

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.

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THURSDAY, March 29.

COURT OF ESCHEAT.

(Continued from our last.)

I shall now, Sir, request the attention of the committee to the report of the hon. member, submitted to the House on his return from his second mission to England, which is as follows:—

"From the opinions I had entertained for the settlement of the Land Question, that a settlement could not be made without the sanction of the British or Colonial Legislature; and as Ministers were not inclined to submit the question to the Imperial Parliament, nor to give any answer to a Delegate from the House of Assembly of Prince Edward Island, it appeared to me that the views of Her Majesty's Government, communicated to the Lieutenant Governor through the regular channel of official correspondence with that officer, would, in all probability, convey sufficient instruction to enable the House of Assembly to legislate for the settlement of the people, with some confidence that their measures would meet the views of the other branches of the Legislature; and, as it was not likely that I would receive any further instruction from the House of Assembly until the end of the Session, I therefore deemed it proper to return to the Island.

"Before I left London, I applied to Counsel for advice on behalf of the Tenantry, on the plea of the forfeiture of Grants and Reserves for the fishery; but the Counsel declined to give an opinion, as I had not the laws of the Island with me, to enable him to see whether or not any of the Colonial Statutes went to confirm the Grants, or the purchase of them by other persons.

"I also applied to Joseph Hume, Esq., M. P., to enter into arrangements with that gentleman for bringing the grievances of the Colony before Parliament, and delivered to him copies of the correspondence that had passed between me and the Colonial Office; and he, on the perusal of the correspondence, frankly declared his willingness to do all that laid in his power for the settlement of the Colony, and was pleased to add, by way of advice and instruction—it appeared to him, the oppression of Tenantry, by persons who had not performed any of the conditions of the Grants, was a question at law, which would ultimately be given in favour of the Tenantry; if not in the Island, it would, if the suits were carried to the Courts in England, as he could not see how the Crown, who was the Trustee for the people, and the judge sworn to administer impartial justice between subject and subject, could refuse to put the law in force against the proprietors, to forfeit the land, and deliver the tenantry from a bondage which originated from a neglect of the Crown Officers to perform their duty—that for the Courts of the Island to take advantage of such neglect, which compelled British subjects to submit to bondage, and then by law to compel them to perform any obligations the proprietors had exacted, appeared a case of such iniquity, that he (Mr. Hume) had not heard of the like being sanctioned by the British Government.

"I stated that the tenantry were too poor to go to law with the proprietors—that it was equally as impossible for the tenantry to obtain justice by law as it was for them to pay the rent. Mr. Hume said, "then your House of Assembly should address your Governor, and inquire for the Instructions the Minister has sent; and if they will not afford redress, inquire whether any Court in the Island will take cognizance of the non-performance of the conditions of the Grants, to forfeit the land and relieve the tenantry; and if you do not obtain a satisfactory answer from your Governor, the House of Assembly should examine the officers of your Courts of Justice (if you have any), and inquire by what authority they are prevented from enforcing the forfeiture of the Grants against the proprietors; and if they are prevented, inquire in like manner by what law or authority they can reconcile it with justice to compel the tenantry to submit to the demands and exactions of the proprietors; and if you find, upon such examinations, that your Courts will not afford relief to the tenantry, and that your Council will not agree to an Act for the settlement of the people, it would be proper for your House of Assembly to examine several of the proprietors, as to whether they are the grantees, or hold their right by purchase or inheritance—the terms on which the tenantry hold of them—the rents received, and in arrears; and also examine a portion of the tenantry as to the treatment they have received.

"A report of such examinations, as your House of Assembly may think necessary, in support of the charges they intend to prefer, and a list of the Documents forwarded to the Colonial Office, from the earliest periods, for redress of those grievances; and also, a list of the despatches in answer to such applications, together with a petition to the British Parliament, will be sufficient for me to bring the matter before Parliament."

"In case the House of Assembly should not be disposed to follow the foregoing recommendations, or, if it is followed, and, through any utmost event, prove unsuccessful, there has been another plan suggested to me for redress of our grievances.

"Several gentlemen, with whom I have conversed on the subject, are of opinion that the delay of Ministers to redress our grievances, has for its object to induce the people of this Island to seek for annexation to Nova Scotia; and the delegates from that province, whom I met in London, and several influential gentlemen of their House of Assembly, whom I afterwards met in Halifax, declared that if the people of the Island were inclined to be annexed to Nova Scotia, they would do every thing in their power to have the inhabitants comfortably settled, and that the Island would be allowed a full share of representation, in proportion to the extent of territory and population—all which is respectfully submitted."

Well, Mr. Chairman, the hon. member having got the opinion of Mr. Hume, the House passed a resolution in 1841, to the House of Commons, praying the grievances arising from the land question might be redressed. That House took no action on the petition, and the hon. member was so enraged with the Home Government, the proprietors and all hands, that in his report, which I have just read, he was willing to annex the Island to Nova Scotia. (Laughter.) And, Mr. Chairman, I do not know what better answer to the assertion of the hon. member that we have only the opinion of individuals who might be holding the seals of the Colonial Office at the time, to shew in opposition to his views, and that the British Government have not decided against the measure which is the subject of this evening's discussion, than the despatch which I will read to you from the journals of

1842. I think that expresses the decision, not of the then Colonial Minister, but of the British Government, and I request hon. members to observe that it expressly mentions the determination of Her Majesty's Government. That despatch is as follows:—

"Downing Street, 25th June, 1841.

"Sir,—I have to acknowledge the receipt of your despatch of the 5th May last.

"I have to acquaint you, in answer, that Her Majesty's Government, having reviewed the whole progress of the discussion regarding the tenure of land, have arrived at the following conclusions:—

"First.—That the original terms of settlement were impracticable; and that any escheat at the present day, on the ground of the failure to fulfil such conditions, would be unjust.

"Secondly.—That Her Majesty's Government consider it right to state, that the Crown has not at its disposal any funds out of which the lands could be purchased by the Crown, to be afterwards sold or granted to the tenants.

"Thirdly.—That the terms proposed by Mr. G. R. Young, or terms equivalent to those, seem to have been acceded to by the great majority of proprietors.

"Fourthly.—That under these circumstances, the best course which Her Majesty can recommend is, that the Assembly and Council should turn their attention to the improvement of the resources, and the encouragement of the growing wealth of Prince Edward Island, and leave to the gradual operation of time the settlement of a question which offers no sound footing for direct legislation.

"Lastly.—I have to state that Her Majesty is not disposed to blame any party for the mode in which this discussion has been prosecuted; but Her Majesty's anxiety for the welfare of the Province makes her desirous to see the termination of a fruitless and irritating contest.

"I have the honor to be, Sir, &c. &c.,

"J. RUSSELL."

Now, Sir, I would ask what language can be more explicit? It states that the question had been reviewed; now, who reviewed it? Why, Her Majesty's Government. And it further states that Her Majesty's Government, after "having reviewed the whole progress of the discussion regarding the tenure of land, have arrived at the following conclusions;" and then proceeds to declare the conclusions; and we find there the positive and express declaration that it would be unjust to escheat the lands, on the grounds that the original conditions were not complied with, and alleging that those conditions were impracticable. And, Mr. Chairman, the endeavour of the hon. member to make it appear to the country that the Legislature had never given up the principle of Escheat, is as susceptible of refutation as his assertion that the British Government have never declared their opposition to it. Why, Sir, at the risk of being considered as occupying too much of the time of the Committee, by a reference to what is well known to many hon. members, I will direct their attention to the journals of 1843. In that year, when the House was in committee on a Bill introduced by the hon. the present Speaker, and generally known as the "Squatter's Bill," the following amendment was moved, and by whom? by the hon. member himself! Here is the preamble of his amendment, as entered on the journals, and the record that he moved:—

"Mr. Cooper moved that the Bill be recommitted, for the purpose of amending the same, by striking out all after the word 'Whereas,' in the said Bill, and substituting the following in lieu thereof:—

"Her Majesty's Ministers have stated in their Despatches that the conditions contained in the original grants were impracticable, and that it would be unfair to deprive the proprietors of such grants of the land for the non-performance of such conditions; but as the proprietors have imposed conditions upon persons who have improved the land, which are so oppressive as to deprive such persons of the benefit of their improvements; it is, therefore, not only necessary, but just and equitable, that while the proprietors of such grants are allowed to retain the fee simple of the land so granted in its wilderness state, that persons who have cleared such land, and brought it into a state fit for cultivation at their own cost and labour, and have erected buildings thereon, should be secured in their improvements by a settlement upon the land."

That amendment embodies the principle of the Tenant's Compensation, of which the hon. member has chosen now to say he disapproves, and I contend, Mr. Chairman, that no man of common honesty and intelligence can view the extract I have just read in any other light than as a declaration by the hon. member himself, and of his party, that the question of Escheat was considered at that time finally settled. Although I think I have already adduced documents sufficient to shew the recorded declarations, not of Colonial Secretaries individually, but of the British Government not to grant escheat, I shall refer to the despatch of the present Earl of Derby, then Lord Stanley, and Secretary of the Colonies, dated the 14th July, 1842:—

"In obedience to Her Majesty's commands, I have to acquaint you, for the information of the House of Assembly, that Her Majesty's Executive Government must decline to interfere any further in the question in debate between the grantees of lands in Prince Edward Island and their tenantry; experience having sufficiently shown, that no beneficial result is to be anticipated from any such interference."

Then we find the announcement of the determination, not of Lord Stanley, but of Her Majesty's Government. Now, Mr. Chairman, after so many decided expressions of the opinion of the Home Government, I put it to this House and to the hon. member himself, if it is not useless to agitate this question further. He knows well what reception our previous applications have received, and let him consider for a moment who it is that now holds the seals of the Colonial Office? Why, Sir, Lord John Russell, the man whose opinions I have read to you. Is it likely that the Government, of which he is a leading member, will consent at this day to grant a Court of Escheat? That hon. member knows it is not; and I regret that the minds of the people are agitated on this question. Had it not been for parties exciting them, and holding out false hopes, every thing would have gone on quietly, and the Land Purchase Bill, the Education Act, and the proposed Bill for taxing the rent rolls of proprietors, would have had the effect of inducing a reasonable and equitable settlement of the tenantry. I do not believe any member of the present majority is pledged to support the motion, and I am sorry my hon. colleague intends to vote for it. I know that his constituents never asked him to do so. As to the petitions having much influence on the minds of hon. members, I know how they have been got up. A few individuals in Charlottetown prepare them and send them through

the country, telling the people that they are to have free lands. The movers in the matter know that the prayers of the petitions cannot be granted, and that Escheat is out of the question; but they get up this excitement merely to upset the present Government. The people sign the petitions without consideration, and in proof of the facility with which signatures can be obtained, I may mention to the Committee, as a fact, that the hon. member for Belfast (Mr. Douse), has now from his constituents two lists of names, to put to any petitions he may please, and for or against any measure he chooses to support or oppose. But, Mr. Chairman, at the risk of being considered tedious, I will read from the pamphlet published by the hon. member, an extract from Lord Grey's despatch to Sir Alexander Bannerman, in 1851—the despatch commonly called the "Bloody Despatch":—

"Without going into detail, it is sufficient for me here to remind you that repeated applications have been made, at different times, to Her Majesty's Government, to consent to deprive the proprietors under the original grants of their estates, on the ground of their having escheated to the Crown by reason of the non-fulfilment of conditions. These applications have been resisted on the grounds with which the correspondence between successive Secretaries of State and Lieutenant Governors of Prince Edward Island, especially since the year 1832, will render you sufficiently familiar. It is only my purpose now to state that Her Majesty's Government feel themselves bound to adhere to the decisions so repeatedly adopted by my predecessors in this matter, and to state that both on the grounds of justice to the landed proprietors, and of the permanent interests of the community of Prince Edward Island, they regard such a measure as impracticable. Nor on the other hand could they consent to entertain any measure, such as has occasionally been suggested, of buying up and extinguishing the rights of proprietors, or any portion of them, at the expense of the Imperial Treasury.

"The subsisting rights of parties cannot, therefore, be altered in any other manner than by that of equitable adjustment; and while the law continues as at present, it is our duty to enforce obedience to it, by the firm exercise of the authority entrusted to you, and by the employment, if necessary, of the military force at your command; should any extreme case occur, you may even apply to Sir John Harvey for an additional force to put down any attempt at resistance to the law."

After such declarations, I would like to know if any hon. member really believes Escheat practicable? Can it be supposed that after those repeated decisions the British Government will turn round and undo all it has previously done, and take away from individuals the property, in many instances purchased on the faith of those very decisions? No man of proper judgment would seriously entertain the idea for a single moment. The hon. member for Princetown (Hon. Mr. Montgomery), who voted for the Bill in 1841, to which I have referred, was in the House at the time the Land Purchase Bill was passed, and he never said a word as to the fifth section requiring Government to test the validity of the original grants. The Government, from the Bills passed in this House on the subject of the land question, were bound to adopt, as a rule, the legislative admission that the question of Escheat was finally settled. In taking the course I have on this question, God knows I am uninfluenced by any feeling in favour of the proprietors. Up to the present time, I have received and braved their most determined opposition, so that if I entertain any personal feeling to warp my judgment, and give a bias to my action, it would be a desire to do what lay in my power to injure them. But I have no such feeling. It is but natural that the proprietors should use all their influence against laws affecting their properties; that is of course to be expected; and I hope that the question will be disposed of to-night calmly and dispassionately. It has been so thoroughly sited at the Colonial Office and in the Island, that the committee can close the discussion to-night. I have ever been anxious to adopt all practicable measures for the benefit of the tenantry, as the Bills I have introduced and the votes I have given will abundantly prove; and I think that the Bill I proposed to bring in, compelling landlords to record their titles, will be a substantial boon to the people. At present a tenant, after taking a lease, or purchasing the fee simple of his land from one person, representing himself as proprietor, finds that he has to pay it once or twice again to subsequent claimants. By that Bill the tenant will be able, by referring to the Registry Office, to ascertain who is entitled to receive his money. Such measures as those are beneficial to the tenant, and can be obtained; while this question of Escheat is, to use the term of which the hon. member (Mr. Cooper) gave us the definition—a mere "will of the wisp." I shall not at present, Mr. Chairman, trouble the committee with any further remarks, but shall conclude by declaring my intention to vote in opposition to the hon. member.

Mr. COOPER.—The despatches on which the hon. member has laid so much stress, are not of much weight now, since we have got Responsible Government. In the times when these despatches were sent out, they were framed in accordance with the despatches previously sent from the Colony, of which the people were not aware. When in England I could get no reply from the Colonial Office until a despatch had been received from the Island, and, Mr. Chairman, I assert that that despatch is a secret to this day. There is one great argument in favour of investigation of the original titles, that is, the fact that it was assigned to in the time of Lieut. Governor Fanning. If conceded then, why should it be withheld now? And notwithstanding the assertions of the Hon. Col. Secretary, I maintain that a despatch only binds the Minister, and not the Government of which he is a member. It is not to be considered as an act or opinion of Her Majesty's Government. You will find that where the action of the Government is taken on a matter affecting the Colonies, it is done in Council. [The hon. member here instanced the form used in giving the Royal Assent to Acts of the Colonial Legislatures, when the Sovereign and members of the Privy Council are present.] And I maintain that no title can be deduced except from the original grants; if they are void, no transfer from one to another can create a good title, or convey what the original grantee had it not in his power to give, and the only way to try the title is by the intervention of a jury, and if it is found to be bad, they can declare it so.

Hon. COL. SECRETARY.—Then, according to that doctrine, no proprietor has a good title. If I am not mistaken, the hon. member himself has purchased lands in the Island.

Mr. COOPER.—Yes; from the Crown. The land was escheated.

Hon. COL. SECRETARY.—Well, suppose the case of a private individual about purchasing a piece of land from

another—what would be his course? He would employ his lawyer to investigate the title. And where is the lawyer to be found who would not consider the original grants valid, after those despatches and admissions of the House which I have read? The Government employed their own lawyer, the Hon. Attorney General, and he has done his duty. The hon. member still argues against the effect of a Secretary's despatch, and instances the case of a Bill receiving the Royal Assent. True, that is the Act of the Government, but the decision of that Government is conveyed to the Colony through the proper channel—the Secretary of State for the Colonies—and several of the despatches I have read, expressly mention the decision of "Her Majesty's Government."

Mr. LAIRD.—Mr. Chairman, the Hon. Col. Secretary said he was sorry that I was going to support the motion for a Court of Escheat, and said my constituents never asked me to vote for it. When we were trying to get Responsible Government, the opinion of my constituents was, that I should first do what I could to obtain that, and they never told me to vote against Escheat. With reference to the remarks about the investigation of the titles by the Government under the Land Purchase Bill, I helped to put the fifth section into it, and I think it the best part of the Bill. I see no reason why the Government should not investigate the original grants as well as any of the other documents. I am sure the Bill expresses that plainly enough. I have no wish to break up the Government while they do their duty; but I must say, Mr. Chairman, that it is not fair to blame me as breaking my pledge to support the Government. The people, by their petitions to this House, have shewn the course they wished members to pursue.

Hon. COL. SECRETARY.—Mr. Chairman, the hon. member (Mr. Laird), seems to speak as if he introduced the clause providing for the investigation of the titles into the Land Purchase Bill. Why, Sir, that clause was in the Bill when it was introduced by the Government, and the hon. member voted for it. He has said that the petitions before the House relieved him from his pledge to support the present Government. But how were those petitions got up? They were got up by Mr. Cooper. Look at his letter addressed to myself, and published in his pamphlet. The hon. member (Mr. McIntosh), did not join him in that, knowing that the letter and the answer would be published, and, that the answer would not have the tendency to encourage agitation of this question. The result of the meeting held in the district of the Hon. Mr. Whelan and Mr. Dingwall, at which the former was present, shews plainly that the people will not be bothered on this subject much longer. They have had enough of it during the ten years' agitation by the hon. member (Mr. Cooper). Sir Charles Fitzroy's answer to the address of the inhabitants of King's County destroyed the private influence of that hon. member.

Mr. MCINTOSH.—If we had before us all the documents which Sir Charles Fitzroy sent home, we might know something more of the true state of the case than we do at present. Sir Charles Fitzroy's conduct clearly shewed that he did not act in reality, as he would endeavour to make it appear. From the private representations sent to England by Sir Charles Fitzroy and Sir Henry Huntley, no despatches based on them could be relied on. It is very well for hon. members to say that Escheat was finally settled. It was not, however, dead in 1850. The despatch brought out by Sir Alexander Bannerman shewed that the Ministry at home knew, from private information, what the new Governor would meet on coming to the Colony. If the Land Purchase Bill was the last measure for the relief of the people from the oppression of their landlords, it would be no use in discussing this question, but, Mr. Chairman, I am inclined to consider that Bill but as a beginning. I would, for one, just as soon see the lands in the hands of the proprietors as to see the landlords joining a set of speculators in taxing labor. My desire, Mr. Chairman, is that I may see the people treated as British subjects, not as aliens or bastards by the Imperial Government. (Laughter.) Oh, hon. members may laugh, but I repeat it, Mr. Chairman, that they have been so treated, and I do not wonder at it, when those who ought to stand up for the rights of the people are found on the side of their oppressors. Since we have Responsible Government, if the Governor and Council state the views of the people to the Council, we can obtain what we wish. I must, however, Mr. Chairman, confess that I expected from Responsible Government more than I have seen. (Laughter.) I had no intention of turning out one set of land speculators to put in another. I am willing to give the present Government credit for the good they have done and all they may do. I will give them credit for the Education Bill and the Tenants' Compensation Bill, but not for playing the game of the proprietors. I have heard hints of some members of this House speculating in lands, and from what I see, I am inclined to think it is the case. If this is the only way of relieving the tenants, they might as well remain in the purgatory in which they have been tormented for so many years. (Laughter.) I have no desire, Mr. Chairman, to turn out the present Government; they will, probably, last my time. But I am astonished at the way this question is treated in the House. We are met by the opponents of the measure as if we were advocating some dishonest scheme to rob people of their property. Mr. Chairman, if we had not a constitutional right to a Court of Escheat, I would never stand up in favor of it; but as a British subject, I feel that the people are entitled to it, and they who oppose their obtaining it are the parties who are taking away the rights of others. I see no reason for any one objecting to the establishment of a Court of Escheat. Let us have it; and if the lands cannot be escheated, as has been said, the Court can do no harm. Then why not have the Court? The complaints of the people are that there is no such Court. In the time of Governor Smith, a Township was escheated in two or three days after he issued his proclamation, and I believe if he had staid in the Colony, every Township would have been escheated, and the people have as much right to Escheat now as they had at that time.

Hon. COL. SECRETARY. I rise, Mr. Chairman, merely for the purpose of answering that part of the hon. member's observations, which insinuate that the Government were in league with a third party, namely, land speculators in the purchase of the Worrel Estate. That statement is not true—the hon. member knows that the Government had not power to compel parties to sell their lands. But, Sir, when the Liberal party assumed the Government, they gave notice to the Trustees of Worrel Estate, that they were prepared to receive offers from them—they could not say to them "you must sell the property, whether you wish to do so or not." Then came the vote of want of confidence, which displaced the Liberal Government, and before they returned to power, Messrs. Pope

(For continuation of debate see last page.)