

The Colonial Herald,

AND

PRINCE EDWARD ISLAND ADVERTISER.

Vol. III.]

CHARLOTTETOWN, SATURDAY, MARCH 14, 1840.

[No. 137.]

COLONIAL LEGISLATURE.

FRIDAY, February 21.

TRIALS OF LOCAL ACTIONS.

(Debate continued.)

Mr. POPE, in continuation, said, all local actions were to be tried in the places in which the causes of such actions originated, and none but transitory actions were removable, or could be carried from one county to another. It was clearly the duty of the Debtor to meet and pay his Creditor at the place where the debt was contracted. The consideration that the Debtor ought to come to his Creditor, and that the Creditor ought not to be compelled to hunt or pursue his Debtor, from county to county, in order to bring his action of debt, was a strong argument in favour of the law as it then stood. The way in which business in the County Courts was frequently, he ought not to say *done*, but *left undone*, was discreditable to the parties concerned. The Chief Justice had a salary of £700 Stg. a year, and was, besides, allowed £100 a year to defray the expenses he might incur from its having become necessary for him, in his judicial capacity, to visit King's and Prince Counties. Trials ought not to be postponed and decisions delayed by hasty adjournments of the Court, to the inconvenience and loss of parties engaged in law suits, as was now too often the case. Though not condemning the system of the administration of justice within the Colony, he could not refrain from expressing his disapprobation of the manner in which the system was made to work.

Mr. LE LACHEUR said there were two kinds of actions, the one denominated *local*, and the other *transitory*. What he understood by *local* was, confined to a place, *immovable*; and, by *transitory*, *not fixed—moveable*. Wherever a person should come from the country and take up goods on credit in Charlottetown, or elsewhere, as it might be, he should, in justice and equity, be required to make payment where the debt was contracted. But with regard to local actions, such as actions for house rent, or rent of land, as the person incurring, or being liable for such rent, could certainly not carry away either house or land, and as every particular affecting such a case, would be best known in the County in which the property for which such rent was claimed lay, it would be an actual violation of the rules and principles of justice that such actions should be classified with *transitory* ones. Cases of replevin or ejectment were defined *local*; then why, he asked, should actions for rent be *transitory*? Were they not of a like nature, and should they not belong to the same class? He certainly thought, when an engagement was entered into for a purchase of land, or a lease of a quantity of land taken, and any action arose between the parties to the sale or lease, relative to the land sold or leased, such action should be brought in the Court of the County in which the land lay.

Mr. RAE said the hon. and learned member for Charlottetown had expressed a doubt about his being comprehended by the House. He (Mr. RAE) believed there was some truth in it. They were all astray. They could not see their way; and common sense could not easily clear up the mist in which they were lost. Lawyers, with their technical jargon, served only to increase their darkness and to perplex them more. Yet, by a proper use of that light of common sense which they possessed, it was necessary for them to open and clear a way for themselves. When Court Houses were built in King's and Prince Counties, it was generally expected that all trials respecting rents of lands, or purchases of lands, would be tried where the lands lay and where rents accrued. Whatever distinction may be made by the laws of England between *local* and *transitory* actions, he was convinced that, in this country, where the claim lay there should the trial be also. He admitted that, as the law now stood, all actions strictly *local* were tried in the counties in which they arose, unless the *renew* were changed in consequence of an affidavit showing a sufficient cause for the removal of the trial to another county. On such an affidavit's being made, it rested with the Court whether or not to break through the regulations which were usually observed. But that was not left to depend upon the common Law; for there was an act, if unrepealed, (and he believed it was unrepealed) conferring such power upon the Judge, that, at discretion, he might move a trial from one end of the Island to the other. Thus, what with an affidavit stating that a fair trial cannot be had in the County wherein an action arises, and what with the special act enabling the Chief Justice to remove trials, all actions might be brought into the Court at Charlottetown. On these grounds he would support the motion, that the House do immediately go into Committee.

Mr. PALMER said, with respect to actions of Covenant between Landlord and Tenant, some were already of a local nature, and their trial confined to a particular county. Where the action is brought between the original lessor and lessee, or between the assignee of the reversion (that is, a purchaser of the landlord's estate) and the lessee, wherein either may be plaintiff, these actions being founded on a privity of contract, are *transitory*; but where the action is brought by the lessor against the assignee of the lessee (that is, a purchaser of the leasehold interest), and the contrary; also by the assignee of the reversion against the assignee of the lessee, and the contrary; these being actions founded, as it is technically called, on privity of estate only, must of necessity be brought in the county where the estate lies. He (Mr. Palmer) assured hon. members that these rules constantly prevailed, and were so that, upon the whole, the number of *transitory* causes between landlord and tenant was after all small in proportion to those of a local nature. There were many leases however which contained stipulations as to the particular place at which the rent is to be paid: the rents on some Townships he himself could name, were payable in Charlottetown, wherein, it should follow, actions brought for those rents should be brought: and the lessor in such cases ought not, as the present Bill is intended to do, compel him to follow his lessee from county to county, when it became necessary to sue on the lease.

Mr. THOMSON said it was a very easy thing to have the venue changed. Another thing, he said, should be acknowledged; he meant the justice of the principle that it was right that the Creditor should have to sue his Debtor, when suing was necessary, in the county wherein value had been received; this would apply to rents. He would not like hon. gentlemen to lose sight of the Bill, but he saw a necessity for deferring the further consideration of it; he was disposed to support the Bill.

Mr. POPE would, without reserve or disguise, state his opinion of the Bill. He considered its object to be the protection of delinquent tenants, by securing to them, in cases of trial, the protection of their neighbours, who were as bad as themselves. Were actions of rent to be confined to the Counties in which the rent accrued, landlords would have a wretched chance of justice. The Bill would encourage tenants to resist payment of rents. It was just and necessary, he said, that actions should be removed from those counties in which a strong popular prejudice was known to exist upon the subject. He instanced the trials of the Chartists in England and Wales, and alluded to the present state of King's County, in this Island. Disloyal, rebellious and insubordinate principles were, he was sorry to say, not foreign to some parts of P. E. Island. His opposition to the Bill was not factious; it was made with a view to promote peace and order (laughter), to uphold the supremacy of the laws, and check the progress towards anarchy and confusion. He would move, as an amendment, that the Bill be committed this day three months.

The amendment was negatived, on the following division:

Yeas—6. Nays—13.

It was then ordered, that the Bill be committed on Saturday.

SATURDAY, February 22.

Mr. LE LACHEUR reported, from the Committee to whom was referred the Petition of John Willock, and the said Report was again read at the Clerk's table, and is as follows:

Your Committee, to whom was referred the Petition of John Willock, of Pleasant View, in Queen's County, respectfully report, that they have examined the statements contained in said Petition, and are of opinion that the Petitioner's case is one of peculiar hardship, and deserves the favourable consideration of this House—involving as it does the property of a person who was not concerned in the

transaction in which it originated, and which was incurred without his knowledge or consent, for which Petitioner's property is now detained. Under the very peculiar circumstances in which the unfortunate Petitioner is now involved, by his brother, Mr. Abercrombie Willock, he having become one of the sureties of Major Coun Douly Rankin, in a Bond given by that gentleman, as required by Law, before he could contest his Election, your Committee are, under all the circumstances of the case, of opinion, that an Address be presented to his Excellency the Lieutenant Governor, praying him to be pleased to direct that such proceedings may be adopted as will prevent any further proceedings against the property of the said John Willock.

Ordered, that the Report be received, and adopted by the House. Messrs. Le Lacheur, McNeill and Arbuckle were appointed a Committee to wait on His Excellency with an Address in conformity therewith—who reported, that His Excellency would attend to the desire of the House.

The Bill to amend the Act for regulating the time, and places of holding the Supreme Court in the different Counties, in so far as to compel all actions of a local nature to be tried in the County where the cause of action shall arise, was committed; and after several amendments had been introduced, the Bill, with the amendments, was reported to the House, and passed to be engrossed.

The Hon. J. S. MACDONALD read in his place a Petition of divers Inhabitants of Townships Numbers 65, 30, 31, and others, praying a grant in aid of individual subscriptions towards erecting a Bridge over the Elliot River, from Angus M'Eachern's to M'Ewen's.

Ordered, that the said Petition do lie on the table. The Hon. Mr. POPE, according to notice, begged leave to introduce a Bill to enable Commissioners of Small Debts and Justices for the Trial of Assaults and Batteries, to appoint Clerks. The Bill contemplated no increase of fees. In other places such Clerks were employed. They existed in New Brunswick, and he believed in Nova Scotia. Such appointments rendering direct application to Commissioners and Justices of the Peace unnecessary by persons taking out summonses and warrants, the Commissioners and Justices would be less liable to have their minds prejudiced by *ex-parte* statements. Summonses, &c. would be granted by the Clerks, and Commissioners and Justices would previously hear nothing of the merits of the causes to be tried; besides, it would be a convenience to suitors. It now sometimes happened that after a man had travelled twelve or fifteen miles to take out a summons, he was, from not finding the Commissioner or Justice of the Peace at home, obliged to retrace his steps without having effected his object. Were Clerks appointed, such disappointments would be much less likely to be experienced. But the doing away with the ease with which attempts were too often made by suitors to prejudice a case was alone almost a sufficient recommendation of the Bill. Without detaining the House, he would move that the Bill be received and read.

The Bill having been read accordingly, the second reading of it was set down for Wednesday.

JURY BILL.

Mr. THOMSON, according to previous notice, begged leave to introduce a Bill to regulate the qualifications of Jurors, and the mode of striking Juries. The chief objects of this Bill, he said, were, in the first place, to raise the qualifications of Jurors, and next to prevent the packing of Jurors. At present, said he, Jurors are selected by Sheriffs and their Deputies, a practice very liable to abuse. His Bill would alter the present mode of selecting Jurors: it provides that lists of all persons qualified to serve as Jurors in each of the Counties shall be prepared by the Justices of the peace, and presented to the respective Courts; and, in order that qualifications may be real, the Sheriffs shall have power with respect to qualifications, to search every record in the Island. The names of Jurors so qualified were to be written on separate and similar pieces of paper, folded up, and placed in a box kept for that purpose, and drawn in open court. The Bill was almost a transcript of the Jury Law in Nova Scotia, a law which had been found to operate well in that country. Another feature of the Bill, he said, was, that either plaintiff or defendant might object to three of the Jurors, before the swearing of the Jury: according to the present law, the privilege of objection was allowed only in criminal cases. The Grand and Petit Jurors were to be drawn from the same box. The functions of the latter were generally allowed to be the most important, and yet they were usually selected from the most ignorant classes of society. He had not unfrequently seen persons in the Jury box who did not understand a word of English.

Mr. PALMER, though it was unusual at this stage of the business, begged leave to make a few observations relative to what had fallen from the hon. member introducing the bill. He (Mr. P.) remarked upon the extreme guardedness and caution of the Law of England, with respect to Jurors. He observed, Sheriffs were men of property, respectability and independence, and having a knowledge of persons in their respective Counties. The names of Jurors, returned by the Sheriff, he said, were put into a box, all on scraps of paper, and twelve were drawn promiscuously. As to the qualifications of petit jurors, he confessed he had occasionally seen persons acting as jurors who were not so well qualified, not so intellectual as he could have wished them to be. However, he supposed jurors were generally as good as the country could afford. He denied that there were any grounds for imputing partial selections to the Sheriff. His (Mr. P.'s) knowledge, with respect to the appointing of Juries, he humbly conceived, was at least as great as that of the hon. framer of the bill. No names, he said, were selected to be put into the box. Juries were drawn in open court; there was no chicanery, no artifice, all was done in a fair and open British style. It was impossible to pack a jury by any manoeuvre. There was no occasion to provide, that after a fair drawing, each party might object to three. Such a practice would half empty the jury-box, and would uselessly consume the time of the court. There was a law admitting objections to be made to the next of kin, relations, or such as might be supposed to have prejudged the cause; and being of a notoriously bad character, was a sufficient reason for the privilege to object was not required. He thought an extension of the privilege of individuals properly qualified to serve on juries, he thought, would be a very expensive one. Justices of the Peace could not be expected to take the trouble it would impose upon them, without suitable remuneration, and besides, if Sheriffs were to be suspected of partiality, so might Justices of the Peace. Other objections might also be made to the bill. All that was wanted in juries, said (Mr. P.) was men of sound mind, honest intentions, and common understanding, to distinguish between one fact and another, with two or three, capable of examining papers and accounts.

Mr. LE LACHEUR could not form an opinion until he had heard the bill read. He was, however, decidedly of opinion that something ought to be done to change the composition of juries. He had seen young men upon juries, who, he believed, had never seen the inside of a court before. On juries there should always be two or three in some degree acquainted with the general practice of courts, able not only to detect the prevarications of witnesses, but also to see through the wily glossings and forced interpretations of lawyers; and of penetration sufficient to enable them to perceive and detect motives.

Mr. CLARK thought mental qualifications ought to be an object of greater regard in petit, than in grand juries. He knew nothing about the imputed partiality of Sheriffs; but Deputy Sheriffs who undertook the office as a job were not likely to put themselves to any expense or trouble they could avoid, and were therefore very apt to pick up men to serve on juries, by chance, in their own (the deputies') neighbourhood.

Mr. THOMSON explained that he had merely stated imputations of unfairness might be brought against Sheriffs; it was to prevent the possibility of such imputations that he had brought in the bill. That such persons as the honorable and learned member for Charlottetown had admitted frequently sat as jurymen, should ever have it in their power to decide in cases of life and death, was, in those who gave the power, a crime against high heaven; and he (Mr. Thomson) said it was the duty of the learned and hon. member to come

forward in a manly manner to remedy the evil. He (Mr. Thomson) admitted that juries were fairly drawn; it was the selection, he said, of men to serve on juries of which he complained.

The Bill was then read the first time.

BILL RELATING TO CONTESTED ELECTIONS.

The House then went into Committee on the Bill to continue the Act for regulating the manner of proceeding on contested Elections, &c.

The Committee went through the Bill, and made several amendments thereto. Mr. Speaker then assumed the Chair, and Mr. Le Lacheur, the Chairman of the Committee, reported accordingly.

Mr. PALMER moved, that the Bill be recommitted, for the purpose of inserting a clause, more clearly defining the qualifications of electors for Towns and Royalties. He supported his motion by repeating the explanation which he gave on Friday, when complaining that many of his constituents who were, he considered, entitled, by the spirit of the law, to vote at elections, were, by the letter of the law, deprived of their right.

Mr. LONGWORTH said he did not see that any feasible objection could be offered against the adoption of the proposed amendment, as, in his opinion, it only went to explain a clause in the election act, in the way which, he had no doubt, was agreeable to the intentions of the framers of that act, and according to what he really thought was the spirit of it: but as doubts did exist on the minds of some of his constituents, as to its construction, and as many whom he thought were legally entitled to vote under the clause defining the qualifications of an elector for Towns and Royalties, could not take the oath required by law, if tendered to them, he thought the clause should be so amended, as to put it beyond question that the owners of the property, or owners and occupiers of property of the yearly value of £10 and upwards, whether that property were rented or not, were entitled to vote at the election of representatives for Towns and Royalties.

Some honourable members thought that the elective franchise should not be interfered with in any way, otherwise the bill must be reserved for the royal assent.

The amendment was negatived, on the following division: Yeas, 5: Nays, 12.

The Bill was then ordered to be engrossed.

MONDAY, February 24.

The Bill for confining the trials of all actions of a local nature, to the Counties in which the defendant resides, or where the cause of action may be, was read a third time.

Mr. THOMSON said, that the bill appeared to him a very laboured production. What he had to propose was plain and simple. It merely went to shew what were to be considered local actions. If adopted, the laws then in operation would be sufficient. He did not see that those who had supported the bill could oppose the amendment. It was not his own production, and, therefore, he could speak impartially of it. It went quite as far as the bill, and would be better understood. He then proposed, as an amendment to the bill, viz: to strike out the whole, except the fourth section, and substitute the following:

"Be it enacted, by the Lieutenant Governor, Council and Assembly, That from and after the passing of this Act, all or any action or actions of debt, for use and occupation, or otherwise, and all or any actions that may accrue or be brought upon a lease or leases, shall be deemed to be local, and the venue thereof shall be laid and tried in the County only where the cause of such action or actions has arisen: and that all criminal actions, of what kind or nature soever, shall be brought and tried in the County where the offence may have been committed."

The House divided on the question—Yeas, 6; Nays, 12.

Mr. PALMER then moved, that the present title of the Bill be struck out, and the following substituted, viz:

"An Act compelling all actions between landlord and tenant, for the recovery of rent, whether of a local or transitory nature, to be tried in the County where the tenant resides, whether the rent be payable in that County or elsewhere, or whether such actions be founded in debt, covenant, replevin or assumpsit, and for other purposes therein mentioned."

The House divided on the question—Yeas, 5; Nays, 13.

A motion being made, that the Bill do pass;

Mr. PALMER moved, in amendment, that at the end of the question be added the words "this day three months."

The House divided on the motion of amendment—Yeas, 4; Nays, 14.

The question being then put on the main motion, "that the Bill do pass," it was resolved in the affirmative.

AMERICAN LOYALISTS.

Mr. RAE reported from the Committee to whom was referred the Despatch from Her Majesty's principal Secretary of State for the Colonial Department, on the subject of the Bill of last session, for the relief of the American loyalists and disbanded troops in this Island; the substance of which is as follows:—

The measures of last Session were calculated to put the Loyalists and Disbanded Soldiers in possession of the land which, having been set apart for them, still remained in the possession of the Proprietary claimants, who had agreed to the surrender thereof, or of their heirs. But the objections made by the Colonial Minister to any enactment which may sanction any right which militates against the interest of proprietary claimants, and the fear he expresses that an Act giving to these Loyalists any portion of the Crown lands, would be an encroachment on the rights of the Crown, all tend to make your Committee draw the conclusion, that the only step to which the Colonial Minister will not at present object, is an Act authorising the claims of such Loyalists and Disbanded Soldiers to be put upon record in conformity with the terms therein prescribed, and your Committee accordingly submit a Bill, which they trust will be found suitable for that purpose.

Your Committee cannot but lament, that the answer of the Colonial Minister evinces a much greater regard for absentees, than for those whose attachment to monarchical institutions led them to expose their lives and properties in the defence thereof, and to rely with confidence on proclamations sanctioned by their authority. Your Committee are satisfied that many of those unfortunate men, by their experience in the modes of industry most beneficial in a new country, were of material service to the other inhabitants who emigrated from the British Isles; they feel real regret that many of such individuals have never been able to obtain justice, and that, even now, when the matter has been laid before the Imperial Government, when there are extant, in the Colonial Office, Acts passed by former Houses of Assembly verifying their claims, substantiated by the Report of the House of Assembly of 1833, when the whole of what they claim was from the beginning sanctioned by a Governor's Proclamation, industriously circulated throughout North America, when the Public Papers, the Journals of either House, and the different other Records of this Island, will shew that their claims have never been dormant; that now the length of time during which this unjust procedure has been without remedy, is brought forward as one main argument why it should never be remedied—and that the American Loyalists and Disbanded Soldiers are looked upon by Lord John Russell as a body which, no doubt, had once been put to