

THE ELECTION TO-MORROW.

A Meeting of the friends and supporters of HENRY LONGWORTH, Esq., will be held in Allin's Hall, this Wednesday evening, to make final arrangements for the Election to-morrow.

THE DAILY EXAMINER.

NOVEMBER 13, 1878.

TO-MORROW!

To-morrow the Legislative Council Electors of Charlottetown and Royalty will decide between the Local Government and the people at large.

To-morrow the Legislative Council Electors of Charlottetown and Royalty will decide between a government by the people for the people, and a government which clings to office and power in spite of the people.

To-morrow the Legislative Council Electors of Charlottetown and Royalty will show the sympathy they feel with the people of this Province at large, by VOTING for HENRY LONGWORTH.

To-morrow the Legislative Council Electors of Charlottetown and Royalty will decide whether or not it is right that any man, carrying on a private business, should have control of the public money.

To-morrow the Legislative Council Electors of Charlottetown and Royalty will show whether or not the Hon. Thomas W. Dodd, or any other man, can, with impunity, deliberately violate the law securing the Independence of Parliament, by contracting for Chance's No. 1 Glass, Register Grates, etc.

City School Board's Little Bill.

In another column will be found a statement of the financial operations of the City School Board—the Irresponsible Board—for the year ending 30th June, 1878. We might reasonably complain of the dilatory action of the Board in this particular. To submit a statement on the 12th of November of an account closed on the 30th June is, we think, fairly censurable. But all minor considerations are lost in the great fact that the Board have, in one short year, imposed upon the City a debt of no less than \$12,654.05, the interest on which has to be paid by the citizens for all time, or until the principal is made up. The debt was, for the most part, incurred before the City had a single representative at the Board. It was incurred without the authority and in spite of the City Council. It was incurred without even a thought of direct reference to the citizens at large. It incurred on the sole responsibility of the Local Government—the fate of which will to-morrow be determined by the votes of the Legislative Council electors of the City. It was incurred by a power which, under charter, gave to the citizens themselves the right of deciding what they shall be taxed for.

We have no space to criticize the statement at length. But we have one or two questions to ask:—

1. What was the \$1,359.38 under the head of "Miscellaneous," spent for? The amount seems unduly large.

2. What right has the Board to carry the large sum of \$943.41 to next year's account? Should not the expenditure of each year stand on its own bottom?

What about "That Glass" to-morrow.

REGULAR convocation of Port la Joie Encampment, No. 13, I. O. O. F., at Odd-fellows Hall this evening, at 8 o'clock. The Patriarchal and G. R. Degrees will be conferred. A full attendance of Patriarchs requested.

City Council.

A MEETING was held last evening. We regret that we have not space for a full report. The following statement was submitted:—

Receipts and Expenditures of Board of School Trustees of Charlottetown for the School Year ending June 30th, 1878.

RECEIPTS—CURRENT ACCOUNT.

1878.
June 30—By Gov't loan... \$5,000 00
By Union Bank loan... 3,081 39

EXPENDITURE—CURRENT ACCOUNT.

1878.
June 30—Teachers salaries \$1,944 52
School apparatus 195 13
Fuel 343 00
Care of School-rooms 610 46
Rent 2,187 92
Printing and stationery & books 331 83
Repairs and alterations—East Kent School... 157 70
Miscellaneous... 1,359 38
Salary of Sec'y... 438 33
Interest on Current Account... 217 12
Interest on debentures... 318 37

\$8,123 76

Deduct school fees received from country pupils 42 37

\$8,081 39

Amount charged to the year's expenditure and surplus... 8,000 00 8,000 00

Carried forward to next year's account... \$81 39 \$1 39

Expenditure of Board of School Trustees of Charlottetown under Debenture Account.

DEBENTURE ACCOUNT.

1878.
June 30—Furniture... \$3,493 12
New School Building & grounds... 9,155 93

Total \$12,654 05

Amount realized from sale of debentures... 11,710 64

Balance carried forward to next year's account... \$943 41

ISAAC OXENHAM,
Secretary of Board of School Trustees of Charlottetown.

George McLeod, Esq., of the Union Bank, was appointed City Treasurer.

Mr. D. Gordon was dismissed the office of Park Keeper, and Mr. Curtis reinstated.

The Manufacturers' Meeting.

A MEETING of the manufacturers of this city was held in the Athenaeum last evening with the object of considering the best means of protecting their interests in view of the recent decision of the Master of the Rolls in the case of Alley vs. Duchemin. The meeting was well attended, all our leading manufacturers being present. Shortly after 8 o'clock, Mark Butcher, Esq., was called to the Chair, and Mr. Archibald White, jr., appointed Secretary. Mr. John Newson then explained the object of the meeting. He was followed by Messrs. Alex. McKinnon, Smallwood, Lea, White, McLean, Duchemin, Foster and others—who, in short speeches, expressed great surprise at the recent decision of Judge Peters. By the Judge's interpretation of the existing law it was apparent that in every case an *ex parte* injunction could be granted to prevent any factory from working, which might be construed into a nuisance. This being the case, there was not one manufacturer in the city who is not liable to have his establishment shut down at a half day's notice by some mischievous or crusty neighbor, who may, through spite, consider it a nuisance; and, in order to more fully vent his spite, obtains an injunction. They then see their interests at stake, and it is time for them to move promptly to have so great an injustice to the artisan removed. The best legal advice should be immediately obtained; and, if the decision of the higher court is against them, let a bill, which will grant reasonable protection, be prepared and presented at the next meeting of the Legislature. At the close, Alex. McKinnon, Esq., Esdale Foundry, moved, seconded by R. Smallwood, of Smallwood & Boyer:—

Resolved, That the following Committee be appointed to procure the best legal advice in regard to the matter in question, and report at a future meeting, viz:— Messrs. Mark Butcher, John Newson and Archd. White, senr.

Large Meeting at St. Peter's.

LARGELY IN FAVOR OF KICKHAM.

A LARGE meeting of electors was held at the Head of St. Peter's Bay on Friday evening. Mr. L. Doyle occupied the chair and Mr. A. Lewis acted as secretary. The meeting was addressed by Messrs. Beaton, Dingwell, Kickham, P. R. Bowers and Hon. S. Bolger. Mr. Beaton declared himself a Grit, and the meeting was largely in favor of Mr. Kickham. It is considered by many electors to be the duty of Mr. Dingwell to withdraw from the contest in favor of the Liberal-Conservative Party.

LETTERS to hand from Ireland state that Bishop Gillooly, the newly appointed delegate to Canada, is not inclined to accept the onerous responsibilities imposed upon him by the Holy See; his advanced years and the multifarious duties which would necessarily devolve upon him in his assigned position are said to be the reason alleged by him in his remonstrance.

Alley vs. Duchemin.

IMPORTANT DECISION BY JUDGE PETERS—SUMMARY REPORT.

This is an application to discharge an *ex parte* injunction, granted by me on the 1st of September last, restraining the defendant from using the steam factory in such a manner as should interfere with the plaintiff in the enjoyment of his house.

The case is this: the plaintiff and defendant are adjoining owners. The defendants in May last erected a steam factory on their property, close to the dwelling house of the plaintiff, who complains that the smoke, soot and cinders from the factory chimney, and the noise, tremor, and vibration caused by the working of the defendant's machinery, disturbed the plaintiff in the comfortable enjoyment of his dwelling.

The plaintiff, in his affidavit made to obtain the injunction, deposes: That the noise caused by the defendants' machinery when in full operation, is so great, that not only is the ordinary and comfortable existence of himself and his family materially diminished, but that his house is rendered so unfit for a dwelling that if he continued he would have to remove and find another and that the health of some members of his family has been so affected by it that they have had to be removed.

That the boiler is placed in the cellar of the factory at a very short distance from the foundation wall of the plaintiff's house; that it is a second-hand old boiler, and is worked at a high pressure of about 60 pounds to the square inch, which is attended with great danger to his dwelling house and the lives of all parties therein, as the same is very liable to explode, the effect of which would probably be to destroy the plaintiff's home.

Dr. Jenkins, a medical practitioner of Charlottetown, deposes: That he has been the plaintiff's family physician for ten years and in that capacity has paid frequent visits at the house; his last visit thereto being the 14th of August last.

That the noise made by the defendants' steam factory, which is just adjoining the complainant's dwelling, is so discordant that the house is rendered thereby unfit for a private residence, and that he would not occupy it as such free of rent.

That the wife and youngest daughter of the defendant are constitutionally nervous, and he considers a noise prejudicial to their health, so much so that he advised the complainant solely on that account to remove them to some other place, as the constant buzzing, driving and rattling noise made by the factory is very irritating to persons of sensitive nerves.

Wm. Dodd states that he was called in by the plaintiff to see the state of the premises; that the premises were full of smoke which proceeded from the factory. That although the windows were shut at the time the smoke and soot permeated the air, rendering it very offensive to the senses; that marks of it were on the window sills and other places, seriously injuring the furniture. That on another occasion he attended when the factory was in operation, that he went into the cellar kitchen and other rooms, and the action of the factory was sensibly felt there.

Thomas Brehant states that he slept in the house on the night of the 22nd of July last, that on the following morning early he first heard a loud noise—a buzzing, rumbling sound resembling a heavy gale of wind, with distant thunder. He, at once, went to ascertain the cause, and finding that it proceeded from the above defendant's steam factory just adjoining the said dwelling house, he looked into the window of the said factory and found that the chief noise proceeded from a circular saw that was then in operation, &c., &c. He considers, from what he experienced, that the noise would very much interfere with the sleeping of residents in the house, and also with conversation carried on therein in an ordinary tone of voice.

On the part of the defendants, numerous affidavits were produced from persons who spoke, not from what they had seen inside the plaintiff's house, but who live in the vicinity, and who state, in substance, that they have experienced no annoyance from the factory and do not think that it materially affects the comfort of the residents in the plaintiff's house.

From the manner in which I have determined to deal with the present application, it becomes unnecessary to enter into an examination of the opposing statements. I will only remark that the persons deposing to what they saw, heard and felt, while inside the plaintiff's dwelling, have much better means of knowing how the working of the factory affects the house and the comfort of its residents, than those persons who have not been in the house, can possibly profess. And from that and the high respectability of many of the deponents to the affidavits produced on the part of the plaintiff, I have no doubt that the noise, vibration and smoke proceeding from the factory was a great nuisance to the plaintiff. But the defendants, beside denying the nuisance, set up a prescriptive right to an easement to convey those noises, vibrations and smoke over the plaintiff's premises.

The manner in which I intend to deal with this motion also renders it unnecessary to express any opinion now on the various points raised or the argument relating to this part of the case. But one of the grounds on which it was contended the injunction must be dissolved was that the plaintiff in his bill and affidavits had omitted to state facts of which he should have informed the Court on making his *ex parte* application for an injunction.

The Court in granting an injunction *ex parte* can only act on the belief that a faithful statement is made; it is a rule that suspicion or misrepresentation of material fact will of itself dissolve an injunction. One allegation in the complainant's affidavit was that the boiler was second-hand, old, driven at a pressure of about 60 lbs. to the square inch, and very unsafe. This allegation is expressly contradicted by the affidavit of Wm. Crouk,

who describes himself as a mechanical engineer of 43 years experience, and who swears that he tested it in June last, and that it is perfectly safe with a pressure of 80 lbs. to the square inch. As there is no contradiction to this affidavit I must take it to be true. At the same time I notice the affidavit of John McMillan, Mechanical Engineer, states that the boiler was built under his inspection, and on its completion tested by him, and that at that time it was perfectly safe from explosion at a pressure of 60 lbs. I must remark that it seems to me extraordinary that a boiler whose safe capacity was limited to 60, when first turned out new from the manufacturers' shop, should have become so much stronger from 2½ years' use as to be now perfectly safe at a pressure of 80 lbs. This naturally shakes one's reliance on Mr. Crouk's accuracy.

In this matter His Honor looked carefully into the authorities, and does not think they justify him in dissolving the injunction if the remaining grounds are sufficient to sustain it. He goes on to say:—

I have already stated that I am convinced that the factory greatly disturbs the plaintiff in the comfortable enjoyment of his dwelling, in which everyone has a right to be protected, unless by grant or otherwise another has acquired a right to disturb it. The defendant claims such a right, but as the chances of being able to support his claims are, I think, very doubtful, I am bound to protect the plaintiff against the annoyance until the defendants have made it appear beyond doubt that they have obtained the power to cause the annoyance to the plaintiff with impunity.

The loss which the defendants will sustain by having their factory stopped was much pressed on me by their counsel, but that argument is of no weight where there is an invasion of rights.

His Honor then quoted several cases where injunctions were granted; compared them with the present, showing them to be identical. He then said:—

The question of nuisance or no nuisance to others must be determined by looking—not at the alleged wrongful act alone—but by viewing it in connexion with the town or place in which the property is situated. The quantity of smoke, for instance, that would undoubtedly be a nuisance in a place like Charlottetown might be no nuisance in Birmingham or Manchester. So like stables factories are necessary and the ordinary business of mankind could not be carried on without them. But is it necessary or reasonable that a person should place a steam engine and noisy machinery close to the wall of his neighbor's dwelling and thereby seriously impair or entirely destroy his comfortable occupation of it? The maxim "*Sic utere tuo*," etc., steps in to regulate the conflict of rights. It tells the mechanic you may build and work your factory, but it must be built far enough from your neighbor's boundary to prevent the noise being felt in his house so as to interfere with the quiet and comfort which the citizens of Charlottetown ordinarily enjoy in and around their dwellings. The mechanic may say, "My factory requires 40 feet of land and I have no more. If you require me to leave an open space between my factory and my neighbor's land you will prevent my carrying on the factory at all." The answer is the contracted boundaries of your land is no excuse for the invasion of your neighbor's rights. You shall not interfere with his comforts or deteriorate the value of his property in order that you may make a larger profit by your own wrong. If you want to erect buildings like others in the vicinity no law forbids you. But if you are desirous to have a factory which must be injurious to your neighbor if placed on your little plot of land, you must go to some other locality and procure premises large enough to carry on your factory without its being placed in such close proximity to others as to injure them. If the circumscribed boundaries of one's land could be allowed as an excuse for using your own so as to injure your neighbor a person owning 25 ft. of land in a city like Charlottetown, might erect a very cheap factory, the noise, smoke, and vibration from which would render valueless buildings on each side which had cost their owners thousands.

I therefore refuse the motion to dissolve the injunction, and direct it to be continued until the hearing or further order, on the plaintiff's undertaking to abide by and order the Court may make as to damages, in case the Court shall hereafter be of opinion that the defendant has sustained any by reason of this injunction. On the argument it seemed to me that the best way of dealing with the case, if I did not dissolve the injunction, would be to direct the case to be set down for hearing as soon as possible, and then the whole matter could be at once disposed of; but on carefully examining the affidavits, and considering the various points that will arise, it seems to me probable that an issue will have to be directed on the question of nuisance, and also on several questions of fact relating to the defendant's claim to an easement by prescription. I, therefore, think that it would probably greatly expedite the final determination of the case and save a great deal of expense to the parties to direct an issue at once, but I have no power to direct an issue before hearing unless the parties consent.

NIGHT SOIL.

THE Subscriber, having obtained the Contract to remove night soil from the City, no one else is authorized to do so.

Night Soil only removed between 8 p. m. and 6 a. m.—at 75 cents per hogshead.

Payment to be made only to me.

Orders left at the Police Station will be promptly attended to.

DANIEL GORDON,
Charlottetown Royalty, 3m wed & th
Nov. 13, 1878. } ne pat m & tues

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TEA AND SALE OF Useful and Fancy Articles

REFORM CLUB HALL,

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SALE TO COMMENCE AT 4 P. M.

Tea on the tables at 6 p. m.

Tickets for Tea, 25 cents. Admission to Hall, 10 cents.

Instrumental music will be provided throughout the evening.

M. L. JOST, Secretary.

Nov. 12—1 aw tf

HORSES WANTED THIS WEEK.

10 STYLISH CARRIAGE HORSES—weighing from 8 to 10 cwt.

FENTON T. NEWBERRY & CO.

Nov. 11—2i

VENNOR PREDICTS

An early winter and a long one. Look at and see that your feet are protected, and thus save many doctor's bills.

W. R. BOREHAM

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has the best selected stock of Boots, Shoes, Slippers, Overshoes, Moccasins, &c., to be found in the City, which he will sell at bottom prices, to suit the hard times.

CUSTOM WORK.

I am now also prepared to take orders for every description of Custom Work, having opened a Custom Boot and Shoe Department, under the superintendence of D. W. KITCHEN (late foreman at Dorsey & Jost's). Mr. Kitchen has had long experience as a cutter and practical shoemaker, and will guarantee good fits and the best of workmanship. None but first-class material will be used, and all orders will be promptly filled. Prices as low as possible consistent with good work. Mr. K., having had considerable experience in making boots and shoes for persons with DEFORMED FEET and those who are troubled with

CORNS AND BUNIONS,

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Good Fit and Perfect Ease

in every case, or no money taken.

REPAIRING NEATLY DONE.

Ch'town, Nov. 7, 1878—3m wed & sat

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Kent Street Tailoring Depot.

To the Public.

TAKE NOTICE.

I WILL IN FUTURE (on account of hard times) make up Clothing as under, viz:—

Men's Suits of Black Cloth... \$5 50
" " " Good Tweed... 5 00
" " " Common Tweed... 4 25
" " " Homespun... 3 25

Boys' Suits.
Suits of Black Cloth... \$4 25
" " " Good Tweed... 3 50
" " " Common Tweed... 2 00
" " " Homespun... 2 00

—ALSO—
Pants of Black Cloth... \$1 00
" " " Good Tweed... 90
" " " Common Tweed... 80
" " " Homespun... 80

Vests.
Of Good Tweed or Black Cloth, 90 cents each
" Homespun or Common Tweed, 80 " "

All work guaranteed, or no pay for making. N. B.—Parties having Clothing done and not paid for, are requested to call and pay for them. If not, I will sell them for my expenses in two weeks from date of this notice.

Patterns cut to order.
WM. J. MCINTIRE,
Kent Street.

Nov. 4—1m eod ne 1m her 2m

FOR SALE,

A SECOND-HAND PIANO, by one of the best English makers; almost as good as new. Price moderate. Apply at this Office.

Ch'town, Nov. 4—

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