ONTARIO LEGISLATURE.

Sixth Parliament, Second Session.

(By Our Own Reporter.)

February 15, 1888.

The Speaker took the chair at three o'clock

RAILWAY ACT.

Mr. BRONSON presented a bill to amend the Railway Act of Ontario, which was read the first time.

UPPER CANADA COLLEGE.

Hon. G. W. ROSS (Middlesex) presented a bill respecting the endowment property of University College and Upper Canada College, which was read the first time.

PRIVATE BILLS.

The following private bills were presented and read the first time :—

Respecting the Town of Parkdale—Mr. Leys (Toronto).

Respecting the Town of Port Arthur and the municipalities of Shuniah and Neebing—Mr. Conmee.

ASSESSMENT ACT.

Mr. MONK presented a bill to amend the Assessment Act, which was read the first time.

MUNICIPAL SINKING FUNDS.

Mr. BLYTH moved for a return of copies of all Orders in Council with respect to the investment of sinking funds of municipalities under the provisions of the Municipal Act. He said that a few years ago, when the craze for railways was at its height, many of the municipalities granted large bonuses. These bonuses were secured in too many cases with little regard for the interests of the people, but with regard rather for the interests of the speculators who were concerned in the schemes. The sinking funds on these loans were coming in and it was difficult for the municipalities to find means of investing the money safely and profitably. An Order in Council gave authority to place the money in banks, and a good deal of money so invested by municipalities had been lost. By a change in the law power was given to invest in mortgages. But in making these investments the municipalities had to come in contact with the loan companies. It was well known that these companies had executive officers of great experience to manage the investment of their funds. But Municipal Councillors were elected from year to year and necessarily could not have the same experience to guide them in investing. Therefore, as a rule, they did not take advantage of this means of investing. He thought it would be well should the Government of the Province agree to receive the funds collected for the repayment of these loans, paying interest at 5 per cent. This would overcome the difficulties which at present existed. The information he sought by this motion, he believed, would furnish strong arguments in favor of the suggestion he made.

Hon. A. M. ROSS said he supposed the motion was called forth by the unfortunate locking-up of the funds of the Township of Bentinck in a bank which had recently failed. He pointed out that there were several modes of investing county funds, and a very large latitude was allowed to the Councils to enable them to make safe and permanent investments. He believed, notwithstanding the hon. gentleman's statement, that Municipal Councils had availed themselves to a large extent of the proviso allowing Municipal Councils to invest money on first mortgages on real estate. The difficulty of looking after a sinking fund might be obviated by having the debentures payable in yearly instalments, and this plan he believed would save both expense and trouble. He did not think it necessary for the Government to establish a sort of savings bank for the investment of municipal funds.

The motion was carried.

THE LAW OF MORTGAGES.

Mr. FRENCH, in moving the second reading of the bill to amend the law respecting mortgages, said he had every confidence that the bill was a good one, and would receive the approval of the House. It is well known, he said, that if I were to borrow money from you, Mr. Speaker, on my promissory note ——

Mr. MEREDITH—You would never pay it. (Laughter.)

Mr. FRENCH—If that note was overdue, I would have the privilege of paying it at any time with interest for the time overdue. But if I gave you better security by a mortgage of my farm—if I had one—and the loan were three days overdue I would be obliged to give you notice of six months or pay interest for that time before I could compel you to take your money. This is a grievous burden upon the poorer class of borrowers, and, as you can see, must often work great injustice. Continuing, he pointed out that the law, as it was now assumed by mortgagees to be, was based upon the common law of England as set forth in decisions given in the last century. In Manitoba they had a law in the same general direction as he now proposed. When he introduced this bill he did not know that the question had ever come before the Courts. He found, however, that there was a case which had gone through a preliminary Court and came up for decision by the High Court, and it was there decided that in this matter the common law of England did apply to Canada. If he ever had any qualms of conscience about anything in his business life they arose from the fact that he had once represented a loan company. Formerly the companies offered to make loans at twenty years, the circulars in which the money was offered stating that the mortgages could be paid off any time on reasonable terms. But subsequently those who sought to pay them off found that the "reasonable terms" offered were such as made it impossible for the mortgagees to pay them off. There ought to be some simple machinery by which these "reasonable terms" could be arranged between the parties.

Mr. GIBSON (Hamilton) agreed that the unwritten law which now held good had operated harshly in many instances, and that there should be some express declaration of the rights of the parties in cases of overdue mortgages. But the House ought not, in curing one grievance, to make a new grievance on the other side. He believed there was a midway course open which would be substantially just to both parties. If the mortgagor came a few days late, or a few weeks, or even a few months late to pay off a mortgage it was only reasonable that he should be allowed to clear it off on paying interest up to the day of payment. But where the mortgagee had refrained from insisting upon a re-valuation and a new mortgage, which would be a great expense to the mortgagor, and the latter had gone on paying interest, it was only reasonable that the mortgagee should have some notice before being compelled to take back his money at a time when, perhaps, he could find no other investment for it. Where interest had been paid after the mortgage came due, he held that three months' notice should be given. The comparison with the promissory note was hardly apposite—that of the case of landlord and tenant would be better. He would like to see the bill sent to a special committee, but would not like to see it pass without modification, and such as he had suggested.

Mr. MEREDITH said he was unable to agree with the changes proposed. It was desirable that there should be no complexity in these laws. Not one in five hundred mortgagors knew that any such law as the Courts had sustained was applicable to his contract, and it was most unreasonable that the borrower should be held down to a rule of that kind. The comparison with the case of the promissory note he believed to be applicable. In the case of landlord and tenant, while the tenant had to give six months' notice, the landlord had to give six months' notice of intention to put the tenant out. In the case of mortgage, the unfairness is that, while the mortgagee might bring proceedings at any time, the borrower had to give notice, so that the rights were not reciprocal. While he agreed that the bill should go to a special committee, he thought the matter should be discussed in the House. He suggested that legislation should be passed here in the terms of the Dominion Act with regard to mortgages, so as to leave no chance for a wealthy company to hold over the head of a borrower the threat of appealing to the Courts contesting the constitutionality of the existing Dominion law.

Hon. Mr. MOWAT agreed that in practice the law worked harshly, and it did not seem fair that a mortgagee desiring to pay off a mortgage should be compelled to give six months' notice or pay interest for that time. In Manitoba, as he understood it, they had simply abolished the notice required under the common law of England, leaving the Court to say what would be fair notice.

Mr. MEREDITH—No.

Hon. Mr. MOWAT—I understand that to be the effect. Such a measure would not secure what the hon. gentleman desired, for it left it so that it might be decided that anything less than six months would be a fair notice. If this bill were referred to a special committee doubtless that committee would frame a clause fixing a time to meet the general opinion. Perhaps even a shorter period than three months might be fair in the cases mentioned by the member for Hamilton (Mr. Gibson). He believed it quite