

Fredericton, to Peter Mitchell, Esq., Newcastle, that the New Brunswick Society for the encouragement of Agriculture, Home Manufactures and Commerce, have forwarded to Mr Flett, through Mr Mitchell, the handsome sum of 15*l.*, as a bounty for the erection of his mill.

THURSDAY'S MAIL.

NEW BRUNSWICK.

REMONSTRANCE OF THE JUDGES.

Letter from the Chief Justice to Earl Grey.
Fredericton, May 8, 1851.

My Lord—

I must regret that I am obliged to trouble your Lordship in consequence of an Act of Assembly lately passed by the Legislature of this Province, to abolish the fees which since the erection of the Province have formed an important part of the emoluments of the Judges of the Supreme Court. I had hoped after your Lordship's Despatch, dated the 25th November, 1850, that some arrangement would have been effected on the terms proposed by the Lieutenant Governor, in his Despatch of the 16th May, 1849, and sanctioned by your Lordship.

To such an arrangement the Judges would have assented, though it would on an average have reduced their annual incomes by 50*l.* or 60*l.*, and I was certainly not prepared to find without any previous notice or proposed compensation, a Bill introduced into the Legislature for the total and immediate abolition of the Judges' fees, supported, in opposition to your Lordship's views and instructions, by the majority of the Executive Council.

I think it right and necessary under the circumstances to state distinctly to your Lordship, that this measure has been carried without any previous communication with the Judges, and without their assent, which assent would be freely given to any measure permanently commuting their fees for the annual sum of 100*l.* to be charged on the Civil List of the Province, in addition to their salaries now charged on that fund.

The present measure, if assented to by her Majesty, would bear with peculiar hardship upon me. Your Lordship is aware that I lately accepted the office of Chief Justice at the reduced salary of 700*l.* currency, being 50*l.* less than the salary I was receiving as a Puisne Judge, and nearly 400*l.* a year less than that of my predecessor, by which arrangement an annual saving of 150*l.* was effected in the Civil List on the reduced scale of salaries.

The salary of 700*l.*, which I now receive, was established by an Act of Assembly which passed in 1845, which gives that salary irrespective of fees, an arrangement which was urged in the debates of that time as preferable to a higher salary proposed, inasmuch as the requisite amounts would be made up by fees varying with the amount of business and labor. It can hardly be contended that an income of 800*l.* (which the proposed commutation would give me), is exorbitant for an office of so much trust and importance.

I must therefore confidently rely on your Lordship's consideration and protection, and trust that her Majesty may not be advised to give her assent to any measure for depriving the Judges of their accustomed fees, without some certain provision for the compensation proposed by his Excellency the Lieutenant Governor, and sanctioned by your Lordship, to which we offer our ready assent.

I have, &c., JAMES CARTER.

From Mr Justice Street to Earl Grey.
Fredericton, May 5, 1851.

My Lord—

As one of the Judges of the Supreme Court of this Province, I feel it again necessary to appeal to your Lordship [as H. M. Principal Secretary of State for the Colonies] for protection from an Act passed by the Legislature of this Province in its last Session, now just closed—the object of which is to abolish all the fees of the Judges of the Supreme Court [which have hitherto formed an important portion of their incomes], without provision for any allowance as a commutation in lieu thereof, and thus at one blow to take from each of us about 150*l.* a year in reduction of our hitherto established incomes.

I did hope after your Lordship's explicit and decided Despatch of the 25th November last, to his Excellency the Lieut. Governor, that there would not again have arisen any cause for the Judges troubling your Lordship further on this subject, but the Legislature having passed this Act in the very face of that Despatch, which had been previously laid before both Houses, were we to remain silent on the subject, your Lordship might be thereby led to an erroneous impression that we had either given our assent to the measure, or were indifferent to its effects—particularly as the Act in its passage through the lower house was supported by the Secretary of the Province—a leading member of the Government, even without a suspending clause, while it was strenuously opposed by the present Attorney General—the leader of the Government in that House, upon those high-minded, honorable principles that have ever governed both his political and his private career, declaring it to be a measure, not only in direct defiance of the before-mentioned Despatch of your Lordship, but an act of great injustice to the Judges, and a breach of public faith. It is true, in the Legislative Council, the suspending clause was added [without which his Excellency might not

have thought himself under your Lordship's instructions at liberty to give his assent to the Bill], but the measure was there also supported by three members of the Executive Council. I therefore think it but right to assure your Lordship, that this proceeding has been taken without any previous notice, or consultation, or advice, with myself, or, I believe, with any of my brother Judges on the subject, either by any member of the Government or of the Legislature; but on the contrary we appear to have been looked upon and treated as parties who have no voice in the matter, whose rights and interests were not to be considered as having any weight, and whose rank and station as administrators of justice in the highest Law Court in the country, was not worthy of notice, and this, too, with that passage before them in your Lordship's despatch, wherein the dissent of H. M. Home Government, to any measure intended to diminish the salaries of the Judges, or to any commutation even of their fees, without their assent, is so clearly expressed.

It is true, my Lord, that we have assented, and I believe we are all still willing to take 100*l.* a year each, if made a permanent charge on the Civil List Fund, as a commutation of fees, rather than that they should continue to be a subject of controversy in the House of Assembly, although, we thereby give up from 50*l.* to 60*l.* a year each, of our present incomes and your Lordship having assented to this arrangement, we did expect that the Legislature, at the last session, would have passed some resolution expressive of its assent thereto, so that it might be carried into effect, rather than have attempted to take from us the whole of the fees without any equivalent whatever—an act of injustice that we confidently trust your Lordship will never assent to.

This proceeding is still more extraordinary, as the Act passed in the Session of 1849, fixing the salaries of the successors to the then incumbents of the Bench, at a reduced rate, expressly reserved to them the present established fees, as an additional income of the office, which no doubt had a great bearing upon the amount at which those salaries were so established—and of course the present Chief Justice, and Mr Justice Wilmot, who accepted their appointments under the provisions of that act, did so in the full confidence that all the income and emoluments thereby given to those offices, were to be permanent and not subject to any further reduction.—And yet the very first session after these appointments, and two sessions after that act was passed and had received the Royal Assent this new Act is passed, taking from them as well as from Mr Justice Parker and myself (who held our appointments long prior to 1849) this large portion of the amount which the Act of 1849 has provided as the income of the Judges thereafter to be appointed.

This must show to your Lordship how little regard the majority of the present members of our local Legislature have to former engagements or enactments, or to public faith in respect to the Judicial establishment of the Province, and how recklessly they are disposed to go on from year to year, reducing our incomes according as they think it may be popular out of doors, without giving any weight to the principle of good faith that should ever be binding between every Government and its public servants. These proceedings if allowed to go into force, must have a tendency to depreciate the present high standing in our Supreme Court, and shake that public confidence in the integrity and ability of the Judges which has hitherto always been shown, and is so necessary to the satisfactory administration of justice. One of the leading arguments used by the advocates of these measures, and which produces its effect upon the minds of the ignorant part of the public, is, that there will be no difficulty in finding persons ready and willing to take office of Judge at reduced incomes, and this may be true: but the important part of the question is, will such persons be duly qualified with integrity of character, independence of mind, and legal acquirements to fill so important an office in a way beneficial to the public, or (however well meaning they may be) will they be free from that bias in the administration of justice which a dependence upon the voice of a majority of the House of Assembly by their means of support must naturally produce? It needs no great stretch of understanding to say that they will not; but at all events, they would be suspected of being subject to such influence, which of itself would destroy public confidence.

These my lord appear to me prominent reasons on behalf of the public, why the Judges of the land should never be left at the mercy of a popular Assembly; but in this case there are others more immediately relating to myself, which I think it right to bring under your Lordship's notice to show the great injustice this measure would do me.

At the time I was offered a seat on the Bench in 1845, I was holding office which brought me in a certain income of upwards of 350*l.* currency a year, besides my practice at the Provincial Bar which was at that time a large and lucrative one, all which I gave up when I accepted the appointment to the Bench, in the fullest confidence that the then salaries of the Judges, with the established Fees were held as permanently binding upon the Government to maintain, and would never be allowed to be interfered with to the injury of these incumbents, and I was the more confident of this, as both branches of the Legislature had previously thereto on more occasions than one, by Petition to the Crown, and by resolutions almost unanimously passed, declared that the income of the

Chief Justice should be equal to 1,000*l.* a year, and those of the Puisne Judges to 900*l.* a year each, (that is currency) which is about what we now receive including fees. If I could for a moment at that time have supposed that the then income of the Judges was not permanently secured to the incumbents, taking the office therewith by the good faith of the Crown, and that it was to be subject to the control of a majority of the House of Assembly, I certainly should not have given up the advantages I then possessed for a seat on the Bench; for I find the income as it then was barely sufficient to meet the ordinary expenses of a family in this place, living in the rank a Judge of the Supreme Court is expected to maintain; beside which as the House of Assembly seem determined against allowing pensions in any case to old and long tried faithful Judges, who from age and infirmity may be rendered incapable of continuing to discharge the duties, it becomes more requisite that the incomes attached to their offices should be secured to them so long as they continue to fill the same.

I do therefore, in conjunction with my brother Judges, who will also severally address your Lordship on the subject, confidently trust that H. M. advisers will not recommend the Royal Assent being given to any Act so pernicious and injurious in its effect both as to public and private interests in this Colony, as the one in question would be if allowed to go into force, not only as to its own operation, but as opening a door to future enactments of the like nature.

I have, &c.

GEORGE F. STREET.

From Mr Justice Wilmot to Earl Grey.

Fredericton, May 9, 1851.

My Lord—

The Legislature of this Province having at its late Session, passed an Act, with a suspending clause, to abolish the fees at present received by the Judges of the Supreme Court, without making any provision in lieu thereof. I have the honor to inform your Lordship that such a measure, if sanctioned, will cause a very considerable diminution from my present income, to which I cannot give my consent.

I am willing however to accept the commuted allowance proposed by His Excellency Sir E. Head and approved of in your Lordship's Despatch of the 25th Nov. last.

I have, &c.,

L. A. WILMOT, J. S. C.

NOVA SCOTIA.

Halifax Nova Scotian, February 2.

HOUSE OF ASSEMBLY.

FRIDAY, January 30.

RAILWAY PAPERS.

Hon. Provincial Secretary rose to lay on the table of the House, by command of His Excellency the Lieutenant Governor, part of the correspondence touching Railways, that had passed between the Provincial Government and the Secretary of State for the Colonies.

This correspondence is that which has already been published in the different papers during the last ten days, commencing with the despatch of Earl Grey, stating that he did not see any objection to the dissolution of the Provincial Assembly, and ending with the despatch of Earl Grey in reply to Mr Howe's reports on his Despatch of 27th November.

These despatches and reports were read in their order by the clerk; and notwithstanding their previous publication, were listened to by the House and the audience in the galleries with breathless attention and profound interest.

ADDITIONAL DOCUMENTS.

Hon. Provincial Secretary also laid on the table the following documents.

1st. A despatch from Sir Edmund Head, dated January 23d, introducing the Hon. Mr Chandler, as a delegate from New Brunswick, accompanied by three members of the Executive Council of Canada—their mission being to endeavor to come to a definite proposal for the construction of the Railway by the three Provinces.

2nd. A memorandum signed by Honorable Messrs. Hincks, Tache, Young and Chandler, recommending a Line following Major Robinson's Line from Point Levi to River du Loup, or Trois Pistoles, crossing to Temiscouata, and thence through the Valley of the Saint John River, to the city of St John, and thence by the Bend of Peticodiac to Halifax. The delegates believed this plan would meet with the approbation of the Home Government, if recommended by the three Provinces.

3d. A memorandum signed by the members of the Nova Scotia Executive Council, expressing their dissent from the proposition that Nova Scotia should make one third of the new line, under which she would enjoy far less advantages than by the two lines, under which only she had agreed to make eighty miles beyond her own boundary.

4th. A memorandum from Messrs Hincks, Tache and Young, in answer to the above, offering as a final proposition that Nova Scotia should take but one-fourth of the common stock, New Brunswick five-twelfths, and Canada, as originally intended, one third, and stating that if this proposition was not adopted Canada would be relieved from all responsibility as to the failure of the enterprise.

EXPLANATION.

Hon. Provincial Secretary said:—I presume, Mr Speaker, that no debate on these documents will take place to night, but I rise

for the purpose of offering a few explanations with reference to the memorandum handed to the Government by the honorable delegates. It will be remembered that when we met in the extra Session, it was obvious to all that the Government could not command a majority of its ordinary political supporters to carry the propositions for constructing the Railway, to which we stood pledged. We had, therefore, to throw ourselves broadly on the house, and appeal to that generous good feeling which we knew existed on both sides, so far, at least, as this question was involved. At that time we could not conceive any mistake—we could not believe, as far as this Province was concerned, any difficulties would afterwards arise, such as have arisen, for us to consider. No expression of the house, therefore, on the present aspect of affairs, was thought of, for the instruction of the Government, and had the house not been nearly in Session again, when the new features in our Railway affairs arose, and when the honorable delegates arrived in this city, the Government would of course have felt compelled to have dealt with the question in all its bearings, and given these gentlemen a final answer.

As regards the proposition contained in their first memorandum, we felt little difficulty, and thought it our duty to state to them without delay, that even if it were pressed with all the influence the Government could command, it could not be carried in this Assembly. To that extent therefore we did answer them. As the proposition containing their final terms, was not fairly in our hands till yesterday, it was impossible for us to give any answer without an apparent discourtesy towards those gentlemen in the House who had sustained us last Session. If any political majority were to have been consulted, the duty would have been more simple, and the answer would have been given at once. But we deemed it more respectful and courteous to those gentlemen who sustained the action of the House last Session to lay the papers on the table first; and we are not prepared at the present moment to lay on the table any reply to the final proposal of the Canadian Delegates. We have not had time to mature our own minds on the subject. Our first duty, therefore, was to lay the papers on the table, and allow gentlemen all round the House time to master their contents, and weigh the new emergency in which we are placed. Now, Sir, I do not intend to detain the House with any personal reference or explanation. Any explanation that gentlemen may ask for, and that I can furnish, will be cheerfully given. No matter what may seem to be my position—no matter what blame may seem to attach to me—all I can say is this, that holding an official position, I must deal with this question with the remembrance that I am subordinate to my superiors. I may have to restrain my feelings to some extent, in order that I may not compromise others and you. I shall adhere to that course even though it may seem to do injustice to myself. But I stand in the midst of men who for twenty years have had the means of judging me—I am here in the sight of friends who have sustained, and of the opponents who have scanned my public life for so long a period; and who know that I am not apt to write or speak ambiguously—who know that I do not often evade inevitable conclusions—and that they are not very much in the habit of misunderstanding me, nor am I likely to misunderstand them. By their observations of my past conduct I am willing to be judged. I will not detain you with any further references of a personal nature. The honorable and learned leader of the opposition, who sits opposite to me now, did me the honor, at the close of the debate in the extra Session, to say, that the conduct of the Provincial Secretary throughout this matter, has been manly, explicit, frank and clear. What his opinion may be now, I know not—nor what may be the opinion of others; but I feel that I must be content to let my countrymen judge for themselves, of the manner in which I have been drawn into this embarrassing position. If it becomes necessary to discuss the subject at large, I will endeavor to do so frankly and explicitly, considering the conflicting features the subject now presents.

After a pause the honorable Provincial Secretary said:—I do not know whether gentlemen wish to say anything on these papers to-night, but it is of course desirable to deal with them as early as possible. Perhaps the best course will be to refer them to a committee; although, if the house insist that the Executive Government should deal with them, I am satisfied. In that case we must perform the duty and incur the responsibility.

Mr Wilkins.—Has any despatch been received disallowing our bills?

Honorable Provincial Secretary.—No despatch; but it will be seen at the end of my first report that I recommend they should not be presented for the Queen's assent until after the house has opened this Session.

Mr Wilkins.—The reason I ask is, that I do not see what ground there is for forming the very strong opinion that Her Majesty's Government will not assent to our Bills, if the same policy is affirmed by Canada and New Brunswick.

Honorable Provincial Secretary.—A clause in our Bill says that the whole of our legislation shall remain inoperative unless both lines are provided for in the Sister Province. This renders it impossible for New Brunswick to act in the new posture of affairs. The whole thing falls to the ground, and we must say what we will do under the altered circumstances.