

The Colonial Herald,

AND

PRINCE EDWARD ISLAND ADVERTISER.

Vol. III.]

CHARLOTTETOWN, SATURDAY, MARCH 28, 1840.

[No. 139.]

COLONIAL LEGISLATURE.

SATURDAY, February 29.

STATUTE LABOUR ACT.

(Debate continued.)

Mr. LONGWORTH did not see anything very objectionable in the Resolution, except that it went rather too much into detail. He meant to propose a commutation, and, if that were carried, a Bill might then be drafted in accordance with the principle previously recognized.

Mr. D. MACDONALD would oppose the Resolution. If the present Act did not work as well as it once did, the fault, in his opinion, was not with the people, but with the overseers. Still, however, there would, even then, remain one cause of complaint, not of the inefficiency of the statute labour, but of the principle of injustice in the character of the law, inasmuch as by it the rich were not more heavily taxed than the poor.

Mr. PALMER acknowledged the Act required amendment, but said he had not heard any plan proposed which was calculated to improve it. If the law did not effect its object, he believed it was more owing to the supineness of the Commissioners and Overseers than to the laziness of the people. Overseers were not constantly present; they were averse to be regarded as negro-drivers, and it was natural for the people to take advantage of the remissness of Overseers. When the principle of commutation was introduced, it was thought that none, however poor, would choose the alternative of work. They had found they were mistaken. Many persons in the country were so poor, that it was impossible for them to pay in cash. A general commutation cannot take effect. Many individuals are not possessed of a shilling between January and December. If Overseers were compelled to make their returns on oath, they would have a sufficient apology for their strictness, and one which would be regarded by, and excuse them to, the people.

Mr. SPEAKER said, it was understood that the old Act had, for a long time, been very efficient; but bad habits will overrun a country. A single individual was frequently sufficient to introduce bad habits to a most mischievous extent; both as Commissioner and Overseer he had sufficient experience of that: he would like to see a uniform system of statute labour enacted. There should be one Commissioner for each County with a fixed salary of £30 a year; in addition to which he might be allowed 3 per cent. upon the money expended upon the roads in his County, in a year, which might be about £500: his salary would then be about £45 a year.

The Hon. Mr. POPE said, such a mode would never remunerate a Commissioner for the discharge of his duty. It would not even pay for his horse hire or his lodgings when travelling through his district. If at present a Commissioner did his duty, £10 a year was by no means a sufficient compensation for his trouble. When he began to act as a Commissioner he found the discharge of his duties took up one half or one third of his time. It was not so now, for the roads in his district having been brought into a pretty good state, they now required less attention than formerly. If a man were appointed a Commissioner for a whole County, a discharge of his duties as such would take up his whole time in summer. All know Mr. Mabey. For a long time he sat in this House as one of the representatives for Charlottetown, with the almost universal approbation of his constituency. His activity as a Road Commissioner would also be very well remembered by many. At the time he acted in the latter capacity, had the Government allowed him £200 or £300 a year, it would have been no more than he deserved. But after zealously and faithfully discharging the duties of his office, by compelling others to perform their share of labour upon the roads, had he again, at an election, sought the support of some of those persons whom he had caused to do their duty, although they would formerly have supported him, they would have endeavoured to hoot and scout him from the hustings. This would show how invidious a duty Commissioners and Overseers had to perform. Were he offered £100 or £150 a year to act as Road Commissioner for a whole County, he would not accept it; and no conscientious man could do it for one farthing less. If a Commissioner were in fault, his delinquency ought to be made known in the proper quarter, and his dismissal from office would follow of course. With an overseer, however, he was disposed to sympathize. If the overseer did his duty, he was almost bound to keep up a quarrel and fight with his neighbours for a whole week at a time. The overseers want power to enforce the law without rendering themselves liable to the ill will of their neighbours. He would of all things prefer a money tax before statute labour, if he thought the country in a fit state for it. Road Commissioners here, as in other Colonies, should have power to employ a sufficiency of labour to keep the roads at all times in a proper state of repair. If a Road Commissioner had a portion of the grants placed at his disposal, he might employ labourers at any season of the year. At present, Commissioners were held responsible for the state of the public roads, without their having means at their disposal to keep them in repair. To do away with any objections respecting the misapplication of moneys, he would suggest that Commissioners should, in all cases, make their returns on oath, accompanied by vouchers of expenditure. And Overseers being also required to send in their returns on oath would very far do away with the invidious nature of their duty; and besides being a relief to themselves it would also yield satisfaction to those who faithfully performed their tasks, and who, like free horses, were almost worked to death, while surrounded by a set of lazy fellows who ridiculed them for their simplicity and laughed at the authority of the overseer. If such a plan as he had spoken of should be brought in, he would be inclined to go along with it, and to consent to its having a trial.

Mr. DALZIEL said, their chief object ought to be to relieve the poor, and to make the rich pay according to their abilities.

Mr. HUDSON said, a money assessment would be very severely felt. Two thirds of the population were unable to meet it. There were hundreds and thousands of persons upon farms in the back settlements, who were not in possession of one dollar in money from one year's end to the other. A money assessment might answer in Charlottetown; perhaps it might answer in Georgetown; but it could not be borne by the country generally. He would go along with any amendment which was likely to improve the working of the present Act; but he would oppose a money tax.

Mr. FRASER fully coincided in opinion on this subject with the honourable member who had last spoken.

Mr. YEO said it was in back settlements that roads were most wanted. Poor people in these settlements would not only have an opportunity of working up their own money, but of earning that of others.

Mr. MACNEILL thought the best way would be to allow the matter to stand over till the next session; and, in the mean while, honourable members might acquire that information of which they then appeared to be in some degree deficient, and which was necessary to enable them to make a beneficial alteration in the Act under consideration.

Mr. GORMAN said, they (honourable members) were all road makers or Commissioners: they knew quite enough about the matter. What was proposed was not a money tax; it was merely devising a means to compel persons faithfully to discharge a duty which they alike owed to themselves and the community at large. It was something like the penal laws against thieves and robbers: when thieves and robbers disappeared, the laws against them would disappear also. If a man would not perform his statute labour faithfully, but tried to skulk and play, it was right and proper to make him contribute in money.

Mr. RAE replied, that it seemed all Mr. Gorman saw in the tax of money was that it would compel a man to work upon the roads; but he (Mr. RAE) saw much more. It came to this; the money would go into the hands of Commissioners and Overseers, and by them be paid to two or three individuals. If a Commissioner regarded his own peace and ease, he would have to yield to such a distribution of the money. There was not a single petition before the House calling for any alteration in the Statute Labour Act: he had never heard that such an alteration was in agitation, till the honourable member (Mr. YEO) had introduced it to the House. He (Mr. RAE) thought they were not warranted in entering upon it without previous enquiry and consideration. In the heat of debate, it was

possible, they might make some alteration, or introduce some principle, the recognition of which might not be for the general good. He was entirely opposed to the principle of a money assessment. It was very easy to complain that the people made only a pretence of working; but many individuals drive their waggons along roads which have been made entirely by statute labour. Great regret was expressed at the loss which industrious farmers suffered by being obliged to work on the roads, when it would be far more profitable for them to pay a moderate sum in money. Did the present Act prevent their doing so? Did it not encourage them to do so? The proposed change, the plan of making every one pay money, was grounded on pretence and nothing else. It would be accompanied by injustice: it bore oppression on its front. It was to say that the Legislature would not accept from the poor man the labour of his hands, with which faculty Providence had endowed him; but that the Legislature would insist on demanding from him money, with which he had not been born, and which he might never acquire. Was a liberal House, chosen by much exertion on the part of the people, prepared to sanction such monstrous doctrine? If there be a change, let it be one founded on correct principles. Let us take the Act of New Brunswick, and we would there find that if the poor man chose to work, the overseer could not exact money. And let us take still more of their plan. Let us make the rich pay for that road over which their career with their blood horses, nourished for their pleasure out of the funds too lavishly supplied them from the public purse. At present, the man on fifty acres of rented land with but two sorry horses, contributes as much to the maintenance of roads, as the man who lives on 200 or 300 acres of his own land, or on £400 or £500 of rent extorted from the cultivators.

Mr. PALMER did not approve of a postponing of the business. He thought it would be better to take the sense of the Committee as to whether any alteration should be made in the law; and, to try it, he submitted a Resolution nearly to the following effect:—

“That it is the opinion of this Committee, that the present Act, regulating the performance of Statute Labour, be altered and amended in different respects; and, in particular, by requiring commutation from all persons now liable to perform statute labour, without leaving to any person the option of performing actual labour.”

Mr. RAE apprehended that, by Mr. Palmer's mode, they would have either to pledge themselves to certain principles or to reject all amendment.

Some discussion then took place, as to whether any alteration should be made in the law, with a view to its going into immediate operation, or simply by bringing in a new Bill, to be printed for the information of the people, and allowing it to stand over till the next session.

The Hon. Mr. POPE thought a Bill might be brought in, printed, and allowed to stand over till the next session.

Mr. MACINTOSH acknowledged that the Act required amendment. He thought it would be loss of time to postpone it. The amendment was wanted now and might now be made.

Mr. RAE would not concede to any principle until he had referred it to his constituents.

The Hon. Mr. POPE would never admit, that on all occasions, when the alteration or introduction of a law became necessary, it was the duty of honourable members directly to consult their constituents. Such a proceeding would be an actual acknowledgment of their own incapacity to grapple, not only with any unforeseen emergency, but with any measure suddenly arising out of the common business of the country. If a Bill were brought in, making any very great alterations in the law, he would certainly wish it to be printed for the information of the people. Although he thought it unnecessary to go and consult his constituents, could he assemble them all at once, he did not say he would refuse to pay deference to the majority of them.

Mr. RAE did not consider that the printing of a Bill would render it necessary for honourable members to call meetings of their constituents. The printing of the Bill would merely be a warning to the people. In the next session, if no petitions were sent in against it, they might pass it into a law.

The Hon. Mr. POPE said, it surely would be a relief to a poor man to allow him to pay the value of one day's labour instead of working three. He thought it would answer if the commutation money were reduced as low as three shillings.

Mr. MACINTOSH would object to taking away the option from a man either to pay money or to work. If it were compulsory upon people to pay in money, the law would have a very bad effect.

On Mr. YEO's Resolution being submitted to the vote, the House divided: Yeas, 10; Nays, 10. The Chairman, the Hon. J. S. Macdonald, in giving his casting vote against the Resolution, said, he did not approve of taking away the option either to pay in money or actually to perform the labour. There were many settlements in which in twenty or thirty families it would be impossible to find twenty or thirty shillings. On the Speaker taking the Chair, the Chairman reported the following Resolutions:—

RESOLVED, That it is the opinion of this Committee, that the system by which Statute Labour is performed, and commutation money expended on the public roads of this Island, does not operate with due advantage to the Colony.

RESOLVED, That a Committee of seven members be appointed, to prepare and bring in a Bill to amend the Act, 3 Will. 4, cap. 2, intitled “An Act to regulate the performance of Statute Labour on the Highways, and for other purposes therein mentioned.”

A Committee was then appointed to carry the said Resolutions into effect.

Mr. RAE moved, that it be an instruction to the Committee, to provide that Commissioners of Roads, and Overseers, be required to make affidavit every year, that they have complied with the requisitions of the Act; and also to provide that the Statute Labour be apportioned to polls, teams, income and property.

Mr. YEO thought it would take a wise man indeed to ascertain the income of every man in the country.

Mr. RAE said that, in reference to the motion which he had just made, as to the road work being done in proportion to polls, teams, property and income, the hon. member for Prince County (Mr. YEO) need not think it was such an impossibility to ascertain a man's property or income. True, it might sometimes be imaginary, as if a merchant's property should be valued at £5000, when, in reality, he was not worth £1000, or a lawyer's income at £300, when it was not more than £100; but they had their remedy—they might make affidavit, which ought to be taken; and if the desire of appearing wealthier than they really were led them to refrain from so doing, they must bear the loss. But, as hon. gentlemen on the other side were so fond of precedent, he had one ready for them. It was the Road Act of New Brunswick of 1836, which went on precisely the same principles he (Mr. RAE) advocated. He had been opposed to any change in the Road Act at the present time, because he thought the house had enough to do with other matters; but, since it must be changed, let it not be changed the wrong way, by making the poor man pay money which, perhaps, he had not, and giving him merely a chance of getting this money back, by a competition wherein the caprice, ignorance or partiality of an overseer, or the nature of the job, might prevent him from competing; but let it be changed the right way, and let the rich man pay for the roads over which he careered with his blood horses.

Mr. THOMSON asked if Mr. RAE had forgotten his declaration, that he would not concede to any principle until he had had an opportunity to consult his constituents.

Mr. LE LACHEUR was of opinion, that when a Committee was appointed to prepare and bring in a Bill, they were aware of the opinions of the majority of the House on the subject. The House might as well frame the Bill themselves. He would vote against the instruction.

The Hon. Mr. POPE said he thought the Special Committee had had full power given them to bring in a Bill, and this was seeking to take it away from them again. He would vote against it. The hon. member (Mr. RAE) was now on twenty-five or thirty commitments. He (Mr. POPE) had no objection to his doing all the business; but he should not be allowed to run away with the ideas of others. He should not either lead or drive him. He would move the previous question—“Shall the question be now put?”

Mr. RAE said the hon. member (Mr. POPE) had said that he (Mr. RAE) wished to take the lead in every thing; that he was already

member of twenty or thirty Committees—most of which had not reported; that he believed he wished to do the whole business of the Colony, and to take the credit of this motion from the Committee to himself. He (Mr. RAE), however, did not seek this business—resisted the opening of the matter; but, since it was opened, let them go to the bottom. These instructions appeared to comprehend the most prominent parts of what, in the Committee of the whole House, appeared to meet general approbation, or least objection, and they had reason to expect that the Bill would be in conformity therewith; but the General Committee had not gone through the form of resolving that these should be instructions to the Special Committee.—He (Mr. RAE) had wished to remedy the informality; but, since the members of the Committee, and, especially, the Hon. Mr. POPE, had no objections to the matter, but only to the mover—since the Hon. Mr. POPE had said, that he would have done all this in the Bill without his (Mr. RAE's) prompting, he (Mr. RAE) would not take up the time of the House. It was not their good opinion he came there to seek, nor his own reputation, but the good of the country; and if that were attained, he cared little for the blazing his own name.

The Speaker put the previous question—“Shall the question be now put?” The House divided—

YEAS—Messrs. RAE, FRASER, D. MACDONALD—3.
NAYS—Hon. J. S. Macdonald, Messrs. Palmer, Yeo, Pope, Le Lacheur, Thomson, Montgomery, Gorman, Dalziel, Beck, W. Dinguell, Longworth, Macintosh, Arbuckle, Hudson—15.

Mr. THOMSON obtained leave to introduce a Bill to authorize the appointment of Coroners in King's and Prince Counties. He accordingly presented the said Bill to the House; and the same was read the first time, and ordered to be read a second time on Monday next.

FISHERY RESERVES.

The House resolved itself into a Committee of the whole, on the further consideration of the Bill for the regulation of the Fishery Reserves in this Island. When the Clause respecting the Lots which do not contain any Reservation was under consideration,

The Hon. Mr. POPE said he could see no use in the clause. It was without meaning. He would move it should be struck out of the Bill.

Mr. RAE said it was very necessary to insert the clause, as its omission should be deemed a renunciation of a right to a future extension of the Fishery Reservations.

The Hon. Mr. POPE said they had no right to say anything about it. When a grant has been passed under the Great Seal, it was not in their power to infringe it. The clause might be considered as words without meaning.

Mr. MACINTOSH thought it was the best clause in the Bill.

Mr. PALMER said he had hitherto taken no part in the discussion, either one way or the other, but not because he was averse to any measure which might set at rest this important and unhappy question. The great point he had always thought to be, the defining where they should draw the line of demarcation, in declaring what extent of coast or shore should be subject to the reservations. This should be a main object of the enactments. They would never otherwise be able to settle the question to the satisfaction of Tenant, Crown, or Landlord. Without precisely ascertaining and establishing this, there would be continual bickering, strife and law-suits on the subject, originating with some or one of these parties. Last Session it was proposed to determine it by disinterested persons, to be appointed Commissioners for the purpose: no provision of this kind was made, no notice of it even was taken in the present Bill; but he considered the overlooking of it to be the omission of a most essential point. The next thing should be to establish a tribunal to settle all disputes between occupants of reserves and fishermen, when the latter applied for a piece of ground. When he last saw the Bill, it merely required the fisherman to give a certain notice to the farmer that a certain station was wanted for a fishery, but it provided no way to compel a compliance on the part of the farmer. That, however, was now altered, and effectually, so far well and good.—Let it be left in the breast of a Magistrate or of some other person to hear both parties, and when he has ascertained that a man really intends to carry on a fishery, let him view the ground, lay it off and report to the proper Tribunal with all convenient speed. He would not even stop there, but give a power to carry it before a higher tribunal, if either party should consider himself aggrieved, for he would be very sorry to see any man authorized to enter into the fields or enclosure of another, to take a piece of his land, unless the circumstances of the case fully justified the act. Unless such provisions as these were made, it would be better not to legislate at all, and thereby not open a new and more fruitful field for litigation. If it were meant simply to encourage the fisheries, let them legislate merely so far as was necessary for the accommodation and protection of fishermen. But if it were only meant to frame a law of that nature that tenants should hold the fishery reserves, despite both of the landlord and the Crown, let such intentions be expressed; let hon. members openly declare it, and the real object of the Bill be laid open to discussion. He certainly thought that when a piece of ground was taken for a fishery station, the landlord should not be entitled to any rent for that piece; but he would not consent that a fisherman should be held at bay by the occupant holding adversely to both the Crown and the proprietor. He positively declared that, unless these principles were admitted, he would oppose the Bill in its present shape, from beginning to end. He would have the House to take upon themselves the defining of the extent of the Fishery Reserves, under both clauses of Reservation in the Grants, with a proviso to this effect respecting Grants which have been lost, if they be hereafter found, and contain the fishery Reservations. He thought, that of the vast extent of land, or territory he might say, in the aggregate quantity reserved, but a very small comparative part would suffice for all the purposes of the Fisheries, as far as experience had shewn us, or present prospects in that branch of our trade demanded; the hon. member who lives to see the whole required, will have a very grey head—God forbid that he should live so long. He did not know, nor was it for him to inquire, whether the Legislative Council would persist in the amendments offered by them last year; but he would say the most of them were necessary, and well adapted to the subject. He had, with two or three hon. members, put together a number of clauses differing in some parts from those amendments, but so as to meet the views which he and those members alluded to entertained; he would lay them on the table, and if the Committee, upon consideration, coincided with them, or any part of them, he would be glad to see them adopted.

Mr. MACINTOSH said it was one of the wildest things that ever came into a man's head to think that a fisherman should have his station chosen for him by another person. They might talk about appointing people of character, but such a plan would take away all chance of obtaining the benefits which it was intended to convey by the Fishery Reserves.

Mr. POPE said they must know that unless the bill were founded in justice, it would never pass into a law. It might indeed pass this House even in a most objectionable shape as to its principles; but the other branch of the Legislature would not pass it; and even if it did, the home government would never sanction it. Not one fiftieth part of the Reserves were wanted for fisheries—and many parts of them were not suitable for the purposes of fisheries. Why then throw them open, unless the object was to encourage litigation? The only suitable places are those where boats can be drawn up and stages erected. He would not throw open one single acre unless it were actually wanted for carrying on the fishing business. He would consult the interests of the tenants by allowing the Reserves to remain in their hands. Why should they be like the dog in the manger, taking that from the proprietors which they did not want themselves? To throw open the whole, or any part of the Fishery Reserves, but such as were wanted for the bona fide purpose of fishing, would be a case of extreme and unjustifiable hardship to many small freeholders having frontages on the shore. If they were to throw the Reserves open where not wanted for the legitimate purpose of the Reserves, they would, in fact, be legislating to bring the proprietors and the tenants together by the ears.

Mr. THOMSON differed totally from those who thought any one but the fisherman himself ought to select his fishing station. They might as well send a blacksmith to select a needle, or a mason to put up a frame, as to send any one but a fisherman to make choice of a fishing station. If some honourable members could not boast of