

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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Colonial Legislature.

LEGISLATIVE COUNCIL.

MONDAY, March 17.

The Hon. Attorney General moved the second reading of the Bill regulating the proceedings of Justices of the Peace with respect to summary convictions and orders.

Hon. COL. SWABEY explained the object of the Bill, which was to ensure uniformity of practice, and prescribe forms to be used by Justices of the Peace in cases of the nature specified in the title. There was one novel feature in the Bill, which was an improvement. It was generally the practice for Magistrates to make warrants and summons returnable before themselves. The Bill contemplated making the writs returnable at a certain place specified before any Magistrate. The other parts of the Bill were principally forms, tending to establish uniformity of practice.

The Committee rose and reported progress.

TUESDAY, March 18.

Hon. Col. Swabey, by command, presented an extract of a letter from Sir C. E. Trevelyan to Herman Merivale, Esquire, on the subject of the Prince Edward Island Bank Act.

The Hon. Attorney General, by command, laid before the House despatches communicating the royal assent to six Bills passed last session.

The Hon. COL. SWABEY presented the report of the Trustees of the Lunatic Asylum and House of Industry, and the report of the Medical Attendant, and in doing so, stated that his connection with the institution rendered it necessary that he should briefly explain the present condition of the institution. Last year the Legislature voted £350 in addition to a like amount previously voted, making the whole £700. It had been found that the darkness of the places where the lunatics were confined had counteracted any, to a great degree, the benefits of otherwise beneficial treatment; and it had been deemed advisable to provide a properly secured yard in which they might take out-of-door exercise, and increase the accommodation for them within the building. This had absorbed about £300; the cost for additional bedding, painting and other necessary improvements had exceeded the vote by some £35. That was rendered necessary by the increased number of individuals taken in, as it was a well ascertained fact that it was easier to effect the cure of those received in an early stage of their malady, than of those whose affliction had gained strength by neglect of proper treatment. The correctness of that opinion, he was happy to say, had been fully verified in some instances he alluded to. The lunatics were tolerably well provided for, but the number of imbeciles was so great that additional accommodation should be provided. Numerous applications for admission of individuals of that class have been constantly refused for want of the proper accommodation. He hoped that a sufficient amount would be placed at the disposal of the Government to meet the exigencies of the case.

Hon. Mr. Mooney, from the House of Assembly, brought up the Licence Act.

Hon. Col. Swabey presented the report of the School Visitor.

Hon. Attorney General presented a petition from divers inhabitants of Prince County, praying a division of the County and an increase of its representation in the House of Assembly.

Hon. Mr. Haythorne presented a petition from the Royal Agricultural Society, for the establishment of a Model Farm.

The Bill regulating the proceedings of Justices of the Peace with respect to persons charged with indictable offences in Committee; progress reported; and Licence Act read the first time.

WEDNESDAY, March 19.

A Bill relating to Indians was introduced, and read the first time.

The Committee of the Bill regulating the proceedings of Justices of the Peace in cases of indictable offences, was resumed, and Bill agreed to with certain amendments.

The following petitions were presented, read and laid on the table:—

By Hon. Mr. Wright, from inhabitants of Lot 12, praying aid towards the erection of a bridge; from inhabitants of Tryon River and Crapaud, for aid towards the extension of a wharf at the west side of Crapaud harbor; from inhabitants of Lot 14, for altering a line of road; from inhabitants of Bideford, for aid to Silas and Honor Ford, an aged and infirm couple; from inhabitants of Lots 13 and 14, for opening new line of road.

By Hon. Mr. Walker, from Donald Wall, for land granted to his late father, the grant of which was lost.

The Licence Bill was committed and progress was reported.

THURSDAY, March 20.

INDIAN BILL.

The Hon. Attorney General presented a petition from the Indian Commissioners, praying to be heard at the Bar of the House in support of the Indian Bill, which having been agreed to, Theophilus Stewart, Esquire, one of the Commissioners, appeared at the Bar, and addressed the House as follows:—

Your Honors having been pleased to accede to the desire of the Indian Commissioners to be heard on the subject of a law proposed to be laid before the Legislature, whereby the protective supervision of the Executive Government may be extended over any lands belonging to the Indian population of the Colony, one of the Commissioners is now for the purpose before your Honorable Board.

That the Indian population of this Colony come under the appellation of a neglected people, is a truth which we apprehend will not be disputed; while, from time to time, an ameliorative process has been in operation for the improvement and advancement of their white brethren in all useful arts, it does not appear that they have, in any measure, participated therein. That individual instances exist among them of that variety in circumstances arising from a course of successful industry and good conduct (elsewhere observed) will not be disputed—still as a body they remain, as it were, without the pale of civilized life. An individual case or two may be cited illustrative of the dependent condition of the resident Indians which came under the Commissioners' notice and observation so recently as the 20th March, 1854; at that time four Indian families were encamped on Lot or Township No. 48, within about four miles of the ferry opposite Charlottetown; in one of the camps the Squaw had been ill during the whole winter, and was then confined to her camp, nursing an infant of six months old; they had reached that period without having had a particle of a blanket or other description of bedding whatever. On enquiry as to how their lives had been preserved from the effects of the extreme cold in such a state of destitution, it was replied that they had been obliged to keep up the fire all night, as well as day. The case of this particular family, as well as of the others encamped in the neighborhood, being brought before the Assembly then in Session, as well as before charitable members of the community, suitable provision was immediately made for their temporary relief. Under successive Administrators of the Government, many grants of money, as well as of grants of

land, have been made to the Indians, shewing the sympathy and desire of the local Government to extend its protection and care to that people; and to the credit of an individual proprietor, the Hon. Charles Worrell, 200 acres of land on the Morrell, Lot 40, was, in 1842 or thereabouts, laid off by that gentleman for the exclusive use and benefit of certain resident Indian families and their descendants. In the case of the last named gift or testimonial, the head of one of these families evinced such interest in the cultivation of his particular allotment, as to have succeeded in annually raising a considerable crop of wheat and other useful articles of produce. This poor fellow, after exhibiting the greatest possible ardour in its cultivation and improvement, has been temporarily despoiled of the fruits of his industry, by yielding to the solicitations of some of his villainous white brethren, who, with a paltry pecuniary bribe, seduced him to give up his little possession, whereby himself and family have been again cast adrift, like a ship without an anchor. They have been since wandering from place to place, without any settled habitation. The remainder of the tract of 200 acres being parcelled out in a similar manner, has all shared the same fate, the parties designed to be its occupants having given way to similar solicitations, and been thus defrauded of their little patrimony.

Under this state of facts, as well as from considering that in the case of most of the grants of land made by the Executive Government, little or no actual benefit has accrued to the parties sought to be benefited thereby, it is manifest that something is wanting to effectively carry out the object and principle of protection to that part of our population; that something, it is conceived, will be found on reference to the proceedings of the neighbouring Legislatures, where, for a series of years past, enactments have been made authorising the different Governments to appoint Commissioners to take the supervision and management of all lands belonging to the Indians, and of their affairs generally; and who, at the same time, have been provided with funds to stimulate the Indians to habits of agricultural industry, &c. With such luminous precedents and guides as are afforded by the enactments in question, your Honors will doubtless be greatly relieved from any apprehension of encouraging useless legislation, by being parties to the support of the law now proposed for the consideration of your Honors.

The Indian Bill was then read a second time.

SATURDAY, March 22.

The Hon. Attorney General presented a petition for the incorporation of the members of St. David's Church, Georgetown; also, from Rev. David Fitzgerald and other Protestant Clergymen, and from the Free Presbytery of the Island, praying the adoption of measures to prohibit the traffic in intoxicating liquors, except for Medicinal or Mechanical purposes.

By Hon. Mr. Beaton, petition from Archibald C. Beckford, teacher Lot 8 district school, for remuneration for services.

By Hon. Mr. Wright, from certain inhabitants of Casumpee, for aid to repair road.

Hon. Mr. Wright obtained leave of absence for a week.

The Bill transferring to one of Her Majesty's Secretaries of State the powers and estates heretofore vested in the Board of Ordnance, was read a first time, and the House went into Committee on the Licence Bill. Hon. Mr. Bagnall Chairman.

On the clause authorising the Grand Jury to withdraw licences, Hon. Mr. HAYTHORNE was not aware of the reason for such provision. He had understood that the great complaint against the law as it stood was, the power vested in Grand Juries, which had refused to grant licences to respectable housekeepers, some of whom had been deprived of their means of obtaining a livelihood, pursued by them for years without complaint or objection. The present clause he considered equally objectionable, as it would still subject people to the same tyranny.

Hon. COL. SWABEY said that the Bill was rendered necessary by the mistaken view Grand Juries had taken of their powers. While the spirit and intention of the law was, that they should exercise due discretion as to the individuals to whom they might grant licences, they had claimed the right of withholding them in toto from respectable persons. This course was wrong and involved inconvenience to the public and loss to the revenue. The present measure was in many respects similar to the old law. It was not contemplated to deprive the Grand Jury of the power to withdraw licences, on proof of a violation of the conditions on which it was granted.

Hon. Mr. BEATON had no objection to the clause. By the Bill, it was necessary that the applicant for a licence should produce a certificate of having accommodation for man and beast. If that condition were deviated from, it was only right to give the Grand Jury power to cancel the licence. Parties might be reluctant to come before a Magistrate, but a body constituted as the Grand Jury would attend to those cases and see that the law was complied with.

Hon. COL. SWABEY thought Hon. Mr. Beaton had adduced a very strong argument in favour of the Bill. Parties would be unwilling to inform to a Magistrate, and therefore, if the power were not vested in the Grand Jury, there would practically be no check.

The Hon. the PRESIDENT said it was their duty to protect the public interests. He regretted that the House of Assembly had altered the system by withdrawing from the Grand Jury the granting of licences, but would be sorry to see the clause struck out. He could not agree with the Hon. Col. Swabey and Hon. Mr. Haythorne, that the Grand Jury had exceeded their powers in refusing to grant licences. The law gave them full power to determine whether licences should be granted or withheld, and in coming to the latter decision, they had not exceeded the scope of their instructions. They should receive credit for having acted according to their convictions of their public duty. The old clause had been in operation since 1846, and no complaints of its working had previously been made.

Hon. Mr. HAYTHORNE would not devolve upon an individual the necessity of coming before a secret conclave like the Grand Jury, to give evidence against his neighbour. Such system might lead to much injury from malicious motives.

Hon. Mr. BEATON.—It was necessary to produce a certificate of two Magistrates and six neighbours, that the necessary recommendation was provided. He knew cases of the removal of the accommodations after the licence had been obtained. Therefore, it was necessary to empower some persons to see that the law was observed; and a great difficulty would be experienced in getting witnesses to go forward as informers before Magistrates, whereas the name of the informant before the Grand Jury need not be divulged.

The Hon. ATTORNEY GENERAL was more in favour of the clause than previously. The power of Grand Juries would be the same as those of Justices of the Peace. He would consider the decision of the principal men of a County, on a subject of this nature, entitled to as much weight as that of the Judges of the Supreme Court.

Hon. Mr. CRASWELL agreed in the necessity of withdrawing licences from improper houses. He knew instances in Prince County where parties were afraid to complain of houses kept in violation of law. He was of opinion that the Grand Jury had abused their powers, and that it was their duty to see that suitable public houses were provided for the travelling public throughout the Island.

After some conversation, progress was reported.

MONDAY, March 24.

Hon. Mr. Beaton presented a petition from Hugh McVarish, praying compensation for loss of a house formerly used as a temporary hospital, and destroyed by fire.

THE MEMORIALS AND PETITIONS OF LANDED PROPRIETORS.

Hon. COLONEL SWABEY.—Mr. President, on the 17th I gave notice that I would call the attention of this House to certain documents which had been laid before it, on the subject of the Rent Roll Tax Bill and the Tenants' Compensation Bill, and that I should move a resolution on the subject. I now proceed to do so, and approach this subject—one which, from the character of some of the allegations in the papers I refer to, is of a very serious complexion, not as a member of the Government, but as member of the Legislature—as a man jealous of the reputation of the Legislature, jealous of the character of the people of the Island, jealous of the reputation of Her Majesty, which is reflected on. I wish to be understood as not in the slightest degree denying the right of parties to represent their cases to the Colonial Office in terms as strong as they may please, but they should contain no expressions reflecting on the Legislature, which would be considered disrespectful, if embodied in a petition to this House. One part of the documents states that the legislation of the Colony for some years has been based upon injustice. If that assertion be true, then has this House been unjust, the House of Assembly unjust, His Excellency unjust, and Her Majesty unjust. Such imputations should not be tolerated by the Legislature. Are we to be told that we are systematically doing injustice to individuals? And the most reprehensible feature is the imputation that is conveyed against the population of this Island, that they are not to be believed upon their oaths—that, in cases brought before the courts, the juries would perjure themselves. The petitioners should have pondered seriously before they made such assertions. I shall now proceed to shew that these observations are not made without grounds to justify them. The petition of Mr. R. Bruce Stewart contains the following passage:—

“By one existing local law of this Colony, the landlord is debarred from the remedy open to all other classes of Her Majesty's subjects—the Small Debt Courts; by another existing law, the process of distraint for rent is rendered so difficult as to be almost impossible, especially on property managed by agents.”

I call attention to this extract, because at the time of the passage of the law all branches concurred in sanctioning it. I would never restrict legislation to any particular limits—the same principle, which, in one state of circumstances, would be quite proper, might, from another point of view, be quite inapplicable. The particular circumstances of a country should be regarded in any measures which may form the subject of its legislation. The next extract to which I request your Honors' attention is the following:—

“The present Act does certainly seem to me a monstrous innovation upon all those principles which I had been accustomed to consider fixed and established by justice and usage in regard to such property. But the evil of such an Act as this would be less extreme in Great Britain than in this Colony, wherein ninety-nine persons out of every hundred have a direct feeling and personal interest on behalf of the tenant, and quite the reverse towards a landlord. I do not hesitate to say that justice is quite out of the question, and could not be hoped for under such arbitration. The Act would have, and is intended to have, in connection with other Acts, the effect of depriving the landlord of every remedy other than the expensive one of an action at law in the Supreme Court of Judicature, the defendant being generally destitute alike of property and principle—the jury being unavoidably composed of tenants or persons interested for tenants, or hoping themselves to become freeholders, without purchasing their land, and the sanctity of an oath being but little regarded when a proprietor is to be injured by its infraction.”

Now, Sir, I consider it monstrous to charge upon the Legislature, as matter of censure, that they have acted unjustly in establishing a tribunal of arbitration. As to the statement that the parties constituting the juries, where the cases may be carried to the Supreme Court, would unavoidably be tenants, I am at a loss to know on what it is founded, for we have as many freeholders as tenants. As to the reference to arbitration, there is nothing in the Tenants' Compensation Bill, which restricts the choice of an arbitrator by the landlord to any particular class. In case of an appeal, the landlord can, if he pleases, have a special jury. I have, Sir, made those remarks merely to expose the untenable character of the statements I have cited, and to shew that no principle of justice has been infringed by our legislation in the Bills. I will ask you, Sir, and the Hon. Attorney General, how many cases have come within your knowledge, as legal gentlemen, of parties being found guilty of perjury in the Island? My recollection enables me to refer to but one; and in view of that fact, I can but characterize this wholesale slander of the population of the Colony as most disgraceful to its author.

I come now to another portion of Mr. Stewart's remonstrance, which reads as follows:—

“In an Act relating to highways, there is the following clause: ‘When land held by a tenant or lessee under lease or agreement, or a part thereof, shall be laid off, or taken for a highway or road, the tenant or lessee shall be discharged from any further or future payment to the lessor or landlord, in respect of the said land, or of a part or proportion thereof, according to the extent or area of the land taken for the highway or line of road.’”

Now, Sir, I ask what right has a landlord to complain, if he does not receive from the tenant rent for land taken for public purposes, and for the benefit of that landlord's property? Would there be any justice in making the tenant pay for such land? As to the observations on the law giving the posses-

sion of the area of a road stopped up, Mr. Stewart admits that it did not pass this House; yet we find him abusing the very parties who have protected him. The remonstrant states that the Act to compel landlords to put their titles on record was subversive of the rule of law, which prevents the tenant from disputing the title of his landlord, and that it was introduced as a Government measure. As to the first allegation, I cannot see how the fact of a landlord's title being recorded will violate the principle alluded to; to the last, I offer the most unqualified denial. It was not brought in as a Government measure. As to the remarks alleged to have been made by the Hon. Col. Secretary in the House of Assembly, I do not intend to trouble the House by reading them, as they are in possession of hon. members, and properly have no relation to the action of this House; but this I will say, that, if they were intended to convey the meaning that the proprietors, during a long course of time, having done little or nothing to encourage enterprise and develop the resources of the country, and elevate the intellectual and moral condition of its inhabitants, and that those benefits would result from compulsory legislation of an indirect character, and to a moderate extent, I will avow my agreement with them and will readily endorse them.

The second document is the Memorial and Petition of Mr. Robert Bruce Stewart and Mr. Charles Wright. This being almost a recapitulation of the former, I shall only allude to those portions of its contents which do not appear in the other. The first paragraph which attracts my notice is the following:—

“That certain local enactments, passed during the last five sessions of the Legislature, have called forth various remonstrances on the part of owners of Township Lands in this Colony, respectfully urging the attention of the Colonial Minister to the serious consequence of such measures, as affecting the value and security of property throughout this Island; the object of the Legislature being to force land into the market, with a view to its being purchased by the Government, under an Act passed for that purpose, and thereby affect its reinvestment in the Government, by the working of oppressive statutes, whose operation, if sanctioned, will be tantamount to the confiscation of lands so situated.”

Now, Sir, the inaccuracy of this statement is so glaringly absurd, that I cannot pass it by without requesting your attention to it. The Act alluded to, as that by which the Government could purchase land, was not passed till subsequently to those which are stigmatized as tyrannical and unjust. It is not necessary that I should occupy the time of the House in commenting on such sentiments as are here expressed. The objects of the Acts were fair and just—they were to tie parties to an honorable and equitable construction of their bargains. It was proper that actions for arrears of rent should not be brought in the Small Debt Courts. I deny that the landlord has not facilities for the collection of his rents. The remedy by distraint is one peculiar to proprietors, and is of much more speedy operation than any other; and on affidavit that there is not sufficient distress on the premises, the landlord can recover his debt in the Small Debt Courts, and can arrest the person of the debtor.

Another passage in this document deserves a passing notice at my hands. It reads as follows:—

“Among the unusual privileges conferred on tenants by local statutes, stock, if distrained for rent, cannot be sold between November and June, comprising six months of the year—the tenant being required to give a bond that such stock shall be forthcoming at the time when sale thereof can be legally affected. All hay and provender found on the premises being reserved for the use of the stock; and no stock can, under any circumstances, be removed to a greater distance than five miles from the premises, without the consent of the tenant.”

That Act, Sir, was passed with the consent, if not at the instance, of the proprietors. In this House it received the support of the present Judge Peters, at the time agent for one of the principal proprietors; and it was dictated by proper and human feelings. The difference between that provision and the law in Great Britain was rendered just and necessary by the different circumstances of the two countries. In the latter, a distress can be taken at any time; here, if it were enforced at the beginning of winter, the tenant, being deprived of the benefits of his stock all winter, would be unable to cultivate his land in the ensuing season. By the law as it at present stands, the landlord has security that the property levied on shall be restored, and thus receives his demand without injuring the tenant.

As to the Bill for taxing the rent rolls of proprietors, the petitioners state that:—

“Apart from the unjust principle of partial taxation, your petitioners contend that the provisions of the Act are arbitrary and inquisitorial—the security required by it, difficult to be complied with, and the penalties to be incurred, needlessly severe, extending even to lunatics, idiots and insane persons; and it can only be regarded as part of a plan for extinguishing the rights of proprietors, by means of an aggressive system of legislation, which, your petitioners humbly conceive, bears more affinity, in the present instance, to a statute for the punishment of offenders than to an Act for contributing towards raising a revenue by fair and legitimate taxation.”

Now, Sir, the only principle on which that Bill was based is, that land should be subject to a reasonable share of taxation, and the remarks about insane persons have no connection with the subject. Insane persons own landed property in England; that property is taxed, and the same is the case every where.

The next paragraph to which I shall here allude is to be found in the petition which stands third in the order of publication. It is in the petition of the owners, and has much in comparison with those I have briefly reviewed. It says of the Rent Roll Bill:—

“It is one of a series of measures, the avowed purpose of which is, to compel the owners of Township lands to convey the same to the local Government of this Island, to be by it disposed of to the present tenantry in freehold, and to those usually termed ‘squatters,’ who have taken and held possession without the consent of the owners.”

Now, Sir, I stated at the beginning of these remarks, that I did not, for one moment, deny the right of parties to petition or remonstrate against any measure they might deem affecting their interests. I repeat the sentiment now; but while I would be the last to abridge the liberties of the subject, I contend that their complaints should be couched in proper and respectful forms, and should contain no expressions derogatory to the character of the Legislature—that nothing should appear in them which would be deemed disrespectful in a petition to either branch of the Legislature. It is untrue that the object of the Bill was to make ‘squatters’ freeholders. Now, Sir, there is a paragraph in the document under review