

Provincial Legislature

HOUSE OF ASSEMBLY.

Thursday, March 1.

THE LATE RECEIVER GENERAL.

The House went into Committee, in further consideration of His Excellency's Messages.—Mr. Hanington in the Chair.

The Message and documents relative to the affairs of the late Receiver General having been read,—

Mr. L. A. Wilnot said, that it appeared that the Crown claimed a right to recover from the estate of the late Mr. Bliss, through his sureties or administrators, a large sum of money; and to effect this object three different courses had been pursued. First, a commission had been issued, to have the matter found, as a matter of course, as a debt due the Crown, and thus to enable the Crown to issue a *scire facias* against the sureties. That proceeding was discontinued, in consequence of unexpected difficulties having arisen. Secondly, a *scire facias* was issued against the Trustees, calling on them to pay over the sum claimed, on their bond as such Trustees; but it was found that that bond contained no obligation, to compel the Trustees to pay over any monies on account of the Receiver General after his death; but it merely compelled them to see that he paid over such monies during his lifetime; that suit therefore was also abandoned. Thirdly, an action was instituted against the Administrators of Mr. Bliss's estate; that action was tried before a most respectable special jury, appointed at the instance of the Crown; and that jury found a verdict for the defendants. The Province therefore had already suffered great loss, by the expenses of these three proceedings, all of which had totally failed; and consequently it was now absolutely necessary for the House to interfere in some way or other. The action was still pending over the heads of the Administrators, because a new trial had been moved for on the part of the Crown; but it was worthy of remark, that although at the late trial, certain points of law had been reserved for the judgment of the Court, they had not been so reserved at the instance of the Crown officers, but by the Counsel for the Defendants; and they were such points as he (Mr. W.) fully believed never would be got over by the Counsel for the Crown. He therefore thought that, as a respectable special jury of the country had given their deliberate verdict on the facts, and there was no probability of any other result being arrived at, upon further litigation, the Legislature should put the whole matter at rest at once, and should tie up the hands of the Crown from further proceedings, by a Legislative enactment. He believed there was a balance in one of the Banks, of about £1600, which was admitted to belong to the Crown, and it appeared that the whole sustainable balance due to the Crown was £1,612 5s.; he thought, therefore, that an Act should be passed, to indemnify the parties whenever they should have paid over to the Province that balance, and thus to put the matter at rest for ever.

Mr. Street had examined the accounts and statements relative to this matter; there were great difficulties in the question, and he was clearly of opinion, that it would be better to come to such a determination as had been suggested by the Hon. Member for York, than to allow the matter to be agitated further by fruitless litigation. There was a balance of about £1600 in the Bank, and although the Crown officers appeared to be of opinion that the amount of the balance should be larger, yet a special jury of the country had given a verdict of a contrary nature, after a full investigation of the whole subject. It was evident that the Crown officers never would be able to get a verdict against the Defendants in this case; and the points of law reserved for the Defendants were such, as would defeat any claim of the Crown for a larger amount than was now stated as being due. It would therefore be far better for all parties, to adopt the course that had been suggested.

Mr. Weldon fully concurred in what had been said on this subject; and would also observe, that in the investigation of the question before the court of law, there were great doubts entertained whether, in the event of a larger sum being declared as the balance due from the estate of the late Receiver General, a claim could not be fully established by the Defendants, for a much larger sum due to the late Mr. Bliss, as commission on his receipts and expenditures; that claim appeared very likely to be established to the extent of £11,000, which would be much beyond the whole balance claimed by the Crown Officers; and if the case should be again tried, that question might again come up and prove successful. Under all the circumstances, therefore, it was very desirable that this subject should at once be determined. He supposed that this balance of £1600 was ready in the Bank, and that the sureties and administrators were desirous of settling the whole matter by paying over that balance; and he had no doubt that if litigation were allowed to go on, a set-off of a much larger sum than the Province could claim, would be established by the Defendants, and therefore it would be an actual gain to the Province to put an end to the dispute in the manner that had been suggested. He would therefore move the following Resolution:—

"Resolved, as the opinion of this Committee, That under the difficulties which present themselves to prevent a recovery from the Estate of the late Receiver General of the balance of monies appearing due therefrom, it is expedient that a Bill be passed to discharge the Estate of the late Receiver General and his Sureties from all further liability, upon payment of the sum of £1,612 5 3 currency, the balance admitted to be due by the Administrators of the Estate."

Mr. Partelow considered this to be a difficult, embarrassing and perplexing question; but from what had been said by the legal gentlemen, he thought that the course they had pointed out was the only one that could be pursued. He was not till now aware that the administrators had admitted this balance of £1600 to be due, but thought, from the verdict that had been given, that they made no admissions whatever. But if a bill was to be

brought in, to indemnify them against any demand beyond the £1600, and they did not freely admit that even that balance was due, the bill ought also to indemnify them on paying over the £1600, so as to prevent their being called in question by the heirs of the estate. He could not however help expressing his astonishment at the value of the accounts, some items of which were not altogether satisfactory to him; and he also must express his very great surprise at the nature of the bond taken by the law officers of the Crown from the sureties of the late Receiver General, which had proved to be one that would not stand the test of law. That fact was certainly very remarkable; the bond must have been prepared by the Crown law officers, and surely it ought to have been such a one as would have enabled them to recover the balance due, from the sureties. However, it could not now be remedied; but he would not have been disposed to adopt this course, but would rather have allowed the case to go to another trial at law, if it had not been a special jury before whom it had been already tried. But as it was a special jury, and a very respectable one, and they had come to the conclusion that the late Receiver General really owed nothing to the crown, it was now unnecessary to prosecute the business any further; and therefore, under all the circumstances, he was disposed to submit to the passing of the Resolution.

Mr. Weldon replied, that the administrators did not admit anything at all; they merely said there was so much money in the Bank, which they were ready to pay over, and settle the whole affair; but if the Province should call for a larger balance, it would soon be found that a very much larger sum would be established as due to the late Receiver General, and therefore it was advisable to settle the matter at once.

Mr. End did not oppose the Resolution, but he did not like this sort of proceeding at all; it was a most extraordinary kind of thing. His career in the House had not been very many years, but in the course of his short experience, this was the third or fourth public officer whom the Legislature had been called on to indemnify. He felt many matters pressing on his mind, which made it a grievous affliction to him, to rise up and say any thing at all on this subject; but as a Representative of the people, he could not let a matter of this kind pass away without some remark on it. It was altogether a most extraordinary matter; the communication from the Attorney General was itself very extraordinary. It appeared that the crown officers had adopted three distinct modes of proceeding, for the recovery of this money, and had been foiled in all three; and the last foiling was by a special jury having decided against the advice of the Chief Justice. The Attorney General's communication also stated, that certain points of law had been reserved for argument before a full court; and he (Mr. E.) would ask any Hon. Member whether, from the manner in which that fact was mentioned, it would not at once be supposed that those points were reserved on the part of the Crown? And yet they were now told, that they were not so, but on the part of the Defendants; the Defendants themselves appeared doubtful of the correctness of the verdict. He therefore wanted to know, why the document did not state that fact, in the manner that it ought to have stated it. That document seemed to show, that there was still a hope, that the Province would recover this large amount of arrears. He dared not, however, trust himself to make remarks on that kind of statement, or to say what he thought about such a mode of stating things, proceeding from such a high authority. Then, why were not the parties to be called upon again? And why was it, that there was no case, no bond, no jury, nothing at all to give the Province a remedy against a public debtor, and the Legislature were called upon to indemnify the parties, instead of prosecuting the claim? It really was a most extraordinary thing; he could not understand it at all; and now there was a claim, too, set up for *per centage*, to defeat the claims of the Province. He was willing to allow all reasonable *per centages*, but he wanted to see the right amount ascertained, and the Committee had a right to demand it, and to have the case regularly tried before a public tribunal. He repeated, that he did not like it at all, as it was now; he could not like it.

Mr. L. A. Wilnot replied, as to the points of law reserved. The case was an action of common assumpsit.—[Mr. End: "An Action of Debt."] well, an action of debt, with the common counts only; it was founded on a contract between the Crown and the Receiver General, in which certain duties were specified, to be performed by each party; and on the trial, an exception was taken by the Defendants, that the Declaration ought to have set out the contract specially, shewing the nature and extent of the duties, to be performed on the part of the Crown and the Receiver General respectively, and alleging wherein the latter had failed in discharging his part of the conditions. The only ground, therefore, for the observations of the Hon. and learned Member for Gloucester, (Mr. End,) was simply the fact, that the special jury felt themselves bound to find a verdict against the Judge's charge.

Mr. End doubted very much whether matters would be allowed to go this way with other public defaulters, if there had happened to be any such. If the Commissioner of Crown Lands had had the misfortune to be in such a scrape, he (Mr. E.) thought it would not go so easily with him.

The question was then taken, and the Resolution agreed to, without a division.

On the House resuming, Messrs. Weldon, L. A. Wilnot and Street were appointed a select Committee, to bring in a bill in accordance with the Resolution passed in Committee.

Mr. End then said, that he hoped the same Committee would also bring in a bill, to point out the form of bond to be taken for the future in cases of this kind; because, if the public law officers did not at present know their duty sufficiently, and could not draw such bonds as ought to be drawn, the form should be pointed out for them by law; be-

cause this kind of proceeding was not to be endured.

Mr. Weldon observed, that he would like to see copies of the bonds of all public officers, and their sureties, laid before the House for examination; that it might be ascertained whether they were sufficiently safe for the interests of the Province.

Mr. Partelow concurred in the suggestion, and thought that such bonds certainly ought to be so drawn, as securely to effect the object intended.

Mr. Street did not think it was any fault of the law; but rather that it was the manner of drawing the bond in this case that had been erroneous. But the House could know nothing about the matter, till they saw the documents themselves.

The conversation then terminated.

Friday March 2.

DISSENTERS' MARRIAGE LAW.

The Bill, sent down from the Legislative Council, to amend the Act relative to the solemnizing of matrimony, was committed.—Mr. Partelow in the Chair.

The object of the bill was merely to remedy the erroneous construction put upon the present Act by the Law Officers, and to remove the existing difficulty relative to Dissenting Ministers solemnizing Marriage between parties of different denominations. The bill was agreed to, with a suspending clause, without debate.

THE LATE RECEIVER GENERAL.

The bill brought in, in pursuance of the Resolution of yesterday, to settle the estate of the late Receiver General, was committed. Mr. Taylor in the Chair.

The object of the bill was simply to authorise the Attorney General to receive the balance now ready to be paid over by the Administrators of the estate, and upon receipt thereof within 20 days after the passing of the Act, to give a full discharge on the part of the Province.

It was agreed to, without debate.

ROYAL GAZETTE.

FREDERICTON, MARCH 7, 1838.

Central Bank of New Brunswick.

HENRY G. CLOPPER, Esq. President.

Director this week.....W. J. BEDELL.

Discount Days.....Tuesdays and Fridays.

Bills or Notes offered for discount must be left at the Bank, enclosed and directed to the Cashier, before two o'clock on Mondays and Thursdays.

Bank of Fredericton.

ASA COY, President.

Director this week.....F. E. BECKWITH, Esq.

Discount Days.....Mondays and Thursdays.

Notes or Bills for discount are to be left at the Bank, enclosed to the Cashier, before 3 o'clock on Saturdays and Wednesdays.

Saving's Bank.

Trustee for next week.....MR. MARK NEEDHAM.

Central Fire Insurance Company.

Office open every day, at Mr. Minchin's Brick House, opposite the Parade, (Sunday excepted,) from 10 to 2 o'clock.

B. WOLHAUPT, President.

Committee for the present month.

JOHN T. SMITH and CHARLES McPHERSON.

Alms House and Work House.

Commissioner for the week commencing to-morrow.

CHARLES LEE, ESQUIRE.

Mr. BOWEN arrived here yesterday in the short space of three days, express from Quebec, and left town almost immediately after for Halifax. As various rumours are afloat respecting the nature of Mr. B's despatches, we have endeavoured to collect the most correct information we could on the subject, and we have it from good authority that the object of that gentleman's mission is solely with the view of expediting the movement of more Troops into the Canadas, to enable Sir J. Colborne to relieve the Militia and Volunteers.

The latest accounts state that the Rebels continue to assemble on the frontiers, both of the State of Vermont and New York, and bringing rumours of intended invasion.

ERRATA.—In last week's Gazette, in the "Militia General Order," the date of Lieutenant John Balloch's Commission, should be 1st March, instead of "21st February;" Jones, instead of "James Fitzherbert," dated 2d March; "George Giberson," to be dated 3d March.

From the New York Albion, Feb. 24.

CANADA.—By the latest accounts from Detroit and other places on the border, we find that there are still on foot small parties of those wrong-headed Patriots! who cannot yet persuade themselves, or be persuaded, that their very silly cause is desperate. They still delude themselves, and permit the rebellious wretches who have fled there to delude them, with the expectation of making a descent into Upper Canada. Gen. Scott, who had left the command of the western frontier in the hands of Col. Worth, and had come on to Albany, has made a requisition to Governor Marey for two additional battalions, which have been promptly granted to him, and he has now returned with extraordinary dispatch to his station. All this, however, does not argue danger either present or impending, but merely the prompt decision of Gen. Scott's character, who, determines to be at his post, and enforce the authority reposed in him until every vestige of these follies is destroyed.

The "patriots" prove their pretensions to the character they assume by the veneration which they exhibit towards the laws of their own country;—laws which are virtually made by themselves for the public security. They break into arsenals, public council rooms, depots of public stores,—no place is too sacred to be violated, if it stand in the way of fierce and besotted inclinations. Those who can so recklessly betray the liberties of their own country, and set its laws and its magistrates at defiance, are, to our poor thinking, but mis-

erable instruments to be employed in setting up the liberties of others. They most surely must misunderstand the term, and think it to mean license, for the most unbridled license is the order of the—patriots.

Van Ransselaer, Sutherland, McLeod, and other miscreants who were engaged in first "setting the breeze a-low" are about the northern borders of Ohio, the misguided people who are with them, will probably skulk about those borders during the winter, whilst there is nothing better to do; as for a descent, it is too ridiculous to suppose such a thing; we could not anything which, as good loyalists, we could more wish for than such an expedition; for, blind as they are to every thing like common sense, they would be unable either to shut their eyes, or avoid the conveniences due to their temerity. But they will linger until the weather permit a return to labour, and the valorous generals will see their "army" melt away from them, like the winters snows at the return of spring.

The Canada Bill makes but slow progress in Congress; we should not be surprised to find the reinforcements from England arrived and strengthening the whole Provincial Frontier, before the deliberations at Washington are finished, or at least before the resolutions thereupon can be carried into effect. In the meanwhile it is fortunate for international as well as individual peace, that such officers as Gen. Scott and Col. Worth are in authority upon the American frontier. Without them it would be found, we fear, a difficult matter to preserve the two nations from hostile collision, such is the folly of the visionary champions of liberty.

Lord Gosford is expected in town daily, from Quebec, having at the last accounts nearly recovered from the effects of his fall on the ice. His Lordship, it is now said, will pay a visit to Washington prior to his embarkation for England. Sir John Colborne assumes the Government on his Lordship's departure from Canada.

Lady Head, daughter, and Mrs. Dalrymple, sailed in the Wellington on Wednesday for London. We regret to learn that these ladies received some very unkind treatment while passing through Rochester. The following, which we copy from a contemporary, we understand is correct:—

"We learn that on the arrival of Lady Head and family, in an extra at Rochester, the coach was surrounded by persons who demanded if Sir Francis was there? On being told no! they insisted that he was of the party concealed in women's clothes, and proceeded to search the stage. The Way Bill was then demanded, which the ladies in great alarm gave up; it was detained for nearly half an hour and then returned, and the coach allowed to proceed. No person whatever, appeared to defend, or offer protection to those female strangers. It is feared, that if Sir Francis had been present, personal violence would have been inflicted on him."

DESTRUCTION OF THE BOWERY THEATRE.

—This unfortunate house seems fated to continual disaster. On Sunday morning last between one and two o'clock, a fire broke out in the upper part of the Theatre, which speedily was caught by the Flies and the side scenes; and, notwithstanding the strenuous exertions of the fire department, this noble structure was utterly destroyed. This is a large establishment of actors, mechanics, and others, utterly deprived of the means of subsistence at the very period of the year when privation is the hardest to be borne, and is most precariously procured. It is remarkable upon this occasion that the actors and musicians who commonly take home their wardrobe, instruments, music, &c., particularly on a Saturday night, happened for the most part not to do so on the evening of this calamity, and thus they are not only bereaved of employment, but also of the little property necessary for them in their professional avocations. When the roof of the building fell in, the cinders were thrown up and dispersed to a very considerable distance. One piece descended through the skylight of a stable belonging to Mr. Hamblin, formerly of this theatre. The stable was burnt up and with it a coloured man who had taken shelter there, and whom rumor guesses as having an incendiary hand in the destruction of the theatre. Many circumstances tend to the belief that it is not a mere casualty, and investigations are now in course of procedure to bring the truth to light. But, however it may have happened, we cannot but observe the striking superiority, in point of care and vigilance, at the Park Theatre, which amongst all the conflagrations to which places of this kind are obnoxious, never sustains any accident or damage.

THE FOLLOWING IS THE LATEST AND MOST AUTHENTIC DETAILS THAT HAVE HITHERTO BEEN RECEIVED FROM KINGSTON, OF THE INROAD EXPECTED TO BE MADE UPON THAT TOWN FROM THE UNITED STATES.

It will, however, be seen that there are no grounds of apprehension from any marauding attempts that may be contemplated by the refugee-insurgents or their abettors in the United States; for the people of Kingston, like ourselves, are perfectly prepared for the worst:—

"The warning which we gave in our last number, was soon proved to be well founded. In a day or two afterwards, information was received here, stating that a large number of Americans, some accounts said *ten thousand* had united with McKenzie, and designed to capture Kingston and Fort Henry by a *coup de-main*. On Saturday, this information was also given to our authorities by one of the United States deputy Marshals, who stated that there was cause to apprehend an extensive organization for the purpose, said that the Government had no force at hand to restrain the people, and we were therefore to expect an attack. Information was also given that the pirates had a friend in the fort, who had engaged to spike the guns on the night when the attack was to be made. The only person against whom a suspicion of such baseness could attach, has been dismissed from the militia service. Immediately on the receipt of the information, a Rifle Company was formed, and rifles

distributed to them. A volunteer guard of one hundred kept watch all night at the Court House, and is renewed every night. Pickets were sent out in all directions, and the guns on the batteries at Mississauga Point and Point Frederick, some of them eighteen pounders, were loaded with canister shot. These guns command with a cross fire, the whole field of ice in front of the town, and can arrest the advances of any party in that direction. The guns on the Fort and at the Block Houses are also ready to pour destruction on the invaders. Several streets are barricaded, on Sunday Captains Lockwood and Clark's companies of Lennox Militia arrived in town, with Capt. Fralick's troop of horse; and yesterday others arrived.

"The various reinforcements and the volunteer companies have increased the effective strength of this garrison to upwards of 1200 men, besides several hundreds ready at a moment's notice. The 24 Frontenac, 1200 strong, can be brought in at short warning. Besides, our strong force in artillery gives us a ten-fold superiority over the pirates, to say nothing of the other defences. On Friday afternoon a detachment of the Royal Artillery under Lieut. Wilkins, arrived from Montreal; and yesterday they, with the party previously here and some of the Marine and Perth volunteer artillery, were exercised with guns on the ice in front of the town, firing blank cartridge.

"We do not think that our townsmen need be under any alarm, or entertain any apprehension of an attack on them, while they preserve efficient organization and strength ready for immediate service. Whether an attack was really contemplated by the Americans or not, our only safety consists in being prepared to repel an assault. But, as to surprising Kingston the thing is all but impossible. Besides the line of pickets on the roads every ten or fifteen miles, pickets are kept up all around Kingston, and on Wolf Island, and no force could approach the town but must leave, at least two hours notice of their approach. The shortest route from the States to Kingston is across Wolf Island, and if any force leave the States our picket will instantly burn blue lights or rockets, these will be answered by a rocket from the fort, and every man will have time to prepare for an attack. If any other route were taken, there would be still more time for preparation. But we repeat, that we do not believe that any attack will be made, so long as we maintain an efficient force on foot. While the ice keeps good, our safety must be purchased by unceasing vigilance."

"Since the above was written, we have seen one of our townsmen who has just returned from the other side. He states that on yesterday morning at one o'clock, the arsenal at Watertown was broken open and robbed of 500 stand of arms. 1500 stand were in the arsenal, but the robbers could take no more. There is no doubt but the others would soon be taken. For the last ten days the Americans have been collecting arms and provisions, and our informant saw some of them receiving arms, powder and pork. Their intentions are now placed beyond doubt, and we have only to regard them as enemies, and be ready for an attack."—*Montreal Gazette*, Feb. 22.

From the Old Quebec Gazette, Feb. 24.

The Upper Canada papers, received this morning, give nothing of interest. We have been favoured with the following extract of a letter from Toronto, which we think may be depended on:—

Extract of a Letter from Toronto, dated 14th February, 4 P. M.

"Since writing the enclosed the Amherstburgh Mail has arrived, and we have dates from that place to the 10th inst. There appears to be no doubt that the rebels are again collecting in considerable numbers; the reports vary from 5 to 900, and I am inclined to think they are about 600; it is also stated that it was expected they would make an attack upon Amherstburgh on the 11th. The ice is now good here, and they can cross in sleighs.—We have at that place three companies of regulars making with the Militia on duty about 500 men, and it is expected that yesterday five companies more (regulars) under Col. Maitland, must have reached that place,—under all circumstances, I think that little danger is to be apprehended, as to tell you the truth I place but little confidence on the report of the attack on the 11th. Gen. Vanrensselaer is up there, and Duncombe was in Detroit.

"Our people had bought a quantity of flour, which was in an American steamer in Swan Creek on the American side, and were taking it over in sleighs, and had carried over all to about 120 barrels, but on the night of the 9th, 40 armed men took possession of the boat and carried away the flour; it does not appear from what I can learn that any of our people were there.

"Should you hear any reports contrary to what I write, you can safely lay them down as incorrect, as what I have stated is all the news we have that can be depended upon."

We understand that the trials of the persons charged with the murder of Lieutenant Weir, and the volunteer Chartrand, are going on at the Criminal Term at Montreal. Upwards of a hundred of the other prisoners in the gaol there taken in arms, or charged with being concerned in the rebellion, have recently been discharged.

The ice on the St. Lawrence is again stopped opposite the Chaudière. The high tides commence on Saturday.

From Upper Canada there are various rumours of hostile movements, and it appears to be well authenticated that the remnant of the Navy Island gang have re-assembled, not far from Detroit, and meditate an incursion into the Western District of the province. At the East end of Lake Ontario, a more daring expedition is on foot.—McKenzie has collected a band near Watertown, the strength of which is variously reported; but it appears at all events sufficiently strong to set the authority of the United States at defiance, and to carry off, without interruption, the arms from the United States arsenal.—The report we gave, in a postscript on Thursday last, of a Deputy Marshal, of the United States having arrived