

10th Parliament, Second Session.

(By Our Own Reporter.)

FRIDAY, March 9, 1883.

The Speaker took the chair at three o'clock.
FIRST READINGS.

The following bills were introduced and read a first time:—

To amend the Municipal Act—Mr. Leys.

To amend the Act entitled an Act to secure to wives and children the benefit of life insurance—Mr. Guthrie.

To amend the Municipal Act—Mr. Balfour.

THIRD READINGS.

The following bills were read a third time:—

To incorporate the Peterborough & Chemong Lake Railway Company—Mr. Leys.

Defining a portion of the boundary between the Town of Sandwich and the Township of Sandwich West—Mr. Balfour.

THE LINE FENCES ACT.

Mr. FRENCH asked whether the attention of the Attorney-General has been drawn to the interpretation placed upon the words "occupied lands" in sub-section 1 of section 2 of the Line Fences Act, whereby, as contended by some County Court Judges in appeal, the whole Act is rendered nugatory; the object of the Act being manifestly to provide a means for fencing unenclosed lands, whereas by said sub-section, it is provided that the Act shall not apply to "unenclosed lands," and if any remedy were proposed.

Hon. O. MOWAT said he thought his hon. friend was not correct in assuming that the Act was rendered nugatory by reason of the interpretation pointed out. That was the opinion of some judges, but others held quite a different view. In any case he claimed that the object of the Act was actually secured in the great majority of cases.

REGARDING CORRUPT PRACTICES.

Mr. WHITNEY asked whether it was the intention of the Ministry to introduce during the present session legislation in the direction of increasing the severity of penalties for corrupt practices at elections.

Hon. O. MOWAT said in reply:—We have no intention of introducing during the present session any further legislation on the subject mentioned in the question.

POLL TAXES.

Mr. FIELD moved for an order of the House for a return showing the amount received from poll tax in each city, town and village in the Province for the year 1886.

The motion was carried.

CONDITIONAL SALES OF CHATTELS.

Mr. NAIRN moved the second reading of his bill respecting the conditional sales of chattels. He said he was inclined to persevere in this matter from a firm conviction that legislation in the direction indicated in the measure is urgently required in the public interest, and from the fact that the bill in the same direction introduced last session fell to the ground largely on account of the lateness of the time at which it was introduced, and the difficulty experienced in getting together a quorum of the members of the special committee to whom the bill was referred. But, although failing in this regard, the merits and demerits of the bill were nevertheless pretty thoroughly discussed and criticised by delegates of manufacturers and dealers assembled in opposition, and he was not sorry that it was so discussed and criticised, because it enabled him to recast and remodel the present bill, and, as he had supposed, to practically remove and overcome objectionable features pointed out by the manufacturers, but the demonstration he had recently witnessed and the petitions which had since deluged the House convinced him that nothing short of the withdrawal of the entire bill would be satisfactory to them. While he was willing to concede something reasonable to the manufacturers, he held that his duty in this House was to legislate in the interest of the people as a whole, and not in the interest of any

SPECIAL CLASS OF THE COMMUNITY.

It cannot be denied that through the laxity of the law, as it now stands, cases of great hardship, injustice and positive frauds were frequently cropping up all over the Province. The system of lien notes or hire receipts, now in vogue, was in direct opposition to the whole spirit and tenor of the legislation, and was nothing more nor less than a cunningly-devised scheme to evade the wholesome provisions of the Chattel Mortgage Act. The principle involved in this bill had been, from time immemorial, acknowledged and acted upon in re-

gard to real property, and the tendency of all legislation in regard to personal property was that the possessor and apparent owner should be the real owner for the purposes of sale, and when the possessor and apparent owner was not the real owner for the purposes of sale, notice of the fact must be given to the world by the registration of an instrument setting out that fact. If a person borrowed money, giving personal property as security, a chattel mortgage had

TO BE EXECUTED AND REGISTERED.

When the owner of goods in possession transferred the property in goods to another, but retained possession of the goods himself, the purchaser must give notice to the world by the registration of a bill of sale, showing that the possessor and former owner was not the real owner, in order to protect goods from creditors of former owner, as well as from innocent subsequent purchasers from him. But as the law now stood the owner of goods or possessor might transfer possession to another, and yet retain property in goods in himself until the happening of a certain event in the future, viz., the payment in full of the purchase money by instalments, as agreed upon, and then, and not till then, does property or goods pass from the transferrer to the transferee. In the meantime, however, the possessor and apparent owner may vend and sell these goods to innocent purchasers, and the law provided no way by which the purchaser could ascertain that the possessor and apparent owner is not the real owner—a palpable defect and one which tended to hardship, injustice and positive fraud; and to provide a remedy for this was the primary object of this bill.

Cases such as he had referred to were constantly cropping up, and many found their way into the Courts, but in every instance the lien-holder had the advantage, and the

NECESSITY FOR REMEDIAL LEGISLATION

in the premises had been frequently commented on by judges in the Division and County Courts, and by the Superior Court judges as well.

The system of lien notes or hire receipts for articles disposed of had become all but universal amongst manufacturers and dealers, and it mattered not how much a man might have paid for an article in good faith, or how long he might have had it in his possession, if one of these lien notes was out the article was ruthlessly taken possession of by the lien-holder, and the victim, the innocent purchaser, in most instances was left without any recourse whatever. Cases of the most aggravated character had come under his own observation, and dozens more had been recently reported to him, involving thousands of dollars. He need not recapitulate them here, as he presumed there were few members in this House but could readily recall cases in their own constituencies illustrating the evils of the system. He held, moreover, that the system was wrong, because it gave legal protection to and maintained a class of preferred creditors to the injury of legitimate trade. The baker, the butcher, the grocer, the dry-goods man, the tailor and the furrier were placed at a disadvantage, as their goods, when parted with, went into immediate consumption, hence no lien could be sustained over them, while others, who in many cases supplied articles of luxury and extravagance, were secured in their pay, and in many instances the parties supplying the very necessities of life, were

LEFT OUT IN THE COLD.

It might possibly curtail to some slight extent sales of some superfluous articles now disposed of on the instalment plan, but he felt satisfied that little or no injury would be done to legitimate trade, while he felt sanguine it would prove an important factor in arresting a growing evil and in placing the business of the country closer to a cash basis. Mr. Nairn then explained the provisions of the bill, which provide that all lien notes shall be registered, or if not that a notice shall be put on the article showing that it is disposed of under provisions of his bill. He further said that in consequence of facts which had been adduced since the introduction of the bill he was willing to modify this, so far as manufacturers were concerned, to the basis of the bill now in operation in Manitoba, which provides that manufacturers must place their names on all articles under lien notes, and under a penalty be prepared to give all necessary information when called upon. He also said that if the bill was allowed to pass a second reading he was prepared in committee to make any other reasonable modifications so long as the efficiency and principle of the bill were not destroyed.

Mr. HUDSON opposed the bill. He said it would bear very hardly on farmers and would hurt business generally.

M. BRONSON admitted the present law to be very defective, but thought the bill as it was at present would not be a good measure.

Mr. FRENCH said while Mr. Nairn had not been a member of the House—from 1833 to

1837—he (Mr. French) had stood sponsor for the bill. Since then he had modified his views considerably, and in doing so was justified by the legislation in Connecticut, New York and Manitoba, all of which had retraced their steps; and therefore Ontario had acted wisely in not legislating too speedily. The New York Legislature had, however, provided that the lien should not obtain unless the vendor deposited with the vendee a copy of the agreement of sale. He read the New York statute and the provisions in force in Connecticut. These sales conditionally made were not objectionable, except for the clandestine manner in which agents procured signatures. If a purchaser, after knowing he had made such a conditional purchase, in fraud sold the article, he is the wrongdoer, and not the manufacturer. He referred to the anomaly of mortgaged property—say a valuable horse—being brought into this country from the United States, no renewing or re-filing was required here; whereas, if an article in Ontario was transferred from one county to another, the mortgage had to be refiled in that county to which the mortgaged article was removed. He trusted the committee would carefully guard the general interest of the community, in view of the legislation in other countries, and not go farther than the law now in force in New York and Manitoba.

Mr. O'CONNOR claimed that the law as it at present stands is unfair and allows of a good deal of hardship and injustice, and quoted several instances in support of his contention. He mentioned one case where the manufacturer of a safe sold it, painting upon it the name of the purchaser, so as to show who was the real owner of the article. The purchaser afterwards sold it to another party, who had no knowledge of the lien that was held upon it by the original seller, and who, although he paid in full the man from whom he purchased the safe, had afterward to pay the full price of the safe to the manufacturer. Another instance was where a party purchased a reaper upon which there was a lien without having knowledge of the lien, and after he had obtained knowledge of the lien sold it to a third party, and was held bound to pay the full price of the reaper at the time he so disposed of it. The hon. member then went on to show the present practice of manufacturers in taking lien notes, and showed that under the present system the manufacturer took not only a lien upon the implements sold and the security of the endorser, but also under the same instrument took a mortgage upon the land of the purchaser, and in addition to that a mortgage upon

THE LAND OF THE ENDORSER

of the note. (Several members, "No," "no.") Hon. gentlemen might shout "no," but he had the document in his hand and could show them that the ordinary form of a lien note contained clauses which proved his argument. The hon. gentleman went on to show that people were extending this system into every relation of mercantile life, so that when a horse was sold, or almost any article in common use, a lien note was taken upon it, and it had in consequence become absolutely unsafe for any person to buy any article not knowing but what there may be a lien upon it, and being without power to find out whether there was or not. In other matters relating to the sale of goods and chattels or the borrowing of money upon the security of goods a mortgage is required under the present law, giving full notice to the whole world of the transaction, and something of the same kind would only be proper in the matter of the lien notes. He did not agree with the provision of the bill requiring an affidavit of execution being made before the registering of the lien, or a copy of it in the County Court, but thought the filing of the lien note or a copy of it should be sufficient. In the latter event the total cost to the manufacturer would not be more than ten cents on each transaction, and a matter of ten cents would be nothing upon the sale of any one agricultural implement, although the manufacturers talked a great deal of the enormous cost they would be put to in case the bill became law. He wanted to have the bill read a second time and referred to committee.

Hon. Mr. FRASER said it seemed to him to be conclusive that if the States of Connecticut and New York and the Province of Manitoba, after trying such a law as this, had

DEEMED IT BEST TO REPEAL

such legislation, it would be unwise for Ontario to try it. The promoter of the bill, moreover, himself alleged that three-fourths of the business of the Province was done under this system, and the legislation, he contended, would consequently be an unwise interference and intermeddling with almost the entire volume of business. Years ago there might have been grounds for fearing that wrong would possibly be done, but now when nearly everybody knows how largely the business of the country is carried on under this system, such an argument should no longer prevail. He objected, further, that the legislation would be very much to the detriment and