

Fifth Parliament --- Third Session.

(By Our Own Reporters.)

THURSDAY, March 4.

The Speaker took the chair at 3 o'clock.

REPORTS PRESENTED.

Mr. GIBSON (Hamilton) presented the ninth report of the Committee on Private Bills.

Hon. T. B. PARDEE presented the eighth report of the Committee on Railways.

ST. ANDREW'S CHURCH, PETERBORO'.

THE SPEAKER presented the report of the Judges on the Bill respecting St. Andrew's Church, Peterboro', to the effect that the preamble and petitions did not show how the original trust was created, and that therefore they were not in a position to express an opinion on the Bill.

FIRST READINGS.

The following Bills were read the first time:—

Mr. Carnegie—Respecting snow fences.

Mr. Monk—To amend the Assessment Act.

Mr. Balfour—To amend the Assessment Act.

Hon. A. S. Hardy—To amend the Act respecting the application of the Religious Institutions Act to the Church of England.

CONVEYANCE OF REAL PROPERTY.

Hon. O. MOWAT moved the second reading of the Bill for improving the practice of conveyancing and amending the laws of property. The Bill, he said, did not follow the English Act so closely as that which he had introduced at two former sessions. All lawyers knew that it was of great advantage to suitors that our laws should substantially correspond with the English laws, in order that we might receive the benefit of the English decisions. However, the English Bill contained some provisions which were unnecessary in Ontario, and some perhaps which had been rendered unnecessary even in England by the passage of the Judicature Act, and he had, therefore, retained only such clauses as were of practical value here. He then proceeded to explain the Bill as follows:—The fourth clause is to render unnecessary in a conveyance the use of the word "heirs." Our law is in a very curious state on this subject. In a will the fee simple can be conveyed without the use of any particular words. Effect is given to the clear intention of the testator without the use of any technical language; and where a testator devises land his whole estate in that land, whatever it may be, passes. And a similar rule applies in the case of contracts to sell. But in a conveyance the rule is entirely different. There it was absolutely essential to use the very word "heirs," so that if I conveyed to you "in fee simple," that did not give you the fee simple but simply an estate for life. In England that distinction has now been swept away; and the fourth clause of this Bill is intended to effect the same object, and carry into effect the intention of the grantor without the use of any particular words. Several of the subsequent clauses are intended to do away with the necessity for a great many provisions which are now necessarily inserted in deeds, mortgages and leases. There are certain covenants for title which a purchaser is entitled to have and which are inserted in every well-drawn deed. The Bill provides that certain specified covenants of this kind shall be implied without being expressed. In this way conveyances will be very greatly simplified. Similar provisions are made in regard to mortgages and leases. The 16th section is to provide

RELIEF FROM FORFEITURE

in certain cases of breaches of covenants in leases. A great injustice used to arise from allowing the lessor to take advantage of forfeiture. We have provided relief in some cases, and the Court of Chancery has given relief in others. The present enactment extends relief to some new cases. Then for the same purpose of simplifying conveyances, provision is made for the following case:—Land is conveyed to two trustees by will, settlement, or otherwise, and provision is made for the appointment of new trustees from time to time. As the law stands now, when new trustees are appointed, long and sometimes very elaborate deeds have to be prepared for the purpose of vesting in the new trustees the interest of the outgoing or deceased trustee. It is proposed to enact by this Bill that when a new trustee is appointed the estate shall vest in him without conveyance. The reasonableness of that amendment is manifest enough. The 18th section provides for the following case:—Settlements and wills often give interests

to women, with a provision that they shall not be at liberty to anticipate the future income of the fund. That is a very reasonable and useful provision, calculated to secure a woman against future poverty. But it sometimes happens that it would be extremely convenient and advantageous to the woman that an exception should be made, and a portion of the income allowed to be anticipated; and the Bill provides that under such circumstances

THE COURT MAY AUTHORIZE

such an anticipation. The closing sections of the Bill relate to the remuneration of solicitors for conveyancing. A solicitor is now paid according to the length of the documents, and nothing else. Provision is here made that the Court may provide a tariff for conveyancing, and may have reference not only to the length of the document, but to skill and other considerations. It also provides that a solicitor may enter into an agreement to do a certain piece of work of this kind for a certain sum. This is now prohibited by law. In the United States they have gone so far as to sanction such agreements, even in the case of litigation; in England they have not gone quite so far. To prevent a solicitor driving a hard bargain, this Bill provides that if a client thinks a contract is unreasonable, the Court may consider it, and if they think proper, relieve him from it. The English Bill was regarded as a very great advance in simplifying the laws upon the subject, and the result has been such as to justify the expectations which were formed regarding the measure.

Mr. MEREDITH said as far as his opportunity allowed him to judge, the Bill is one which should be adopted by the House. He suggested among other changes, that as the deeds were being shortened, the fees of the Registrars should be diminished.

The Bill was read the second time.

JUSTICE ACCOUNTS.

Hon. O. MOWAT moved the second reading of the Bill respecting Criminal Justice Accounts. The Bill seeks to obviate delay in the payment of accounts to constables and others, which are paid in the first instance by counties, but refunded by the Government.

The Bill was read the second time.

REAL AND PERSONAL PROPERTY.

Hon. O. MOWAT moved the second reading of the Bill respecting the estates of deceased persons. This Bill will remove some of the distinctions between personal property and real estate. All distinctions will not be removed, and the interest of a widow as dower will be retained. This Act will apply:—To all estates of inheritance in fee simple, or limited to the heir as special occupant, in any tenements or hereditaments in Ontario, whether corporeal or incorporeal; to chattels real in Ontario; to all other personal property of any person who has died domiciled in Ontario; that all real or personal property comprised in any disposition made by will in exercise of a general testamentary power of appointment shall be deemed to be within the provisions of the Bill.

Mr. MEREDITH, while generally agreeing with the principle of the Bill, objected to the restriction of the right of dower.

Mr. MERRICK opposed the Bill on the ground that the law as it now stands provided for an equitable division of the estate if a man died without a will, but now to secure this a man must employ a solicitor to draw up a will.

Mr. ERMATINGER said the Bill introduced by him early in the session was pretty much covered by the measure now before the House. He advocated the abolition of the right of dower.

Mr. FRENCH suggested that the appropriate features of his Bill to amend the Surrogate Courts Act and respecting the estates of deceased persons and minors should be incorporated in the Bill now before the House.

Mr. WOOD thought the clause providing in certain cases for a widow having one-third, absolutely met with his approbation.

Mr. CREIGHTON agreed with the Bill.

The Bill was read the second time.

QUIETING OF TITLES.

Hon. O. MOWAT moved the second reading of the Bill to facilitate the quieting of titles where the Land Titles Act is not in force. He said that it had not been thought advisable to adopt the Land Titles Act all over the Province at once, although he had no doubt that ultimately it would be generally adopted. It would be an advantage to have a larger experience of its working here. Questions of great importance arose in the case of titles, and it was a question of great moment to whom the immense power of settling these questions should be given. There was the less reason for haste in extending the provisions of the law to other counties, because, so far, comparatively little advantage had been taken of the Act in Toronto and York. In order to