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NOVA SCOTIA.

HOUSE OF ASSEMBLY.

MONDAY, JAN. 6.

The Fisheries

The Hon. J. B. Uniacke, rose and said, that he had mentioned on a former day his intention to move for the appointment of a committee to take into consideration the state of the provincial fisheries. There had occurred during the last year the most flagrant instances of violation of the treaties between Great Britain and the United States, and an abuse of the privileges of Colonists, the extent of which would scarcely be believed if facts to convince were not abundant. Our fishermen had been subjected to the most barefaced and open aggressions; and one party in particular had been plundered of 800 or 1000 quintals of fish. On the coast of Labrador the Americans used the fisheries as though they were their own. If their aggressions were confined to that spot, the legislature might plead indifference, or ignorance of the true state of the matter; but so far from this being the case, the American fishermen had almost taken possession of Magdalen Islands, and had extended their aggressions and habits of plundering to the eastern shores of Nova Scotia and the Island of Cape Breton. It had become imperatively necessary, to have the boundaries of their right to fish around these colonies defined, and to have it determined whether they had a right to land on the Magdalen Islands or not. The home government had already acted upon this subject—they had given rules and regulations for limiting the approach of the Americans to the shores of Nova Scotia; but there were many other portions of British fishing ground in which the inhabitants of this province were as deeply interested as they were with the fisheries in the waters immediately surrounding them. The preservation of the Magdalen Island fisheries was of more importance to us than even our own, because upon them depended the herring fishery. It became, therefore, the inhabitants of British America to have their right to the fishery defined; and when so defined, to ask the aid of the mother country, and prosecute the most vigorous measures themselves, effectually to maintain them. During the last year, by the activity of one small vessel in the service several seizures had been made. The sister province of New Brunswick had already made overtures to enter into a conjoint system of defence, by which the fisheries in the western parts of this province and of the bay of Fundy, might be protected. It was unjust that the protection of these should fall on either province alone, because both shared the benefit of them. One of the objects of the committee he would move for, would be to communicate with the proper authorities in New Brunswick, and make arrangements for an efficient system of joint defence. The committee would no doubt collect and throw out a vast deal of information. One observation he would make relative to the means of defence was, that small vessels had proved to be much better than the large unwieldy men of war which were sent out by the home government for our defence. The Americans had commonly eluded the large heavy armed ships, while one small cruiser had captured and brought into port eight or ten American vessels which had been caught committing depredations. A few more light well armed cruisers, with vigilant commanders, would be of infinitely more service than as many long speeches in the house of assembly, or long articles in the popular periodicals. The small vessels had been already proved, for they had performed their work, while the depredators could slide from one side of the bay to the other and elude the men of war. The hon. gentleman concluded by moving the following resolution:

Resolved—That a committee be appointed to enquire into the state of the fisheries, and the privileges of the people of the province to resort to fishing grounds, and to investigate the encroachments of foreigners thereon, and the violation of subsisting treaties, and the laws of this province, with power to send for persons and papers, and to correspond through the legitimate channels with the executive governments

of the adjoining colonies, and such persons as they may think fit, with a view of obtaining an united system for protecting that valuable resource. Also to report some effectual means for protecting the trade and revenue of the country, by the employment of small armed vessels or otherwise.

Mr. Morton was very glad that the hon. gentleman from Cape Breton had taken up the subject to which his resolution referred; and he hoped the committee which he now felt assured would be chosen, would propose such measures as would settle the question for years to come. He did not profess to be acquainted with the eastern parts of the province; but respecting the aggressions of the Americans to the westward, he could say that they came up the bay of Fundy in twenty or twenty-five vessels at a time. They not only availed themselves of the fisheries, but actually landed and robbed the inhabitants of their property. In fishing, they drove the provincial fishermen off the grounds, and threw the garbage or offal overboard, which effectually destroyed the fishery, so that our fishermen had not been able to take any fish, where formerly they were a profitable employment. Many of them were armed; and, threatening the shore people from approaching their own seines and nets, deliberately robbed them of the catch. The provincial fishermen had no armed vessels, or the state of things would be different. The names of the vessels or their captains were not known, and therefore no complaint could be made to the American government. The hon. and learned gentleman from Cape Breton had truly remarked, that small vessels would be best to suppress the robberies.—The American craft easily escaped the vigilance of the men of war. He (Mr. M.) was of opinion that if some small vessels, or perhaps a steam boat was armed, and stationed in the bay of Fundy and basin of Minas, an effectual stop would be put to all aggression.

Mr. Goudge.—Does the hon. gentleman know that a steam boat would destroy the fish as well as the Americans?

Mr. Morton was not aware of that. He thought a steam boat would be most certain and active in its operations. At all events some kind of armed boats must be employed; for besides the aggressions on our fisheries, smuggling was carried on to an unlimited extent. From his own knowledge alone, he felt satisfied that not one half of the revenue was paid in the western part of the province; and as we were likely to have more free ports by which the trade and revenue of the province would increase, there was an imperative demand for a proper armed force to protect both the fisheries and the revenue; which latter instead of amounting annually to fifty or sixty thousand pounds, would, he felt satisfied, average £100,000. He could conceive of no measure of more importance to the province, than those projected for the protection of its trade, fisheries, and revenue.

Mr. Huntingdon made some observations, but in too low a tone to be distinctly heard. We understood him to say that he would make no objection to protecting the trade and fisheries, nor to anything else that would benefit the country; but he had reason to know that the question of the fisheries had been taken up by her Majesty's government, and that negotiations were progressing, and investigations were being made, with the government of the United States, and he (Mr. H.) would be sorry to see anything go abroad reflecting upon the inhabitants of that country, which would have the effect of embarrassing the measure in progress in behalf of the colonists.

Mr. Young said that the aggressions of American fishermen were more flagrant last year than they had been before. They had during the past summer, landed on an island inhabited by British subjects, not far from the coast of Cape Breton, took forcible possession of it, plundered the inhabitants, burned their houses, and ordered them off, and forced them to go! Such were the facts, and this was our position. The house was now to consider whether this state of things should continue. The home government had already had the subject under consideration; and had sent us aid, and would send us more if required. But he felt firmly convinced that in order effectually to redress these evils, this and the adjoining provinces must act for themselves. He agreed with members who had previously spoken respecting the better adoption of small cruisers for this service; and he should advise the house with the sanction of the government, to have fitted out and well appointed, some active armed cruisers, to seize every one of these marauders and confiscate all belonging to them. He therefore, most cordially concurred in the proposition for appointing a committee, but hoped it would not be a large one. The facts stated were notorious, and the opinions of the house and the country well known. The report of a former committee, though containing a vast body of information, was too vague in its recommendations for suppressing aggressions on our fisheries and illicit trade. A small committee would act with most decision; and he hoped it would submit such a report as would define precisely the best description and the proper amount of force necessary for the protection of our revenue and fisheries.

The resolution passed, and Messrs. Uniacke, Morton, Young, Huntingdon and Forrestal were chosen for the committee.

Mr. Huntingdon moved a resolution for a special committee to wait upon his Excellency the Lieut. Governor, and request him to call upon the proper officers, for a statement of all the monies paid from the treasury during the last ten years, for damage to lands through roads had been opened; the statement to specify the sums for each county, and the names of persons to whom paid. The house went into committee on bills, and passed by Mr. McKim's criminal counsel bill.

Mr. Young informed the speaker and the house, that he was now prepared to lay upon the table of the house the report of the proceedings of the delegates, sent by that house, to confer with her Majesty's secretary of state for the colonies; which document he read in his place, referring, as he proceeded, to various letters and papers connected therewith.

The report was laid on the table of the house, and 500 copies of it ordered to be printed.

Mr. Bell then moved the following resolution, which was agreed to by the house—
Resolved—That the thanks of the house be justly due and be therefore given to Herbert Huntingdon and Wm. Young, Esqrs. for the diligence and ability displayed by them during their mission to England, and for the zeal with which they have pressed upon the attention of her Majesty's government, the various important matters entrusted to their charge.

General Education
Mr. Howe moved for a committee to whom all

petitions and other papers which were now, or which should hereafter come before the House on the subject of education should be referred, which committee should take into consideration the education of the country, and devise measures for extending and supporting it, either by a plan of general assessment or otherwise.

Some exception was taken to the proposition for assessment, when
The Hon. J. B. Uniacke said that he should like to see the last words of the resolution "assessment or otherwise," stand as they were. They would then go forth to the public, and the House would soon find by petition whether the plan of assessment for education met with the approval of the country or not. He himself was satisfied that they would have to come to that system at last. He had been in the House for several years, during which the subject had been agitated among the members, and he had heard no conclusive objection urged against it. He was ready to take his share of the responsibility to pass a law this session, to carry that principle into effect.

Mr. Young perfectly concurred with the hon. and learned gentleman who had just spoken.

Mr. Huntingdon was willing to fall in with members in a plan for general assessment, if the money assessed was to be under the control of the people; but he would never agree to put more money in the hands of the local government to expend, to enable them to educate children just as they pleased.

The resolution passed.

Hon. Mr. Uniacke suggested that the resolution should be printed.
Mr. Howe wished the resolution not to be printed, but that the house would take up the subject at an early day, and when the discussions went forth the public would have more materials to found their opinions upon. This was a subject which the house and the country were all interested in, and which party influence need not touch.

The hon. Mr. Dewolf thought it scarcely worth while to refer the resolution to a committee. The house ought to take up the subject themselves. If the resolution were printed, they would soon have conflicting opinions from all parts of the country respecting the principle of assessment. It was for the house to pass such a law as they felt convinced would advance the interests of education. He had always been an advocate for general taxation to provide means to educate the people. How that principle ought to be carried out, either for raising the money or expending it, he had not yet made up his mind, except that it should be equally shared by all. He wished an assessment law to pass, and he was willing to take his share of the responsibility of passing it.

The speaker said that there would perhaps be no necessity for printing the resolution by order of the house. The very discussion which was now occurring would in all probability go abroad in the papers, and give more information of the sentiments of the house than any resolution could do.

Mr. Young suggested that the committee on education should report to the house two or three leading propositions, which could be taken up and discussed separately, and the views of the house upon them given to the country. A permanent system of education ought to be established. The inhabitants of some parts of the country were incredibly deficient in education. In his own country, upon an average three out of four in the county of Inverness were ignorant of the very elements of learning—even of the alphabet. As one, he was extremely desirous that the assessment principle should be adopted; he was willing to bear his part of taxation, and his part of the responsibility connected with passing the law.

Mr. Dickson concurred in the principle of assessment, and moved that the committee of education for the last year be a committee under the resolution which had passed.

Mr. Bell would like to have on the committee some of the gentlemen who were conversant with the laws in force respecting education. He would like to nominate the hon. Mr. Uniacke or Mr. Young.

The Speaker was glad to perceive from the expressions of approval of the principle of assessment which had fallen from members generally, that a liberal spirit was springing up in the country for the support of the public interests. Hitherto scarcely anything could be done without an application for money from the public treasury, whence all monies have hitherto been drawn to encourage and extend education. He was convinced that the resources of the country would never be developed without an extension of the same liberal spirit.—He had himself laboured in the work of educating the people, and he was willing still to assist with labor and his property, those who were not able to educate their own children. He would make every man do the same—in fact every man ought to consider it his duty to contribute for the education of those children who, as the representatives and successors of the present population, were to give Nova Scotia its future character.

Mr. Lewis expressed doubts as to whether the majority of the population concurred in the principle of assessment. He had made enquiries as to how the principle was to be carried out, but could never obtain a satisfactory answer.

Mr. Howe said that the hon. Member for Cumberland would perceive that in the details lay all the difficulty. Nearly all concurred with the principle, but few could agree upon a system for acting upon it. To a large portion of the population assessment would not at first be agreeable, therefore he would recommend that when a law were passed, it should be fixed for ten years, that the people, after having had proper opportunity to perceive its effects would estimate its benefits.

Mr. Smith was disposed to agree to assessment under proper limitations, but to raise the whole sum required for an improved system of education by assessment he thought would be too great a burden.

Mr. Forrestal agreed with the closing remark of the gentleman who had just sat down; but thought the fears of the gentleman from Cumberland (Mr. Lewis) were premature. He (Mr. F.) thought that the people of the Country ought to be called upon to educate paupers as well as maintain them—for the instilling into them of moral principle and the cultivation of their intellectual powers, were of as much importance as providing for their subsistence.

Mr. Huntingdon said that assessments ought to be carried out by each section of the country calling a meeting to assess themselves. The assessment principle would have this good effect—all would send their children when they knew they had to pay whether they sent them or not.

Mr. Dickson's motion for continuing the old committee was agreed to.

Mr. McKim rose and said he wished to call the attention of the house to a law for making the lands of absentees liable for the repair of roads and bridges which he said had not been acted upon. He stated that he knew of persons in the county he had the honor to represent, who held extensive tracts of wild land, for which they did not pay a sixpence towards the improvement of the country, neither would they sell to those who wished to purchase with a view of settling on them; but retained all that they might eventually derive every benefit from the improvements of the poor settlers around them, by whose sole exertions the roads were opened and the wild lands thereby made valuable. He wished some measures adopted by which these evils would be remedied, and asked the House for leave to bring in a Bill for that purpose.

FOR THE SENTINEL.

Remarks on the Courts, &c. of N. Brunswick.
No. 1.

MR. EDITOR,

One of the chief advantages resulting to mankind from society, is the protection which it affords. This is obtained in every well-regulated community by Courts of Law, which are constituted legitimately for no other purpose than to be the means of protection, and the medium through which justice shall flow to nourish and secure the rights of every individual. But as these Courts are composed of men, who are possessed of the like passions and prejudices which attach to human nature, society should take great precautions that there shall be sufficient qualifications, and restraints, imposed upon them, so as to prevent tyranny and abuse, and secure the result for which legal tribunals are constituted. The wisdom and devotion exhibited by the people of England in the construction of their Courts afford a noble example, which sheds a lustre over their history truly enviable. They by their exertions enjoy at the present time, the happy condition of having legal tribunals which protect life, liberty and property, without the pernicious influence of individual will or caprice. It cannot, I think, be devoid of interest, to enquire how far this is the condition of the people of this Province?

Permit me, therefore, through the columns of your valuable paper, to make a few observations (as leisure will permit,) upon the peculiar formation of our Courts, and incidentally ask a candid and discerning public if it be not highly expedient to adopt the institutions of England further than we do at the present time. In pursuing the following remarks, I am led by no motive which I would be ashamed to avow. As a citizen, I can have no interest or desire to lessen the character or weaken the influence of our Courts. It is indeed the highest interest of us all to maintain those institutions by which law is administered, but it is also his interest and his duty to promote and encourage improvement and reform whenever these are necessary.

With these preliminary remarks I will proceed to notice, first:—

The Interior Court of Common Pleas. This Court is an extraordinary compound. It presents this singular anomaly: Judges ignorant of the law which they profess to administer, and the Clerk—the chief officer of the Court—engaged and interested to assist one party in a suit against another!

Can British subjects look at this picture of a Court without painful emotion, or the conviction of the necessity of improvement?
But let me not be misunderstood by your readers. While I assert that the judges are ignorant of law—which they confessedly are—I do not, however, intend to convey an imputation against them, or wish to wound their feelings; their ignorance is their misfortune not their crime. Persons unlearned, have been appointed to preside in this Court because our country was too poor to pay gentlemen skilled in law to accept the office.

This has grown out of the poverty of this Province, while in a state of infancy; but it is a question how far this reason will apply to justify the appointments at the present time. In Nova Scotia, where the Provincial funds are less than in this Province, the Judges in the Common Pleas are selected from the Bar, and are gentlemen of known legal ability, and are also paid for their services. If the like system cannot be adopted with us, it would be truly wise, to abolish the inferior Court altogether, and allow the Supreme Court to do all the business of the country, which it is quite competent to do, without any additional expence whatever. I shall recur to this subject in a future letter, and will now remark upon the Clerk of this Court.

The Clerk, who is the principal actor in the inferior Court, is a practising Attorney in the Court. He is hired by one suitor to assist him against another!—was there ever such conduct as this allowed in England? An officer of a public Court, a hired partisan having an interest at variance with his duty! Would Englishmen or their just Government permit it? Most certainly not! Then how does it happen so anti-British a practice could have crept into this Province, and be so long continued? This evil, Mr. Editor, like the appointments of the Judges, originated in this Province in the days of her youth, and has been suffered to continue because it promoted the interest of the "Family Compact."

In the first settlement of this Country, and for some years after, litigation was not known among the hardy and honest inhabitants. They cared not who was clerk of a Court, or whether there existed any Court at all. Hence this was a favourable time for an attorney to procure the office, and we find the practice engendered at that time, and it has been continued ever since, the office being handed down as an heirloom from father to son, or the next relatives, or friends!

During this period the Governors of our Province have usually been gentlemen who belong to the military profession, and whose views and inclinations directed their attention to other objects, than those which would produce improvement in Courts of law. The other branches of the Legislature have not had their attention called to the evil, and therefore it can be no source of wonder or surprise, that the wrong has remained unredressed.

I would observe here, that it appears to be the opinion of our Legislature that it is justified in not removing a grievance, because the people have not petitioned against it and pointed it out. This opinion is apparently in accordance

with the modern practice pursued in legislation in England, but it is truly absurd and ridiculous to be entertained in this Province. The powerful struggle which is continually kept up between the great parties in that country makes it necessary, (at least party men in England think it so,) for the people to express their opinions upon questions which are agitated by parties there and often for party purposes—and hence the people petition, and every intimidation is resorted to, to carry a favourite measure. I shall not attempt to justify or condemn the practice in England, but I do deny that the necessity exists in this Province for the people to petition to induce legislation, or that the same motives to respect the remonstrance of the people in the minds of our Legislators, exist as in England, and for this plain reason: because there is not equal responsibility to the people.

It is highly desirable, that our Legislature should remove an evil quietly, and decide every question upon its merit, without exciting the passions and prejudices of the people upon subjects which are not generally understood. However, the people of this Province have not been aware of the impropriety of an attorney holding the office of clerk, or without doubt they would have removed all excuse from our Legislature, by petitioning every branch of our Government. The evil has either not been understood by the people, or they have become familiarized with its effects.

A slave loaded with chains becomes in time reconciled with his situation, and so likewise the people may have become satisfied with a continuance of this grievance, and have therefore, not petitioned against it. But, be this as it may, whether the people complain or not, our Legislature would have been justified in removing the evil, if not upon principle, yet upon the precedent afforded by the Legislature of Nova Scotia. Attorneys were clerks in that Province at one time, exactly as is now permitted in this; but the Legislature of Nova Scotia, be it said to its honor, passed a statute and removed the deformity, without the enlightening influence of a petition from the people.

I have digressed to make these observations upon the reason why the evil has been continued in this Province, which in candour I feel bound principally to ascribe to the influence of those persons who hold the office. I think this conclusion will be supported by a reference to the composition of our House of Assembly, ever since the formation of that body. The clerks of the inferior Court have very many of them, enjoyed seats in the Legislature; and it is not in human nature to expect that individuals will legislate against their own interests. But to return to the Clerk. By the office he holds, he issues all writs, executions, &c. and has charge of all the papers of the court. He also files papers, grants rules, and best of all, he takes his and client's costs—how and when he pleases!

If it should so happen that his client loses a cause or has costs to pay, how easily the clerk can favour his employer. In this manner is he er? The answer is too apparent. "No other lawyer can practice without "paying court" to him. He has a decided advantage over other attorneys who practise, and therefore over their clients.

They have to pay costs to him, for which if he was doing the same business he would have nothing to pay. They may lose money by poor clients, but he never can, to the same extent; and, consequently no attorney can compete with him upon even terms, unless he could enter into partnership with him, and then divide the profits! But this I would recommend to the high minded lawyer as the *dernier resort* to procure a "fairfield!"

If an attorney who is clerk be possessed of money-making propensities who can controul his avarice? Ignorant suitors cannot do it, for law and the costs thereof are mysteries, which even a sheriff will fail to explain to them? Nor will judges exercise control: for they know nothing of the actions which are brought unless they happen to be defended, and then it is to be supposed those judges are capable of retaining a lawyer, provided they had the will? In as much as the clerk pays little or no costs, is it not possible for him to speculate upon the terror which a suit produces, to compel a party to pay any supposed demand? Again, the clerk is always a gainer in every suit; and may not this afford a motive for the clerk to promote petty litigation, and use the writ of our Lady the Queen, for tyrannical purposes? I will not pursue these probable evil consequences which may originate in the present practice, for it must be evident to every discerning mind that there exist most serious objections, against allowing an attorney to hold the office. There is indeed "poison in the cup," and it must be admitted that any system which is bad in principle cannot be good in practice. I have before me a rule passed by the Hon. Judges of the Supreme Court, which regulates the conduct &c. of the clerk of that Court, but which also illustrates the impropriety of the practice pursued in the inferior Court.—This rule is the highest legal opinion to be had, as I conceive, in the Province, and I therefore transcribe a copy which is as follows:

Hilary Term, 7 Will. IV. A. D. 1837.

"Whereas it is deemed improper, that any clerk in the office of the Pleas of this Court, should act as an agent of any attorney with or without remuneration or gratuity. It is ordered that henceforth no attorney of this court, do employ any such clerk as his agent in any suit or matter pending in this Court, or in the transaction of any business in the office either of the Clerk of the Crown or Clerk of the Pleas, and that the Clerk of the Pleas do not allow or suffer any clerk or other person employed in his office to act as agent under any pretence whatsoever."

This Mr. Editor is a noble rule, it will operate as a safeguard to justice, and prevent imposition. Why should not a similar rule be adopted respecting the clerk in the inferior Court? It is stated in the preamble, that it is improper that any clerk in the court should act as an agent of any attorney with or without reward.—If this proposition be true,—then how much more improper it is for a clerk to be the principal or attorney and have a direct interest adverse to his duty: which is exactly the situation of the clerk of the inferior Court.—Upon comparing the two Courts it will appear more necessary to have a disinterested officer in the inferior Court than in the Supreme.—The one has Judges unacquainted with their duty, and that of their officers; while the other has gentlemen presiding in the Court, who are learned in the Law, and by experience and observation are conversant with the motives and springs of human action, and are therefore capable of restraining their officers.

Comparisons are said to be odious, and I will not pursue a further parallel between those