The Examiner.

A WEEKLY JOURNAL OF POLITICS, LITERATURE AND NEWS.

EDWARD WHELAN] This is true Liberty, when Free-born Men, having to advise the Public, may speak free.—EURIPIDES. [EDITOR AND PUBLISHER.

VOL. VI. CHARLOTTETOWN, PRINCE EDWARD ISLAND, MONDAY, APRIL 13, 1857. No. 40.

Colonial Legislature.

LEGISLATIVE COUNCIL.

FRIDAY, March 13, 1757.

Adjourned for want of a quorum.

SATURDAY, March 14.

After the presentation of some petitions, the following special committees were appointed:—

Education—Hons. Col. Swabey, Messrs. Craswell and Aldous.

Roads, Bridges and Wharves—Hons. Messrs. Dingwell, Walker and Bagnall.

Agriculture—Hons. Messrs. Beaton, Craswell and Wright.

Paupers—Hons. Messrs. Walker, Craswell and Bagnall.

Miscellaneous Petitions—Hons. Attorney General and Mr. Forgan.

MONDAY, March 16.

A Message from the House of Assembly, by Hon. Mr. Montgomery, with a Bill to amend and continue the Princetown Royalty Church Incorporation Act, and to repeal an Act therein named. Read first time.

Mr. McDonald from the House of Assembly, brought up a Bill to continue and amend the Act relating to the running at large of Horses, Swine and Geese, in Georgetown. Read first time.

Hon. Attorney General reported from the committee on expiring laws. Ordered that the report be received.

Several petitions having been presented, read and referred to the several committees appointed to consider and report upon their respective subject matters, the Council adjourned.

TUESDAY, March 17.

Hon. Attorney General, by command, laid before the House copies of the following despatches and documents, which were read, viz:—

Despatch from the Secretary of State for the Colonies. No. 27, dated 6th August, 1856, with reference to the Act prohibiting the exportation of Saltpetre, &c., as unnecessary to be assented to.

Despatch No. 30, dated 29th August, 1856, transmitting an order of Her Majesty in Council, dated 21st August, 1856, confirming various Acts of the Legislature.

Despatch No. 39, dated 30th October, 1856, transmitting an order of Her Majesty in Council, dated 22nd October, 1856, confirming several Acts of the Legislature.

After several petitions had been presented, read and referred to the appropriate committees—Hon. Col. Swabey, by command, laid before the House the following Message from His Excellency the Lieutenant Governor:—

D. DALY, Lieutenant Governor.

The Lieutenant Governor transmits the accompanying correspondence for the information of the Legislative Council, and for such careful consideration as he feels assured the very important subject of the more perfect lighting of the coasts of this Island will receive.

He also invites the early attention of the Legislative Council to that portion of the correspondence which has reference to Cape Race Light.

The Message was accompanied by copies of the following despatches:—

No. 26, dated 3rd July, 1856. No 35, doted 15th October, 1856. No. 42, dated 13th November, 1856.

WEDNESDAY, March 18.

Mr. McDonald from the House of Assembly, brought up a Bill to continue the Act relating to Packets sailing between this Island, and the Provinces of Nova Scotia and New Brunswick. Read first time.

Several petitions having been presented by different members of the Council, and referred to the respective committees, Hon. Col. Swabey, by command, laid before the House the following written Message from His Excellency the Lieutenant Governor, viz:—

D. DALY, Lieutenant Governor.

In transmitting, for the information of the Legislative Council, the accompanying despatches regarding alterations in the Colonial tariffs, rendered necessary by the Reciprocity Treaty with the United States, the Lieutenant Governor invites the attentive consideration of the Legislature to this subject, which, he trusts, will lead to the adoption of such measures as may be necessary for the reconciliation of the tariff of this Island with the treaty obligations of the Home Government, and the extension to the trade of the United Kingdom, of the privileges enjoyed by the neighbouring Colonies and the United States.

After careful consideration of the probable consequences of a compliance with the suggestions of Her Majesty's Government, in regard to the proposed alterations, the Lieutenant Governor fully concurs in the opinion expressed by the Secretary of State, that no practical inconvenience to this Colony is likely to arise from their adoption.

Copies of despatches, with their enclosures, from the Secretary of State:—

No. 23, of the 15th July, 1856. No. 41, of the 10th November. 1856.

Copy of despatch, with its enclosure, to the Secretary of State, from the Lieutenant Governor:—

No. 42, of the 6th September, 1856.

Government House, 17th March, 1857.

Hon. Attorney General laid upon the table the Blue Book for 1855.

The House went into Committee on the Princetown Royalty Church Incorporation Act, which was agreed to without amendment.

FRIDAY, March 20.

The Princetown Royalty Church Incorporation Act, was read third time and passed.

Hon. Mr Wightman from the House of Assembly, brought up a Bill to continue the Act exempting Bills of Exchange, &c., from the operation of the Laws relating to Usury. Read first time.

After the reading of several petitions, the Act prohibiting the going at large of Horses, Swine and Geese in Georgetown, was committed and reported as agreed to, without any amendments.

Hon. Attorney General laid before the House the Impost and Excise Accounts of Charlottetown and the Outports, the Auditors' Classified Accounts, and the statement of the Accounts of the Bank.

MONDAY, March 22.

Several petitions were presented and read, after which the Act preventing Horses, Swine and Geese, going at large in Georgetown, was read third time and passed.

The Bill to continue the Act relating to Packets sailing between this Island, and the Provinces of Nova Scotia and New Brunswick having been committed, was agreed to without any amendments.

Hon. ATTORNEY GENERAL introduced a Bill to amend the practice of the Supreme Court, and to alter the time for the attendance of Petit Jurors in Queen's County, and for other purposes therein mentioned: and, in doing so, briefly explained the leading features of the measure. Under the present practice of the Court, parties were being frequently subjected to loss and inconvenience, in consequonce of the uncertainty as to the time at which their cases might be called on. This was more particularly the case with appeals and summary suits. One instance of the truth of this statement was before their honors in the petition of John McLeod, of New London, who was perfectly justified in supposing that his case, being an appeal, would not be tried until late in the Term; but on arriving in Charlottetown to attend the Court, he found that his case had gone off in his absence, on the second day of the Term, although the whole of the Jury cases had not been tried. Another individual, a client of his, (Hon. Attorney General) had himself experienced a similar surprise in another case of appeal, which stood for trial at the last term. In mentioning those instances, he did not intend to impute harshness or undue haste to the Judges, whose action arose from the very proper desire to expedite the business before the Court, and not delay those parties who were in attendance. The present Bill provided certain stated days for the trial of appeals and summary causes, and would thus obviate the inconvenience to parties in such cases and their witnesses, of having to attend the Court during the trial of Jury causes, which at present they were compelled to do, lest at any moment the appeals or summary causes should be taken up. The Bill also made the *venire* for Petit Jurors for Queen's County returnable to Wednesday the second, instead of Tuesday the first, days of Hilary and Trinity Terms. By this alteration the Petit Jurors need not attend during the first day, the greater part of which is generally consumed in the formal business connected with the opening of the Court, charging the Grand Jury, &c., during which the attendance of the Petit Jurors was not required. It also proposed to appropriate for the Jury trials, ten days from the second day of the Term, with power to the Court if the business required it, to extend the period two additional days—thus giving twelve days for Petit Jury trials, when required, or under any circumstances. The appeals would be tried after the lapse of those days, and parties would thus know when they might expect their cases to be called on, and would be saved the expense and loss of time consequent upon their own attendance and that of their witnesses, to which under the present system they were subjected. It would be competent for the Court to set down Special Jury cases for trial at any time, even after the expiration of the Petit Jury days. Attornies would have the time for docketing their causes for trial extended to three o'clock, p. m., of the first day of Term, instead of being limited to an hour after the opening of the Court as at present. Another change to be effected by the Bill, had reference to Warrants of Attorney and Cognovits, executed by parties confined in jail. At present, no Warrant of Attorney or Cognovit, so executed, had any validity unless the execution took place in the presence of an Attorney. Such a rule operated in many instances as a very great hardship, as their honors would perceive, when they reflected on the fact that all the Attornies resided in Charlottetown, and that consequently the expense and difficulty in obtaining the attendance of an Attorney, which might be experienced by an unfortunate debtor confined in jail in King's or Prince Counties—might frequently cause him to remain in prison until the next Term of the Court for the County in which he is incarcerated, although his detaining creditor might be willing, and even anxious to liberate him, on receiving either of the above securities. This inconvenience and hardship it was one of the objects of the Bill to terminate, by allowing such documents to be executed before the Deputy Prothonotary, in either Prince or King's Counties, who would, for his attendance to witness the execution, be allowed the sum of 3s. 4d. With the exception of that clause, the Bill had reference to Queen's County exclusively. Conceiving the Bill to be a most necessary and useful one, he trusted it would receive the sanction of the House.

Hon. COLONEL SWABEY expressed his warm approval of the Bill, which he considered would be productive of great improvement in the present system, and that the Hon. Attorney General was entitled to the thanks of the community for having introduced the measure. No doubt the Judges were actuated by a desire to accelerate the business of the Courts, and thus quicken the action of the Barristers; but it was clear that under the present practice of the Courts, great inconvenience resulted to individuals. A very decided improvement would result to parties to appeals, from the knowledge of the time when it would be necessary for themselves and their witnesses to appear at Court.

The Bill was then read a first time.

On motion of the Hon. Attorney General, the Bill exempting Bills of Exchange, &c., from the operation of the Usury Laws, was read a second time and reported agreed to, without amendment.

Hon. Attorney General, by command of His Excellency the Lieutenant Governor, presented copy of a despatch from His Excellency, to the Secretary of State, regarding a Loan to be raised under the Imperial guarantee; also, an extract from the Minutes of the Executive Council, on the same subject.

HOUSE OF ASSEMBLY.

WEDNESDAY, March 18.

AFTERNOON SITTING.

USURY LAWS REPEAL BILL.

House in committee according to order on the second reading of this Bill, Hon. Mr. Wightman in the chair.

Mr. T. HEATH HAVILAND.—Mr. Chairman the Bill now before you was originally introduced into the Legislature of this Colony, by myself in the year 1854. I introduced it because I was convinced that the Usury Laws so far as they affected the ordinary commercial transactions of the country, were contrary to the spirit of the age, Sir,—contrary to the principles of free trade, and in fact that any country that boasts of enjoying free trade, must repeal the Usury Laws. For it is contrary to common sense to say, that an individual should not be entitled to use all his capital in money in the same manner as if that money were converted into goods or houses. It is impossible to justify any country in any longer permitting the Usury Laws to remain on its Statue Book. In England, the first Act interfering with the old Act of Anne, which declared that no more than 5 per cent. interest should be recovered on any contract or loan of money, was passed in the reign of King William the Fourth, in consequence of a very able Essay written upon the subject of the Usury Laws by one of the most talented men of his day, the late Jeremy Bentham. The bill was passed through the British Legislature as an experiment, and it was thereby declared that any amount of interest might be received on a bill of Exchange or promissory note, provided the bill or note, had only three months to run. The Legislature subsequently passed another Act extending the time to twelve months. In fact, any person who calls himself a political economist, must admit this principle that a man has the right to receive as much interest or profit for his money as the merchant has to make on his goods and merchandize. It certainly would be a retrograde movement for this House to fall back, and fix the rate of interest on money by statute. I am confident that if a Special Committee was appointed, and parties were examined before it, the generality of borrowers would declare that they have paid or been charged a lower rate of discount since 1854, than they were under the old law, when only six per cent. interest could be legally charged on money loans. Because now, there is more competition amongst capitalists, in consequence of the Act of 1854 having declared it legal to exact more than 6 per cent. interest than there was before it was legal so to do. Under the old law, there were many capitalists who would not lend money at a higher rate of interest than 6 per cent. from scruples of conscience, as they were averse to breaking the laws of their country, in consequence whereof the business of shaving or bill-discounting was in the hands of a few less scrupulous capitalists, who charged a high rate of discount in order to insure themselves against the pains and penalties they were liable to, for exacting a higher rate of interest than the law of the land sanctioned or allowed. In order to convince this House that Usury Laws are unsound in principle and impossible to be enforced, I shall, lawyerlike, quote a few authorities. The Colonial Treasurer, who I suppose occupies the same position in this House as the Chancellor of the Exchequer does in the Imperial Parliament, should have been the warmest advocate of the bill now before you, instead of its greatest opponent. In England, the whole of the Usury Laws were abolished and wiped off the Statute Book in 1854, upon the motion of Mr. Gladstone, the then Chancellor of the Exchequer. In 1839 when one of the bills for suspending the operation of the Usury Laws, was introduced into the House of Commons by the then Chancellor of the Exchequer I have found on reference to Hansard, that a Mr. Warburton, a relative, I presume, of the Colonial Treasurer, was one of the warmest advocates of the measure. I will read the debate for the information of the House, as it is a short one:—

"The Chancellor of the Exchequer rose, pursuant to his notice, for leave to bring in a bill to make perpetual the Act of 1 Victoria, cap. 80, to exempt certain bills of exchange and promissory notes from the operation of the Usury Laws. The right hon. gentleman said, this was a subject of the greatest importance to the commercial world. By the Act, as it at present stood, all bills not exceeding three months date were exempted from the operation of the Usury Laws. Now, it would be in the recollection of hon. members, that an attempt had been made about two years ago to extend that exemption to bills of a longer date; and a bill to that effect had passed through this House, but had been lost in another place. During the late commercial difficulties of the country, had it not been for the small relaxation of the Usury Laws to which he had alluded, those difficulties would have been greatly increased. On this account, therefore, he now proposed to extend the exemption from the Usury Laws to bills of twelve months date, and also to re-affirm the original proposition of making the Act perpetual. Although he asked only for this limited remission, yet, had he consulted his own feelings, he would have given the fullest benefit he could to the commercial world by a total repeal of these laws, for he thought there ought to be as free a trade in money as in any other article.

"Mr. Warburton fully concurred in the principle of the right hon. gentleman's motion. It was, he had no doubt, the general feeling of the commercial world, that the whole of the Usury Laws should be done away with. If such a measure had been in operation during the late commercial crisis, many houses which had sunk and been ruined under that pressure, would have been saved; and be now in a sound and flourishing condition."

There is a very able article in the *Encyclopedia Britannica* on the subject of the Usury Laws. In 1818, when a committee of the House of Commons was appointed to inquire and report on the expediency of abolishing the Usury Laws, a member of the great commercial firm of Baring & Brothers was examined before it, and I will read the evidence he gave: "The laws against Usury drive men in distress, or in want of money, to much more disastrous modes of raising it than they would adopt if no Usury Laws existed. The landowner requires capital to increase his live stock, or improve his land, or for any other purpose, at a period when the government is borowing money at above five per cent., or when the funds give a greater interest than five per cent.; no one will then lend to the land-owner, because his money is worth more to to him than the law allows him to take, the landowner must, therefore, either give up his improvements, or borrow money on annuity interests, on much more disadvantageous terms than he could have done if no law existed against usury. The man in trade, in want of money for an unexpected demand, or disappointed in his returns, must fulfil his engagements, or forfeit his credit. He might have borrowed money at six per cent., but the law allows no one to lend it to him, and he must sell some of the commodity he holds, at a reduced price, in order to meet his engagements. For example, he holds sugar which is worth 80 shillings; but he is compelled to sell it immediately for 70 shillings to the man who will give him cash for it, and thus actually borrows money at twelve and a half per cent, which, had the law allowed him, he might have borrowed from a money dealer at six per cent. It is known to every merchant, that cases of this kind are common occurrences in every commercial town. A man in distress for money pays more interest, owing to the usury laws than he would if no such laws existed; because now he is obliged to go to some of the disreputable money lenders to borrow, as he knows the respectable money lender will not break the laws of his country. The disreputable money lender knows that he has the ordinary risk of his debtor to incur in lending his money, and he has further to encounter the penalty of the law, for both of which risks the borrower must pay. If no usury laws existed, in common cases, and where a person is respectable, he might obtain a loan from the respectable money lender, who would then only have to calculate his ordinary risk, and the compensation for the use of his money." The article in the *Encyclopedia* at its conclusion, recommends the laws of Usury to be repealed by a statute which should provide that where the contract was silent as regards the rate of interest, that then in such a case only five per cent. should be recoverable. Now, a law framed upon those principles has been upon our statute book since 1854, and the bill now before the House is a bill for its continuance. I shall now quote an authority from this side of the Atlantic in support of my views, from a work on Political Economy written by Professor Wayland, who has a namesake in this House. He says that "Laws regulating the rate of interest are injurious to the prosperity of a country." Some of the reasons for this opinion are the following:—"Such laws violate the right of property. A man has the same right to the market price of his capital in money, as he has to the market price of his horse, his house, his shop, or any other of his possessions. The real price of capital cannot be fixed by law, any more than the real price of flour, or iron, or any other commodity. There is, therefore, no more reason for assigning to it a fixed value, than there is of assigning a fixed value to any commodity. The price of capital or money, is really more variable than that of any other commodity. Most other commodities have but one source of variation, namely, use or profit. But capital in the form of money, is liable to two sources of variation, risk, and use. These vary, at different times, in different investments, and with different individuals. There is, therefore, less reason why the price of money should be fixed by law, than why the price of anything else should be so fixed. These laws, instead of preventing, give rise to great and disastrous fluctuations in the price of money. It is I presume needless to add, that such laws can never be enforced. Men in want of money, will pay what they please for it, and those who chose to pay enough for it, can generally borrow. The effect, then, of the Usury Laws, is merely to drive the best and most conscientious lenders out of the market, or else oblige them to lend by means of subordinate and less scrupulous agents. For this agency the borrower must pay, and hence the additional rate of interest." The Usury Laws are disobeyed year after year, and should therefore be repealed, as it is bad policy for any government to have laws upon their statute book, which are considered by the people as a dead letter. In fact, it is impossible to retain the Usury Laws any longer, unless we are determined to set at nought all the arguments that have been adduced against them by the most enlightened Political Economists of this century. The Imperial Parliament has expunged the Usury Laws from the statute book with the approbation of statesmen of all shades of political opinions. The benefit of abolishing them has been proved over and over again, not only in theory but also in practice; for in those countries in Europe which have laws regulating the rate of interest, higher rates of interest are charged than in those countries where no such laws exist. In Holland, there are no Usury Laws, and money is loaned there at a lower rate of interest than in any other Continental Kingdom. In fact money, like any other article, will find its level; and when an individual wants it, he will have it, let him pay what he may for it. If a committee were appointed, and I am sorry that one has not been appointed, I feel convinced that they would come to the conclusion that the rate of interest charged on discounting bills and notes of hand is much lower now, than it was previous to 1854. Rumours are in circulation, and I presume they are not without foundation, that the main objection to the bill now before you Mr. Chairman, is, that it enables the bank of Prince Edward Island to exact seven and a half per cent. discount. But I would ask the Representatives of the people, especially those who call themselves liberals, why we are to have free trade in all articles but capital in the form of money. No individual is obliged to pay the bank seven and a half per cent. interest, unless he borrows money there. Surely the whole community is not again to be saddled with the Usury Laws, because the Bank is charging seven and a half per cent. for discounting mercantile paper. I trust there is sufficient good sense in this House, and gentlemen who are liberals not only in name but in principles who will carry this bill and not burk it either from party or private feelings.

Hon. COL. TREASURER.—The hon. member for Georgetown ought to have allowed me to make the first speech, before he stated my opinion upon the bill. He certainly has made very strange statements, yet I hope to have this bill burked. The hon. member spoke of the evils of allowing people to be usurers contrary to law; but I know it is a fact, and that in this town, people—called religious people too—have got as much as 60 per cent. for money; and when 60 per cent. and 50 per cent. has been obtained for the use of money in Charlottetown while the usury laws were repealed, where now is the morality of such conduct? There certainly is need of some act to prevent people from acting in this manner. I do not oppose the bill merely because the Bank charges 7½ per cent. though that is a benefit which private persons cannot have; for in reality the Bank has 22½ per cent, since they are allowed to issue £3 for every pound of specie lodged in their vaults. Three months I believe is the time to which their discounts are limited. The hon. member has brought forward the names of parties,—and one of my name who supported the doing away with the Usury Laws in England; but that gentleman is no relation of mine, nor any connection; in fact, his name is Warburton only by act of Parliament. Mr. Gladstone has also been alluded to as supporting the measure; well, I happened, at one time to be acquainted with that gentleman, but his opinion has no influence on mine respecting this bill. But the hon. member for Georgetown will not say that people in this Island who can get 60 per cent. for their money, are in the same circumstances as those in the old country who lend money. As to opposition to free trade, I am quite prepared to take my share of the blame that may be laid on the members of this House, who take the same views on the subject as I do. I shall now move that the Speaker take the chair.

Mr. YEO.—Certainly there is more sense in the House than do that; for money is scarce enough already. Now, there is a gentleman belonging to this place, Mr. Peake, who has sent out from England to withdraw his money from the Island, as he can get more interest for it in England. If people that have got money, do not lend it, what are people in business to do? It is a good deal better to let the Usury laws die away than add others. If one man have a document against another, he cannot charge more than 6 per cent. except by express agreement; but with this he can charge more than 6 per cent. So it must be to stop trade and distress poor people, were not such an Act as the proposed one in force. I had a bill from England not long since; they charged 7½ per cent; but I knew no such thing before; 6 per cent. was charged not long ago. I do not know why the laws should be different here from those in other parts of the world. I think it is a very unfair thing, and has no reason at all in it.

Hon. COL. SECRETARY.—It is a remarkable circumstance that the hon. member (Mr. T. Heath Haviland) has been so long in the House, and such an abominable law allowed to remain on the statute book. It was the Liberal Government who introduced the measure now before us. [Mr. T. Heath Haviland.—I introduced it myself.] It was supported and passed by the Liberal House. Now, sir, if this Usury act is such an evil to the country, why, I should like to know, was the measure in question not introduced under the old system of Government? I think it is hardly fair for the hon. member to come forward and accuse other hon. members who hold different views from him on this subject, and who wish to benefit the poor man. But from what was stated by my hon. friend on my right (Hon. Col. Treasurer) I think the poor man has to suffer by paying 60 per cent. Now, with regard to what he (Mr. T. Heath Haviland) said, that there should be free trade in money as well as in everything else, this is very correct; but if an exorbitant merchant were to charge an extravagant price for goods, he could not recover it, and courts of law would decide against such an extravagant charge in the bill. But here it is a difficult matter to decide what money is worth; in fact, a man borrowing money has no chance of bringing a charge against parties in the Court. They prove there that he made his bargain, and had a right to pay for it. Well, in such cases, perhaps the poor man was glad to obtain the money at any rate; perhaps it was paid for a month, and might not appear to be at a high rate, but if for a year, the transaction would be better understood. Now, as to free trade in money as well as in every commodity, every person having a store or place of business, is known as a man of business; but with money lenders, it is otherwise; they are not generally known as men of business. If licences were given to them, as to retailers of of spirits, then parties would have some chance of knowing what is in the market; but such is not the case. One individual may be inclined to lend money at 6 per cent, but that not being known, a person wishing to borrow money, may run about and at last get it at 60 per cent. I think, then, these money lenders cannot be placed in the same scale as those similarly engaged in the old country. With reference to the Bank charging 7½ per cent., I think when a company obtains the privilege of a charter, as this Bank has, they should not charge so high a rate, merely because they are privileged individuals. It is true of some money graspers about the city, that they will take all they can get, 30, 40, or 50 per cent; but a fair money lender will be satisfied to get 10 per cent. But, sir, when the bill incorporating the Bank, was introduced into this House, they were to issue only two pounds for one; but I thought they should have the privilege of issuing three for one, and moved accordingly, which was carried. Now, however, they are making 22½ per cent. by the Act of Incorporation; whereas private individuals have not that privilege,—they cannot issue notes, but must lend their hard cash. When, therefore, the Bank has such a privilege over private individuals, they ought not to charge an extravagant rate of interest; for 7½ per cent. is in proportion very high; but I think if they got 6 per cent., it might pay them very well. Besides, they would get more to do, and might take the business out of the hands of money lenders. I do not know whether this Usury law will do that or not. It is no more than just to allow this act to expire, and not to allow the Bank to take more than 6 per cent. It is said by Mr. Yeo that in England they charge 7½ per cent; but they issue pound for pound, which is the principle they go upon; and therefore they have some excuse for charging 7½ per cent; but I think very few charge that. It has been stated that a gentleman with large capital, was about taking it to England, because he could get more for it there; but it is well known that money can be had there for 4 or 3½ per cent. I do not dread persons taking money out of this country to other countries. I shall hear what arguments can be adduced in favor of this Act; yet I think if the Bank could only charge 6 per cent., it would be very well. Most of the directors of the Bank are