the responsibility of magistrates—thought it was so in the Bill. The Clerk, he said, was answerable to his principal, and the magistrate liable for the acts of his clerk, so far as they pertained to his office, and would be held so at this day, whether he (the clerk) were appointed under the common law, under an express law, or merely at the will of his principal. The clerk was answerable to his superior; and the superior to his client. Mr. Palmer then exemplified his statement by the re-Deputies of the Clerk of the Supreme Court was still more in point. Each deputy should be accountable to the Clerk in Town? No: it was unnecessary it should do so; according to the law as it stood before his appointment, he was so responsible. Was the honourable member who spoke of the appointment of a youth of eighteen, so ignorant of the law, that he thought a special clause requisite to prevent the appointment of unfit persons. Did he not know that by the law of the land infants were debarred from filling such offices?

The Hon. Mr. POPE moved, that after the word "Clerk," in the first clause, these words be inserted: "and for whose act or acts in the discharge of his duty, such Commissioner or Commissioners, or Justices of the Peace, making such an appointment, shall be at all times responsible." He (Mr. Pope) wished, as far as possible, to

guard against delinquencies, and to make the Act useful to the country.

Mr. RAE gave the honourable member credit for the readiness with which he took half the loaf when he could not get the whole. He (Mr. Rae) would support the amendment, not because he thought the Bill necessary, but simply because with the amendment the Bill was less open to condemnation than before.

Mr. LE LACHEUR observed, that the insertion, at first, of the words comprising the proposed amendment, would have saved much time to the House. His sole objection to the Bill, for a moment admitting it to be called for, had been the want of responsibility on the part of the magistrates. With that amendment, if he thought the Bill called for, he would not object to it.

The Hon. J. S. Macdonald seconded the amendment, not because he thought the omission a defect, (for the principal was always responsible for the acts of his deputy,) but because it would remove the objections of some honourable gentlemen to the Bill.

The amendment was agreed to.

An amendment proposed by Mr. Rae, having for its object the preventing of clerks to be appointed under the Act taking fees for themselves, was negatived.

The Hon. Mr. POPE moved the following amendment:—

And be it enacted, That the said Book, so to be kept by any such Clerk as aforesaid, shall be handed over to the Commissioner or Commissioners who shall have appointed such Clerk, on his going out of office or being superseded; and if the said Clerk shall neglect or refuse to deliver up to the said Commissioner or Commissioners such Book, when demanded, he shall forfeit and pay, for such offence, a sum not exceeding Twenty Pounds, to be recovered, with costs, in the Supreme Court of Judicature of this Island, and applied to and for the use of Her Majesty.

This amendment was agreed to without a division.

Mr. D. MACDONALD moved an amendment to the said Bill, that a clause be added, limiting its duration to the space of three years—which was agreed to.

On the Speaker resuming the Chair, Mr. Hudson reported, that the Committee had gone through the Bill, and made several amendments thereto.

Mr. Speaker having put the question, "Is it the pleasure of the House that the Report of the Committee be received?" the House divided—Yeas, 14; Nays, 7.

THURSDAY, February 27.

LOYALIST BILL.

Read a third time, as engrossed, the Bill intitled "An Act for the relief of certain of the American loyalists and disbanded provincial troops, and their representatives."

Mr. D. MACDONALD moved that the Bill do pass.

The Hon. Mr. POPE moved, in amendment, that the said Bill do pass this day three months. He (Mr. Pope) had been in hopes that some measure would be framed obviating all the objections which had been made to the former bill by the Home Government. The machinery of the present bill was so complicated and difficult, that few things could be better qualified to keep alive excitement. Among the Loyalist complaints there were only two or three cases deserving consideration; the rest were altogether unworthy of attention. It was well known that many of them had bartered away their claims for mere trifles. They who made themselves most conspicuous in bringing forward and pressing their claims, were persons who had had their grants, but who had thought fit to part with them. In support of, and with a view to advance, the Loyalist claims, he had heard the most ungrounded statements and the grossest falsehoods made by persons, not members of the honourable House. The bill would be an infringement of the prerogative of the Crown, and in direct opposition to the royal instructions. He, for one, would certainly record his name against the bill, even though he should stand alone.

Mr. LE LACHEUR denied that the bill was any infringement of the prerogative of the Crown. The application on behalf of the Loyalists was founded on facts. All the demands of the Loyalists were founded in truth, reason and justice.

The Hon. J. S. MACDONALD said he did not rise to oppose the bill; what was objectionable in the bill, he hoped would be amended by the other branch of the Legislature. As to lands being re-vested in the Crown, and placed at the disposal of the Legislature, he did not think they needed to entertain the most distant hopes of such an event. The Colony was much more likely to lose its constitution, and to be annexed to one of the neighbouring provinces.

The Hon. Mr. POPE's motion not being seconded, the question was put on the original motion, That the bill do pass.—The House divided on the question:

Yeas: 15.
Nays: Hon. Mr. Pope, Mr. Palmer—2.

Read a third time, as engrossed, the Bill intitled "An Act to enable Commissioners under the Small Debt Act, and Justices of the Peace throughout the Island, to appoint Clerks."

A motion being made, that the Bill do pass; Mr. Le Lacheur moved, in amendment, that, at the end of the question, the following words be added—"this day three months."

The House divided on the question: Yeas, Messrs. Le Lacheur, Macneill, Forbes, D. Macdonald, Macintosh, Clark, Rae, Fraser, 8. Nays, Hon. Mr. Pope, Messrs. Palmer, Yeo, Dalziel, Thomson, Macfarlane, Gorman, Beck, Longworth, Arbuckle, W. Dingwell, Montgomery, Hon. J. S. Macdonald, 13.

STATUTE LABOUR ACT.

Mr. YEO, according to previous notice, moved, that a Special Committee be appointed, to take into consideration the Statute Labour Act.

Mr. RAE said it would certainly seem very hard to refuse a Committee, if it were thought any good would arise from it. If granted, however, he was afraid it would be productive of no good. Some, he understood, contemplated a money assessment; but he considered the Colony was not ripe enough for such a taxation.

Mr. LE LACHEUR said the Statute Labour Act imposed a poll tax upon the people; and, therefore, its very first principle was one of justice: the poor were called upon to pay as much as the rich. Persons enjoying incomes of £1000 or £500 a year, were not required to contribute more than the man who was earning his bread by the sweat of his brow. His Excellency the Governor, the honourable Treasurer, and his honor the Chief Justice contributed no more than the poor slave of a tenant on a greenwood farm, or the mere hired labourer. Those who had become wealthy by the toils and labours of others, were not more heavily burthened than their own hewers of wood and drawers of water. He (Mr. Le Lacheur) would go heart and hand with any honourable member who should attempt such an improvement of the Act as would apportion the burthen, by a scale of gradation, according to the circumstances of every individual subject to the tax.

Mr. CLARK thought it was high time some alteration should be made in the Statute Labour Act. To every person travelling the country, the state of the roads told this. Could not exactly say what were the intentions of the hon. member who had moved for the Committee, although he had had some conversation with him on the subject. Could not agree with Mr. Rae in his ideas respecting the commuting of labour for money. The poor man, said Mr. Clark, was obliged to pay as much as the rich man. The latter paid in money, and the former paid in labour—labour, the money of the poor. Was a tax direct only when paid in money? The poor man was obliged to contribute four days' labour—one hundredth part of his time—surely this was a direct tax, and a heavy one too. Still, if it were an available tax, he (Mr. Clark) would have less objection to it; but any one might see it was not available. It was a hoax upon common sense to observe a body of men going out with wooden shovels and potato-hoes, under the pretence of road-making. Such bodies would themselves avow that they did not go out to labour, but merely to give the time exacted by law. If the overseer attempted to do his duty, what was the consequence? He merely subjected himself to abuse, and embroiled himself with all his neighbours. In some instances he (Mr. Clark) knew that 20s. paid in money, had done more good than the work of thirty men. When roads were sold for money, people bade against one another, and took jobs for a little. In opposition to a direct money tax, some object that many would not be able to get on a certain day the work to be done on any road should be publicly let, only to pay their own tax by taking jobs, but to earn the money of such whatever labour they did above government labour. He (Mr. Clark) believed this was the object of the hon. member, Mr. Yeo. Whether it was intended to tax individuals according to their wealth and property, he (Mr. Clark) knew not. He, at any rate, thought they who made much use of roads, should pay much towards the making and repairing of them. They should certainly be taxed more heavily on account of roads than they who made less use of them.

Mr. D. MACDONALD would suggest to the honourable member, that he should withdraw his motion, and move that the House would resolve itself into a Committee of the whole, when the propriety of amending the Statute Labour Act, and the alterations intended to be made, might be discussed bringing in the Bill.

Mr. THOMSON thought honourable members were cutting and carving out time. If the present Act were duly enforced, it would be found quite sufficient for the purpose for which it was framed. No doubt, in some parts of the country there might be found squads of lazy fellows who, under the sheer pretence of working, went out to the roads merely to shoo away their time; but in performed, that many individuals, zealous of improvement, did more than was bound to admit there were. He thought a circular letter, addressed strict with the Overseers, and with unfinching and impartial rigour, to re-ward effect all that was required.

Mr. YEO said what he had to propose would not oppress the poor man, but would directly work for his benefit. It was a murder to see the time of it seldom happened, he believed, that ten men upon the road did the work of two.