

# LEGISLATURE OF ONTARIO

## SECOND PARLIAMENT—SECOND SESSION.

MONDAY, MARCH 3, 1873.

The Speaker took the chair at 3 o'clock.

### PETITIONS.

The following petitions were presented:—

Mr. Paxton—Of the Township Council of Uxbridge; also of Jeremiah Forsythe and others, of Brock; also of John Hoskins; also of Cugler Payne and others; also of John Barker and others, of Brock, severally praying for certain amendments to the Act now before the House to amend the Act incorporating the Toronto and Nipissing Railway Company.

Mr. Clarke (Wellington)—Of the School Board of Elora, praying for certain amendments to the Act now before the House to consolidate the High School Laws.

There were four petitions respecting a prohibitory liquor law.

### BILLS INTRODUCED.

Hon. Mr. CROOKS introduced a Bill entitled "An Act to amend the Act respecting tavern and shop licenses."

Mr. SCOTT (Grey) introduced a Bill providing for the making of double tracks on new roads.

### ENQUIRY.

Mr. RYKERT enquired why nothing concerning the Ferris Estate Bill introduced by him in January had been heard of.

The SPEAKER said the Bill was sent to the Judges on the 1st of February, and their report would probably be forthcoming.

### PRIVATE BILLS.

The following Bills were read a third time and passed:—

Mr. Boulter—To incorporate the Gatling Gold and Silver Mining Company.

Mr. Dawson—To amalgamate the Nazrey Institute with the Wilberforce Educational Institute, and to amend the Act incorporating the Wilberforce Educational Institute.

### IN COMMITTEE.

The following Bills were adopted in Committee of the whole House, and fixed for third readings:—

Mr. Graham—To incorporate the Trent Valley Railway Company.

Mr. Meredith—To amend an Act intitled, "An Act to incorporate the London, Huron and Bruce Railway Company," and an Act intitled, "An Act respecting the London, Huron and Bruce Railway Company, and to extend the powers conferred upon the said Company, and for other purposes."

### SECOND READINGS.

The following Bills were read a second time:—

Mr. Oliver—Respecting the Fair Ground of the county of Oxford, and the Public Square of the town of Woodstock.

Mr. Fitzsimmons—To amend the Act intitled, "An Act to incorporate the Brockville and Westport Railway Company."

Mr. Cameron—To incorporate the Lake Simcoe Junction Railway Company.

### CONVEYANCE OF REAL ESTATE BY MARRIED WOMEN.

On motion of Mr. MEREDITH, the House went into Committee of the Whole on the Bill to amend the Act respecting the conveyance of real estate by married women, and to facilitate the conveyance of real estate by married women, and reported the Bill without amendment.

### THE BETTER ADMINISTRATION OF JUSTICE.

The ATTORNEY-GENERAL, in moving the second reading of the Bill for the Better Administration of Justice in the Courts of Ontario, said that this measure was one in the direction of fusion of the courts of law and equity in this Province, though it did not involve absolute fusion, which it was not the intention of the Government to propose at present. In bringing forward a measure of the kind now introduced it was important to consider how it would work having reference to the state of things

which now existed. There were certain rights which were recognized in courts of law, and certain other rights which were recognized in courts of equity. There were remedies to be obtained in the one court which could not be obtained in the other. That state of things sprung up in consequence of the great rigour of the common law practice at one period, and the desire to mitigate that rigour by courts of equity. The present measure was designed to make the courts of law and equity, as far as possible, auxiliary to one another respectively, for the more speedy, convenient, and inexpensive administration of justice in every case. It happened that occasionally there was a doubt as to whether a litigant should resort to the one court or the other—a doubt whether the jurisdiction in the case was to be had in the court of law or the court of equity—and it was important that such a doubt should be removed. It was the duty of the Government to, if possible, save litigants from going from one court to another, and thus relieve them from additional expense. It was only occasionally, however, that that difficulty arose, and he did not recall, during his own practice, a single instance where a party had taken his case to the wrong court. An evil that occurred much more frequently arose from courts of law not being competent to do entire justice between litigants in certain cases. Formerly no equitable matter could be dealt with in law, and the only remedy of the party was to file a bill in the Court of Chancery restraining the proceedings in the court of law. That had been remedied to some extent, but to some extent only. It had been decided that a party who was sued in law and claimed a good equitable defence could set it up in a court of law, but the judges held that that could only be done when it was an absolute, perpetual, and unconditional bar to the plaintiff's demand. Cases frequently arose in which a party found it necessary to file a bill in the Court of Chancery, and thus had two suits for one case, one in law and one in equity. Those were the two evils which arose from the courts being separated, and the question was how to remedy those evils. One remedy proposed was the entire fusion of the courts of law and equity; but there were serious difficulties in the way of that; and the measure introduced would, he thought, meet the difficulty. It must be remembered that the judges in both courts were perfectly familiar with the present system, as well as the lawyers, and to introduce an entirely new system would be attendant with considerable difficulty and expense. It was therefore desirable to make as few changes as might be consistent with the object involved. The Bill was substantially the same as that brought forward by the present Lord Chancellor at the time the matter was under investigation in England, when the question of the fusion of the courts of law and equity was considered. The effect of absolute fusion would be to change the whole practice for the sake of avoiding difficulties which very unfrequently arose, and to bring that about would require an immense amount of time and labour. The Commission in New York, which was appointed there for the purpose of bringing about such fusion, was at work for a number of years, and in England there had been several commissions who had been employed years in the same work. The Commissioners here set about a similar scheme, but they informed the then Attorney-General that it would take a long time to perfect it, and that two of the judges would have to be relieved from their work to do so. He thought no lawyer here would suggest that our system would be improved by substituting for it the law of New York. He had no doubt, however, that in England there would be absolute fusion ultimately, as there would be here, and if they had fusion in England it would be a great advantage to us here, for the example there would serve as a guide in this matter. Some progress had been made in alterations in the Common Law Procedure Act, so as to enable courts of law to administer equity in all matters; but he had examined that scheme so far as it was prepared, and he thought it would add by its working to the expense of an equity suit as compared with what it was at present. It was more cumbersome, though, at the same time, it was a scheme which would be a means of ameliorating the common law practice. The Treasurer, who was then Attorney-General, introduced a Bill with a view to fusion. He had examined that Bill also, which was more near the Chancery practice, and would serve more effectually that class of cases than any other, but it made such radical changes in the common law practice that he did not think that it would be satis-