

Unless in case of interest or some other legal incapacity, on the part of the Sheriff, the writs of execution should not be addressed to the Coroner. This was one reason why he was strongly in favour of the present bill. He was determined to do his duty, careless whom it might offend. There was no salary attached to the office of Coroner, and, therefore, were the bill carried into a law, it would do no injustice to the present incumbent. He (the hon. Mr. Pope) disliked monopolies of all kinds, but particularly such a one as that then under their consideration; and he would ever set his face against them.

Mr. SPEAKER said he would have no objection to the proposed appointments, provided the individuals on whom they might be conferred could be prevented from becoming a nuisance instead of a benefit to the country. He had seen enough to convince him how actively mischievous such an officer as a Coroner might make himself, by holding unnecessary inquests for the purpose of increasing his fees. He was afraid the appointments would be eagerly sought after, with no other view than that of making money thereby.

The Hon. Mr. POPE replied, that perhaps the honourable the Speaker thought he (Mr. Pope) might look forward to the appointment of Coroner of Prince County; but he could assure the honourable Speaker, he would not discharge the duties of the office even for a salary of £100 per annum.

Mr. THOMSON said, the evil could not be worse than it was at present. The amount of what had fallen from the honourable the Speaker appeared to him (Mr. Thomson) to be simply this: that in the several counties there could not be found men of sufficient honour and honesty faithfully to discharge the duties of Coroner. He (Mr. Thomson) would be sorry to have either to think or say so.

Mr. SPEAKER thought it would argue no unreasonable doubts or apprehensions, to say the duties of a Coroner should be well and sufficiently guarded and defined.

The Hon. Mr. POPE remarked—that the duties of Coroner were not explained in any British Statute. The office had existed for time immemorial. The Coroner, he stated, acted in a double capacity. In discharging the duties of the Sheriff, he acted in a ministerial capacity: when holding an inquest, his duties were judicial; and in the latter, his peculiar capacity, he was not authorized to appoint a deputy; as the Sheriff's substitute, however, he might. The honourable gentleman here alluded to the employment of a certain individual, employed by the Coroner in his capacity of Sheriff's substitute, to serve writs of execution, and commented with much severity upon the character of that individual. He (Mr. Pope) again insisted that in cases in which the Sheriff was not legally disqualified by his being an interested party, he ought to be the person to whom all writs of execution issued under land assessment judgments ought to be addressed.

Mr. PALMER confessed he was at a loss to tell why the Sheriff should be passed over, and writs of execution issued under assessment judgments, addressed to the Coroner. Certainly, in case of any disability on the part of the first officer, as a matter of course it followed that the duty should devolve on the next ministerial officer. The name of the Coroner was introduced as an amendment to the Land Assessment Bill, at whose suggestion he could not recollect. He had no objection to the appointment of Coroners for the other two Counties, further than as he thought it might be an infringement of the prerogative of the Crown. He had not seen the Patent before. The appointment, it appeared, had been made on the authority of the Despatch, as much as in virtue of any authority otherwise residing in the administrator of the government of the Island. He did not throw out this remark with the view of any obstruction in the way of the bill; but he thought it would be well to consider the subject under that view. If it were found to be as he apprehended it might, the bill would be rejected by the Council as an infringement on the prerogative of the Crown.

The Bill having been gone through, clause by clause, the Chairman, Mr. Le Lacheur, reported, that the Committee had gone through the bill, and agreed to the same.

#### FRIDAY, MARCH 6.

##### BONDED WAREHOUSE—PORT OF CHARLOTTETOWN.

Mr. PALMER said he rose, in conformity with a notice which he had given a few days ago, to move that an address be presented to His Excellency the Lieutenant Governor, praying that he will use his influence with the Commissioners of H. M. Customs, to procure for the port of Charlottetown the advantages of a Bonded Warehouse. It seemed to be a thing much desired by mercantile men in the town. It would increase trade in the town and extend it in the country. There would be no necessity for the erection of a warehouse. It would rest with the Collector of the Customs, if he thought proper, to allow merchants to warehouse in their own stores. The responsibility would rest with the Collector; he might, if he pleased, allow merchants to make warehouses of their own cellars. In this he expected the House would go along with him. He would move a short Address to His Excellency at once.

Mr. LE LACHEUR said it was a subject with which he, for one, was not well acquainted. He would wish, both for himself and others, that time should be allowed for consideration and inquiry.

Mr. RAE observed, that when Government erected Bonded Warehouses, merchants warehousing goods therein had to pay rent on account of the goods bonded by them. Should the object of the honourable and learned member's motion be attained, a merchant might erect a warehouse on speculation. He would never consent to the public's being at the expense of the erection. A readiness on the part of the merchants to erect such a warehouse would be a proof of the necessity for a bonded warehouse. As for a merchant's converting his own cellar into a bonded warehouse, he knew not how far that would be practicable. Cellars to be used as bonded warehouses required to be constructed in a peculiar way, and were subject to certain peculiar regulations.

Mr. PALMER read the Resolution which he intended to submit. He said it was not his intention to burthen the Colony with the erection of a Building. Had he had such an intention he would have made his motion in a different way. Should a warehouse be built, it was most likely it would be out of the Imperial Revenue. He stated the advantage of a bonded warehouse to persons who could not afford to pay the duty on the arrival of their goods. They might then deposit their goods where the Collector should please, and, as they effected sales, they might go and deliver to buyers, and thereby avoid the actual payment of the duties until they were enabled to make it out of the proceeds of the very article sold.

Mr. THOMSON saw no reason given in the address for making Charlottetown a free warehousing port. True, it was said it would facilitate and extend trade. The reasons adduced in support of it, however, were not sufficiently strong to meet his ideas of such necessity. It might not immediately impose a burthen upon the Colony, but eventually it would be likely to do so. If a free warehouse were erected, it would be necessary to appoint a warehouse-keeper, whose salary would have to be deducted from the imperial revenue. He would recommend the honourable member to withdraw his motion, so as to allow time for consideration and inquiry. If the Collector were to do the duty, and no warehouse-keeper should be required, there could not be much objection to the motion; and he thought while they were doing one good thing for the country, they might as well do another. If the honourable member would include Georgetown in the request, he would go along with him.

Mr. PALMER said, to save honourable gentlemen and the House trouble, he would withdraw his motion, and give notice that he would, at an early day, move that an Address be presented to His Excellency, praying his influence to procure for Charlottetown, from Her Majesty in Council, the appointment of a free warehousing port.

#### THURSDAY, MARCH 12.

Mr. LE LACHEUR presented a Petition from divers Agriculturists of this Island, praying for the redress of the various grievances under which this Island now labours.—He stated that there were, he believed, one hundred and forty signatures to it.—The Petition was ordered to lie upon the table.

##### FISHERY RESERVES.

On the motion of Mr. D. MACDONALD, the Fishery Reserves Bill was read a third time as engrossed.

The Hon. J. S. MACDONALD objected to the Bill that it did not settle the question as to where the fisheries should be considered to extend. That question being left unanswered, would, he said, leave room for endless litigation. He proposed to amend the Bill by striking out the whole, and substituting the clauses which had been prepared by Mr. Palmer. (See the report of that gentleman's speech in our last.) The motion was seconded by Mr. Longworth.

Mr. RAE said, the amendment was an entirely new Bill. He did not think the honourable gentleman submitting it could expect they would see any thing so excellent in his Bill, and so defective in theirs, that they would at once abandon the latter and adopt the former. He would therefore support it, and vote against the amendment.

The amendment was negatived, by a majority of eleven, three voting for it and fourteen against it.

The Bill was then passed, and sent to the Legislative Council, for concurrence.

The Order of the Day, for the House in Committee, to consider the Report of the Special Committee appointed last Session, to acquire information during the recess, touching such amendments as it may be expedient to make to the Act for the encouragement and support of District and other Schools, being read;

The House accordingly resolved itself into the said Committee—

Mr. D. Macdonald in the chair.

On the House resuming, Mr. D. Macdonald reported, that the Committee had come to a Resolution—which Resolution was agreed to by the House, and is as follows:—

Resolved, as the opinion of this Committee, that the Report of the Special Committee appointed last Session to acquire information during the recess respecting the changes necessary to be made in the School Act, be printed as an Appendix to the Journals of this House, and also published once in each of the Newspapers of the Island.

#### FRIDAY, MARCH 13.

Mr. Longworth, from the Committee of the whole House having under consideration the Report of the Special Committee appointed to examine and report on the Public Accounts, reported two Resolutions, which were agreed to by the House, and are as follow:—

Resolved, as the opinion of this Committee, that it be recommended to the House to appoint a Special Committee, to ascertain if any and how much of the expenses of Crown prosecutions relate to prosecutions against individuals for alleged resistance to the collection of Rent.

Resolved, That it be recommended to the House to appoint a Special Committee to examine the Accounts relative to Buoys and Beacons, and to report thereon, and on the efficiency of the Buoys and Beacons already provided, so far as they have obtained or can obtain information—with power to send for persons, papers and records.

Committees were then appointed, in conformity with the foregoing Resolutions.

#### SATURDAY, MARCH 14.

The Bill to prevent the running at large of Horses and Neat Cattle in the Streets and Squares of Charlottetown, and to repeal a certain Act therein mentioned, was, according to order, read a second time.

Ordered, That the said Bill be now committed to a Committee of the whole House.

The House accordingly resolved itself into the said Committee, Mr. D. Macdonald in the Chair.

On the House resuming, Mr. D. Macdonald reported that the Committee had gone through the Bill, and made several amendments thereto.

Mr. Clark moved, that the Report be received this day three months.

The House divided on the question:—Yeas: Messrs. Clark, Palmer, Thomson, Longworth, Beck, Macneill—6.

Nays:—Messrs. Yeo, Dalziel, Fraser, Macfarlane, J. Dingwell, W. Dingwell, D. Macdonald, Rae, Hon. J. S. Macdonald, Messrs. Forbes, Gorman, Montgomery—12.

So it passed in the negative.

The Bill having been re-committed, for the purpose of amending the same, and the House having resumed;

Mr. Palmer moved, that the Report be received this day six months.

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

The several amendments reported from the Committee were then read by the Clerk, and on the question put thereon, agreed to by the House. Then the House adjourned.

#### MONDAY, MARCH 16.

Mr. Rae, from the Committee appointed to ascertain if any and how much of the charges for Crown Prosecutions relate to prosecutions against individuals for alleged resistance to the collection of Rent, reported from the said Committee; which Report was again read at the Clerk's Table, and is as followeth:

Your Committee, to whom it was referred by the House to examine whether any of the expenses of Crown Prosecutions relate to the alleged resistance of individuals to the collection of Rent, have to report, that in the Accounts of the Honourable the Attorney General, there appears a charge of £2 15s. 4d.; in those of the Solicitor General, a charge of £1 1s. 0d.; and in those of the Prothonotary, a charge of £1 8s. 0d.—all for a prosecution commenced by the Crown against three individuals, for an alleged rescue of some cattle, &c. belonging to one Martin, of Belfast, and distrained for rent alleged to be due to the Trustees of Lord Selkirk, and that it appears there may be some further procedure in this matter at the public expense. Whether or not any expense was incurred by summoning witnesses, &c. your Committee have not been able to ascertain.

There appears in the Accounts of the Sheriff of Queen's County, the sum of £12 7s. 11d. for expenses incurred in the prosecution, at the suit of the Crown, against Hugh McLeod and wife, for a similar resistance. As a trial took place in this case, there is no doubt that a charge in this matter, for the services of the Prothonotary and the Attorney General, &c. will be forthcoming against the country the next year.

From information which your Committee have received, as to certain proceedings which took place at the last sitting of the Court in Georgetown, it appears, that the public will have to defray a heavy charge for law expenses there, as bills have been found by the Grand Jury against several individuals, for an alleged assault on the Sheriff at a sale of cattle belonging to James Douglas, of Bay Fortune, and distrained for Rent; and that in 1838, there was paid out of the Treasury the sum of £81 18s. 3d. as the expense of taking constables to assist the Sheriff in his endeavours to apprehend one Robertson, of Lot 42, King's County, for his alleged resistance to the Sheriff, in serving a Writ for Rent, besides the Attorney General's Account, in regard to the same matter—amount £7 4s. 6d.

Ordered, That the said Report be referred to the Committee of the whole House, to enquire into and take into consideration the State of the Colony.

#### LEGISLATIVE COUNCIL CHAMBER,

Monday, March 30, 1840.

According to order, the names were called over.

The Order of the Day, for hearing the Solicitor General at the Bar, against the Bill intitled "An Act for the regulation of the Fishery Reserves in this Island," being read;

The Solicitor General was accordingly called in, and spoke to the following effect:—

The SOLICITOR GENERAL said he appeared before the House as Counsel for certain extensive landed proprietors of this Island, to shew cause against certain clauses of a Bill which, as they conceived, materially affected their rights, and went to deprive them of property to which they thought themselves as justly entitled as they were to any part of the estates of which they happened to be owners. Whether viewed with respect to the deep public excitement it had caused throughout the country, or with regard to the immense value of the property involved in it, the question was one of the highest magnitude and importance, and well deserving of their most attentive and serious consideration. Before coming to it, however, he could not avoid felicitating his clients on their good fortune, in thus having an opportunity of having this appeal in their behalf made to those who had some fixed principles of legislation in their minds—to those who, he was convinced, had firmly fixed in their minds that principle of constitutional Law which, he might say, was the test and touchstone by which the legislator might try the correctness of his opinions on any question affecting property on which he was called to decide—he meant that principle of constitutional law which declared that the rights of property are sacred and inviolable, and are not to be doled away at pleasure, to suit a whim, a caprice, or convenience of a moment; whose judgments would not, therefore, be influenced by popular clamour, however loud, a popular excitement, however violent it might happen to be; but who, mindful of that principle, would come to such a decision on the present question as an adherence to that principle would require. Under this impression, he would cheerfully approach the subject he came there to speak upon, feeling he had an easy task to perform, inasmuch as it would only be necessary for him to shew, that the clauses of the bill to which he should object did break through the principle to which he had alluded, by tending either to deprive his clients of their trying, in the ordinary and established tribunals of the land, their right to that which, if they (the House) were pleased to term it so, their right was at present doubtful. He felt convinced, that if he should succeed in shewing that the objectionable clauses had either of these effects, there would be no danger of their passing into a law; because he should then have shewn that by assenting to

them, the House were either directly depriving his clients of their property, or in an equal degree affecting their rights, by assuming to decide on a legal question, which (he felt confident no want of respect to the House would be attributed to him when he said) they were not competent to decide upon—he meant a question as to a legal construction to be given to certain Grants, to which he should presently have occasion to refer.—With these observations, he would draw their attention to the third clause of the Bill, which was the first to which he should object. It proposed, in substance, to abolish the Landlord's right to all accrued or accruing rents, and to all purchase money due in respect of that part of his estates called the Fishery Reserve. Such was the substance of the clause. To try its propriety and justice, it was necessary to look at the grants which created the reserve. They might be classed under two heads—First, of the twelve Townships wherein the words of the reservation were—"Saving and reserving a free liberty to all His Majesty's subjects of carrying on a free fishery or fisheries on any part or parts of the coast of the said Township, and of erecting stages, and other necessary buildings for the said Fishery, within a distance of 500 feet from high water mark." He would pause here to consider the legal effect of this reservation. In whom was the fee in the 500 feet from highwater mark vested? No one would deny that it vested in the grantee, and that a mere liberty, or franchise only, was reserved. Upon what principle of law or justice, then, could the proprietors of these twelve Townships be deprived of their rents, or purchase money arising out of it, or, in plainer language, of the soil which was admitted to be theirs. Property might be possessed in an unfettered and unshackled manner, or it might be held clogged with reservations or conditions; and it might be much less valuable to the owner in its former, than in its latter state. It might be that, free from the reservation, it would be worth £1000, and that, clogged with it, it would be worth but £500; the quantum of depreciation must depend on the proximity or remoteness of the chance of the right reserved being exercised; but, subject to that reservation, it was as much his as any other part of his estate, and the depreciation in its value in consequence of the reservation, was, surely, no reason why he should be deprived of it. What other pretext was there, to deprive the proprietors of these twelve Townships of their right in the soil of these reserves? There was none; and yet the clause to which he was objecting did so: he however, felt assured, that its injustice required only to be exposed to be prevented, and should therefore pass on to the second class of grants, viz: those of the 32 Townships wherein the reservation was clothed in different words—"Saving and reserving, for the disposal of His Majesty, his heirs and successors, 500 feet from highwater mark, on the coast of the tract of land hereby granted, to erect stages, and other necessary buildings for carrying on the Fishery." In whom was the legal estate in the 500 feet vested under this reservation? Did it pass to the grantee, or remain in the Crown? He knew that opinions had been taken on the subject, and he had himself, in his public capacity, given an opinion that it remained in the Crown. Others, however, had held that it went to the grantee. He was not there to enquire which was right or which was wrong; but, with these conflicting opinions, could any honourable member say his mind was free from doubt upon the point? If not, did he feel himself competent to decide it? To deprive his clients of their right, without a trial of the legal question, was just as unjust as to deprive them of that which was indisputably theirs, which this would be, if the fee was in them. Their language on this question is, that they are not to be precluded by the opinions of any man; they say, if a trial went against them here, they would appeal to the Privy Council of England, before they would resign their right. They would do this, not because they wanted confidence in the correctness of the decision they would obtain here; not that they wished to annoy by harassing litigation, but because, where so much property was involved, they felt it a duty due to themselves to contest the question, that they might not afterwards have to reproach themselves with too tamely surrendering up their rights. Should it be advanced against them that sufficient time had elapsed, and the question had not been raised, he would reply, as he had said in another Court, and which had received the sanction of that Court, that this was no question between the landlord and the tenant, but between the proprietor and the crown, and whenever it was to be raised, the Crown must be the plaintiff—the Proprietor the defendant; his clients could not, therefore, force it into discussion; and yet this unjust and arbitrary clause proposed to deny the common right of every British subject—a fair discussion and trial in the competent and ordinary tribunals of his country, before his property was taken from him. Where could they find a precedent for this in the law or practice of the mother country? Did they ever find the British Parliament, when the Crown and an individual, or an individual and the public, were contesting, stepping in and raising up a statutory bar, to prevent the question being tried before the proper tribunal? They might search through the dusty Journals of the House of Commons, from the time it first existed till the present day, and they would find no precedent for such a proceeding; no attempted act of legislative injustice parallel with this. Suppose the Crown or the public, on some pretext just as plausible as the present, should assert its right to a whole Township, would the Legislature come in, and by an arbitrary act dispossess the proprietor, and give it to the claimants, before they had established their right to it in the ordinary and constitutional way. The beauty of the law had been said to be its permanency; and that when the facts were the same, the decision must also be the same, no matter what the value of the thing in dispute might happen to be. If they would not, then, where a whole Township, or ten thousand acres were concerned, dispossess the proprietor without a trial, on what principle would they do so where but 1000, or 500 acres only, were claimed? The decision, in either case, must be the same. These arguments were applicable to the case of every proprietor whose lands were liable to the reservation. There were other objections to this clause, which, though they might not apply to all, applied with equal force to individual cases. There was much doubt whether some proprietors had not acquired a right to the reserve by length of possession. Property so acquired was looked upon by the law of England to be just as sacred as if obtained in any other way; yet this sweeping clause would prevent the owner from availing himself of the right so acquired. Again, many leases were taken by the tenants subject to the reservations; this was the contract between the parties, yet the clause to which he was objecting paid no respect to this, but broke through them, as if they were not entitled to the slightest consideration. With the same propriety might they enter the Merchant's counting house, and apply the sponge to his ledger, or say to him who had given his note or his bond, you were foolish to do so, and we will now release you from his obligation; but if they did apply the erasing knife to the leases, let it not be partially done; but apply it to the whole. Let them avoid them altogether; there would be more justice in this, for the proprietor would then be placed in the same situation he was in before he granted it; and he would then say to were law—you want 100 acres, and I would let you that at £5, but the Act prevents my letting the Reserve. You may have the 90 acres at the back of it, but you must pay the same rent for that as if you had the 100. So far he had argued the question with reference to the right of the proprietor under the reservations alone; and he thought that in that view of it ample reasons had been shewn why it should not become a law. He would now view the question on the 32 grants, in conjunction with the despatches of the home government respecting them; and for this purpose, and for argument's sake, would concede the fee in these reserves to be in the crown. If it was then as between the crown and the public, the land was as entirely the crown's as any other piece of crown land in the Island. Then, if the crown gave it to the public, they must receive the boon in the way the crown chose to grant it. How patches of 1838, and commented upon them, and contended that any Act of the Legislature should be predicated on them; that they put the 32 Townships on the same footing as the twelve; and that the framers of the bill had mistaken their office, inasmuch as, by the despatches, they were only invited to make rules and regulations, "to prevent improvident and injurious practices in carrying them on," and were not authorized to interfere with the rights of the crown or the proprietors, by declaring what the legal construction of the reservation was. If the crown thought they had a right to the soil, it might try the question, or it might say we are content with fulfilling the intentions of the Order in Council, and will moot the matter no further. Whatever further rights the crown might think it had, it had given the Colonial Legislature no right to interfere with them. That such was the construction of the Despatches that the 32 should be put on the same footing as the twelve, and enacted then, without judge or jury, swept away the proprietor's right in the whole. Whether, therefore, the House looked at the question without the despatches, or with them, the clause against which he was contending was most objectionable. In the first case, it precluded his clients from the discussion of an important general question; took from them their property without a trial; destroyed particular instances of acquired rights, and directly dissolved the solemn compacts of mankind, which nothing could justify. And, in the second case, it dealt with the gift of the Crown in a manner different from the intention of the donor.

The next clause to which he should object was the 5th, which went to declare, that the reserve should extend 500 feet inland, from highwater mark. He objected to this on two grounds—First, that it was either mere surplusage,