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AND CONTAINS,

The Decisions of the Executive, and Notices of *Sales of Crown Lands.*

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The Debates in the Legislative Council and House of Assembly.

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CHANCERY PROCEEDINGS AT HALIFAX, November, 16.

His Honor the Master of the Rolls, on opening the Court on Monday, addressed the Bar at some length, with reference to the proceedings in the Council Chamber on Thursday last. His Honor, in the course of his address, observed, that a new discovery had lately been made; but whether it was that of the *philosopher's stone* or a *mare's nest*, he would not pretend to say. He desired the Bar to understand distinctly, that the Court in which he presided was the Court of Chancery, and not the Rolls Court; that he knew not, and never heard of, such a Court as the Rolls Court existing in this Province as a Court distinct from the high Court of Chancery, or elsewhere out of England; that he was Judge of the Court of Chancery, and his directions must be obeyed. He read several letters and acts of Assembly, upon which he commented, and said it was plain that the Chancellor could advise with no other person but the Master of the Rolls, except he was sick or absent from the Province. That there were many cases in P. William's reports, where the Lord Chancellor was attended by the Judges, and in some it was mentioned the order in which they sat, namely—the Chief Justice of the King's Bench on the right of the Lord Chancellor, and the other Judges in the order they sat in the Exchequer Chamber, but in modern times they did not sit with the Chancellor.

His Honor said, he highly respected the Judges of the Supreme Court, in their proper office, and should, when it was necessary, send to them to try an issue of fact, or to obtain their opinion upon a question of law. His Honor also observed, that Counsel should always act properly and respectfully towards the Court; and whether as a Judge sitting by himself, or with his Excellency the Chancellor, Counsel ought to behave with propriety. That the Counsel who argued the case on Thursday ought to have attended to his directions, and addressed his arguments to the only point which was for consideration; and in not doing so, his conduct was ungentlemanlike and disrespectful in the extreme. That he begged the bar to understand that no papers were to be taken or sent to the Chancellor, but were to be left with the Registrar, and that he would take care to enforce his directions against any gentleman who disobeyed them. That the Counsel who argued on Thursday, who spoke of every thing but the point for consideration, had talked of repeating what had been done, undeterred by the terrors of fine and imprisonment; but that whatever might be the age or standing at the Bar, or talents or rank of any gentleman, he should punish him and all others who disobeyed that order, which he said required no formal signature, and which he again declared as the rule of the Court. The Master of the Rolls made many further observations, which we regret we cannot report at length in our present number, for want of space and time; we hope to be enabled to furnish a full and just account of His Honor's remarks in a future number.

HIGH COURT OF CHANCERY.

Discussion of an Important Question relating to the extent of the power and jurisdiction of the Master of the Rolls, and to the Rules governing Appeals from his Decisions.

CAUSE:—CRAIG vs. ROSS.

(Concluded.)

The Honorable Alexander Stewart continued:—Since the colony has been settled, uninterrupted access has been had to the Chancellor of the Province. Is it for the first time to be limitted and restrained at the commencement of his Excellency's administration! He trusted not. All he wanted was the decision of his Excellency; if adverse, which he could not permit himself to anticipate for an instant, then the law would be settled, and it would be for the Legislature to apply an appropriate remedy; but it could surely be neither disrespectful nor contemptuous to seek, by all legitimate means, for an opportunity of respectfully combatting an opinion of the Judge which he deemed erroneous

The 6th sect. of the act of 1833 provides "that the Master of the Rolls in all cases, *except on appeals from his decisions, and hearing thereon before the Chancellor*, shall be, and be deemed the responsible adviser and Judge of the said Chancery, and shall *sign all rules, orders and decrees*, made by him therein; and the signature of the Chancellor, *except in the cases aforesaid*, shall not be necessary to the validity of any such rules and orders in any cause, or to any decree made in the absence of the Chancellor from Halifax:—Provided that the enrolment of all decrees shall be signed by the Chancellor, to whom the same shall be presented to be signed and enrolled." *Except on appeals:* what mean these words? He is to be adviser and Judge *except* on appeals and hearings thereon. The proposition of his Honor is, that *upon appeals* and hearings thereon, he is to be the *only adviser*. But before the mere language of the statute is considered, it would be well to revert to the state of the Chancery Court and of the appellate tribunals of the Province, and to endeavour to ascertain what were the probable intentions of the Legislature in passing this act.

Unquestionably a High Court of appeal from the decisions of the Supreme Court and the Equity Court, is much to be desired, if an efficient one can be procured; and probably at some (it was to be hoped not distant) day, the lower Colonies might, by joint contributions, and combined or Imperial legislation, obtain one for all. It was a subject which (the learned Counsel said he knew) had long occupied the attention of some of the most eminent lawyers of New Brunswick, as well as this colony. But setting aside the expense of it, there were many practical difficulties in the way: Where was it to hold its sittings? where should its records be kept? by what Bar should it be attended? how should its decrees be enforced? of what number of members should the Court be composed? were its decisions to be final? An appeal to the eminent Jurists of England could not, in very important cases at least, be taken from British subjects. And if our own unassisted efforts were to be considered, and these were all that were regarded by the Provincial Legislature in 1833; may its members not have said, We will not constitute three new Judges, (for no sane man would think of committing all the power in the Province to one) at an expense of £3,000 per annum; for, to ubtain proper men, they must be adequately paid. We have seen the Judges of the Supreme Court assisting the Chancellor. Let them still do so upon appeals from the decision of the Master of the Rolls; it is imposing upon those Judges no greater duties than they have been accustomed to perform. We will give to the Master of the Rolls (and the then Master had been a favourite member of the Assembly, and a long time as speaker,) additional power. He shall do what the Master in England cannot do. He shall authenticate by his signature the orders he may make. In the Rolls he shall be the Judge responsible for its decrees. He shall advise the Chancellor as regards matters between the suitors, but he shall not have the power of a despot. There shall be appeals from his decrees, with these he shall not interfere. We will not wrest the Great Seal from the hands in which it has been placed by the Sovereign; (the representative of his Sovereign would not have been true to his trust if he had assented to such an act). He shall still be the Chancellor, sign the enrollments of decrees, and be the Judge upon appeals. In both branches of the Legislature there were several of our best lawyers, they would not be very likely to assent to an act which would drive every barrister, of proper spirit and independence, from the presence of a Judge whose nod might be fate, and decree ruin to them. Why, the materials of a Bar, for such a court, are not, it was to be hoped, to be found in Nova Scotia. They must be imported from abroad; perhaps the Celestial Empire might furnish advocates who had a suitable education under the tuition of the Commissioner Lin. It may indeed have occurred to the Legislature, that Judges of the common law courts are not the most eligible tribunal to appeal to from the decisions of an Equity Judge, but it was the best they had without incurring an expence beyond their means, to say nothing of the inclinations of the Legislature. But what, after all, is the amount of that objection? From the common law Bar in England before Lord Cottenham's appointment, were taken Lords Brougham, Lyndhurst, Eldon, Erskine, Thurlow and Hardwicke; from our own Bar were taken the late and the present Master of the Rolls to fill the Equity judgment seats.—But, in truth, to use a common expression, they were in this country men of all work. To-day in Chancery as barristers; to-morrow in the ecclesiastical court as proctors; next in the Supreme Court as Attornies, having all a mouthful of legal learning, if they have not a meal.

But the Lord Chancellor of England frequently calls the Judges of the common law courts to assist him. If *there*, where the complex and various questions which continually occupy the minds of the Equity Judges, common law Judges are fit advisers for the Chancellor, why not more emphatically *here?* He knew of no such extraordinary abstruseness or difficulty (and he had practised as extensively as any, in the courts of this as well as of those of the adjoining colony) in investigating a question of equity—any more than one of intricacy at common law. Who is to present such questions to the Master of the Rolls except those whose principal practice is at the common law Bar? Such, then, must have been some of the considerations which influenced the minds of the members of the Legislature in 1833, when they passed the act referred to, and could they have better expressed their intententions? To make a working court of chancery, and to leave to the suitor his domestic appellate tribunal as he had it in England, (and as they had seen him in the enjoyment of it in this country, for the act was passed shortly after the cause of Higgins and Gordon had been heard,) appear to have been the leading objects of the Assembly, and they could not have more clearly expressed themselves. (Mr. S. here read the 6th section again.) Take the practice and see how it confirms the view he contended for. From 1838, when it passed, until the 19th of October last, a period of seven years intervening, no such objectionable order was made. In Wentworth vs. Fleigher it was not done, in the order nisi in the present case nothing objectionable was inserted, although the order was moved for by the express direction of the Master of the Rolls before himself, when he Mr. S. considered the appeal should have been allowed, as of course, leaving to this court to consider of the regularity of the proceedings subsequent to presenting the petition of appeal. In the order of the 20th April, nothing is said of any adadviser. On the 10th of October, his honor considers that his Excellency must be advised by himself, but that he may have other advisers also. On the 9th November, his honor declares that his Excellency can have no other advisers. The orders of the 20th April, 1840, and of the 19th October, are signed by his honor only? that of the 9th of November by Lord Falkland AND the Master of the Rolls; that of his Excellency of the 4th November, though prepared and advised by his honor, and relating to a petition in this same appeal, is signed by his Excellency only. Which of all these opinions and proceedings is the correct one? As Master of the Rolls, his honor signs orders under the provincial statute of 1833, and that *excepts appeals*. Whence the authority for making and signing the two first orders and the last, or for omitting to sign that of the 4th November, 1840, and for adding his signature to that of his Excellency on the last order? Can the Master of the Rolls in England sign orders in lunacy? Yet that officer can and has done so here; why? because he is authorized by the act of Assembly. In truth, the Legislature, by the act of 1833, constituted the Rolls Court in great measure distinct from, but not wholly independent of the high court of Chancery—separating the Chancellor, who was generally a military man, from the Rolls court in a more distinct manner than the Lord Chancellor is separated from it in England.

Original jurisdiction, except in cases where the Master of the Rolls may be a party, or otherwise interested, is taken from the Chancellor and conferred upon the Master of the Rolls—where he is so interested, the maxim "nemo judex in propria causa" provides sufficiently for the exception. But whether this view of the statute be correct or not, and, for the sake of argument, conceding that the original jurisdiction (not being taken away by express words or necessary implication) still remains, and that the Master of the Rolls sits in the Rolls court only for the Chancellor; yet *when* his decisions are appealed from; he ceses to have the power or any portion of the power [which is given to him by the statute] of advising the Chancellor, and without that statute he has none whatever, no more than the Master of the Rolls in England has to advise the Lord Chancllor.

If his Honor's opinion be correct, that none can advise in chancery but himself—that is, not in the Rolls, because that he is there the Judge is conceeded by all, and on appeals for reasons which are not yet apparent,—then are the judgments in Read vs. Seamans, and others, invalid, because coram non judice, for *they* were not advised by his Honor

Comparing the courts of common law with that of the Rolls, in reference to the subject of appeals, there are many distinctions in favor of the former. There are four minds in the Supreme court; in the Rolls there is but one.—The former travel and adminster justice under the view of jurors, who must assist in that administration, and, returning to the capital, their opinions delivered on circuits are again openly canvassed by the leading members of the Bar, and discussed amongst themselves. Thus there is a very considerable, though, it must be conceded, not so thorough and efficient a cheek, as a high court of appeal would impose upon them. But, in chancery, if the position contentended for be established, there is none whatever; for as to an appeal to the Privy council in England, it takes three or four years to get a decision, and as many hundred pounds to prosecute, while the appellant may languish in prison during an investigation, which though it terminate in his favour, may leave him nothing but ruin! Such is the practice, such the law, and if it were possible to give strength to the reasoning urged, it is to be found in a bill, which, in the year of 1339 passed both branches of the Legislature without objection, but was reserved by Sir Colon Campbell. It would ill become him (the learned counsel) to say a single word reflecting upon his administration, but he might be allowed to lament, as he had always lamented, that the bill referred to had not passed into law. He had not the honor of being a member of the Executive Council, and did not know the reasons which induced his Excellency to withhold his assent. But one fact was incontrovertible, that the House of Assembly and council in 1839, in passing this act to regulate the practice on appeals in the court of chancery, never doubted but that such appellate jurisdiction was in existence. That, none, in or out of the Legislature; disputed, yet no appeal in fact exists, unless it be an appeal from the Master of the Rolls to himself only, and that compulsory upon the suitor. By this bill it was proposed to diminish the amount of the deposit to £10; to impose on the appellant the necessity of employing, upon every appeal, additional council, and to make many other useful regulations to prevent vexatious and harrassing appeals. It also authorized the Governor to commission two or more Judges of the Supreme Court to hear such appeals without his Excellency being present. Perhaps his Excellency may have considered this provision as derogating from his authority as Chancellor; but if so, what does the proposition under discussion imply, but that his authority is entirely gone, and that he is a nonentity in the court of which he holds the broad seal? It has been said that appeals to the House of Lords are substantially to the Lord Chancellor; but if he be not a peer, he cannot vote thereon, and he may not be Chancellor when the cause appealed from his decision is heard. There are now two retired Chancellors, if not more, amongst the peers, and they and the law lords form a great body of the legal knowledge, which, besides the presiding Chancellor, always exists in that House. The case of Small vs. Atwood, as well as that already referred to, affords a striking proof that the Chancellor's decisions are not always upheld by the Lords. *There*, notwithstanding a speech of Lord Lyndhurst in favour of his own decree, so eloquent, argumentative, and ingenious, that Lord Brougham desired an adjournment till next day, that its effect might pass away, that decree was reversed!

The attention of his Excellency was next requested to the 1st and 2d sections of the act of 1833. By the latter, it is enacted, that, until the Judges shall make other rules, the practice of the High Court of Chancery in England shall prevail; by the former they are authorized to make such rules. Except the few general rules of December, 1833, made and signed by the then presiding Chancellor and the late Master of the Rolls, none other have been made under this act; at least none such have been made and signed by the Chancellor and present Master of the Rolls, that he (Mr. S.) was aware of. For the High Court of Chancery, either by his own inherent power, or by this statute, as he shall think fit, it is apprehended the Chancellor, in all matters relating to appeals, may make the necessary regulations; For the Rolls Court, he and the Master of the Rolls may make rules, and as regards these, although they require the signature of his Excellency the Chancellor to give them validity, yet, if they interfere not with the parties right of appeal, it is apprehended (as the responsibility is with the Master of the Rolls,) the signature of the Chancellor is *of course;* but not one of these should prescribe that motions shall be made or petitions relating to appeals in the Rolls Court. But none at all, either by the Chancellor alone, or by him and the Master of the Rolls conjointly, have yet been promulgated; consequently the English practice, which was in force on the 20th of April, 1833, regulates the practice here, (unless, indeed, it be argued that the changing practice of the High Court of Chancery in England, under new orders, as its alterations and additions are brought out every fortnight by steam, shall govern us.) By the English practice, *no deposit* is required upon an appeal petition in an interlocutory proceeding, as the order of the 19th October, referred to in his Excellency's order of the 4th November, undoubtedly was; consequently, (the learned counsel said,) he humbly presumed that the amount deposited would be ordered to be immediately returned to Mr. Ross. The application would at all events excite the sympathy of his Excellency, for it seemed to be hard that he should be compelled to pay an additional £20, for permission to argue a question in which he had no very direct interest, although he might have some feeling; but which it was of the last importance to the court itself, and to the practitioners and suitors therein, should be finally put at rest; and that the more especially, if it should be found that the order originally complained of was in whole or in part irregular or void. For what purpose is a deposit paid at all? Clearly to guard the party who prevails in the court below against a vexatious and harrassing appeal. And, by the terms of the order under which a deposit is paid, unless his Excellency should otherwise direct, the whole amount is paid to the appellate by way of forfeit, in addition to his costs. That, of itself, is sufficiently onerous; and the learned counsel apprehended that Mr. Robie's order, which merely required security to be given for the costs incurred, was more applicable to the circumstances of the country than the English rule; and as Mr. Robie's rule was made after the act of 1833, he (Mr. S.) contended that the deposit could only be regarded, in the spirit of that rule, as security for the costs to be incurred. But as regards the last deposit, to protect whom was that required? not the plantiff Craig, for he could have no interest in the question; and on that ground alone, the learned counsel contended, it ought not to have been required, and would be returned by his Excellency's order; and it was competent to his Excellency to vary or modify the order his Honor had made.—At present £40 were impounded in court belonging to the petitioner, and when it was considered that £20 was the whole sum paid in England, and the relative value of money in this Province was regarded, he (Mr. S.) thought that was quite enough to enable him to obtain—which was all he asked—*a real* appeal from the decree of the Master of the Rolls, and, if it was confirmed, he would submit as became a good and loyal subject.

The learned Counsel thanked his Excellency for the patient attention with which he was honoured. The question whether one man (however gifted in mind or unblemished his integrity was, or however impartial and unprejudiced, and even unimpassioned, he might be,) should have the uncontrolled power of punishing, by fine and imprisonment, offences against himself, was, unconnected with all the other considerations of this case, one of the deepest moment to the people of this Province. His Excellency himself, distinguished by noble birth and rank and high office, both as regarded his private and public conduct and character, if either were subjected to the foulest libel that malice or rancorous hate could concoct, would be compelled to resort to a Jury for their vindication. Should a humbler subject be denied an appeal from one mind to another? The learned Counsel implored his Excellency to take this eppertunity of making such rules regulating appeals, as would give ease and security to the suitors in the Court, and safety to the gentlemen of the Bar who had the honour of practising before him. He concluded by removing for relief, agreeably to the prayer of the defendent's petition, and generally and especially, that the £20 last paid into the Registrar's hands, under his Excellency's order, should be returned to the petitioner, Mr. Ross.

At the conclusion of Mr. Stewarts's argument, his Honor the Master of the Rolls advised the Chancellor to adjourn the Court until to-morrow—but his Excellency, after consulting the Judges, directed the Counsel on the other side to proceed.

James F. Gray, Esq. Counsel for the plantiff, accordingly addressed his Excellency very shortly in reply. He disclaimed, on the part of his client, any particular interest in the question so elaborately and comprehensively spoken on by the Hon. Mr. Stewart; although, perhaps distinctions might be drawn, and reasons urged, which would weaken and controvert some of the principles he had attempted to sustain. With the greater parts of his argument however, and in many of his positions, he (Mr. G.) entirely concurred. After a few further observations, the learned Counsel concluded by saying, that, under the peculiar circumstances of this case, he should leave it entirely in the hands of his Excellency.

James Stewart, Esq. in reply, made a few observations, which the approaching darkness prevented us from taking down.

After the argument was finished, the Judges told His Excellency they would give them their opinions in writing if his Excellency desired it, to which His Excellency replied that such was his desire.

Just as the court was about closing, his Lordship the Chief Justice addressed his Excellency and said, that when he entered, he had observed the Master of the Rolls sitting in the seat always assigned to his predecessors and himself, when called to assist the Chancellor in the high court of Chancery, namely, on the right of His Excellency; and that, as the Master of the Rolls had forgotten to tender it to him on his entrance or afterwards, His Lordship felt it due to his office to state to His Excellency that although he should have great pleasure in assisting the Chancellor as his predecessors had always done when he should be requested to do so, that when he again attended he should require that the seat on the right of His Excellency, as due to his office and rank, should be assigned to him. His Lordship also observed that he had not thought prudent before to mention this as it might have interrupted the proceedings in the cause. His Excellency explained to His Lordship that the taking the seat by the Master of the Rolls was quite accidental and inadvertent, and indeed, at his instance, and the Master of the Rolls so assured His Lordship.

The Master of the Rolls was then about to direct the court to be adjourned until Monday, the next Rolls court day, when the Hon. Mr. Stewart rose, and addressing His Excellency, said that he did not consider himself to be in the Rolls court, but in the High court of Chancery, The latter court was then postponed until His Excellency should appoint a further day of which due notice should be given, and afterwards the Rolls court was adjourned by order of His Honor to Monday next.

The above is as far as we could ascertain, at the distance *we sat*, what passed. We shall attend at the future sitting of the high court of Chancery and report what further occurs in this important and interesting matter.

NOTE OF AUTHORITIES CITED BY MR STEAWART.

English Authorites.—Newland, Grant, and Smith's Chancery Practice; Chancery commissioners' Report, in 1828,—pages, 37, 38, 113, 114, and 115, 1st Brown's Parliamentary case, 90;—Lady Falkland's case; 5th Vezey Reports 725;—8th Vez. 561;—10, Vez. 246;—13th Vez. 423: 457;—15th Vez. 133; 16 Vez. 212; 18th Vez. 452; 19 Vez. 550;—2 Ruseell, 163;—2 Mylne and Keen 280, 284 and others.

Nova Scotia Authorities.—3 Vol Prov. Law 285; 4 do do do 232; King vs Lawson; rehearing before Chancellor; Bill passed in 1838, by Council and Assembly, to regulate the practice on appeals in Chancery not assented to, by Sir Colin Campbell.

Cases heard by Sir P. Maitland and Sir Colin Campbell as Chancellors assisted by the Judges—1831, Higgins vs Gorden et al. an *Appeal* from the M. R.;—Chief Justice 1835, Read vs Seaman—original hearing—Judge Bliss; 1835, Murison, vs. Reynolds,—same—Chief Justice; 1836, Collins vs Tremain—same—Judge Hill, 1838, Wentworth vs Fleigher, *appeal* from the Master of the Rolls,—Chief Justice and Judge Bliss.

From the London Spectator.

Parliamentary abolition of the Cathedral Service.

Some time has now elapsed since we drew the public attention to the state of our Cathedral Choirs—the enrichment of Deans and Chapters at their expense, the miserable decay into which they had fallen, and the final blow which had been levelled at their existence by the late act of Parliament, framed by the Bishop of London, and sanctioned by our legislators, noble and plebian. We exposed a history of fraud, violence, and spoliation, which probably the records of no civil corporation can parallel, attaching to the dignified (!) clergy of the Church of England. Rampant, noisy, and bullying, as the champions of that Church now are, it might have been expected that such a charge would have aroused one of them to attempt its defence. We dealt in no vague and general declamation, but confined ourselves to plain facts, almost without note or comment. These remain unimpeached and uncontradicted.

The universal silence of our contemporaries, daily, weekly, or monthly, is, primarily, to be ascribed to their inability to arraign the accuracy of our statements, and their natural reluctance to enter upon a controversy from which disgrace only could result. No body of men, having abundant means of defence through the press, would submit in silence to definite charges of fraud and peculation—of the violation of public duties, to the disregard of oaths—if defence were possible. But, as far as we know, we have neither helpers nor opponents in this controversy. Our Whig contemporaries are dumb, for Lords Melbourne and John Russell are sponsors or wet-nurses to the Bishop of London's bantling. Mute are also the Tory oracles, in deference to his Lordship's will. Peachum and Lockit have found it expedient to shake hands.

Let it not be hence inferred that the subject has excited no interest. We have the best means of knowing that the reverse is the truth. The public are in possession of facts of which proper use will be made in due time; and though the silence of the English press is universal, we are glad to see that the subject has engaged the attention of the most widely-circulated journal in Europe, the *Allgemeine Zeitung*. In the number of the 13th September, the article which appeared in the *Spectator* was translated, with a commentary, of which the following is a portion:

"Thus it seems that the Bishop of London is not content with the havoc which he made with Æschylus, but he must now turn round upon Purcell, the great English composer for the Church, and lay his barbarian hands upon him. When Purcell was the organist of Westminster Abbey, English church music is said to have attained its highest rank. From the middle of the last century it declined; and the glees and canons of that country are all that remains of the English school of vocal harmony. It is almost a *tabula rasa;* and the destruction which the Bishop of London has effected may accomplish final good. He has made a void which the English will now endeavour to fill up; for it musical taste is really making any progress in Britain, it must necessarily reach and include church music—the highest elevation of the art—its starting point, and also its point of culmination. The church music of England has long had only a nominal existence, and this sham life the Bishop has terminated. If there is any appetite for the art in that country, this void—now become real—must be filled up. That he has drawn upon himself the merited indignation of the musical public, is apparent from a recent article in the *Spectator*, where a worthy castigation has been inflicted upon him; and the Chapters are also enraged at his attack upon their patronage and property. As long as these clerical incorporations were left in quiet possession of their spoil, they were silent; but a higher Church power has now laid its hand upon them. A spirit of bitter enmity has thus been engendered; and if the Chapters wish to regain their former position and power, they must make common cause with the public, and return to an honest administration of their trusts. The Bishops, too, will do well to reflect, that to stir up