

self been concerned in two cases, where actions of ejectment had been brought, on the presumption that the sheriff had done all that was necessary to effect a legal sale, and, on trial, it had been found, in both cases, that some formality had been inadvertently wanting, and the actions were therefore of necessity given up, to the loss of the purchasers.—He thought the presumptions stated by the hon. member for Gloucester would be fully met, by inserting a clause in the Bill, to compel the sheriff to make such an affidavit as he (Mr K.) had alluded to; and such affidavit, with proof of sale, should then be *prima facie* evidence of a good title.

Mr Street had no objection to such a clause, and he thought it would be a very good amendment. The only reason why he had not before included such a provision was, that he considered that every sheriff was sworn to perform his duty faithfully, and he thought that safeguard sufficient.—The hon. member, then, at some length replied to Mr End's observations relative to the presumptions of law, and maintained his own former assertions.

After a few further words of reply and explanation from Messrs. End and Chandler, it was agreed that progress should be reported, &c. in order to give time for Mr Kinnear to frame such an amendment as he had proposed.—Progress reported accordingly.

February 17.

EXPENSES OF THE LEGISLATIVE COUNCIL.

The debate on this subject occupied the committee upwards of three hours; but much of what was said was very similar to what was advanced on the same point in committee last year.

Mr. Simonds opened the discussion by adverting to the message and resolution of last session, and then observed, that it appeared that His Excellency the Lieut. Governor had been advised to repeat the recommendation, not in consequence of any further instructions from the Home Government, but merely from the suggestions of the Executive Council. It was not, therefore, the message of His Excellency, but of his Council, or, as they might be termed, his Ministers. He (Mr. S.) thought that if His Excellency had been left to himself, he would not have made such a recommendation a second time, after knowing the feelings of the House on the subject. There would be a manifest improvement in the House acceding to the recommendation in this Message. The Councils were divided about the time when the Message was first sent down; and by this new creation of Executive Councillors, a number of the old Legislative Councillors were causelessly degraded from their rank; they were now no longer Executive Councillors, but were superseded in that high office by persons, who, previously, had not been Councillors at all. This was a very great hardship to those Gentlemen: their feelings had been very deeply wounded by this proceeding; and now this measure was adopted, this proposal to pay them, as he (Mr. S.) believed, merely as a sop, to allay their wounded feelings; they were to be paid in money as a compensation for their degradation. The mode in which this scheme had been devised was most extraordinary; perhaps it had never been equalled in any Colony; he (Mr. S.) believed it was wholly conceived by a Cabal in this Province, and that when it was communicated to his Excellency it was gone too far for him to prevent it. There was no question in his opinion, but his Excellency would have stopped it if he had an opportunity; but it was conceived and carried into effect from mere wantonness of power, and then pay to the Legislative Council was proposed as a compensation. The hon. member here alluded to the astonishment of Sir James Kempt at this proceeding, when informed lately of the facts; and commented on the different course pursued (on a similar attempt being made in Nova Scotia) by Sir Peregrine Maitland, who had submitted the proposal to the Legislative Council for consideration; and then proceeded to observe, that in his (Mr. S.) opinion, the whole proceeding had been effected for the mere purpose of placing a particular person at the head of affairs, whose claims on the province he could not ascertain. It was therefore a totally out of the question for the House to sanction such a proceeding by voting pay for the Legislative Council. Why were the old Councillors reduced and degraded from their rank? Had they been charged with any imbecility or misconduct? No.—Any want of zeal or attention to duty? No.—Any political offences? No.—Any dishonorable conduct? Not a word. And yet this obnoxious arrangement had been made, without their knowledge or consent; all their former services were totally lost sight of, and others promoted over their heads.—With respect to the recommendation in the message, his (Mr. S.) opinion was decidedly the same as it was last year; that the House could by no means comply with it. What would be the feelings of the Legislative Councillors, if they were offered this pay? They would consider it only as a price offered for their unmerited degradation; and several of them, he was quite confident, and even authorized to say, would spurn it with indignation. Even those who had been more recently appointed to seats in that Council, had fully expected to enjoy all the original privileges of Councillors, and they too had been deeply disappointed by the new arrangement. There could not be a single reason urged, why the House should now depart from the course adopted last session; viz. that it would be inexpedient and improper, to comply with the recommendation. The hon. member then submitted a resolution, to the effect, that nothing had occurred, since last session, to alter the opinion then expressed by the House on this subject.

Mr. S. Humbert observed, that with respect to the origin of this call on the House for pay to the Legislative Council, the House could know nothing. They could only conjecture.—They

could only presume, that it had been by advice of the Provincial Ministers or Executive Council; but come from where it might, it was before the House, and was for them now to determine upon. With regard to the opinion already expressed by the House, it might be asked, what right had any other branch of the Legislature to suppose that they would alter their opinions? They gave not their opinion as individuals, liable to change; they spoke as a deliberative body; their opinion was fixed and determined, and their journals expressed it. Something of very high importance should be offered to induce them to alter their opinions; and he (Mr. H.) had seen or heard no such important reason.—Other Colonies had not been called on to pay their Legislative Councillors, and there was no reason why New-Brunswick should. The situation of Councillors was of so exalted a nature, as to render it improper in them to receive pay. The hon. member then adverted on the impropriety and hardship of the late measures relative to the separation of the Council; and observed that the Legislative Councillors had been treated on a principle similar to that erroneously maintained by some men, relative to salvation and election; that some were elected, while the Almighty did not do—others, but merely passed them by:—so the Legislative Councillors had received no censure, had been charged with no fault, but they had been entirely passed by; and now they were to be compensated for the injury to their reputation and feelings by an offer of money. He (Mr. H.) hoped the house would reject the proposition.

Mr Kinnear did not approve the principle, that because the House had once expressed its opinion on a subject, it might not be liable to change; because peculiar circumstances might authorize and require it. On the present question his opinion was wholly unaltered; though he thought every message from the Executive ought to be treated courteously and respectfully. The Hon. member then at some length commented on the expression in the Messages, 'compensation for services,' as applied to the two houses, and drew the distinction between compensation for services and for mere expenses of travelling, boarding, &c. which was all to which the House of Assembly (excepting the Speaker) were entitled, and expressed his hope that the bill now before the house for reducing even that allowance, would be passed. The hon. member also showed the disparity between the situation of the Legislative Council and the house, the latter being composed, with three exceptions, of persons living at a distance from Fredericton, and obliged therefore to travel and reside away from their homes during the session; while the majority of the Council were persons actually resident in Fredericton, and incurring no such expense; and he argued, therefore, that such hon. gentlemen would neither be entitled to, nor would receive payment from the public. The two houses therefore, were not on equal footing in any respect; and with respect to the President of the Council and the Speaker of the House of Assembly, there was an equal disparity. The latter, like other members, came from a great distance, and incurred great expense during the Session; while the former did neither, but received a very adequate and ample salary as Chief Justice of the Supreme Court, and as he could not possibly sit in both places at once, he ought not to receive two distinct payments. The hon. member then referred to the decision of last year, and to the expressions in the petition of the house to his Majesty, in which the house declared themselves deeply aggrieved by the division and composition of the Councils; repeated his conviction of the universal dissatisfaction occasioned by that measure; adverted to Mr Stanley's reply, and argued that practical inconvenience was not the point urged by the house, but the injustice to individuals which ought to be redressed, and contended, that by now granting pay to the Legislative Council, the house would tacitly concur in those obnoxious measures, and admit that all their complaints on the subject were unfounded. The principle then, must stand now as it stood last Session; and the house therefore, could not comply with the recommendation in the Message. There was another important view to be taken on this subject. If a Legislative Council was to be established in any Colony, independently of an Executive Council, it ought to be entirely composed of persons having no connection with such Executive Council, and receiving no pay for any other services. It should be perfectly free and pure from all influence and interested motives. On this ground also, the Legislative Council did not stand on the same footing as the House. The members of the house were chosen by the people; he did not wish to see the Council similarly appointed; but he was desirous to see it, now that it was separated from the Executive, put on so pure and independent a footing that it might be wholly free from every kind of improper influence. He therefore objected to granting them pay, because some of them now formed part of the Executive Council, and others held offices of trust and emolument. The hon. member proceeded to contend that Legislative Councillors ought to be appointed from the most affluent and independent members of society (as the Lords are at home) and that they should be such men as would disdain to receive the paltry allowance contemplated as a remuneration for their expenses; and concluded by expressing his unwillingness to comply with the suggestion of the Message.

Mr Chandler thought it wholly unnecessary to mix up the opposition of the Councils with this question. That point had been taken up last year; had been complained of, and the complaint had been replied to by his Majesty's Government, and so far there was at present an end to it. It appeared to him that the present arrangement of the Councils had grown out of what was called the Canada Committee's Report; it was only following up the spirit of that report, and it had been adopted in both the Colonies, as well as in this Province, though it had not been enforced in Nova Scotia. It was adopted for the sole purpose of rendering Legislative Councillors more independent of the Crown, and in future they would be rendered so. The hon.

member then contended that every reason applicable to the payment of the House of Assembly, was equally applicable to paying those members of the Legislative Council who were independent of the Crown; and that, neither for the one House nor the other, could a sufficiency of talented and able men be always found, to render their services to the public at their own expense. Affluence, in his opinion, was not the requisite qualification for either house; talent, ability, and integrity were the proper characteristics, and those could not always be found combined with wealth. The hon. member contended, that in a young country like this, it was therefore proper and necessary, that both houses should be paid, in order to secure to the public the services of those best qualified to perform the duties of the station. He saw no reason why both houses should not be on an equal footing; the members of both were chiefly engaged in commercial or other respectable pursuits, which rendered a considerable sacrifice necessary, to enable them to attend to their Legislative duties; and he (Mr C.) was therefore inclined to take up the idea started the other day by the hon. member who had opened the debate, that those Councillors who were independent of the crown, and received no official emoluments, should receive pay. The hon. member concluded by insisting that the question of rank and precedence was one for the consideration and remembrance of the Councillors themselves, and that the house had now nothing to do with it.

Mr End began by styling the observations of Mr Simonds as exceedingly superfluous, and by expressing his dissent from them, and particularly with respect to the idea, that the division of the Councils was chiefly for the purpose of advancing one individual. The hon. member then referred to the Journals of 1822, and quoted a dispatch from the Home Government, disallowing an Act which had passed both houses, for giving pay to the members of both; and thence contended, that this was not the first time that the proposal had been made, and that so far from refusing to accept pay, the Council had formally concurred in passing an act for that purpose. The hon. member insisted, that on the principles of common justice the Legislative Councillors were entitled to pay, and demanded, what would be the condition of the Lower House, by and by, (if they should refuse to pay the house) with respect to their own pay? He was also of opinion that the Assembly ought to be paid; he was never over modest in that matter; because, by depriving them of their pay, they would deprive the people of the power of choosing such representatives as they most approved. The representation would then entirely be thrown into the hands of rich men; and therefore, for the sake of keeping open the elective franchise, the members ought to be paid; but they certainly ought not to make money by it; their expenses only should be allowed. But how would the house be situated by and by, by refusing the Council pay? A new house would meet, they would send up their own pay bill for concurrence, no notice would be taken of it, and the house would find out privately and accidentally, that the Council did not intend to pass it, till pay was provided for them too. Thus the Legislative Council would have a complete command and influence over the house, by becoming their paymasters; and therefore, for the purpose of establishing that principle of the constitution, that every branch of the Legislature should be independent of the others, the council ought to have their pay. The Chief Justice and some other Councillors perhaps, would not receive it; but there was no reason why it should not be generally given; and let them refuse it if they pleased.

Mr Street entered into the question at immense length; but our time and limits will only permit the transcription of a few of the leading points of his speech; especially as the arguments were chiefly similar to those of hon. members on the same side in debate on the same question last year. The hon. member contended that the division of the Councils was an exercise of the prerogative of the crown with which the house had no right to interfere; that the duties of the Legislative Council, when much more arduous than at present, had been gratuitously performed, by men of ability, talent, and integrity, for nearly half a century, and that there was therefore now no reason for pay; that the Province had much increased in wealth, and that there was now therefore a greater number of eligible persons to be found, who would serve gratuitously; that though an act had been passed in 1818 by both houses, yet it had been disallowed by his Majesty's Government in 1822, as derogatory to the dignity of the parties; that the arguments of the hon. Member for Gloucester carried with them an apprehension on the part of the house that the house would hereafter lose their pay, if they refused pay to the Council; but such an argument ought never to influence the House; and that as no other colony paid their Legislative Councillors, this Province ought not to be an exception. The hon. Member at very great length, eulogised the hon. Judges, and regretted their retirement from the Council; and as he considered that the resolution of the house ought to express the reasons of their determination, stated that he intended to submit an amendment to the resolution, to the effect, that, as it had been found that men of tried worth and talent had served the Office of Legislative Councillors for nearly fifty years, the house did not consider it necessary or expedient to pay them for their services, especially as in their opinion the Legislative Council ought to be composed of persons wholly independent of the crown.

Mr End, in explanation, assured Mr Street, that he did not wish to hold up a conflict between the two houses about their pay; *in terrorem* over the house; but merely to shew that such a collision would tend to destroy that principle of the constitution, that the various Legislative branches should be independent of each other.

Mr Parlow briefly adverted on the wide and discursive range the discussor had taken, and declared that nothing had been advanced to alter his former opinion, which was decidedly against paying the Legislative Council. The hon. member very