The Gleaner:
AND
NORTHUMBERLAND SCHEDIASMA.

VOLUME II.] "Nec aranearum sane textus ideo melior, quia ex se fila gignunt nec noster vilior quia ex alienis libamus ut apes." No. 30.

MIRAMICHI, TUESDAY MORNING, APRIL 5, 1831.

THE GLEANER.

AMERICA.

New-Brunswick.

HOUSE OF ASSEMBLY, FREDERICTON;

Tuesday, March 15.

JUDGES' EXPENCES.

According to notice, Mr Weldon this day moved for the commitment of the Bill to provide for the circuit expences of the Judges; and it was accordingly committed.—Mr. Smith in the Chair.

The debate on this Bill occupied the greater part of the day, and would require almost half a dozen reporters, to transcribe the whole, in the interim between the rising and sitting of the House. It gave rise to a long and irrelevant discussion, respecting the conduct of Mr. Simonds some years ago, with regard to the respective rights and privileges of the Council and the House of Assembly; some Hon. Members charging Mr S. with having on that occasion advocated principles different from those he now maintains. This charge the Hon. Member unequivocally and positively denied; and the arguments on the question occupied much time, both during and subsequent to the consideration of the bill, until it was at length relinquished at the suggestion of Mr. Speaker.—We must endeavour, therefore, to give as concise a compendium of the arguments on the main point as possible; their extreme extent rendering a thorough transcript impossible.

Mr Weldon observed, that there existed a necessity for circuit courts throughout the Province; their could be no doubt on the minds of the Committee on that point. If, then, there was a necessity for them, additional duties were imposed on the Judges, which required from them additional expences. Whenever the House imposed additional duties on any public officer, it should also provide for the attendant expences. If a Judge was required to travel throughout the country, he should do so in a manner suitable to his station in life. As to the Judges' present salaries, he (Mr. W.) believed that when they had been originally fixed they had reference only to holding of Courts in Fredericton; and the Judges therefore received no salaries for holding Circuit Courts. The Bill introduced in 1826 gave them something like a guinea a day for their travelling expences: which he thought not any too large a sum for a Judge to receive. He could not think that a Judge, travelling the Circuit, could be called on to pay his expences from his own private purse; all such expences should be defrayed at the public charge. As to the Judges holding other than judicial stations, that was not now the question before the House; although it had been referred to the other day, and, as he (Mr W) thought, improperly so. If the Committee should be of opinion that the Judges should not hold such other situations, the more dignified way to proceed would be, by bringing the matter under the consideration of His Majesty's Government at home.—When such a question should come before the House, it would be quite time enough to consider it; but whenever the House should go into Committee on the subject, he (Mr W.) would be against the measure; because he did not think the country at present at all prepared for so important an alteration of its constitution. As to the expences of the Clerks of the Circuit Court, it appeared absolutely necessary to provide for them; otherwise they would fall on a few individuals alone; the suitors themselves must pay them. Circuit Courts were a great benefit to the country. They brought justice nearer to every man's door than could otherwise be the case. Previous to the first passing of this act, the heavy charges for the Circuit Clerk's travelling expences almost amounted to a denial of justice in many parts of the country. If this bill should now fall it would be a great injury to the country. It might not effect York county, wherein all the Courts were situated; or St. John which was so near to them; but in the remote parts of the country, it would very seriously affect the community As to the contemplated reform in the whole law, when that measure should be brought forward, he (Mr W.) would go heartily with it; but till then the present bill must be continued. He would propose two years for its duration; and he trusted the Committee would allow it to pass for two or three years under present circumstances. Probably, in the course of next session, if it should be found expedient to repeal it, in consequence of any general alteration, it might be so done.

Mr Simonds said, that as it appeared Mr Weldon thought it necessary to continue the act at present, because the Judges were not sufficiently paid, he (Mr S.) would like to get information on that point. He might probably be of the same opinion, if he knew what they now get. He would like to know what they got from the casual revenue, from fees, &c.

Mr. Partelow did not consider that information of material consequence as to the passing of the bill. What the salaries of the Judges were, was not the question. It was, whether Circuit Courts were necessary, and whether the Judges were bound by law to travel for the purpose of holding these Courts. If they were not bound to do so, it was necessary to provide some salary to pay their travelling charges. The salary now was about, [we could not hear the sum named,] which he (Mr P.) trusted would not be considered more than a compensation for their services, or than sufficient to maintain the dignity of their station, even if they did not travel the Circuits. There was an absolute necessity for Circuit Courts, to bring justice to every man's door, and provision, was, therefore, necessary for their support. What provision, was matter for the Committee to determine. He (Mr P.) believed the whole amount hitherto allowed the Judges for their travelling expences had never been drawn. As to the salary of the Clerk of the Court, there could be but one opinion as to the re-establishment of that. Under the operation of the old system, the Clerks' travelling charges brought the costs of suitors to an enormous extent. As to the city of St. John, one of the Judges resided there. The Circuit Clerk also resided there. [Here we lost one or two observations.] But the House was not legislating for the city of St. John alone; but for the whole province. If the Judges were not bound to travel the Circuits, some provision to defray their expences ought to be made.

Mr Simonds said, that till he saw a greater necessity for granting money to the Judges than he then saw, he certainly could not consent to the bill. He would not go over the whole of the ground that he had travelled over the other day, but would merely make a few observations. The Committee were not legislating on mere Pounds, Shillings and Pence, but coupling their consideration with great constitutional points, which ought to meet very gravely. In the first place, he (Mr S) had the other day made a mistake as to what the Judges receive from the casual revenue. He had said that the Chief Justice received £100 sterling, and the three assistant judges £75 sterling each. But he had now discovered that they received exactly double this amount from the casual revenue. He believed the whole salaries were established somewhat in this way: each assistant Judge received a salary of 500l. sterling, which would amount to about 600l. currency. They had also each 150l. sterling from the casual revenue, amounting to 166l. 13s. 4d. currency; and the lowest average of their fees, he believed, would amount to 140l. per annum. These sums added together, made the emoluments of each of the assistant Judges about 906l. 13s. 4d. The Chief Justice, he thought, received about 1200l., or perhaps a little more. Now the question was, whether these sums were not ample for all the purposes which could possibly be required by the Judges; whether it was not money enough to enable them to maintain their proper station in society in the fullest manner. There was no question of it, in his (Mr S's) opinion. 900l. was a very large sum, enough to provide for all the wants and all the luxuries of any man in this country, without any such further allowance as contemplated in this bill. Suppose this amount were doubled. Suppose the salary was made 1800 a-year. It would not add one jot to the comfort of the Judge. An additional 800l. would only create more wants, and be a burden to the possessor. The more we increase our income beyond a certain amount, the more we add to the burdens of life, and to our cares. 900l might increase the possessor's wants to the amount of 1000l., and would thus take 100l. from his comforts. There was no necessity for any salary in the Province being more than 900l. That sum ought to be the maximum of all salaries, except that of the Chief Justice. But the mere matter of Pounds, Shillings and Pence weighed but little in his (Mr. S's) mind, in comparison with other matters. The unconstitutional powers the Judges now exercised were weighty reasons with him. They possessed a triple power, as privy councellors, as executive councellors, and as judges. This was a monstrous association: which hereafter might be attended with great danger; although not so, perhaps, at present. But it should be combatted in good time. It had been seen in times past how those powers had been exercised, even in this Province. [Here the Hon. Member proceeded to detail the circumstance of an occurrence some few years ago, during the administration of Governor Smyth; on which occasion the Privy Council had determined for the future not to pass any bills containing matters relating to themselves, unless they were included in separate and distinct bills. [The Hon. Member read some quotations from the Journals in support of his assertions. The circumstances did not clearly reach our station; but it was this statement that gave rise to the very excursive discussion before mentioned]—The Hon. Member asked, were not these powers which ought not to be exercised by the same person? He thought they were so. Not for one moment should they be so exercised What must be the consequences of such a union of functions? In case of any political discussion arising in the country, the Judges must necessarily become members of a party. They must be on one side or the other, unquestionably. He (Mr S.) knew by experience, that they were occasionally members of a party; and this must always be the case, unless they were more than mortal, more than mere human beings. Those disputes generally engendered strong feelings, strong prejudices and prepossessions. Every one must be aware of that. Supposing it, then, to be the case, that a cause of great importance came into Court, the Plaintiff and Defendant in which were on different sides of a political dispute. This would place a judge in a very difficult situation. In deciding the cause, he must take one side or the other. But instead of calmly listening to and considering the cause, he would be carrying on a conflict in his own heart, striving to get rid of the feelings engendered by the party prepossession. He would be oppressed with this perpetual struggle in the discharge of his judicial functions, for he would see the necessity of it. This was a very unfortunate situation, and one in which a judge never ought to be placed. But so it must be, as long as judges are politicians; and the same difficulties would arise, even if they were merely executive councellors as well as judges.—[The Hon Member put another suppositious case.]—Suppose an article were to appear in a newspaper, even, for instance, this very week; which should be deemed obnoxious, and concerning which it should be necessary to make enquiry. The Privy Councellor would be summoned, of which the judges formed a majority. It might be there determined that the matter in question reflected on the Government—that it was in fact a libel. It would there be determined to prosecute the offending party. Here, then, would be the judges exercising the functions of a grand jury: they might be said to find a true bill of indictment against the offender. They would then direct the attorney general to file an information, and bring the matter into Court. Then came the difficulty. The very case already actually decided by the Judges in Privy Council, would come into a court of law, and be again decided by them! Was not this a case that ought to be deprecated in every free country? Surely so. No one could for a moment deny it.—This very question had been considered very maturely in the mother country; and there was no question on which the public mind there was more settled.—[The Hon Gentleman then proceeded to state in detail the opinions on this question, which had been broached in England by the Earl of Eldon, Earl Mulgrave, Lord Hawkesbury, Mr Canning, and Viscount Castlereagh, and other authorities; all which the Hon. Gentleman read, and briefly commented on SERIATEM.] These were the authorities to which he (Mr S.) had alluded on a former day. The opinion of such men as those ought to weigh deeply on the minds of the Committee. Before granting any more money to the Judges, which would be in fact increasing their tremendous power, the House should see their duties confined to their proper functions as judges of the Land.—The report of the Committee of the House of Commons on Canadian affairs corresponded exactly with the opinions of those eminent men already mentioned. That report recommended, in the strongest terms, that the judges should not be allowed to sit in the Councils of the Colonies. The hon. Member here quoted other written authorities; and proceeded to contend, that under existing circumstances the country could not get such laws passed as it required. This he knew by many years painful experience. The best bills of the House had been thrown out by the Council; and he verily believed, by means of the influence of the judges. This shewed the impropriety of their holding such situations. It appeared that those facts were so striking, that the Committee would fail in its duty, by granting any additional allowance while they held such tremendous powers. They might not do injury now: he had the fullest confidence in the present judges. But the House should have an eye to posterity: and must take care not to establish a power, which may hereafter be exercised to the prejudice of the country. This was a very important duty of the House.—There was another circumstance to be considered. the difference between the judges of this Province and those of the mother country. There the judges are not allowed to take any fees. Their salary is in full allowance for all fees, and emoluments. Such fees as could not be abolished were paid into the Exchequer, and become a part of the revenue of the country. So it should be in this Province. It was highly improper for any judge to have a pecuniary interest in any suits in court: which he must have as long as he is allowed to take fees.—This was a glaring impropriety in our constitution. He [Mr. S.] would like to see an act passed in this Province, similar to that lately passed in England, [6 Geo IV. cap 34] abolishing all judges fees The judges would then have no pecuniary interest in causes tried before them. He did not see that the judges now made a bad use of it; but a time might come, when such a use would be made. He had every confidence in the judges now; but the house should look forward, their views should not be confined to the present moment.—There was another circumstance to be mentioned. When the act now sought to be renewed was before the House in 1826, he [Mr S] well recollected the arguments of a former member of that House in support of it. He had stated, that the judges salaries were not then sufficient, without a further allowance of travelling charges; that they had applied to the parent Government for an increase, and had been answered, that the Government could not grant it, but that the Judges must apply to the Provincial Legislature; and that, consequently, the application was made. Now it appeared that ever since that time. the Judges had annually received a grant from the casual revenue, (the Chief Justice of 200l. sterling, and the three puisne judges 150l each.) over and above what this bill gave them. Had it been known at the time, this bill would never have been passed, because it was understood that they received nothing from the casual revenue This, therefore, was a proper reason for repealing it now. He (Mr S) had no objection to the allowance of 250l to the Clerk of the circuit, because the payment of his expenses would reduce the costs of suitors. It was very proper, therefore to continue his allowance; but he (Mr S) could not by any means consent to the rest of the bill He would certainly be against any further allowance under the present circumstances. While they would keep this power in their hands, they ought not to expect any such grant.—The Hon. Member then made a few observations on the [illegible] patronage possessed by the judges, which he considered to be equivalent to money, and added some allusions to the [illegible] in Canada, on the same subject; and [illegible] the