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CHARLOTTETOWN, SATURDAY, APRIL 10, 1841.

[No. 193.]

HOUSE OF ASSEMBLY. WEDNESDAY, March 24.

JURY BILL.

Read a third time, as engrossed, the Bill intitled "An Act to regulate the qualifications of Jurors."

A motion being made, that the Bill do pass,

Mr. PALMER said, that this Bill, if carried into effect, would operate a very important change in the jury system; but he feared it would not be for the better. It was not adapted to the state of this country. He, for his part, knew no defect in the present system. If there be any irregularity in the return of jurors, the same is supposed to have originated from one cause, that is, in the conduct of one of the County Sheriffs. If he is censurable in his official conduct, let him be removed, and not alter the jury system on his account. He here spoke as to the conduct of persons now appointed to return jurors; he said that their conduct stood quite unimpeachable. With regard to the individuals to be appointed under this Bill for that purpose, he could not anticipate any favorable result. The mode of returning jurors by this Bill, appeared to be very objectionable. By this mode, a juror will have it in his power to become acquainted with the jury who are to try his case before the day of trial arrives, and would thereby be enabled to practise on and win jurors over to his interest. But such is not the case at present; for none but the Sheriff knows who are to be jurors until the day of trial. He would here repeat what he had said on a former day, that Magistrates would be influenced by the same motives that now are supposed to sway some of the Sheriffs in the discharge of their duty. By this Bill, the most of those who are virtually qualified to sit as jurors would be precluded, forsooth, because they are not possessed of all the qualifications required by the Bill. He (Mr. P.) had opposed this Bill through every stage, for reasons already declared to this House; and as a professional man, he felt it to be his duty to oppose it now, in its last stage; and would therefore conclude, by moving, as an amendment, that the said Bill do pass this day three months.

Mr. THOMSON could not coincide in opinion with the hon. and learned member for Charlottetown, who said that this Bill would be the means of depriving the country of the services of many men who are otherwise well qualified to sit as jurors. This would not be the case; for after this Bill passes into a law, there will be nearly as many qualified to act as jurors as there are at present. The property qualification of jurors was not the chief motive that induced him to bring forward this measure. It was the suspected partial selection of jurors, made by Sheriffs, that he wished to provide against; he wished to take this important charge out of their hands, which they themselves ought to be glad of, and confide it to men who, if not beyond the influence of party faction, had at least a more general knowledge of the inhabitants, than one single person can have. This Bill did not take its rise from any special cause, as alleged by hon. members. He (Mr. T.) had thought, long before he saw this Bill, that a change was much required in the mode of returning jurors, and that those generally selected as Grand-jury-men should be petit Jury-men, as their decisions were the most important. The system has undergone a material alteration in the province of Nova Scotia, where it no doubt works well. The population of the respective Counties of this Island far exceed that of any County in Nova Scotia, with one or two exceptions; and for that reason he thought that no difficulty could be experienced in the choice of proper Jurors. If it were for no other purpose than to prevent the too frequent recurrence of granting new trials, which he conceived an intelligent jury would, in some measure, prevent, he conceived that alone a sufficient cause to pass the Bill. With respect to suitors practising on jurors before the day of trial, the mode adopted in the Bill of drawing jurors must effectually prevent that, and be the very reverse of that attempted to be set up, as the defective working of the Bill; for the names in which the Jurors' names are to be placed would be sealed, and be beyond the power of any one to inspect; but by the present system, a party may know from the Sheriff who those persons are that are to be jurors—nay more, by the present system, there is a possibility of a Sheriff selecting a jury to try a friend's case, or even his own.

Mr. Le LACHEUR said, it was not his intention to say much of the subject, as the principle of the Bill has been conceded the majority of the House. He had no objection to the present jury system, only that the return of jurors was influenced by party motives. He conceived that as long as the fountain is corrupt, the stream would flow impure. This Bill, though it is most perfect, would have the effect of purifying, in a measure, this fountain. He would not have hon. members believe, that what he meant was directed against the representative of justice; no, he was not the corrupt fountain; he knew as little of the fitness of persons to act as Sheriffs as the Emperor of China; but it is his bad advisers who are censurable for their insolence, in recommending unfit persons as Sheriffs. The hon. and learned member for Charlottetown had remarked how far an individual appointed as juror might be tampered with by the unprincipled. If an individual juror is so easily drawn aside by artifices of snipers, how much more so would that Sheriff be, who meets with more temptations in his way than the juror, and who, as a public officer, would be more likely to be influenced by great? He would adduce for example the conduct of the Sheriff of King's County, against the men of the same County, the memorable riot case. The hon. member for Charlottetown given us the law, with respect to Sheriffs being precluded from interfering in civil cases wherein they themselves are interested parties; but that hon. gentleman did not forget to tell us, he said breath, that they were allowed to summon the jury, prosecute, to stand as witness, and, in fine, to act as executor—and all this in their own cause—in the vindication of their own conduct. This Bill will remove, in a measure, these ills. If the present mode of appointing Sheriffs were altered a better one, he would have less objection to the present jury system. When we consider how much is placed at the disposal of the Sheriff, namely, the character, the property and the life of the subject, it behoves us that we be watchful, that the persons filled with so important an office should be men in whom the utmost confidence might be reposed. All that we require is, that the fountain of justice may flow on in an uncorrupted stream, and to forward the object is the design of this Bill. No one can say, that it will serve to make the present system worse than it is, by giving appointment of jurors to many trusty men. It cannot be used for one moment that a number of men will be more likely to misplace their trust than one or two of questionable character. If we have one bad Sheriff, it does not follow as a matter of course that a number of Magistrates will turn out equally so. Were it not for the selection of jurors, made by the Sheriff of King's County in the ever-memorable riot prosecution, could not have those poor fellows now pining away in the Jail. It is now high time that an end be put to such a state as this; he would therefore vote for the Bill to pass.

YEO was opposed to the principle of the Bill, from its leading to the present stage. The more he considered it, the more he felt justified in opposing it. It is a measure altogether unbecoming. If the people of King's County felt any inconvenience in the return of jurors, he would have no objection to conjoin the Bill to King's County. This Bill, if it were even necessary, is premature. Our population is but very limited indeed, in comparison to the neighbouring Colonies. If it passes into a law, it will be an injurious Bill to many. If the Sheriff of King's County deserves censure in his official capacity, then let the aggrieved petition His Excellency to have him removed, and not alter the existing jury system because of the conduct of one individual. Under such considerations he felt himself obliged to vote against the Bill.

GORMAN said, that as the present Sheriff of King's County is not appointed for life, the people can soon get rid of him if he is so great a nuisance to them. He (Mr. G.) had no strong objection urged against the present system. The only reason assigned for this measure is, that one of the present Sheriffs did not do his duty, and therefore the old system must be altered and a new one adopted.

MONTGOMERY said, if the Bill passes, it will deprive the country of the services of many good jury-men, who are

otherwise well qualified to sit as such. When in Committee, he opposed it, on the ground that the qualifications required by this Bill are not to be expected from an infant Colony like this. If the colony were ripe enough for the change, he questioned much whether it would be in the power of the Magistrates or Sheriff to ascertain the qualifications required by this Bill.

Mr. MACINTOSH did not concur in what had fallen from the hon. member who had just spoken. He considered that if the selection of jurors should be left to the Sheriff, as at present, it would only be continuing a great evil. He had no doubt that a selection made by half a dozen honest men would be better than by one. The hon. and learned member for Charlottetown had spun out a very fine and long yarn on the subject; but his sophistry had but little effect on the better judgment of the House. He has not shown, by any of his arguments, what disadvantage would result to the country by the adoption of this measure. All his endeavours were directed to show how admirably the present Act worked. Mr. Macintosh here spoke at some length on the conduct of the Sheriff of King's County, and concluded by saying, that he felt inclined to give the measure a trial for two or three years.

Mr. D. MACDONALD said, that the principle of the Bill was so fully discussed, on its second reading, that he did not think proper then to go into details. He, however, differed from hon. members who thought that the qualifications proposed in the Bill would debar many useful men from becoming jurors. No, he (Mr. Macdonald) never saw or heard of a juror, who was not possessed of the low property qualifications required in the proposed Act, and it was highly necessary that jurors should have some little stake in the Country; and he was sure that young men would not very often deny their qualifications, to evade their being called upon to serve as jurors. For his own part, he had never sat in a Jury box, but would embrace the first opportunity of doing so.

Mr. DALZIEL said, that this Bill went rather far, in precluding many very competent persons from sitting as jurors, who, perhaps have not the qualification of property, and more especially the rising generation, who are still under the paternal roof, and do not own any individual property. With respect to the qualification of moral character, he could not see how that was to be ascertained. If a man, in going to Court, should happen to take a little drop extra, and stagger on his way, then by this Bill his moral character would be questioned, and ten chances to one if he would be allowed to sit as a juror.

The question, "That the Bill do pass," was then put, and carried, on the following division:—Yeas, 12. Nays, 9.

WEDNESDAY, March 31.

Mr. Rae reported from the Committee appointed to take into consideration the proceedings of the Commissioners under the Boundary Act, with reference to Lot Three.

Ordered, That the said Report be referred to a Committee of the whole House on Friday next.

HON. J. S. MACDONALD, from the Committee to whom the Petition respecting M'Connell's Ferry was referred, reported the following:

Your Committee to whom was referred the Petition of divers Inhabitants of the North and South sides of the Hillsborough, praying for a grant of money to build a Scow fit for the conveyance of cattle across the River, at M'Connell's Ferry, and an annual allowance to the Ferryman, also for the establishment of a Post office at or near Fort Augustus, are of opinion, that the accomplishment of the objects prayed for, would be an essential benefit to the Petitioners, but regret they cannot recommend the establishment of a Post office at present, as the carrying of a Mail thither would be attended with considerable expense and inconvenience, from the circumstance of there not being a regular established Ferry at M'Connell's. In regard to the building of a Scow, and an annual allowance to the Ferryman, your Committee recommend to the House to grant and place at the disposal of His Excellency the Lieut. Governor the sum of £18, to be paid to such person or persons as shall provide a Scow fit for the conveyance of cattle over the said Ferry, also one flat-bottomed boat for the conveyance of passengers; and who shall enter into a contract to keep the said Ferry for any term not less than three years; and that an address be presented to His Excellency, respectfully requesting that he will be pleased to cause the said Ferry to be advertised, calling for tenders for the conveyance of passengers, their luggage and cattle, over the said Ferry, and offering the aforesaid bounty to such person or persons as shall undertake the Ferry at the lowest rates of Ferriage, subject to the approval of His Excellency in Council.

On motion of Mr. Rae, the sum recommended to be paid on behalf of the said Ferry was reduced to Twelve Pounds. The Report, as amended, was then adopted, and an Address ordered to be presented to His Excellency, in conformity therewith.

The rest of this day was spent in Committee on the Education Bill.

THURSDAY, April 1.

Mr. Le Lacheur moved, that the following Address to His Excellency the Lieutenant Governor do now pass:—

To His Excellency Sir C. A. FITZ ROY, K. H., Lieutenant Governor and Commander in Chief, &c. &c. &c.

May it please your Excellency;

The House of Assembly having ascertained that the road on the bank of the Montague River, from the main road, at the corner of Mr. George Aitken's Farm, leading to Saint Andrew's Point, has, by the washing away of the bank, become so narrow as to render it dangerous to travellers, and in a great degree useless in its present state; and that some of the occupiers of the farms in the rear of said road have refused to remove their fences, unless compensation be given them, as prayed for in a petition presented to this House, and referred to a Committee, who have reported that it was inexpedient to grant such compensation; the House of Assembly, therefore, fully relying on your Excellency's desire to promote the general convenience and advantage of the inhabitants, respectfully request, that your Excellency in Council will be pleased to adopt the necessary proceedings for causing said Road to be so opened and altered as to render it available for the use of the public.

Mr. Macneill moved the previous question—

"Shall the question be now put?"

Which being seconded and put, passed in the negative.

Resolved, That a Message be sent to His Excellency the Lieutenant Governor, praying that he will be pleased to cause Tenders to be called for, and a Contract to be entered into, for the conveyance of the Western Inland Mails, weekly, from Kildare to Tignish—and also to appoint a Postmaster at Tignish.

Ordered, That Messrs. Gorman, Palmer and Thomson be a Committee to wait upon His Excellency with the said Message.

An engrossed Bill from the Council, intitled "An Act to compel Constables to serve," was, according to order, read a second time; and thereafter committed to a Committee of the whole House.

The Committee rose without reporting—so the Bill was lost.

The House then went into Committee on the Message from His Excellency, with the accompanying documents, relative to the employment of a Steam-vessel, when a Resolution was agreed to.

Report to be received on Saturday.

FRIDAY, April 2.

The Order of the Day, for the House in Committee on the Education Bill, being read;

The House accordingly resolved itself into the said Committee.

The Chairman reported, that the Committee had gone through the Bill, and made several amendments thereto.

For agreeing to the Report, Yeas—18. Nays—Messrs. Le Lacheur and Rae.

Ordered, That the said Bill be engrossed.

The Bill to amend the Act relating to Weights and Measures, was read a third time, passed, and sent to the Council.

The Order of the Day, for the House in Committee on the Report of the Special Committee appointed as to the proceedings of the Commissioners under the Boundary Act, being read;

The House accordingly resolved itself into the said Committee.

The Hon. J. S. Macdonald (the Chairman) reported, that the Committee had come to two Resolutions which Resolutions were again read at the Clerk's Table, and are as follow:—

1. RESOLVED, That it is the opinion of this Committee, That it is expedient that the Act, 4 Will. 4. cap. 15, for ascertaining and establishing the Boundary Lines of Counties and Townships, and parts of Townships, and for other purposes, and the several Acts in amendment thereof, be suspended for one year.

2. RESOLVED, That it be recommended to the House, that the Report of the Special Committee be printed as an Appendix to the Journals.

The Resolutions were agreed to, 15 to 4, after several motions in amendment had been proposed and negatived.

Mr. Rae then moved that the House do come to the following Resolution:—

Resolved, That last year it was considered necessary to suspend the Boundary Act in regard to Prince County, and from evidence before the House as to the description of Townships and the plans thereof, and from the gross inaccuracies in the Tabular descriptions, both in the office of the Surveyor General and as transmitted from the Home Government, and from the very unfair practices of some Surveyors in former times in setting the boundaries of Townships, and from the absence in many instances of enduring natural land marks, and from many Townships being uninhabited, no distinct remembrance being handed down as to the Boundaries of said uninhabited Townships—therefore the Commissioners appointed under said Boundary Act have not sufficient data to enable them to ascertain such boundaries, and that the only remedy which appears applicable to these inaccuracies, is the Survey of the whole Island; but that in the present circumstances of the Colony, and at this late period of the Session, the House of Assembly can see no mode of acting so justifiably and so safe as to suspend the operation of the Boundary Act.

Which was carried, 16 voting for it, and Messrs. Longworth, Maclean and Palmer against it.

The Bill to amend the Act relating to the admission of Barristers, Attorneys and Solicitors, was read a second time, when the further consideration thereof was postponed to an indefinite period.

SATURDAY, April 3.

Mr. Rae presented a Bill to suspend for a limited period the operation of the Boundary Act, which was received and read the first time.

The standing order being suspended, the said Bill was again read, and thereupon committed to a Committee of the whole House, and reported, without any amendment.

On the question for receiving the Report, the House divided:

Yeas, 12—Nays, Messrs. Thomson and Rae.

Mr. Beck reported the following Resolution from the Committee of the whole House, on the subject of Steam communication with Nova Scotia, &c.

WHEREAS, it appearing to the House of Assembly, that His Excellency the Lieutenant Governor, since the Resolutions of this House passed on the 4th March, 1841, relating to the procuring of a Steam-vessel, has not, up to the present period, been able to procure tenders for the furnishing of any Boat, of sufficient power and accommodations to perform the services required by the second of the said Resolutions:—Resolved, therefore, That it is expedient to authorize His Excellency to accept the services of the best and most efficient Steam boat that may be attainable, for the purpose of carrying the Government Mails of this Island during the summer of the present year, and so long therein as the navigation shall remain open; and in the event of no Boat being had before the 21st day of April, capable of performing the services required in the said second Resolution, that His Excellency then be humbly requested to dispense with the condition of running between Charlottetown and Miramichi, and accept the offer for any Steam-boat that to His Excellency may be considered sufficient for the aforesaid purposes, twice a week, between Charlottetown and Pictou, and once a week, or once a fortnight, between Pictou and Georgetown, at any sum not exceeding £350; and that the House, when in Supply, do grant the sum of £550, as agreed to in the Second Resolution, here-in referred to, that the same, or as much thereof as may be necessary, be at His Excellency's disposal for the aforesaid purposes.

Mr. Clark moved, as an amendment, that the following be adopted, instead of the foregoing Resolution:—

Whereas it does not appear that, as yet, an efficient Steam-boat has been offered to the Government, for the performance of the services required by the Resolutions of the 4th of March last:—Therefore, Resolved, That an humble Address be presented to His Excellency the Lieutenant Governor, respectfully requesting that he will be pleased to cause a Contract to be entered into, for the conveyance of the Mails, twice a week, between this Island and Nova Scotia, from the opening to the closing of the navigation, during the present year—the said Contract to be let to the person who may make the lowest offer for the same.

The original Resolution was carried, on the following division:—

Yeas, 12. Nays—Messrs. Clark, Rae, Gorman, Macneill, Fraser, 5.

The Bill for the encouragement of Education was read a third time, passed, and sent to the Council for concurrence.

MONDAY, April 5.

The Boundary Act amendment Bill was read the third time, passed, and sent to the Council.

Mr. Palmer reported a Bill for establishing a more effectual system of Police in Charlottetown, which was read the first time, and set down for a second reading on Tuesday.

A Message from His Excellency the Lieut. Governor.

Mr. Secretary Haviland, by command of His Excellency, delivered the following Message:

C. A. FITZ ROY, Lieutenant Governor.

The Lieutenant Governor lays before the House of Assembly, the copy of a Despatch from the Right Honorable Lord Sydenham, Governor General of these Provinces, in reply to an Address and Resolution of the House of Assembly, praying the Lieutenant Governor, to enter into communication with the Governor General, to ascertain how far the United States Government may be willing to contribute a portion of the funds necessary to defray the cost and maintenance of Light Houses on the coast of this Island.

Government House, 5th April, 1841.

SIR;

I have the honor to acknowledge the receipt of your Excellency's Despatch of the 27th ultimo, covering copies of

An Address and Resolution from the House of Assembly of Prince Edward Island, having in view an application, through me, to the United States Government, for assistance towards the construction of certain Light Houses on the coast of that Island.

In reply, I beg to acquaint your Excellency, that it appears to me inexpedient to make a communication of this nature to the Government of the United States, and I must therefore express my regret, that I cannot meet the wishes of the House of Assembly of Prince Edward Island in this matter.

I have, &c.

(Signed) SIDENHAM.

His Excellency Sir C. A. Fitz Roy, K. H.
Prince Edward Island.

The House went into Committee on the State of the Colony, when the proposed Joint Address to the Queen, on the subject of the Land Settlement question, was taken into consideration. The following Resolutions were reported from the Committee:

1. Whereas the Legislative Council have, by conference, submitted to this House, for its adoption, the draft of a Petition to Her Majesty, setting forth—"That if by the purchase of these lands from the Proprietors, they were again reinvested in the Crown, for the purpose of being again re-granted in small tracts to the tenantry and settlers thereon, it would be hailed by the inhabitants of this Island as the greatest boon which your Majesty could bestow upon them, and would, as your Petitioners conceive, be productive of great and permanent benefits to the Colony. The Council are, at the same time, aware, that this most desirable object cannot be attained without the advance in the first instance of a much larger sum of money than the Legislature of this Colony can command, nor without the free and voluntary consent of the several Proprietors to dispose of their lands, being first obtained."

Resolved, That were the tenants and occupants of land settled thereon, so as to secure to them and their descendants the improvements made upon the land at their cost and labour, it would be the greatest benefit which Her Majesty could bestow upon this Colony; but this Committee cannot, directly or indirectly, acknowledge, that the original Grantees, their heirs and assigns, have a good or valid title to the lands of this Island, when the conditions contained in their grants are not performed, or that the proprietors of such grants should take an undue advantage of any indulgence from the Crown (which indulgence is not founded on law or equity) to impose a high rent upon their fellow subjects for such lands, accompanied with conditions, evidently with a view to resume the land, together with the tenants' improvements, when it is cleared and brought into cultivation. That this Committee entertain a high opinion of the wisdom and justice of Her Majesty's Government, and that Her Majesty on being informed that the Proprietors are unreasonable in their demands, will not continue indulgences to enable them to oppress the greater portion of Her subjects who have cleared the land and improved this Colony. And as the Legislative Council has not shown that the Proprietors have any other claim to the lands but through the special favour and indulgence of Her Majesty's Predecessors, by withholding the appointment of a Court of Escheat—nor the reason why such favour and indulgence should be charged upon the inhabitants of this Colony—therefore, this Committee cannot recommend to the House to petition Her Majesty to negotiate for the purchase of such claims with proprietors who are not disposed to submit to an equitable arrangement, as provided for in a Bill passed by the House of Assembly in its last and present Sessions, intitled "An Act to authorize the Crown to purchase the Lands, and to regulate the settlement of the inhabitants, &c."

2. Whereas this Committee are led to believe that many of the tenantry, illiterate persons, have been constrained, through fear of distraint and ruinous law proceedings, to give Bonds or other obligations, the nature of which they did not understand, to the Proprietors and their Agents for arrears of rent, which they are unable to pay, and that were Her Majesty graciously pleased to grant any sum of money to purchase the lands from the Proprietors, as prayed for in the Petition of the Legislative Council, such purchase by the Crown would not secure a settlement to such Tenants, as the Proprietors or their Agents holding such bonds or obligations would in all probability, and might at any time recover the Lands again for the consideration stipulated in said bonds or obligations: Resolved, therefore, that there can be no hope of a settlement for tenants and occupants of land, but by an Act of the Colonial Legislature, or of the Imperial Parliament, similar in its provisions to the Bill passed by this House in its last and present Sessions, and rejected by the Legislative Council.

3. RESOLVED, That it be recommended to the House, to appoint a Committee to prepare and draw up amendments to be offered to the Petition sent down by the Legislative Council, for the adoption of the House of Assembly.

The Resolutions were all carried in the affirmative—

Yeas, 15. Nays, Messrs. Palmer, Hudson, Longworth, 3.

Mr. Hudson, from a Committee of the whole House, reported, that they had adopted the following Report:

Your Committee appointed to report on the best site of a Light House for the Harbour of Charlottetown, the least expensive mode for its construction, and the manner in which it shall be maintained; have, after obtaining every information on the subject, come to the opinion, that the Western Point of Governor's Island is the best site for its erection; and your Committee herewith respectfully submit a Plan of a cheap description of Light House, with an estimate of its probable expense, which they recommend for the adoption of the House; and also, that the House do provide for the amount required for its erection out of the moneys collected under the operation of the Light Duty Acts.

On the question for agreeing to the Report, the House divided:

Yeas, 15. Nays, Messrs. Macintosh, Fraser, Rae, 3.

Your Committee to whom was referred the several Petitions praying the House of Assembly to grant a sum of money to erect a Wharf or Hard at Minchin's Point, near the Ferry House, opposite Charlottetown, and to repair the said Ferry House, together with the several Estimates of the cost of the same, having had the said Petitions and Estimates under consideration, your Committee resolved to make a personal inspection of the site of the proposed Wharf or Hard, and of the Ferry House, which having done, and having maturely considered the subject matter of the said Petitions, your Committee beg leave to report, that the present Hard is situated in a Cove, and the outer end of it within the range of two points—that any Wharf erected in that situation must not only be extended but kept up in future for the whole length within the points, but besides that, the Channel of the Harbour, or such depth of water as will be required to suit the public accommodation, is at a much greater distance from the end of the present Hard than the necessary depth of water is from the proposed site at Minchin's Point, so called, showing that a Wharf or Hard at the latter place will be of most superior convenience to the public, and ultimately a great saving to the Colony. That from the inspection personally made by many members of this Committee, it appears, that the proposed Wharf

GOVERNMENT HOUSE, MONTREAL,
17th March, 1841.

SIR;
I have the honor to acknowledge the receipt of your Excellency's Despatch of the 27th ultimo, covering copies of