HOUSE OF ASSEMBLY.

SATURDAY, Feb. 14.

The House went in Committee of the Whole on a Bill to regulate Parish Officers; Mr. Palmer in the Chair.

Mr. SIMONDS who brought in the Bill explained the manner in which it had originated.—It had been forwarded to him by the Bench of Magistrates composing the Session for the City and County of St. John; the design being to protect the public against the frauds which might be perpetrated by public officers if not restrained by some such law as the present. The first section only went to compel them to give bonds for the proper discharge of their duties. The second section to which probably some objection might be made, authorized the Sessions to give 10 days notice to public officers, to render their accounts and make payments of such sums as they might have collected; and in the event of refusing to do so, empowered the Magistrates to issue their warrant and commit the offender or offenders to the County gaol, there to remain till the sums so collected should be paid over. Should the present Bill pass, he (Mr. S.) was convinced that it would insure the proper transaction of business, and prevent confusion.

Mr. PARTELOW had no objection to the first section of the Bill; indeed it was necessary that every Public Officer should give bonds for the faithful discharge of his duty, but he would object to the second section which was most arbitrary in its character, giving as it did, power to the Sessions to be prosecutor, Witness, Jury, Judge, and Executioner. By the operation of such a Law the Magistrates had only to say that a Public Officer owed them money, and then, without the possibility of being allowed to make a defence, the unhappy individual must be at once incarcerated, and remain in prison without bail or mainprise. He (Mr. P.) could easily imagine whence and for what cause the present Bill originated.—He need not mention the name of the framer, only to say that it came from Saint John, and the Committee well knew who presided over Session in that City. He (Mr. P.) disliked making allusions to particular cases but he could not avoid observing that had such an act been in operation the last three years, he himself, although perfectly innocent of the charges preferred against him and always counting an honest and an impartial investigation, would have been subject to its arbitrary and unjust provisions, and perhaps have been prevented from arranging satisfactorily his defence. The same remark would apply to the late Overseer of the Poor at Saint John, who held office and gave great satisfaction to the Public for a number of years, but who having gone out of office on the first May, 1843, was indicted at the June Session following for not rendering his accounts although he desired a short time, a few days, to complete them, and this took place when he had a relation lying dead in his house. He (Mr. P.) considered this one of the greatest acts of oppression that had ever been inflicted by a Public body, for he felt satisfied that the officer alluded to would have furnished his accounts in a short time after the June Session, if he had been dealt with as every British subject was entitled to—but he considered that after such a harsh measure, held up as he was to public odium, that he could not obtain justice so long as the present Mayor was continued in office. If He (Mr. P.) had objections to the second section, they would apply with tenfold force to the third, which gave the Sessions the power to enforce its provisions against Public Affairs *not now in office*, giving them in part an exporte facto Law. This monstrous requirement he was satisfied could not and would not be sustained in the Halls of any British Legislature.

His Honor the SPEAKER said that the first section might entail much inconvenience on several persons, as it compelled Parish Officers without discrimination to give heavy bonds; although the Bonds when given, might be considered ample protection to the public. The 2nd section was law already, for the Magistrates may now if they wish, imprison a delinquent: but the 3d Section which is *retroactive*, is also unconstitutional; inasmuch as it assumes the punishment of individuals for matters which transpired prior to the enactment of the law itself. Then another objection was that it would make the Sessions their own Judge, Jury and Executioner; for while in an ordinary case a prisoner might be relieved by a Habeus Corpus, here, on an imaginary offence one or two Magistrates might issue their warrant, and send a man to prison without even the resources of giving bail, or claiming a trial by Jury. Among Magistrates as well as other Bodies there would be occasional instances of private feelings and prejudices; and the better way would be to refuse power which might be made so liable to abuse.

Hon. Mr. SIMONDS remarked that there might be party feelings and prejudices; but such should never be entertained or referred to in the present Committee, which had only a simple duty to perform. The cases put by his Honor the Speaker and the hon. member from St. John (Mr. Partelow) could never occur—no one could be brought up on an imaginary offence; since any one paying out money must be supposed to take receipts, and thus secure himself from annoyance. With regard to the retrospective clause in the Bill, if the Committee did not think it constitutional he was willing to strike it out; as his only object was to make the law a good one. Provincial Officers were compelled to render their accounts, and he saw no reason why Parish Officers should not be subjected to the same rule, for the protection of the people.

Hon. Mr. WILMOT agreed with the principle of the Bill; but it went too far in its details; it gave power to the Sessions which would be liable to the greatest abuse; and it must be remembered that there were bonds required already. In the case of Banks when thousands were at stake, the security which was given to the Crown was deemed quite enough; and why should an additional penalty be inflicted on a petty Parish Officer, or why should the Sessions claim more power than the Crown? Persons composing the Sessions, might like other people get excited, and under the influence of excitement they might do wrong; but the safest way would be, not to invest them with the power. The former part of the Bill, he would be willing to suppert; but he should at the same time feel it his duty to oppose the latter.

Mr. END observed that the result of the whole affair as far as concerned the hon. member from St. John (Mr. Partelow) would have been, that had the law now contemplated been in operation some time ago, that gentleman instead of being able to acquit himself before the public, would have been in a dungeon, under the arbitrary operation of the law; a law, which however well it might be calculated for the Latitude of Algiers, was scarcely fit for New Brunswick, where he hoped never to see such a measure passed, as would give the power of the Jury and the Executioner to the same party.—He (Mr. E.) would be willing to make persons entrusted with public monies give as large bonds as might be required, and he would also compel them to make payments as often as the Sessions would see fit, but he never would give to any body of men, the power to incarcerate an individual thus placing it beyond his power to make a defence. He (Mr. E.) was afraid that the present Bill had been brought in, on review of the failure of their claim against Mr. Partelow; knowing as they did, that had their been such a law, that individual could not have escaped them—he would have no means of procuring evidence to establish his innocence.

Mr. BROWN thought the Committee must be ignorant of the subject under discussion; for there was a law already in force, compelling collectors of public money to give bonds: and that law was enacted only last Session. But apart from that, there was another law, fully as stringent as that now contemplated by the section; authorizing the punishment of imprisonment in the case of delinquent of imprisonment in the case of delinquent Parish Officers; and so, if all that had now been said against the principle of the Bill, were correct, that law should at once be repeated. In the case of Commissioners of Highways, this case was different; for they, by the law, could not be imprisoned, only fined five pounds.—If Officers of this description were made liable to give bonds, it might be hard to find men to serve; for their duties were laborious, and their wages or Commission frequently very small. By the same rule it would be hard to make Overseers of the Poor, Trustees of Schools, and pound keepers, give Bonds, as some of them got little, and others nothing, for their pains. The fact was, that such a law, imposing bonds, would place it out of the power of the authorities to find any one to serve. He could not see either, why the County Treasurer was left out of the operation of the New Bill, as the office was a responsible one, involving large responsibilities. He hoped that the Learned Member (Mr. End.) would have amended rather than opposed the present Bill as a clause should have been inserted for *swearing* those Public Officers, and it appears to him (Mr. B.) that the old law was very defective on that subject.

Mr. SIMONDS thought it the first time he had ever heard that due accountability in Public Officers, however stringent it might be made, was a dangerous principle: and taking the view of the subject, that Public Officers are *not* to be made accountable—he would ask what individual could be found in any Parish in the Province, to render themselves security for the proper conduct of such Officers: and he would ask, if a penalty were not to be enforced, whether the first Section, imposing bonds would be of any use? (Here the hon. member mentioned the case of a gentleman at the Cape of Good Hope, who had proved delinquent in large sums of public money; and whose sentence extended to 14 years imprisonment It would surely not be thought unconstitutional to make all those who refuse to make payments, or render accounts of public monies, liable to punishment. It could not surely be thought wrong in a British Colony, to protect the people; and if as stated by the hon. member (Mr. Brown) that a Law to a certain extent existed on this subject already, so much the better—this would comprehend the rest. With respect to the Commissioners of Highways, they were the very persons who should be rendered accountable, for they received large amounts of public money. He did not think it his duty to contend inch by inch about the Bill; but he considered it common sense; and would consider it highly ridiculous that the individuals giving Bonds should be held responsible, while the principals were permitted to escape with impunity. In conclusion, he would say that if a majority of the Committee came to a conclusion that there was any thing unjust or arbitrary in the Bill he was willing that all such objections should be removed by striking out any thing which might be so construed.

Col. M'LEOD would object to the general application of the Bill, as he was sure that in several parishes where the officers receive only the small amount of thirty or forty shillings per annum, or some such trifle, it would be ridiculous to think they'd be so foolish as to put themselves to the heavy inconvenience of giving Bonds. There would he thought, be no harm in extending the provisions of the Bill to St. John, where large amounts were frequently paid into the hands of public officers, but it would be out of the question to apply such a law to the respective counties and parishes of the Province.

Mr. PAYNE thought the observations of the learned member from Gloucester, were altogether uncalled for. The Bill now before the Committee had been read in the Sessions; and had not been introduced for the accomplishment of any private object whatever. The truth was, the sessions found themselves in a bad position, not having, as they thought, power to secure the public property. They wanted the equal right to sue and be sued; and he (Mr. P.) was sure there would not be the least objection to strike out any thing which might be thought unconstitutional in the Bill. There was a law already, which authorized the imprisonment of certain public delinquents; and the object in this Bill was to apply it more generally, by bringing it down to the case of all Parish Officers; and to this reasonable application, founded as it was, in the principle of public and equal justice, he (Mr. Payne) could see no possible objection.

Mr. END had listened attentively to the arguments brought by the friends of the Bill, and had examined the clause in reference to those "who may in future serve" but he could see no reason in the whole demand, and he knew well that it was not necessary to cram the body of a man into Jail in order to make his bonds liable for the payment of his debts.—Every one who signed a bond, was liable for its amount. He (Mr. End) when he had first heard of the Bill, felt inclined to give it his assistance by way of amendment; but he now saw it so bad throughout, that he thought it imprudent to identify his improvements with it. The hon. member said he had introduced this Bill, because he felt anxious to facilitate public justice; but the love of Justice was the only cause which induced himself and others to oppose it. The public wishe for protection, and he was anxious they should have it. He therefore would move the postponement of the Bill for six months.

Mr. HANINGTON thought the personal allusions which had been made during the course of the debate, were quite unnecessary: nor did he see what the Government of *Algiers* had to do with that of New Brunswick. He had learned that the Bill then before the Committee was framed by the learned and hon. recorder for the City of St. John; and he felt inclined to believe that the Learned Member from Gloucester had not even read it. As a General Bill, he (Mr. H.) could not give his assent to it; for it included the Commissioners of Highways and other persons who did not receive as much as five shillings a year for their services! If however the application of the Bill were limited to St. John, where a great deal of money was paid over to public officers; he (Mr H.) would have no objection to support it. With regard to the retrospective clause of the Bill; he thought it unjust, and supposed it would not receive the consent of the Committee; but as the Bill had been read in the Sessions, and had received the assent of the Grand Jury for the City and County of St. John, he thought it ought to be given to that locality. It was strange that while the high officers of the Law in St. John had agreed in the importance and necessity of this Bill, it was met by such opposition in the House; "but perhaps" (said the hon. member) "we are wiser." It was unnecessary, however, to waste words; if the House were determined to throw out the Bill; but he would say that if the Committee wished to restrict the Bill to St. John, he would not have the least objection to its passing. In St. John they were liable to large assessments; which circumstance frequently left great sums of money in the hands of Collectors and therefore the security contemplated was required—otherwise, those Collectors might—and who could blame them—prove unwilling to make their payments. Was it indeed the object, to screen Public Officers? If so, his (Mr. Hanington's) object would be to make them as liable as possible.

Mr. WARK enquired if the Bill had been read in Session.—"It was." Then he (Mr. Wark,) would not object to its passing for the City and County of St. John.

Mr. BROWN said that with regard to collectors, such a law was quite unnecessary; for in plain English, there was such a law in being already; and persons collecting (Constables) and refusing to pay over, were liable by the old law, to be sent to prison without Bail or mainprize; thus the very demand made in the Bill, turned out to be the law of the land already. (Here Mr. Brown read extracts from certain acts of Parliament, to prove his position.)—With respect to including the inferior officers, he saw no necessity for that clause in the Bill; but if the City of St. John required it, he thought it should be granted them.

Mr. SIMONDS expressed himself highly pleased, after all which had been said, that it was now found out the very object contemplated in the Bill, and so frequently called *unconstitutional*—was the law of the land already. Thus the authorities just quoted by the hon. member from Charlotte (Mr. Brown) fully proved that there was nothing arbitrary in this new Bill, and that a free people would at all times demand and obtain protection.

Mr. PARTELOW said, in substance, that the Foreman of the Grand Jury who had presented the late County Treasurer (himself) to the Court, had been placed, as one of the Grand Jury, on a Committee—after he had become a magistrate—to investigate and report upon the accounts of that officer.

Mr. SIMONDS rejoined.—It was not this Bill would give them power; for they had all that power already: besides, they were to sit as judges on the accounts, and upon these accounts the individual must be judged. And who would say that a person retaining public money was not a proper object for punishment? or that the public should not be protected in such cases? With regard to the unhappy differences which had recently agitated the people of St. John they should now be buried in oblivion—lost sight of forever: and he thought that the very passing of the present Bill would have an excellent effect in that respect, as it would prevent the future recurrence of such unpleasant circumstances. He would wish to hear from the hon. member of the Executive, (hon. Mr. Hazen) to know whether as a lawyer, he thought the present Bill unconstitutional.

Hon. Mr. HAZEN said he was sorry to hear any personal observations; and it was a pity that the Bill could not be discussed without any such allusions. The Bill should be simply considered as a law to regulate and controul Parish Officers; and as such should be regarded as extremely useful, and he (Mr. H.) would feel sorry to see it rejected.—The only question was, should its provisions be extended to the Province at large; or should a Collector of Rates be made accountable, while a Parish Officer would be excused. The law now in being authorized the imprisonment of Collectors of Rates, but he (Mr. H.) thought it ought also extend to Overseers of the Poor. The Bill he said had been read in Session and was so far unobjectionable; he would therefore vote for the first section of the Bill, and the second should also receive his support, if modified.

Mr. PARTELOW briefly remarked that if the Bill were divested of its general bearing and made to apply solely to the case of an individual retaining public money—that is refusing to pay it—he would have no objection to give his consent to it.

Mr. BOTSFORD also spoke briefly.—Since he said, the hon. mover of the Bill was willing to withdraw its general application to the Country and to limit it solely to St. John, he (Mr. Botsford) would have no objection to support it.—He was not willing to give such power to the General Sessions as to allow them in their own persons to inflict such punishment. The proper method would be, to give them authority to make such a refractory individual render his accounts, or in the event of his refusing, to do so to hand him over to a third power for punishment.

Hon. Mr. HAZEN said it would be of no use to demand the man's accounts—if there were no power to punish.—The mere figures on paper would be of no service.

Mr. BOTSFORD. "Yes, his Bonds could be sued."

Mr. WARK said, that the subject required further investigation; and he would therefore suggest that it be deferred to the next Session; when it might be taken up and treated as its importance demanded. (Here the subject was pretty well exhausted: but a few remarks from several individuals followed; after which the Question was taken on several amendments as they came up; when it was finally passed divested of its retrospective character, and limited to the Latitude of St. John.)

Mr. WILMOT presented a Petition from a Mr. Holdernes, a Mill Owner in Richibucto, praying an investigation might be made into some land transactions which he had with the Executive, in which he considered himself agrieved: upon which a conversation followed, in the course of which Mr. Simonds stated that it would be scarcely delicate in the House of Assembly to take the subject out of the hands of the Executive; and several others declared that such intervention was perfectly correct. The result was, that the Petition was referred to a Select Committee.

MONDAY, February 16th.

MILL RESERVES.

Mr. WILMOT offered a resolution for an address to the Lieut. Governor, requesting him to lay before the House all papers under his control relating to disputed Mill Reserves, on the Richibucto River, granted to Mr. Desbrisay, and claimed by Mr. Holderness. The Hon. Member observed that this course had been rendered necessary from the Committee appointed to investigate the subject, having been deterred for want of proper information.

Mr. SIMONDS thought it was quite unnecessary to adopt this course. (We here understood the Hon. Member to say that he was acquainted with all the circumstances of the case, and was willing to afford the Committee all the information in his power.)

Mr. END, as one of the Committee, said he was very much obliged to the Hon. Member.

COUNTY OF SAINT JOHN, CONTINGENT EXPENSES.

The House resolved itself into a Committee of the Whole on a Bill to enable the Magistrates of the County of St. John to assess the inhabitants for the County Contingencies.

Mr. SIMONDS stated that this was a local Bill. A petition had also been received, praying for it to pass, with this difference: that the petition prayed for a permanent Bill, making provision for an annual assessment, but it had been considered more advisable to make the Bill before them temporary, and merely to meet the contingencies of the current year; and this he thought was preferable to the other plan. The amount estimated for the present year was £850. Hon. Members would, of course, take the amount into their consideration, and limit it to what they thought proper. There were other members—some of his colleagues—who were better acquainted with the subject than he was; and he should say nothing further upon the subject until he had heard from them.

Mr. PARTELOW had no objection to the Bill, but thought the sum too high. There were two items to which he should object; these were £50 for auditing the accounts, and £60 for the salary of the Clerk. An arrangement had already been made by which the Common Clerk of St. John was to have a salary of £500 for his services, in lieu of all fees, and as the duties referred to in this Bill belonged to that officer, and he considered him already well paid, he should object to that item. As to the £50 for auditing the accounts, there was no law in existence to authorize the appointment of an auditor; therefore without going into the question whether such an officer was necessary or not, he should also object to that item, because there was no law for it. These were the offensive parts of the Bill, and the only objections he should start.

Mr. W. H. STREET did not concur with the Hon. Member who had last spoken. If there was a compromise made with the Clerk, and he did not pocket the fees himself, they were collected all the same, and went towards the funds of the Corporation. The Bill the Hon. Member had reference to did not pass the Council last year, and if it should pass both branches this year, it would make no difference to the sessions. Much had been said about the large salary enjoyed by the Common Clerk, but he (Mr. Street) was well acquainted with the duties of that office, which were very arduous, and they should remember that the gentleman who held that office could not perform all the duties himself, but was obliged to employ assistant Clerks. He was prepared to support the Bill, especially as it was but for one year.—The accounts would all be audited by the Grand Jury, and there would be no possibility for the Sessions to misappropriate any part of the sum. If the Bill should not pass it would place the Sessions in a very difficult position; he therefore hoped it would be sustained, and the blank filled up with the sum prayed for

Mr. END said this was a local Bill, and according to the rules of the House, all local bills must be certified by the Clerk of the Peace that they have been read in Session, otherwise that House could not entertain them. Now as it did not appear that this Bill had been read at the Sessions, he thought they should first know whether it was properly before them, before they proceeded further with it, If it should be decided that the Bill was properly before them, he should have no objection to its passing, provided a certain amendment was introduced. The House would recollect that they had passed, that very morning, a Bill introduced by the Hon. and learned Member from Restigouche,—brought in first as a local Bill, but which the House had made general—authorizing the Magistrates of the different Counties to asses to a certain amount, to pay off the debts of the respective Counties; but the Hon. Member (Mr. Simonds) who introduced *this* Bill, had upon *that* occasion insisted upon a clause that the assessment should first be recommended by the Grand Jury. Since, then, the Hon. Member could not trust the Magistrates of the Northern part of the Province, why should he expect the House to trust the Magistrates of St. John? especially in a County where the Grand Jury were much more intelligent than in other Counties. Why did not the Hon. Member introduce the clause in this Bill he urged so earnestly this morning? He hoped he would yet do so,—throw the onus of the measure upon the Grand Jury, and let them say whether the assessment be required or not; for if that principle would apply to a general Bill, it was doubly applicable to this. But he would again press the question, is this a local Bill, and if it is, has it been read in sessions, or is it properly before them? He would like to hear the opinion of the Hon. Speaker upon this point.

Hon. SPEAKER explained: this Bill was first moved to be brought in as a continuation of an old Bill, and as such was not required to be read in Sessions; but the Hon. mover had afterwards thought it would be better to bring it in as a new Bill.

Mr. END,—"Is it right, then—is it properly before the House?"

Hon. SPEAKER,—"The House may, if it think proper, dispense with the rule in this instance.

Mr. SIMONDS offered a similar explanation as that just given by the Hon. Speaker. In reference to the amount, he thought the £50 for auditing might as well be saved. There were Members of the Session quite capable of auditing the accounts, and it was the general custom to appoint two or three of the Magistrates to perform this duty, which was usually accomplished in two or three evenings. As to the clause alluded to by the Hon. Member from Gloucester, providing that no assessment be made until recommended by the Grand Jury, he was not opposed to it, and if any Hon. Member chose to move it he would go for it cheerfully; but as he had brought in the Bill, drawn up by another person, he did not think it was his duty to *move* any amendment. In reference to what had fallen from his hon. colleague about the £60 for the Clerk, it was a matter which claimed the consideration of the Committee; but it was his opinion that the sum was fair and just, for although the same person held another office, the duties of this office must be discharged, and whoever did it should be paid for it. However, he was willing in this case to submit to the opinion of one who was much more regular in his attendance at the Session than himself, and therefore was more intimately acquainted with these matters.

Mr. PAYNE entered into a full exposition of the County affairs. He then said that the Magistrates of St. John did not do as certain Magistrates of other Counties did: allow the accounts to accumulate year after year until they were obliged to come before that House for a Bill to pay off the County debt; but they met their accounts, audited them, and squared up every year. But their contingencies—which they had no funds to meet—were heavy; for instance, there was wood for the Gaol, food for the prisoners, &c., these expenses all came out of the County, although the public lands were all in the hands of the Corporation. They had lately made some important reductions in in the expenditure: among other things they had entered into a compromise with the Sheriff, by which his fees were reduced. As regards the Clerk of the Peace it was his opinion that whoever performed the duties of that office must be paid; and he considered the money well earned. He did not think the item for auditing was necessary, and was, therefore, prepared to go for £800.

Mr. END was now convinced that the Bill was properly before the Committee, and therefore waived that objection But he hoped the Committee would deal the same with St John as they did with the Bill which came from the North and in order to test Hon. Members' sincerity he should move that the following clause be added. (Here the Hon. Member read a clause to the effect that the Grand Jury should recommend the assessment before the Sessions should have power to assess.)

Hon. Mr. HAZEN wished the opinion of the Committee to be taken by putting the question for sustaining the first section. It was a local Bill, and he did not know why the Hon. Member for Gloucester should trouble his head about it.

Mr. END would tell the Hon. Member; it was because an Hon. Member for the County St. John, who had introduced this Bill, had just troubled himself about a Bill which came from the North. Besides, that Hon. Member's arguments upon that occasion to show why the matter should first be submitted to the Grand Jury were unanswerable, they were so luminous that his (Mr. End's) previous conceptions were all prostrated. (Laughter.) Now, then, since St. John can boast of the most intelligent Grand Jury in the Province why not apply the same principle to the Bill now before them?

Mr. PARTELOW said there was a material difference between the Bill the Hon. Member had reference to, and the Bill now before them. That was a permanent Bill—a Bill to enable the Sessions to levy assesments year after year; but this is a temporary Bill, for one year only. He would go for striking out the items he had already mentioned, but would oppose the motion of the Hon. Member for Gloucester as he did not wish to see the sessions controlled in this matter by the Grand Jury.

Mr. SIMONDS was sorry to hear his Hon. Colleague's objection; for his own part he considered the more checks the better, and thought the proviso good. The Grand Juries of St. John were composed of intelligent men, to whom he was quite willing the question should be submitted. He moved that the question be now taken upon the first section, and then they could consider the amount.

Mr. END felt highly gratified to hear the Hon. Member consent to the proviso; the people of St. John had now a fair chance of experiencing the blessings of Responsible Government. He hoped the Committee would not have it said that in other Counties the Grand Juries must be the first to recommend an assessment, and not allow the same privileges to the Grand Jury of St. John,—he hoped they would not thus pass a vote of censure upon the gentlemen who compose the Grand Juries of St. John.

Mr. JORDAN would oppose the amending clause. It was