

The Examiner

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EDWARD WHELAN]

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

[EDITOR AND PUBLISHER.

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CHARLOTTETOWN, PRINCE EDWARD ISLAND, MONDAY, MAY 5, 1856.

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Colonial Legislature.

LEGISLATIVE COUNCIL.

TUESDAY, April 1.

Hon. ATTORNEY GENERAL, as a member of the Government, laid on the table a letter of thanks from the Honorary Secretaries of the Patriotic Fund Committee.

The Bill to improve the Law of Evidence was read a third time and passed.

The amendments of the House of Assembly to the Indian Bill were agreed to.

The Bill relative to St. James's Church, Charlottetown, was read a first time.

The House went into Committee on the Bill amending the Act of Incorporation of Charlottetown. Hon. Colonel Swabey in the Chair.

On the clause transferring the jurisdiction of the Small Debt Court for Charlottetown to the civic authorities, His Honor the PRESIDENT alluded to the fact of a serious charge having been made against the Clerk of that Court in an anonymous communication to one of the newspapers. His Honor was happy to state, and he wished it to go forth to the public, that there were no grounds for the imputation. The character of the gentleman alluded to was sufficient refutation of the charge.

Hon. COLONEL SWABEY'S official connection with the Court enabled him to say, that no complaint of the character referred to had been made for two or three years. It often happens at a party's own actions delay the receipt of moneys.

Hon. ATTORNEY GENERAL thought that if any one had cause of complaint he should bring it to the notice of the Court. The fact was, that mere rumour in Charlottetown soon assumed the hue of facts.

Hon. PRESIDENT.—It should be made known that no complaint had been brought to the notice of the Court. He agreed with the Hon. Attorney General as to the gossiping capabilities of the people in Charlottetown. The fact was, that if a man rejected nine-tenths of what he had heard, and accepted the one-tenth, he would, in most cases, be giving his credence to nine-tenths of falsehood.

Progress reported.

WEDNESDAY, April 2.

The St. James's Church (Charlottetown) Bill was committed and agreed to with amendments.

The Hon. Col. Secretary brought up from the House of Assembly a Bill regulating the Ferry and other wharfs in Charlottetown.

Hon. Mr. Mooney brought up a Bill incorporating St. John's Church, Belfast. Read first time.

The Committee on the Bill amending the Charlottetown Incorporation Act was resumed.

The Hon. the PRESIDENT stated that he had been misunderstood yesterday when the clause providing for the laying out the streets was deferred. He was not to be considered as an advocate of the amendments he had introduced; they were handed him by the Hon. Mr. Palmer, with a request to move them. He was not pledged to their support, and would be satisfied with whatever action the House might adopt.

To the clause regulating the opening of streets, the Hon. COLONEL SWABEY objected. The Bill had passed the House of Assembly without those objections; they had not been introduced there, and as they affected private rights he would never give his consent to their being smuggled in in this manner. Parties who would be affected by them had received no notice that their rights were to be invaded. He was cognizant of one instance where a property had been laid off and sold in certain subdivisions with the accommodation of a loan. This clause would nullify that arrangement. The Corporation had just absorbed the Small Debt Court for Charlottetown, and it began to assume such levithian dimensions, that unless checked, it would probably swallow up the whole Island. He was not disposed to give the power sought, which was of a nature the most arbitrary, tyrannical and despotic he ever knew; it was, in fact, nothing short of undisguised spoliation.

Hon. Mr. HAYTHORNE.—I congratulate the hon. member on the change in his political sentiments.

Hon. COLONEL SWABEY had interfered with the claims of the great proprietors as being of public importance, but never had, nor would encroach on private rights. This measure was a despotic infringement of them, which would, therefore, always receive his opposition. If such principle were admitted, a man might find that his property, worth a certain sum per foot one day, was not worth the same amount per acre the next. He knew his Honor the President too well to believe him a party to the measure. He would divide the House against the motion.

His Honor the PRESIDENT was glad that he had introduced the resolution, as it had given his Honor an opportunity of making a speech which he considered was the best of the Session. He could assure their Honors that the sentiments his Honor had just expressed were not exclusively his own, they were the opinions of the Government generally, whose determination was to afford the utmost protection to private rights; but at the same time to oppose, as far as in them lay, the exercise of private rights to the injury of the public at large.

Hon. Mr. BAGNALL did not agree with the Hon. Col. Swabey, that the continuation of the streets of equal breadth would have the effect of depreciating property; on the contrary, he considered it would increase its value; narrow streets were of no benefit; they but increased the risk of fire.

His Honor the PRESIDENT instanced Prince St., which, if continued at the present breadth, would involve compensation amounting to thousands. Where a proprietor had laid off a street of the width of 40 feet, it would be great injustice to take 60—probably worth £1 per foot; besides, as parties to be affected by the operation of the clause had received no notice, he would move that the clause be struck out.

Hon. Mr. HAYTHORNE said it was amusing to see how certain of their Honors became suddenly zealous defenders of the rights of property, when assailed near home. Some hon. members seemed to act as though they considered a foot of land in Charlottetown worth a thousand acres in the country.

Hon. Mr. CRASWELL.—If the continuations of streets were made with the consent of the owners of properties through which they might be carried, it was all very well; but as his Honor the President stated with reference to

Prince Street, it would cost thousands, and might interfere with private property to an enormous extent.

Clause struck out.

The clause authorising the closing of streets less than 40 feet in width, not built upon, was struck out, as conferring a dangerous power, which might be used to deprive a man of access to his own property.

The Bill was agreed to with amendments.

The Hon. ATTORNEY GENERAL, by command, laid out the table the Blue Book for 1854.

THURSDAY, April 3.

BILL OF LIMITATION OF ACTIONS RESPECTING REAL ESTATE.

Hon. ATTORNEY GENERAL.—In introducing the Bill which I am now about to move referred to a Committee of the whole House, I explained its objects and the alteration it would make in the present law. As some of your Honors, however, were not then present, I shall briefly direct your attention to its features. By the law as it at present stands, a party may bring an action for the recovery of land within twenty years after his right accrued. But if he should be absent from the Colony, it may be thirty years, he still has ten years after his arrival here to prosecute his claim, thus giving him in all forty years. By this Bill it is provided that in cases of parties resident abroad, but represented here by duly authorised agents, the possession of the agent should be considered that of the principal. Where parties reside abroad and have no resident agent, the Bill proposes to bar their claims after twenty years from the appointment of the agent. I may state that this Bill has not been introduced by me as a Government measure. I assume the responsibility of it entirely alone, because I think it a just and proper measure. I shall be happy to listen to any suggestions of improvement which may occur to your Honors in Committee, and to make any alterations which may tend to increase the usefulness of the Bill, to which it cannot be reasonably objected that it tends to diminish the fair protection to which real property is entitled. One case was recently brought under my notice, which is of itself sufficient justification for a measure of this nature. A party had been in possession of property about thirty-five years; it was sold for arrears of land assessment, and the resident agent of the proprietor bought it. When the party came to redeem the land he found that he was without redress, that he had no title, because the full period of forty years had not elapsed. That was surely a case of hardship and injustice. The principle of the Bill is admitted on our Statute Book, and its object is merely a modification of the law, not intended to prevent the proprietor looking after his property, but recognizing the ability of an agent to do so. From what his Honor, Mr. Haythorne, had stated, I believe that he entertains strong objections to the Bill, and will probably, if the Bill pass, send them to the Colonial Office.

Hon. Mr. HAYTHORNE.—His Honor is out of order.

Hon. ATTORNEY GENERAL.—Some may object that this Bill has no precedent. It may be so, and I do not consider it necessary to look for a precedent, for sure I am that we will find no precedent for the manner in which the Crown Land of this Colony was originally disposed of. It was all granted in one day. Its particular state justifies legislation, without precedents drawn from other countries, whose circumstances bear no analogy to our own; for if we search the world over we will find no precedent applicable to the Island; and extraordinary cases require extraordinary treatment. In conclusion, I repeat that I shall be happy to listen to any suggestions in Committee; and I now move that the Bill be referred to a Committee of the whole.

Hon. Mr. HAYTHORNE.—My chief objection to the Bill is, that no such law is found existing in Great Britain or in any of the neighbouring Colonies; and that being the case, I recommend your Honors to adhere to the principle of the good old maxim: "*Nolumus leges Angliæ mutari*," which has never been improved on. In debate yesterday a good deal of stress was laid on the injustice of legislating on property, without notice to the owners. Now, your Honors, whose properties are to be affected by this Bill? Those of parties thousands of miles away. To whom have they to look for protection? They may have resident agents, it is true, but those agents may prove false to their trusts, and abuse the confidence reposed in them. Take the case of General Littler, and in citing this instance I do not intend any reflections on his representatives here, but merely wish to give a forcible illustration of the injuries which may result generally from the operation of the Bill. That officer has, I believe, been in the service of his country since the time he was sixteen years of age. A great portion of his life has been spent in India. His attention could not have been devoted to the state of his property here; and suppose that, wishing to rest here in the evening of his days, he should, on reaching our shores, find that a nefarious agent had deprived him of his property? Should he not be allowed to recover it? As I said before, I expressly repudiate the intention of disrespectful insinuations against his agents, but I have put the case as of general application, for the purpose of illustrating and enforcing my argument. Another objection, and in my opinion, a very serious one, is, that the Bill would have a retrospective effect—would be an *ex post facto* law, under which dishonest parties might be protected in their knavish designs of obtaining the property of others, without paying for it. The only class who would be benefited by it are those resident in the Island, squatters, who, by the kindness of the landlord, have been allowed to hold lands for years without paying rent. Those men might avail themselves of the Bill, to deprive the landlord of his property, as a return for the favor and indulgence they had received at his hands. The Hon. Attorney General admits that he can find no precedent for the Bill, and I sincerely hope he may never be able to. I hope the Legislature will always throw the shield of its protection over those whose absence prevents them looking after their own rights. As to precedent, this House is in a state which I believe is unprecedented, when a member cannot obtain even a second on any motion affecting the real property of the country. I do not deny that the holding of land by individuals, in large quantities, is an evil. I only ask your Honors to do justice to the absent. Do not impose disabilities on them without notice. If you do, I will not say that you willfully commit an act of injustice; but I will say, that you act as Legislators ought not to. I move, your Honors, that this Bill be read a second time this day three months.

Hon. COLONEL SWABEY.—As to the argument founded on the absence of precedent, I consider that there is no great force in that. As I mentioned in debate the other day, there was no precedent for the English statute allowing tenants to remove buildings from their lands. That Bill re-

versed the old rule of law, and became itself a precedent. The fact is, the course of the world and the progress of society render necessary the adoption of whatever measures, and the legislative recognition of whatever principles the ever varying circumstances of mankind may require. The only question for your Honors' consideration is this, will this Bill inflict injustice? I cannot see the slightest probability of its having that effect. It is only intended to affect those parties who have resident agents. If those agents are inefficient or dishonest, the consequences of their misconduct should be borne by those whom they represent. The Bill does not abridge the period of twenty years, as that giving title by adverse possession; and really if that is not sufficient, I am at a loss to know what would be. As Sir John Littler has been alluded to, I can say that he has been ably represented here, and his rights amply recognized. Suits have been brought in his name, and decisions given in his favor. I cannot understand why the hon. member, Mr. Haythorne, is so thin-skinned about improvements of this nature. I cannot see the injurious effects anticipated by the hon. member, and I consider that the one case cited by the Hon. Attorney General shows sufficient reason for your Honors to pass the Bill.

The Hon. the PRESIDENT—I was not aware of the Hon. Attorney General's intention to introduce the Bill. I at first entertained an objection to it, as it would not prevent a person fraudulently recording himself as Agent, and after twenty years elapsed, shutting out the title of the proprietor himself. At my suggestion the Bill has been altered to make the production of the Power of Attorney under which the agent claims to act *prima facie* evidence only of his authority. His Honor, Mr. Haythorne, says that this Bill is an infringement of the rights of property. Now, what is the object of the Bill? In law the possession of an Agent is the possession of his Principal. If the latter were in the Island twenty years, adverse possession for that period would bar him; then why should it not equally affect him through his agent? The Bill only affects parties beyond the seas, who have resident agents in the Island. It does not interfere with other disabilities, such as idiocy, coverture, &c. I can see nothing in this Bill morally or legally wrong, and I am truly surprised to hear his Honor, Mr. Haythorne, say that the Bill is unnecessary for the Island. Why, your Honors, the monopoly of the lands is the greatest curse to this Colony that could well have fallen upon it, and by creating that monopoly the British Government inflicted on us an injury which it can never remedy. A great cause of the evils which afflict Ireland is absenteeism, and we labour under the same disadvantage. If the proprietors resided among us, and spent their money here, the same necessity would not exist for the Bill. It is an unfortunate condition of affairs, where large amounts of real property are held back for the benefit of private families, instead of being employed in contributing to the general benefit of the people. Such a state of things diminishes the value of property, and retards the general advancement of the country. It is the duty of the Legislature to remove this, in so far as it can be done without infringement of private rights, and every measure tending to that effect shall receive my cordial support.

Hon. ATTORNEY GENERAL, in view of the suggestion of his Honor, Mr. Haythorne, alter the Bill to prevent its having a retrospective effect, as far as it might be applicable to suits at present instituted. It has been decided in England and here that the old Act was retrospective and prospective.

The Bill was then committed, Hon. Mr. Haythorne dissenting.

The Bill to incorporate St. James's Church, Charlottetown, was passed.

The Act amending the Charlottetown Incorporation Act was also passed.

The Bill incorporating St. John's Church, Belfast, was committed, and progress reported.

Hon. ATTORNEY GENERAL presented a petition for a Prohibitory Liquor Law, from the Young Men's Christian Association; also a petition from trustees of the Georgetown Grammar School, praying increase of teacher's salary.

Hon. Mr. WALKER presented a petition from the Mayor and Common Council of Charlottetown on the subject of the Common.

FRIDAY, April 4.

The Bill of Limitation of Actions respecting real estate was passed.

The Bill incorporating St. John's Church, Belfast, being re-committed, was agreed to with amendments.

The Ferry Bill was agreed to with amendments.

The Bill to limit Actions for Real Estate was read a third time and passed. As also the Charlottetown Ferry Bill.

MONDAY, April 6.

Hon. ATTORNEY GENERAL, by command, laid on the table a despatch announcing the Royal Assent to four Bills passed last Session.

The Revenue Bill was read a first and second times, and committed.

Progress reported.

Hon. Mr. HAYTHORNE moved to have his protest against the Law of Evidence.

Bill entered on the Journals.

His Honor the PRESIDENT stated that it was optional with the House to allow it or not; but the eighth clause was disrespectful, as containing reflections on the Government and this House.

Hon. ATTORNEY GENERAL would oppose the motion *in toto*. The protest characterizes the Bill as one of a series of attacks on property by the Government. Such was not the case. He had expressly stated that it had not been brought in as a Government measure.

TUESDAY, April 8.

After some time spent in Committee on the Revenue Bill, Hon. Mr. HAYTHORNE moved to have his protest against the Evidence Bill recorded on the Journals. He had altered those portions which had yesterday been construed to cast reflections on the House. It had not been his intention to hurt the feelings of any one, and he had been under the impression that it was the right of any individual member to have his protest recorded; but an edition of May on Parliament, later than that which he had referred to, justified the course pursued by his Honor, the President, in referring it to the decision of the House. He still thought that this was the first time the right had been questioned, and he hoped

he would be allowed to exercise it, as it afforded him the only means of recording his opinions, as he stood alone on this question, consequently any amendment he might offer while the Bill was under discussion, not being seconded, could not appear upon the journals.

Hon. COLONEL SWABEY said the House had recently, in discussing the memorials against the Rent Roll and Tenants' Compensation Bills, condemned the imputation of motives, and it would certainly be inconsistent to allow them to appear in a protest on the journals. If they were removed, he did not suppose there would be any objection to the protest being recorded.

The protest was received.

WEDNESDAY, April 9.

House in Committee of the whole on the Appropriation Bill.

On the clause providing for education, the Hon. COL. SWABEY advocated a higher system of instruction in the Academy. A great deal had been done for schools; and he thought the time had arrived for the introduction of a more elevated standard of education in the Academy. The additional expense would be but small, and probably the salaries at present paid to three masters, if divided between two, would secure the object, as the third, or inferior department of instruction was abundantly provided for by the common schools. He wished this suggestion to go forth, that the public might have it under consideration.

The vote for partially reimbursing the trustees of Dunstaffnage school, for expenses incurred in the unsuccessful defense of a law-suit, was agreed to after some conversation, in which his Honor the PRESIDENT stated that his opinion had been given to the trustees in accordance with the judgment of the Court, and had they abided by that the loss would not have occurred.

The Hon. ATTORNEY GENERAL considered that the very fact stated by his Honor shewed that the parties were entitled to the vote, as the public had got the benefit of the decision of a doubtful point, and the trustees had only acted in a public capacity.

Hon. Messrs. CRASWELL and HAYTHORNE thought that if it were allowed it might establish a dangerous precedent. It should be understood that no future grant of the kind would be made.

On Thursday, the 10th April, the Reporter had leave of absence.

FRIDAY, April 11.

ELECTION BILL.

The Hon. COLONEL SWABEY, in moving the second reading of the Election Bill, said that he did so, not as a member of the Government, but as a volunteer; for ever since the introduction of Responsible Government he had been of opinion that an increase of members in the lower Branch was necessary, in order to an efficient carrying out of the principle. He did not state this for the purpose of diminishing the credit of the hon. member who had introduced the Bill into the Assembly, for he was not aware that that gentleman knew his sentiments on the subject. When the Council conscientiously vindicated the liberties of the people, which were imperilled, the majority had the proud satisfaction of seeing their efforts crowned with success. He felt not then greater pleasure than he now experienced. There were many reasons for adopting the measure of general application to any government. There would always be found in any legislative body some unstable minds—some loose fish—whose actions would be swayed by various motives; and no government based on a representative system, could be carried on in ignorance of the way in which members would vote. The class he referred to, were generally men of little talent or strength of mind, and liable to have their judgment swayed by the last speaker. They think they manifest their independence, when they merely lose their consistency. Legislators should attach themselves to some particular party, having general grounds of policy in common; but if they fly off at every little difference of opinion, Government must be changing from day to day. As the constitution declares that those having the confidence of the majority should hold the reins of power, so they should be put in a position to hold them efficiently. In addition, he considered this Bill as a great popular concession—that the effect of it would be the representation of a greater variety of opinions. Another benefit would be a greater choice of individuals from whom to form a Government than was at present to be had. The novel and most important feature in the Bill, was the addition of six members to the present number of the House of Assembly. The details had been enacted from the present Laws, with important alterations. One was, to facilitate the resignation of members wishing to resign; another rendered it unnecessary in a member holding an office, to vacate his seat on being transferred to another department. The division of the Electoral Districts he did not consider it necessary to enter upon, as that was a subject more particularly for the decision of the House of Assembly. Viewing the matter generally as one that was calculated for the benefit of the people at large, he trusted their Honors would concur in the second reading, and that the Bill would become law.

Bill read a second time.

The Bank Act and Appropriation Act were severally read a third time and passed.

The House in Committee on the Election Bill.

His Honor the PRESIDENT considered the Bill was a step in the right direction, but it did not go far enough. He was in favor of representation being based on population, instead of territorial extent. He was satisfied that the principle of population would eventually be adopted. No Government could be properly carried on with the present number of members in the House of Assembly. The absence of one or two members might, at any moment, cause the defeat of any Government, Snarler or Snatcher.

Hon. Mr. CRASWELL thought Prince County could not be divided better than it was by the Bill.

His Honor the PRESIDENT had been misunderstood by the hon. member. He had not objected to the particular territorial divisions in the Bill. He had merely advocated the adoption of what he considered a more just principle. Suppose the case of one district possessing 5,000 electors and another 10,000; were the 5,000 entitled to the same power in the Legislature as the others? His idea was this, suppose the whole population was 100,000, if it was necessary to have thirty members, he would divide the amount of population by thirty, thus giving equal privileges to all.