

The Examiner.

A WEEKLY JOURNAL OF POLITICS, LITERATURE AND NEWS.

EDWARD WHELAN]

This is true Liberty, when free-born Men, having to advise the Public, may speak free.—EURIPIDES.

[EDITOR AND PUBLISHER

Vol. VIII.

CHARLOTTETOWN, PRINCE EDWARD ISLAND, MONDAY, MAY 9, 1859.

No. 44.

Provincial Parliament.

LEGISLATIVE COUNCIL.

THURSDAY, 21st April, 1859.

TEACHERS' PETITIONS.

Hon. Mr. DINGWELL, with reference to the Certificate of the School Trustees, appended to the Petition of Henry Lecky, Teacher, unlicensed, in which the late Government is censured for having allowed the said Teacher only £20 a year for the last two years, although the French Acadian Teachers are allowed £40 each, per annum, said—He thought such censure was very much out of place, and altogether uncalled for; and he believed that generally speaking, with respect to the petitions which were sent in to the Legislature, by Teachers, or on behalf of Teachers, if facts were fairly and fully enquired into, it would be found that blame—where there really was cause for blame—attached, not to the Government, or to the Legislature, but to the parties petitioning, or to others having direct interest in the petitions. He thought that, if the Trustees of the schools and the parents of the scholars were to discharge their own obligations with respect to the schools, in seeing that the teachers faithfully performed their duties, and that the proper daily attendance of scholars was kept up, it would very seldom be necessary to lay before the Legislature any such petitions as those which had just been presented to the House. As he had remarked the other day, with respect to a petition from a teacher, whose full half-year's salary had not been paid to him because the average daily attendance of scholars, as shown by his Register, was half a scholar short of the average required by law, he certainly did think that to withhold any part of a teacher's regular salary for such a reason, was to treat him with unnecessary rigor. It was, in a manner, punishing him for his honesty; for surely when the daily attendance of pupils was so little short of what the law required it to be, it would have been quite easy for him so far to have falsified his Register as to have made it appear that the average had been fully what it ought to have been, if not more. It had been stated by His Honor Colonel Swabey that the Board of Education were strictly bound by the law, and had no discretionary power with respect to such cases. This he did not dispute; still, however, he thought such cases were entitled to, and ought to receive very favorable consideration. But certainly where real blame attached to the teacher, the trustees, or the inhabitants of any of the School Districts, it should rest upon them and the punishment due to it also.

Hon. Col. SWABEY—He was surprised that the two Houses of Legislature had not yet—often and long as the subject had been under their consideration—been able to frame such an Act for the regulation of the District Schools, as, by its operation, if fairly carried out, would obviate the necessity of those repeated applications to the Legislature, by, or on behalf of teachers. Our School Acts, instead of being so clear, precise, and stringent, as to leave no room for misapprehension of their meaning, or for infraction of their provisions with impunity, had been so loosely and vaguely framed, that, as the late O'Connell said, with respect to the Statutes of Great Britain, he could drive a coach and six through any of them. One frequent cause of those petitions was, he believed, that the inhabitants of settlements in which the requisite number of children could not easily be found had too often succeeded in procuring the erection of their settlements into School Districts; and, as a natural consequence, their inability to keep up the average daily attendance of pupils required by law, necessitated most of the petitions complaining that the full statutory allowances had not been made to the teachers. In such cases, to procure either the regular salaries, or else legislative grants in lieu of them, the only alternative with the teachers was fraud or petitioning the Legislature. Besides, several of the petitions which were annually sent into the Legislature, by persons praying remuneration for their services as teachers, were from individuals who, like Lecky, were not licensed by the Board of Education. Such individuals ought not to be engaged as teachers when duly licensed teachers could be procured, and it was unwisely on the part of the Legislature to encourage them.

His Honor the PRESIDENT observed that, were all the petitions which were presented to the Legislature, on behalf of parties irregularly claiming allowances for their services as teachers, to be complied with, it seemed to him that an appropriation of £28,000, instead of £14,000 a year would soon be required on account of the school service.

MONDAY, 25th April, 1859.

DESPATCH of Sir E. B. Lytton, Colonial Secretary, to Lieut. Governor Sir D. Daly, dated 20th October, 1838, announcing the disallowance of the Fishery Reserves Bill, which was passed by the Legislature of P. E. Island, 1838.

Hon. Col. SWABEY—Your Honors, on Thursday last, I gave notice that I would to-day call the attention of the House to the Despatches laid on the Table respecting Her Majesty's disallowance of certain Bills named in His Excellency's Speech, and other Despatches therein alluded to. The first which I intend to notice is that announcing the disallowance of the Fishery Reserves Bill, which was passed by the Legislature in their last Session. I am actuated by several motives in calling the attention of the House to this Despatch. The chief one in my mind is, that it is high time that the assertion of the Colonial Secretary, Sir Edward Bulwer Lytton, that the claim of the Government of this Colony, made by that Bill to the Fishery Reserves in which the land itself is reserved to the Crown, is the revival of an obsolete claim, should be contradicted—as it certainly ought to be, either in this or in the other House of the Legislature. Another motive is, that I wish it to be seen by the country that we do not conceive it to be our duty to sit here as mere automata, to be set in motion by another body; but that we are fully alive to the great responsibilities which constitutionally attach to our position, and determined to act, concerning every measure or question affecting the public interests, as a legislative body possessed of an independent voice, and determined fully to exercise it, on all proper occasions, calmly and dispassionately for the public good, on which our own is certainly as much dependent as that of the individuals composing the other House,—that, in fine, we sit here for no other purpose than the protection of public rights and the promotion of the public well-being. By our proceedings, I wish the country to be convinced that nothing done by us in our legislative capacity

can justify the opprobrious terms which have elsewhere been applied to us; and, on the present occasion, I hope we shall, by a full and direct refutation of Sir Edward Bulwer Lytton's assertion, that the claim of the Government of this Colony to the Fishery Reserves is the revival of an obsolete claim, shew the respect which we entertain for the rights of the people. I also intend to speak of the rejection of the Loan Bill; but first of the Fishery Reserves Bill. Now, your Honors, we may not all have the same clear perception of the rights of the people as involved in the question of the Fishery Reserves: indeed few of us can have a critical knowledge of them; but, perhaps, from the opportunity which I have had to investigate them, and from the earnestness with which I have lately prosecuted the investigation of them, I may be able to place them in a clearer point of view to some of your Honors, than they have hitherto appeared in. In speaking of the manner in which the remonstrances and representations of the Legislature of this Colony respecting the Fishery Reserves and the Land Tenure generally, have, from time to time, been dealt with by the Home Government, I may make strong remarks; but I certainly shall not presume to censure the present Colonial Minister for the views which he has taken of these questions. It is only fair to speak of them as the best and most impartial he has had opportunities to form; and considering the very short time he has been in the Colonial Office, it would, perhaps, be unreasonable to suppose that he might have been better informed upon these questions than he appears to be. We have, besides, good grounds for believing that, whilst considering these questions, his mind has been open to the influence and misrepresentations concerning them of individuals deeply interested in opposing the views entertained with respect to them by the people and the friends of the people of this Colony, and whose opinions generally concerning agrarian questions in this Island are narrow and impolitic, and positively adverse to the interests of the people. What Sir Edward Bulwer Lytton has done to counteract the intentions of the Legislature of this Colony with respect to the Fishery Reserves, he has undoubtedly done in haste; and I do not wish to attribute improper motives when it is only just to suppose that none could exist; but as I have already said, I think it to be the duty of some member of this House to open up the consideration of Sir Edward's Despatch, by which he informs His Excellency, in very strong terms, that he cannot advise that Her Majesty's consent should be given to the Fishery Reserves Bill, and to refute his assertion that the claim of the local Government to the Reserves is obsolete; and, since no other member has evinced a readiness to do so, I have now taken the duty upon myself. His Honor then proceeded to read the Despatch in question, which is as follows, occasionally commenting upon it as he proceeded, as will be seen in the remainder of this report of his speech.

“DOWNING STREET, 20th October, 1838.

SIR;

“I have received your Despatch, enclosing authenticated Copies of an Act passed by the Legislature of Prince Edward Island, intitled ‘An Act relating to the Fishery Reserves in this Island.’

“After a careful consideration of the documents relating to that Act, including the remonstrances to which (as my predecessor would seem to have anticipated) it has given occasion, I find it wholly impossible to recommend that it should receive Her Majesty's sanction.

“The facts of the case I understand to be the following—

“By certain Orders in Council of 1764 and 1767, the Governor of Prince Edward Island was directed to grant the lands in that Colony to various persons, subject to a reservation of ‘liberty to all His Majesty's subjects in general of carrying on a free Fishery on the Coasts, and of erecting stages and other necessary buildings within the distance of 500 feet from high-water mark.’

In parts of the Island the land was actually granted on these terms; but, in other parts, the grants, instead of reserving a right of entry for certain purposes to His Majesty's subjects, reserved the land itself (500 feet from high-water mark) for the disposal of His Majesty ‘to erect stages and other buildings for carrying on the Fisheries.’ I understand, however, that, for a long series of years—I may almost say for generations—no distinction was in fact made between these two classes of grants, the strip of 500 feet being alike treated as belonging to the grantee of the adjoining land, that the owners have leased it, improved it, incorporated it into Farms—built upon it, and above all, that they have paid taxes on it as on their own property, which taxes the Government have received.

“Under these circumstances it appears to have been the opinion of the Law Officers of the Crown in England, and of the Supreme Court in Prince Edward Island, that when the ‘disposal’ of the Fishery Reserves was secured to Her Majesty by the deed of grant, the actual property of the land remained—and notwithstanding the long adverse occupancy, still remains vested in the Crown.

“The Act now forwarded is passed in reliance upon these opinions, and, while saving the existing rights of the Crown, provides that whenever such reserves have been leased by the reputed owners to any Tenant, the Tenant shall be relieved from the liability to pay rent for them.

“Now, in the first place, the revival of an obsolete claim of this kind, however tenable in strict law, is open to objections of great force. The old maxim that ‘time does not run against the Crown,’ has been found in England so invidious in its application, so unjust in its consequences, so prejudicial to the free use of property and the consequent development of wealth and industry, that it has been long since legally annulled in the Mother Country, and for the most part practically abandoned in her Dependencies. Any right, therefore, which requires the support of that maxim should be exercised with great consideration for persons who for long periods have been allowed, perhaps even encouraged, by the laches of the Government to consider themselves the owners of property. And this applies with peculiar force where, as in the present case, the Government has actually enforced against those persons the liabilities of Landowners, and where there appears some reason to doubt whether the rights which it is now prepared to enforce were not unintentionally reserved to the Crown. I do not say what terms could be equitably offered, in this or any other case, to reputed owners—as these terms must vary indefinitely with circumstances; but, as a general rule, they should certainly include, in respect of land not required for any public purpose, a right of pre-emption on reasonable terms, and, if so required, compensation for improvements effected on the property.

“Subject to qualifications of this kind, the assertion for the benefit of the public of the Crown's title to those lands might, under certain circumstances, be defensible, or even necessary. Not so the Act forwarded, which does not resume

the lands for the Queen, who is their owner, but by the abolition of rent, practically transfers them to the tenants, who have no right whatever to them, except that which they derive from their landlords. It is with deep regret that I regard in this Act a symptom of the same contest between classes which has led to former Acts on the part of the Legislature of Prince Edward Island, which one of my predecessors so emphatically disapproved. And I could earnestly wish that, instead of propounding measures which I am convinced that no English Minister can sanction, the Legislature would devote its attention to some feasible scheme for settling these local questions which have caused so much disquietude in the Island. To the expediency of such a settlement I am fully alive. Most gladly would I co-operate in measures by which it may be practically obtained in a spirit of conciliation and fairness to all parties, and the subject is engaging my anxious deliberation. But, meantime, I cannot advise that her Majesty's consent should be given to a Law which enforces, for the benefit of private individuals, rights of the Crown which could not properly be enforced with so much rigor even in the interest of the public. In the absence of such consent, the Act will of course remain inoperative.”

When his Honor had read that sentence of the Despatch, in which the Colonial Secretary, with reference to the two classes of Reserves—the first being merely a reservation of liberty to all subjects of the Crown in general of carrying on a free Fishery on the coasts, and the other being a reservation of the land itself for the disposal of the Crown—says, “I understand, however, that for a long series of years—I may almost say for generations—no distinction was in fact made between these two classes of grants, the strip of 500 feet being alike treated as belonging to the grantee of the adjoining land,” his Honor said, “Generations! The Orders in Council alluded to in the Despatch were made in 1764 or 1767, and reckoning from either of these periods, the lapse of time will not amount to one generation or age. [His Honor the PRESIDENT. In law 21 years are reckoned a generation.] Well, then, giving Sir Edward the advantage of the legal interpretation of the word ‘generation,’ we will allow that he had a right to say ‘generations,’ the lapse of time having been more than three generations. But that to which I here wish to call your Honors' attention, is the erroneous assertion made by Sir Edward that no distinction for a long series of years was in fact made between the two classes of Reserves, and that consequently the claim made by the Government, and asserted by the Legislature of the Colony—a right of property in the Reserves, the land whereof itself is, in the grants, reserved for the disposal of the Crown—is an obsolete claim. If by any time which has elapsed since the original grants were made, or through any abandonment of right, or acquiescence in the assumption of the ownership of such Reserves by the grantees or proprietors, the right or title thereto of the Crown had been allowed to lapse, will it for a moment be supposed that, in the action instituted by the late Government against Mr. Cox, of St. Peter's, for the purpose of dispossessing him of, or ejecting him from, certain Reserves of this class—an action which was instituted almost solely for the purpose of setting the question generally concerning the right of property in such Reserves at rest by a legal decision—will it, I say, be supposed for a moment that if the right or title thereto of the Crown had been allowed to lapse, that the Judge and Jury would have concurred in the propriety of a verdict in favor of the Government? Now, that the right of property, in these Reserves, of the Crown has never been relinquished or relaxed, but that, as against the assumptions of the grantees or proprietors, and with a view to the protection of the tenantry from unjust exactions, it has been annually asserted, and reiterated again and again ever since a House of Assembly first sat in the Colony up to the present time, I could easily show by turning, in succession, to the Journals of the Assembly. Of what force then, let me ask, is the argument of Sir Edward Bulwer Lytton, based on the assertion that the Government has enforced, with respect to these Reserves, against the proprietors, the liabilities of landowners? Of none most certainly. And what he asserts when he says, ‘there appears some reason to doubt whether the rights which the Government is prepared to enforce were not unintentionally reserved to the Crown,’ is certainly an assertion without the shadow of a foundation. I do not wish to trouble your Honors by any unnecessary references; but I wish to show that the word ‘obsolete’ in the Despatch under consideration, although certainly used advisedly and according to its full legal acceptation, has yet been used in the face of a continuous chain of facts, which, to use the Right Hon. the Colonial Secretary's own words, extend over a long series of years, and indisputably prove that the claim, which has never been allowed to lapse and become ‘obsolete,’ has never, at any time, been relaxed or allowed to slumber. In fact, until the contents of this despatch became known to me, I never heard that the claim had ever been so much as questioned, and it is time that the country should be assured that this House will never acquiesce in such spoliation as this Despatch seems intended to authorize. In 1839—not to take your Honors back to a time more distant, for the nearer the present the better—Sir Charles Fitzroy, who seems to have taken a great interest in the question of the Fishery Reserves, entered into a correspondence with Lord Glenelg, in which the whole subject appears to have come under review, from the passing of the Order in Council authorising the reservations in the grants up to the time at which the correspondence commenced. I will read portions of it to the end that I may establish two things by it—first, the power of the Crown and of the local Government over the Reserves where the reservation is to the Crown, and in the second place the acquiescence in the exercise of such power by the proprietors. His Honor then read as follows, from a Despatch of Sir Charles A. Fitzroy to the Right Hon. Lord Glenelg, dated 8th Jan., 1838:

“The Colonial Government has, in a few instances, in cases where the reservation is to the Crown, exercised authority over them by granting licenses of occupation in the terms of the Grant to persons engaged in the Fisheries, as will appear by the return enclosed. Since my arrival in the Colony I have taken upon myself to grant licenses of occupation of these Reserves in two cases where the applicants were freeholders, to the extent of the front of their farms. I have also had numerous applications made to me very recently by tenants for similar licenses; but, conceiving that these licenses were to be used with a view of defeating the landlord's claim for rent, and not for the bona fide purpose of carrying on a Fishery, I have declined issuing any further licenses, until I receive your Lordship's instructions on the subject. It is proper that I should call your Lordship's attention to a correspondence which took place between Mr. Robert Stewart, Lord Glenelg, Lord Stanley, and Sir Arctur W. Young, on the subject of these Reserves, dated 22nd March, 25th March, 22nd May, 26th May, 6th November, 1833.” The Mr. Robert Stewart

spoken of, I take to be the father of Mr. Robert Bruce Stewart, one of the proprietors who memorialized the Home Government against the allowance of the Fishery Reserves Bill. Your Honors will observe that I am not speaking of Reserves in general, but of those only which, on the introduction of Responsible Government, were made over as part of the Territorial Revenue of the Crown to the Government of this Island. Sir Charles proceeds—

“The first letter of this correspondence which appears on record here, is one from Mr. Robert Stewart, under date the 22nd March, 1833, in which he agrees to accept a lease of the fishery abutting on his property, at a reasonable rate. The letter is transmitted in a despatch from Viscount Goderich to Sir W. A. Young, dated the 25th March, 1833, wherein he is authorized to grant to Mr. Stewart, or to any other proprietor similarly circumstanced, who may apply to him, a lease on equitable conditions, of such portions of the space of five hundred feet above high-water mark reserved to the Crown as may border on the property of the persons applying to him.”

“In reply, Sir W. A. Young, under the date 2nd May, 1833, and in a subsequent despatch of the same date, to which I would especially call your Lordship's attention, explains why the Crown in many cases has not the power of granting leases of these Reserves, and very forcibly states his reasons why it would be highly impolitic to grant leases to the proprietors, were it even in its power to do so, except for a very limited period; and, therefore, took upon himself to suspend any further measures on the subject till further orders were received. The views Sir W. A. Young here takes of the case met the approval of Lord Stanley, then Secretary of State, who in a despatch, dated the 6th November, 1833, thus expresses himself:—‘I have the honor to convey to you my approbation of your decision under the circumstances stated by you, to suspend the execution of the Earl of Ripon's instructions on the subject.’”

“As the applications for licenses are likely to be renewed, and with more probability at the commencement of the fishing season in May, I would take the liberty of requesting your Lordship's instructions at your earliest convenience. But I would at the same time press upon your Lordship's attention the impolicy, under any circumstances, of relinquishing those Reserves which are in the Crown to the proprietors, as I finally believe such a measure would not only tend to increase the present excitement against the proprietors themselves, but also weaken the strong attachment now felt by the colonists to the Mother Country.”

Well, in all this I do not recognize any relinquishment of the claim of the Crown to these Reserves, or perceive any signs of a disposition to yield them up to the proprietors on any terms; and, in fact, the whole affords the strongest evidence of the full retention of its claim to them by the Crown. Sir A. W. Young thought upon the question as it was just to think. He thought that it would be highly impolitic in the Crown to grant leases to the proprietors, were it even in its power to do so, except for a very limited period. He saw that were the Reserves to be leased to the proprietors, as they desired they should be, they would acquire a power to lease them again; and so the original intention in making the reservations would be entirely defeated. He saw that such a proceeding would be a virtual abandonment or alienation of the power originally retained by the Crown to dispose of these Reserves, and a putting it beyond the power of the tenantry or the people to derive any advantages whatever from them, except at the will of the proprietors, and on such terms as they might see fit to impose. Lord Stanley, who appears to have always been a friend to the people of this Island, expressed his approbation of and concurrence in these views, clearly perceiving that to entertain the proposition of the proprietors with respect to the Reserves would be to deprive the people of the privileges which, by their reservation to the Crown, was intended to be secured to the people in perpetuity.

Well, your Honors, what view of the question does Lord Glenelg entertain? It is this, as expressed in his reply to Sir A. W. Young, under date 10th May, 1833:

“It appears to me that the reservation made of lands adjacent to the sea coast, or to the shores of inlets from the sea, for the purpose of fishing, so far as the right has been reserved to the Queen's subjects collectively, constitutes a property over which the power of the Crown is exceedingly questionable. These lands appear to have been dedicated to the use of the public for his special purpose, and that dedication of them seems to be irrevocable; but in cases where the lands have been reserved to the Crown they must be considered as forming part of the Territorial Revenue which should be employed in the public service, in whatever manner may be most compatible with a prudent and economical use of them. I am of opinion that such reserved lands ought not to be alienated in perpetuity, or for any considerable length of time, but that they should be put up for auction, at a fair upset price, to be let either for each fishing season, or at most for one or two seasons in advance; or, if the demand of a rent would impede the fisheries of the island, then that they should be thrown open to all British subjects engaging in those fisheries, which might be regulated by such laws as might be found necessary for preventing unprofitable and injurious practices in carrying them out. I concur with you and Sir A. W. Young in deprecating any such disposal of these lands as would secure to the proprietors or tenants of the adjacent soil the exclusive possession of those facilities which are necessary for engaging in the Fisheries of Prince Edward Island.”

Here, your Honors, you will observe that Lord Glenelg besides insisting that the Reserves of which the soil has been reserved to the Crown, must be considered as forming part of the territorial revenue to be employed in the public service, forcibly deprecates any such disposal of these Reserves as would secure either to the proprietors or to the tenants of the adjacent soil, the exclusive possession of those facilities which are necessary for engaging in the fisheries. His opinion is clearly to the effect that the proprietors, in leasing those lands, assumed a right of property in and over them, to which individually they were not on any grounds entitled; and that therefore their having been included in leases taken by tenants could not give to such tenants individual claims to them to the exclusion of the people generally, and to the diverting of their use from the public service to which they were originally dedicated. With respect to that clause of the Fishery Reserves Bill which goes to release tenants from the payment of rent to the proprietors for such portions of that class of the Reserves of which I am now speaking which are included in their leases, Sir Edward Bulwer Lytton appears to have taken a most strangely erroneous view of it, in declaring that its operation would be to confer upon the tenants an exclusive right to such parts of such reserves, although they can have no title to them whatever except what they derive from the proprietors by their leases. That clause of the Bill was not intended to have any such effect as that; and neither can any such construction be fairly put upon it. It was certainly intended to relieve the tenants from the payment of rent on account of such reserves, or any portions of such reserves, to the proprietors of the adjacent lands; but by no means to give the tenants individual claims to such reserves, or to any portions of them, to the exclusion of the people generally, and to the diverting of their use from the public service to which they were originally dedicated. For such reserves, or any portions of such reserves being in the use and occupation of either tenants or freeholders, it would be perfectly right that the Government should exact rent so long as they were not