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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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Provincial Parliament.

LEGISLATIVE COUNCIL.

DEBATE ON THE FISHERY RESERVE QUESTION.

(Continued.)

Hon. Mr. JOHNSON. Do I understand the question? It is not, it seems to me, is the fisherman at perfect liberty to enter upon any such Reserve for the *bona fide* purpose of carrying on a fishery? but, Who is entitled to receive rent for it?

Hon. COLONEL SWABEY explained. There are two classes of Fishery Reserves. In one class, there is reserved a free liberty to all Her Majesty's subjects of carrying on a free fishery, or fisheries, on any part or parts of the Coast of the Township granted, and of erecting stages and other necessary buildings, for the said fishery or fisheries, within the distance of 500 feet from highwater mark; and it is admitted that, of such Reserves, the fee simple is in the Proprietors, and the only power possessed by the Crown or the Government of this Island over them, is to take care that they shall, at all times, be available for the special purpose to which they were originally dedicated—a free liberty to all British subjects to conduct on any part or parts thereof a free fishery, or fisheries; and this dedication of this class of Reserves appears to be irrevocable; but still, perhaps, although the right of the public therein for fishing purposes, cannot be taken away, some regulations might be made to determine how far, as respects different localities, fishermen might be allowed to go in the exercise of their special privilege. In the other class, there are reserved, for the disposal of the Crown, 500 feet from high water mark, on the coast of the Tract of Land granted, to erect stages and other necessary buildings for carrying on the fishery. As respects this class, the soil has been reserved to the Crown, and it has, therefore, been declared by the Home authorities that they form part of the Territorial Revenue to be employed in the public service, in whatever manner may be most compatible with a prudent and economical use of them. The Territorial Revenue of the Crown in this Island having been made over to the local Government thereof, in it is now vested the power to employ or appropriate all the Reserves included therein, in or for the public service, according to the original intention entertained by the Crown when making such Reserves; and this is all the power or authority which the Government and the Legislature have claimed a right to exercise over them. It may not yet have been finally determined how these Reserves are to be dealt with by the Government in every case; but, nevertheless, all now admit that such Proprietors as have presumed to consider such Reserves as portions of their Grants, and have, consequently, exercised the power to lease or sell them, have in doing so, appropriated to themselves lands to which, most clearly, they had no title whatever, and, thereby, perpetrated a fraud upon the public; and this is the evil for which the late Government and the Legislature earnestly sought a remedy.

Hon. Mr. JOHNSON. Well then, the only question seems to be, To whom ought or must individuals in the use and occupation of such Reserves, or of any portions thereof, pay rent? But I am still comparatively in the dark with respect to it. I am, in fact, almost quite unacquainted with the subject; and would, therefore, be thankful for such information as would improve or extend my knowledge of it. I should like to know why the Fishery Reserves Bill was sent Home.

Hon. the PRESIDENT.—I will endeavour to afford his Honor the information which he seems so earnestly to desire. He has already been made aware that there are two classes of Fishery Reserves: in one, the fee simple is in the Proprietors, subject to the easement of occupation for the use of the Fisheries; in the other, the right of soil is in the Crown. It appears that, originally, it was intended that there should be only one class of Reserves. How there came to be two, it is now impossible, from lapse of time, to tell. I will read the Order in Council authorizing or rather commanding the making of such Reserves in the several Townships about to be made of the Townships of this Island. It bears date the 8th day of July, in the year of our Lord one thousand seven hundred and sixty seven, and, by it, His Majesty was graciously pleased to direct "that, in order to promote and encourage the Fisheries, for which many parts of this Island are conveniently situated, there be a clause in the Grant of each Township that abuts upon the sea shore, containing a reservation of liberty to all His Majesty's subjects in general, of carrying on a free Fishery on the coasts of the said Township, and of erecting stages and other necessary buildings for the said Fishery, within the distance of five hundred feet from highwater mark." This was the general Order, but it was not carried out in all the Original Grants. In some the reservation is, "saving and reserving for the disposal of His Majesty, his heirs, and successors, 500 feet from highwater mark, on the coast of the tract of land hereby granted, to erect stages and other necessary buildings for carrying on the Fishery." In such reservations, the right of the soil is in the Crown, or rather it is now in our local Government or Legislature, since, by the Civil List Act of 1851, the disposal of Her Majesty's Crown Revenues is surrendered to them; and the claim of the Government and Legislature to these reservations, is all that we are at present called upon to discuss. In the other class, the reservation is made in these words, "saving and reserving a free liberty to all His Majesty's subjects, of carrying on a free Fishery or Fisheries, on any part or parts of the coast of said Township, and of erecting stages and other necessary buildings for the said Fishery or Fisheries, within the distance of 500 feet from highwater mark." In this class of Reserves, the right of soil is in the proprietors, with an easement, as we lawyers call it, for the benefit of the public, in virtue of which any of Her Majesty's subjects may enter thereon for the purpose of carrying on a fishery or fisheries, without being liable for so doing to an action of trespass. But his Honor has asked why did the Legislature pass, and the Government send home, with a view to the obtaining of the royal sanction thereto, the Bill intituled "An Act relating to the Fishery Reserves in this Island." Now, I will tell his Honor why this was done. The proprietors of the Township lands adjoining these Reserves have unjustly exercised, and, most unwisely and unfairly, been allowed to exercise, acts of ownership over these Reserves, including them in their leases to the tenants, or otherwise having disposed of the fee simple with the land in the rear thereof, and have thereby benefited themselves to the injury of the colony and its inhabitants. That proprietors should be allowed to demand and recover rent for lands reserved for the fisheries whilst, at the same time, tenants paying or subject to rent for these reserved lands, could be dispossessed by fishermen whenever they should require them for the purposes of carrying on the fishery, was acknowledged, and declared by the Legislature, to be a great grievance as respected such tenants; and, besides, the Legislature perceived that so long as such a state of things should be allowed to continue, so long would it operate as an inducement and a reward to the proprietors

to defeat any law which might be made for the regulation of the Fishery Reserves. With respect to all such Fishery Reserves, the Government had, most unquestionably the power to grant a licence of occupation, to any person applying for it, of any portion thereof, for the *bona fide* purpose of carrying on the business of the fishery, and for such uses as are immediately connected therewith; but, at the same time, the Government, in common with the Legislature, felt and acknowledged that, with respect to tenants who were in the use and occupation of such reserves, and paying, or being liable to the payment of, rent therefor to the proprietors of the adjacent lands, in consequence of such reserves being included in their leases, it would be most unjust to interfere with their use and occupation of such reserves, although they had been wrongfully included in their leases, unless they, the tenants, should at the same time be relieved from the payment of rent reserved to their several landlords for such portions of the Fishery Reserves. To prevent the mischief and inconvenience arising from such a state of things—to make the Fishery Reserves available for the purposes to which they had been originally dedicated, and, whilst doing so, to prevent tenants holding such reserves, or any part or parts thereof under any demise or lease, or agreement for a demise or lease, from any proprietor of any lands adjoining thereto, from being harassed by such proprietor or proprietors, by suits at law for the recovery of rent therefor—it was deemed expedient that some measure should be passed by the Legislature to deprive proprietors of the power to bring any action, or to recover rent in any court of law in this Island, against any tenant in the occupation of any part of the said reserves, under any such demise or lease, or agreement for demise or lease, in respect of such reserves; and the Bill, intituled "An Act relating to the Fishery Reserves in this Island" was, as your Honors will perceive by reading over the preamble thereof, intended to remedy the evils felt and complained of in such cases, and to relieve tenants from rent or a liability to rent, which, as respects such reserves, had been wrongfully imposed upon them. The preamble concludes thus:

"And whereas it is expedient that all persons (unless permitted or licensed by the Government so to do), should be debarred from claiming rent for, or otherwise interfering with said Fishery Reserves."

And the Bill then proceeds to enact, Ist, that from and after the passing of this Act it shall be unlawful for any person or persons whomsoever, other than the Government of this Island, or the agent or appointee of said Government, or other person licensed or permitted so to do by the said Government, by or under colour or pretence of any lease, writing, or agreement, or of any covenant, clause, matter, or thing therein contained, or otherwise howsoever, to bring any action or ejection, or other suit or proceeding in any court of law or equity for the recovery of, or to ask, demand, sue for, recover, or receive any rent, issue, or profit due, or hereafter to accrue due, for or on account of such Fishery Reserves land as aforesaid; and the tenant, lessee, or occupier of such Fishery Reserves shall, by force and virtue of this Act, be fully and effectually, to all intents and purposes, discharged from the payment of rent or other consideration therefor, notwithstanding such tenant, lessee, or occupier may have entered into leases or agreements to pay rent for the same, either separately or in conjunction with, or as part of, other land not being Fishery Reserves as aforesaid."

The necessity of this enactment must be clearly manifest to your Honors in two points of view, or in either of them. Ist. By such leases or agreements as those to which the Bill is intended to apply, proprietors can, so long as such leases continue in force, demand and enforce payment of rent for lands which neither are nor ever were their property, and which in fact belong to the Crown; and this, even although the tenant or lessee so subject to rent for such lands should be lawfully dispossessed thereof, either wholly or in part, by any person or persons being licensed to carry on a fishery or fisheries thereon. Do not your Honors allow that such a wrong as this is one which demands and ought to receive immediate redress from the operation of some suitable remedial legislative measure? I am sure his Honor (Mr. Johnson) who, although he says he is almost quite unacquainted with the nature of the Fishery Reserves question, yet, nevertheless, seems to be strangely and strongly biased against the Bill relating to the Fishery Reserves, cannot, with any show of reason or of justice to sustain him, refuse to admit that a stop should at once and for ever, be put to such proprietary assumption and injustice on the one hand, and to such public spoliation and tenant injury on the other. And, in the second point of view, when your Honors consider that, although the proprietors have no title or right whatever to lease and to exact rent for such lands—lands which in reality belong to the Crown—yet, they having done so, and tenants or lessees having no power to impugn the titles of their landlords or lessors to lands for which they have attorned to them, they (the tenants or lessees) must continue to pay the rents which, by their leases, they have covenanted to pay for such lands until they shall be relieved therefrom by legislative enactment. Under this point of view alone—and, for a moment, quite disregarding the other liability of the tenant to such spoliation, which is to be promptly dispossessed of such lands at any time by the fishermen—do not common sense and equity both declare that the tenant should be relieved from the payment of rent for such lands to individuals who neither have, nor ever had, any just claim or title to them whatever? Undoubtedly! None but one willing to appear in the light of an advocate for pillage and oppression, will, I think, presume to argue otherwise. The first clause of the Bill concludes with this proviso:

"Provided always, that nothing herein contained shall extend or be construed to extend to any suit or suits, action or actions, now instituted or pending in any Court of this Island."

(To be continued.)

HOUSE OF ASSEMBLY.

SUMMARY OF PROCEEDINGS.

MONDAY, May 2, 1859.

House met at 12 o'clock.

Hon. Mr. HAVILAND introduced the new Postal arrangement Bill, which was read a first time. It provides that all letters mailed in P. E. Island shall, in future, be prepaid; and gives the Executive power to issue postage stamps.

Hon. Mr. PALMER, by order of his Excellency, laid on the table the Blue Book, Road Correspondent's Accounts, &c., for the past year.

House in Committee of the whole on Hon. Mr. Wightman's Bill for regulating the trade in Pickled Fish.

Hon. Mr. PERRY had listened with great attention to what had fallen from many members respecting the Bill, and was of opinion that it did not sufficiently protect the public from imposition in the importation of Fish, and, therefore, moved that the Speaker take the chair.

Hon. Mr. WIGHTMAN thought the Bill afforded sufficient protection to the public; but if hon. members were not disposed to proceed with the Bill at present, it could remain over till next Session.

Hon. Col. GRAY thought that if it were a good Bill, and for the benefit of the people, it should not be burked. At the last rising of the Committee, the hon. gentleman who introduced the Bill promised to alter some of the clauses; he had not done so. That was no reason, however, to give up the Bill. He hoped the Committee would proceed.

Hon. Mr. HAVILAND felt the Committee were unanimous upon one point, the necessity of protecting the poor people of P. E. Island from the frauds practised by importers of Fish. He believed the Bill would prove a great benefit to the poor man, and if it should occupy three days, it should be proceeded with.

Adjourned at 3 o'clock; met again at 4 o'clock.

Hon. Mr. Wightman's Bill regulating trade in Fish reported agreed to, without amendments.

ESTIMATES FOR THE CURRENT YEAR.

The Hon. Mr. Haviland laid the Estimates for 1859 on the table, and moved that the House go into Committee of Supply.

Hon. Mr. Pope Chairman of the Committee.

Hon. Mr. HAVILAND, on moving the resolution that £5,000 be the amount of the appropriation for the service of Roads and Bridges, said, the amount for this branch of the public service was, last year, £6,000. He had reduced the Estimate for the present year one half; but followed the distribution of last year. He proposed to divide the £3,000 thus—£1,000 for Queen's County, £1,000 for King's and Prince Counties, £1,000 for Charlottetown and £1,000 for the other parts of the Island. He had consulted members of King's and Queen's Counties as to the amount and distribution, and they felt satisfied.

Hon. Mr. WIGHTMAN thought £3,000 totally inadequate for the service of Roads and Bridges—it was a mere nothing. The people looked to this appropriation as the most important. It was one in which they felt most interested, and he was certain they would feel much disappointed at the amount. When the small sum of £925 would be divided among the eleven Districts, it would fall considerably short of £100 for each.

Hon. Mr. LONGWORTH felt that the grant was small, but he would not object. The late Government were too lavish—the present should not follow in their footsteps. It should be the desire of all parties to keep the Roads and Bridges in thorough repair, and it was naturally expected that as the expenditure increased, Roads should be improved. But such was not the case. The roads were better 15 years ago than at present. Statute labor should be again resorted to, which, with small grants in this branch of the public service, would be found sufficient to keep the roads in good repair, and at the same time prevent increased taxation.

Hon. Col. GRAY said—the Hon. Mr. Wightman knew that there must be a reduction in the public expenditure. He should know that the man who spends half a crown out of 6d. a day, must soon come to ruin, and so it is with Governments. He (Col. Gray) felt the people would respond to the smallness of the grant. They want to guard against taxation. He had conversed with farmers from the East Point to the North Cape, and they all unanimously declared their willingness to volunteer and keep the roads in repair rather than have to pay more taxes. Although the expenditure was so lavish, some roads had not been repaired for years. He knew one himself that remained untouched for two years, proving that the roads did not enjoy the benefit of such extravagant expenditure as had been practised. The object of the present Government was to economise the revenue of the Colony, and reform the abuses which had obtained under their predecessors in office.

Hon. Mr. MAULAY said the Government should not allow their expenditure to exceed their revenue. They should not follow in the path of their illustrious predecessors, who issued Treasury Warrants which could only be sold at a large discount, reducing the value of property and ruining the credit of the Colony. The appropriations should be moderate—the expenditure judicious. These principles carried out would satisfy the Country. He felt astonished the other day to hear Hon. Mr. Yeo state, that a bridge had been built at an expense of either six or seven hundred pounds, which is not passable. What wonder then that outlay has been extravagant on the part of the late Government, when they chose to build dams and huts for beavers, to the ruin and impoverishment of the country?

Mr. CONROY said he never heard the Hon. Mr. Yeo state that the bridge was not necessary. The only complaint was that it had not been built in a suitable place. The necessity of the bridge was admitted by all. It was of no use in its present state, and he hoped that measures would be taken to render it available to the public.

Hon. Mr. PALMER felt that the appropriation for Roads and Bridges last year was most extravagant and disproportionate. There was no such disproportion for this service to the revenue in any of the British Provinces of North America. It amounted to £6,000 more than 1-7th, and nearly 1-6th the amount of the revenue. It was said that the people gain by the outlay on roads and bridges. Some did, but not all. If the money had been well employed, the work properly executed, and no jobbery practised, it might be tolerated. But such was not the case. The present state of the finances of the country is a subject of serious consideration. Retrenchment must be the order of the day—they must begin at the top of the bag; with the thousands, and not strain at a gnat and swallow a camel. They should put up with the amount for roads and bridges for this year. He had heard it whispered that £300 discount had been paid by contractors for roads and bridges last. He believed it did not require such a large amount for this service as in former years. The roads were not so much injured as in other years. The spring had been mild, and extensive repairs were not required. They could not contract so cheaply at this season of the year, when the hauling was at an end, as they could have done in March; and this of itself should induce them not to expend too much for the present season. He was convinced the country would feel pleased with the appropriation made, and that the amount would, in combination with Statute Labour, meet all the requirements of the country. Once the House went so far as to stop the supply for roads and bridges, yet still the farmers managed to get their grain to the mill, and their produce to market. The grant for Education must be maintained—the largest item

of their expenditure; and the present appropriation added thereto, would absorb one half their anticipated income. They could not consent, therefore, to increase the present appropriation. The circumstance of the Colony demanded retrenchment, and he hoped the present Government would attend to the demand. He felt one objection, that the amount of the distribution for Queen's County was too small; but still he felt satisfied.

Mr. COOPER thought where a public wharf had been injured, the Government should apply a special grant for its repair.

Messrs. CONROY, OWEN, HOWAT, HOLM, &c., put forth the claims of their respective Districts; but the general feeling seemed in favor of the reduced grant.

The Hon. the SPEAKER would support the diminished appropriation. It was idle to say that the roads were improved. They were much better ten or twelve years ago. He felt that he would be doing an injustice to his own conscience, and acting unfaithful to his constituents, if he did not carry out the principles of retrenchment.

Mr. DAVIES thought there should be a special grant for Pownal Wharf. It was in a falling state. The Corporation were not able to raise money by taxation to carry out the necessary repairs; and it was for the service especially of the Government Steamer Westmorland the public funds should be charged with keeping it in repair, or at least in assisting the Corporation to do so.

Mr. HOWAT suggested, that if there be a special grant for Pownal Wharf similar applications should be overlooked.

Hon. Col. GRAY felt very great surprise that the Corporation of one of Her Majesty's Cities in the Colonies should ask assistance for the repair and maintenance of public property. Could they not raise money by debentures, as was done by other Corporations, and not call upon the poor farmers of P. E. Island to pay for the repairs of their Wharf?

Hon. Mr. HAVILAND thought that when the city was incorporated, the Corporation, in the receipt of the licenses and taxation, would be self-supporting, and that no demands would be made by them upon the revenue of the country.

Mr. HOLM was of opinion that if a special grant should be given for Pownal Wharf, Crapeaud Wharf and Harbour were also entitled to a like favor.

Hon. Mr. PERRY said it was useless to try to get money where there was none to give. It was wrong to apply so much of the public money to roads and bridges. He was always opposed to the amount of the sums appropriated to such purposes. The revenue last year fell £10,000 short of the expenditure. They should not persevere in such lavish expenditure. They should resort as much as possible to Statute Labour for the repairs of roads. They should make up their minds to submit to the appropriation, and not ask any special grants. Should others do so he should do so too. But where a public wharf was falling to decay, it should be kept up, and not build any new ones this year. They were but the stewards of the public, and they should be faithful to their trust. The system of Education must be continued—it cost nearly £14,000 last year, and it would require perhaps £15,000 this year. The appropriation for roads and bridges, besides other contingencies in connexion with this service, would swell the amount to between eighteen and twenty thousand pounds. Under all the circumstances he could not see how they could consent to any special grants this year.

Mr. SINCLAIR was not disposed to quarrel with the Government at either the amount or distribution of the grant. He felt they were perfectly justified in carrying out retrenchment in the public expenditure. But he felt surprised to hear some members say that Queen's County was entitled to more money than either Prince or King's County. Queen's County had a more numerous population, more roads opened up, and was far richer than either of the other counties. Surely then where roads had to be cut through the forest, and bridges built over rivers, by a less numerous and poorer people, there was no justice in the argument that the richer county should have the larger amount of the distribution.

Hon. Mr. LONGWORTH said the members for Queen's County were only asking what in justice they were fairly entitled to—a little more for Queen's. He would leave it to their own honors—the members for Prince and King's Counties—to say if Queen's County should not get the two twenty five pounds—leaving Prince and King's Counties each £200. Formerly Queen's got one-fourth more than either of the other Counties, and she was still entitled to a larger amount from the circumstance of her roads being cut up by the people from Prince and King's Counties.

Hon. Mr. PALMER wished to know if Pownal Wharf was to be allowed anything out of Queen's County share—if so, it was like making a poor man a present of an elephant, without giving him the means to support it. Charlottetown derives no benefit from the wharf. The Steamer stops there—the revenue is only nominal. They wanted the Steamer there, and he hoped they would soon have two. The wharf must be kept up—it now required a large outlay. It was a work of public utility. It belonged not alone to Charlottetown, but to the whole Island, and ought to be maintained.

After considerable discussion, the appropriation distribution, and £700 for contingent expenses, were agreed to.

The next item was £300 appointed by Statute to be paid the Telegraph Company as long as the Telegraph is in working order.

Hon. Mr. PALMER said the Company intended to establish an office at Green's Shore, which would bring them in immediate contact with Shediac, which would again unite them with Great Britain and the United States. Should this desirable object be accomplished, they ought to assist in the undertaking. He would therefore suggest that the resolution be deferred for the present.

SALARIES OF PUBLIC OFFICERS.

Hon. Mr. HAVILAND said the next sum was £5875, for the salaries of Public Officers—being a saving to the Colony of £500 this year compared with last year. The hon. gentleman enumerated the offices in which the saving was effected, viz: Colonial Secretary, Treasurer, Crown Land and Surveyor General, and second Assistant in the Post Office.

Mr. HOWAT considered as retrenchment was the order of the day, the Deputies should be dispensed with, and the principals should perform the duties of their respective situations. They had retrenchment carried out to a large extent in the service of roads and bridges—they should follow up the same course in every department; and, therefore, he considered that the increase of salary to principals, to enable them to pay Assistants, was unneeded and unnecessary.

Hon. Mr. PERRY would not throw off the Assistants. His vote was recorded against the employment of Assistants, but the practice was in force for some years, and was found to work well.

Hon. Mr. WIGHTMAN—£500 appeared to be the whole amount of saving effected in the salaries of the public officers. This did not accord with the professions of the gentlemen on the other side, when they went to the elections. They reduced the amount for roads and bridges more than one half, an outlay in which the people had a direct interest, while in over £6000 for public salaries there was but the small reduction of £500. This would not satisfy the country.

The Hon. the SPEAKER said, it was not to be expected that they would strike off all the money paid for Assistants at once. He thought the saving of £500 would enable them to clear off the debt of the Colony. When the deputies were appointed, £400 was the amount of the salaries of the Colonial Secretary and Treasurer, and it was not considered too high. He thought when these situations were reduced £50, there was no reason to complain.