

to compel the attendance of witnesses at a District Court no matter where his residence may be. It goes also to remove another evil. In all cases where judgment has been obtained in a District Court, the party so obtaining it is compelled, when the person against whom it is obtained lives out of the district where the action commenced, to bring a new action upon the judgment before he can issue execution, by this bill he is enabled upon producing to the Judge of the District where the Defendant resides an exemplification of the Judgment, to sue out execution immediately.

On motion of Mr. Nichol, the committee rose, reported progress, and asked leave to sit again to-morrow.

Mr. Wilson, after a speech of great length moved, seconded by Mr. Hamilton, that the house do now resolve itself into a committee of the whole to take into consideration the propriety of making such alterations, in the existing code of criminal laws now in force in this province, as may tend the better to equalise the punishment inflicted upon persons offending against the same, to the offences committed.

The Attorney General, Messrs. Nichol, Jones Jones, Hagerman; and Baldwin admitted the necessity of an alteration in the criminal code, but feared it was out of the power of the house to effect any thing beneficial this session. The debate was adjourned to Tuesday next.

Mr. Nichol, seconded by Mr. Randall, moves that it be resolved, that a humble address be presented to His Excellency the Lieutenant Governor, praying his Excellency to direct the President and Cashier of the Bank of Upper Canada to lay before this house a list of the Stockholders thereof, the number of shares respectively held by them, with the sums severally paid in on account of the said shares, and also a statement of the funds belonging to the said Institution.

In amendment, Mr. Jones of Grenville seconded by Mr. Crooks moves that after the word "house" in the original motion, the whole be expunged and the following words inserted, "the returns required by the 23d clause of an act passed in the 59th year of his late Majesty's reign, chapter 24th." Amendment carried.

The repeal of the criminal jurisdiction bill was read a first time; and on motion of Mr. Nichol seconded by Mr. Randall, that it be read a second time on Wednesday, the house divided. For the motion—Messrs. C. Jones, Burwell, Nichol, Hamilton, Wilmot, Wilson, Randall, Hornor, Clark, Pattie, Casey, Gordon, Kerr, Ham, and Hamilton. 15.

Against it—Messrs. Walsh, White, Hagerman, McClean, Jones, Crooks, Atty. General, Morris, Rutnan, Bostwick, and Shaver. 11—Majority 4.

Upon Mr. Nichol's motion of finance being called on, Mr. George Hamilton said, he had looked at the public accounts, and they were not made out in the manner he expected. From the Governor's address of last Session he did hope that the public accounts would be furnished in a more satisfactory manner than formerly; but it appeared, that they now came down in the usual state, and contained items which they struck out last year—the travelling expenses of the Atty. and Solicitor General were included in them. He thought it the utmost folly to go into the accounts at all. He would wash his hands entirely out of them. If he were sure of coming to the house again, and certain that the same measures would be pursued next Parliament as had been in this, he would never come inside its walls. A ballot took place, and, upon the glass being turned up, Messrs. Nichol, McDonnell, J. Jones, Gordon, Morris, Wilmot, and Crooks, were declared a committee on finance.

Mr. Nichol, in order to see how far Lower Canada had done this Province justice, moved, seconded by Mr. C. Jones, that it be resolved, that a humble address be presented to His Excellency the Lt. Governor, praying his Excellency may be pleased to procure returns of the amount of duties received at the Port of Quebec from 5th Oct. 1822 and ending 5th Oct. 1823, distinguishing the amount received in each quarter of the same year, and to direct the same to be laid before this house. Carried.

Mr. Atty. General and Mr. Hagerman were appointed a committee to draw up an address pursuant to the foregoing resolution.

Mr. Baldwin rose to move for leave to bring in a bill "for better declaring the true intent and meaning of the 3d clause of the Provincial Statute of the 32d Geo. 3d c. 1," and said that previous to his motion he would make a few observations, in order to explain the object of the bill, which was to check what he conceived a very mistaken and dangerous interpretation given to those words in that clause: "that in all matters of controversy relative to property and civil rights, resort should be had to the laws of England, as the rule of decision for the same." By referring to the section of the British statute 14 Geo. 3d c. 83, and comparing it with this 3d clause of the Provincial statute 32d Geo. 3d, it will appear most obvious that the intent of this clause was merely to exclude the Canadian or French law from this Province; the Canadian law having been the law of the Province of Quebec, at the time of its division into two Provinces. [Here Mr. B. took a short historical view of the early government of the Province of Quebec, after the conquest, till its division by the 31st of the late King.] He said that the 14 Geo. 3d in granting to the Province of Quebec the "Canadian law as the rule of decision in all matters of controversy in matters of property and civil rights," did not thereby exclude any part of the English law, to which it necessarily became subject as a conquered country, or which applied to it under the general condition of a British colony or plantation; as, for instance, the criminal law which was expressly given it, or those statutes that applied generally to the colonies, as the navigation law, the 5th Geo. 3d, and doubtless other statutes; but this indulgence of Canadian law to the Province of Quebec, only excluded that part of the English law which was inconsistent with itself—in like manner, the 3d clause of the 32 Geo. 3d was meant to do away this Canadian law, as regarded the Province of Upper Canada, leaving all that part of the English law and statutes which were the law of the Province of Quebec to be the law of Upper Canada; and taking away the obstacle of the Canadian law from the adoption of that part of the English law which the 8th clause of the 14th Geo. 3d excluded. That this view of the subject is correct, appears by the 31st section of the 31st Geo. 3d chapter 31. In deed the preamble and first enacting clause of the Provincial Statute 32 Geo. 3d c. 1, also fully corroborates this sense of the subsequent 3d clause; nor can the exception of

the Bankrupt and poor laws in this statute be applied to so absurd a conclusion as that, because no other exception was made. Therefore, all other laws and statutes of England were by this clause made the law of Upper Canada. The game laws, the stamp acts, and innumerable other laws wholly unapplicable and impossible to be applied, would under this construction be introduced into Upper Canada.

Mr. B. said, that the advantage of the uniform administration of justice was of the first importance—that the danger of uncertainty was extreme. Under this great latitude of construction he (Mr. B.) had heard it argued that the Statute of Geo. 2d to prevent clandestine marriages (notwithstanding all its exceptions clearly confining it to England) was nevertheless the law of this Province; and a late law was passed in this Province transmitting the offence against that statute from felony to a misdemeanour. It never was the intention of the British Legislature to enforce such statutes in this Province; and, yet, it now becomes a common argument as occasion or emergency may require to quote this 3d clause as authority for applying any Statute of England in this country. (Here Mr. B. read a paragraph in a Kingston newspaper where the writer took this course to introduce the 25th Geo. 3d, regulating elections; but Mr. Baldwin doubted, if it would be admitted, that this same 3d clause introduced that Statute of England which declares, that any member of Parliament accepting a place of trust or profit under the government should vacate his seat—such a construction would oblige his hon. colleague Mr. Robinson to vacate his seat. He (Mr. B.) would not undertake to say, that the Judges have as yet ever decided on the construction of this clause. He had occasion to observe the consequences of this uncertainty with the law. At the Gore Assizes, the year before last, a man of the name of Nash was indicted under the Statute for maliciously shooting at a person—that person was one of a number of rioters, who, under the name of Ch. ravariis, assaulted and insulted the man's house and family; and he, in defence of his house fired some small shot in the night at the group, and grazed the fellow's cheek, without the least mark remaining at the time of trial; and, yet, Nash was indicted under the Statute (the Waltham black act, Mr. B. supposed, or Lord Mansfield's act he did not know which) and convicted and sentenced to death; No doubt the humanity of the governor saved this man from execution. But, is it no evil to stand in jeopardy of life in such uncertainty? Is it no evil to suffer agony of mind? and that a man's family and friends should be put to such pain and trouble? Mr. B. then stated that at the same district this year, a similar Chieravariis party of rioters were indicted for the riot; and the Judge most correctly charged the jury on the nature of the offence which justified resistance; and the rioters were punished. The Judge in the case of Nash was equally right under this construction of the third clause, because Nash was indicted under a Statute. Mr. B. repeated, that the object of the Bill was to exclude so extravagant a construction, which would render it impossible for the subject to know when he acted right or wrong. The fact to turn the eyes of the Judge from the vague expression of the 3d clause, of the 32d Geo. 3d, to the 33d section of the 31st Geo. 3d, whenever the question was whether any particular law or statute of England was the law of this Province or not leaving this 3d clause to its own original simple exclusion of the Canadian law.

(Debates to be continued.)

To His Excellency Sir Peregrine Maitland, K. C. B. &c. &c. Lieutenant Governor of the Province of Upper Canada, and Major General commanding His Majesty's Forces therein.

The Commissioners appointed by an act of the last session of the Provincial Parliament, entitled "an act vesting in certain Commissioners therein named, all the Stock, Debts, Bonds, and Property, of the pretended Bank of Upper Canada, lately established at Kingston, for the benefit of the creditors of that Institution," beg leave, in conformity with the provision, to report to your Excellency, that having entered on the discharge of the important trust vested in them.

Their first object was to procure the books, papers, bonds, notes, and other securities of the late establishment, by which means alone, they could be enabled to ascertain the state of its funds. After much difficulty, they did obtain from the officer employed by the late Directors, such property as had been committed to his charge, and having formed their establishment, they proceeded in the course which they considered best suited to settle the affairs of the pretended Bank of Upper Canada.

They gave immediate notices relative to their appointment, in order to afford information to such persons as had demands against the said Bank, and publicly named a day in each week for the purpose of hearing and determining such claims as might be brought before them.

The Commissioners had not made much progress before a subject of great importance occurred to them. Certificates to a considerable amount had been issued, some of which were soon presented for payment of the debts due to the pretended Bank, while upon a general view of the subject, it might seem just that an acknowledgment of debt by the late institution should be admitted as a fair set off against a demand made by the Commissioners; yet, on mature consideration it appeared to them, that if the whole amount due to the pretended Bank, should not be realized, a proportion only of the debts could be liquidated by the means in their power: consequently those certificates which were received in payment, would be redeemed in full, while such as were not so presented, would only be paid in part—thus placing speculators in a situation to obtain the full amount for that which the fair creditor would only receive in such proportion as might be divided on recovery.

Under the impression therefore that large sums might be lost to the late institution for want of notices and other causes which they could not control, the

Commissioners deemed it most prudent to refuse certificates in payment, until further information respecting the intention of the Legislature, should confirm or change their decision.

Another point also arose with respect to the collection of debts in full, or only to the amount of stock held by the debtor. The manifest hardship of obliging stockholders to pay an amount which was placed at their credit in the books of the association did not escape the Commissioners; but considering the safety of the public to have been the chief object of the Legislature, they did not hesitate to demand all the sums due, indiscriminately, leaving it to time and circumstances to prove what would remain to be shared by the stockholders.

As the discovery of the persons who are said to have abstracted the money from the late pretended Bank, seemed a principal point to be ascertained, it was extremely desirable to institute an immediate investigation to elucidate this important fact.—But before carrying it into execution it became necessary to know that such defalcation did really exist.—This was a work of much time and labour, and long delayed the scrutiny. The Commissioners have however at length been enabled to get through an examination of all the persons holding trust in the late institution, and the result has proved that such carelessness, animosity and want of system prevailed in the conduct of the parties as must defy the most rigid investigation to fix upon the culprit without a direct accusation.

The President of the association neglected altogether to examine into the state of its funds and accounts, and was occasionally absent for several months at a time.—The Cashier was grossly inaccurate, passing notes without the approbation of the board, making false entries, and paying out money without charging the sums in the books.—The Teller considering himself under the complete control of the Cashier, acquiesced in the negligence and deceit he practised, and by his own want of attention contributed to the derangement of the affairs of the institution; while the Directors, placing the most unwarrantable confidence in the Cashier, suffered his statements to pass their board without due examination, at one time overlooking that the books were balanced by an entry of a large sum said to be "by error," without enquiring into the nature of the error; at another time allowing notes of great amount to be discounted by the Cashier without any other names than the drawers, contrary to the express rules of the institution. Thus, where all was disorder, the Commissioners cannot possibly point out to what particular instances of negligence the total failure should be attributed, nor whether the abstraction took place before or after the suspension of the President.

According to the statement submitted by the officer of the Bank on transferring its property to the Commissioners, Bills of that institution amounting to five thousand two hundred and forty five pounds fifteen shillings had been redeemed and destroyed between the twenty third day of December, one thousand eight hundred and twenty two, and the eighteenth day of April, one thousand eight hundred and twenty three, under the superintendance of the directors.

The sums for which the Commissioners have issued certificates, amount to two thousand nine hundred and eighty eight pounds. Those received in payment amount to three thousand four hundred and seven pounds, making in all six thousand three hundred and ninety five pounds which has been taken by them out of circulation. In addition to this amount the sum of fifty pounds two shillings and four pence has been received in current money.

There is reason to believe that much more would have been redeemed, had not unforeseen difficulties arisen and various obstacles been thrown in their way. Their great desire was to execute the trust reposed in them by as easy a mode, and with as much lenity as they could exercise under existing circumstances. They therefore declared their readiness to accept reasonable instalments, which necessarily proved a tardy mode of collecting large sums, although they became gradually diminished and were left equally secure.

This favour, however, produced in some an effect, which, as it could not be justified, was not at all contemplated. The ready accommodation offered induced many to conclude that there was a want of power in the Commissioners to enforce payment. This delusion was increased by evil minded persons, whose reports and anonymous publications were filled with insinuations as base as they would have been contemptible, had they not contributed to mislead the ignorant and prevent their truly estimating the pledge of protection given by the Legislature to an injured public.

There was also another cause which tended greatly to embarrass the operation of the Commissioners. Previous to the passing of the act vesting in them certain powers for settling the affairs of the pretended Bank, the Directors of that establishment had given extended periods of payment for very large sums, by surrendering their immediate claims and taking security upon fixed property, with a condition which postponed their payment to a distant period. A sum exceeding eight thousand pounds was thus put out of the control of the Commissioners and placed under circumstances, which rendered its full recovery before a given period impossible to any person.

The natural remedy for these evils, was immediate recourse to law; but, from the novelty of the case which caused the omission of some necessary form in their

proceedings, the Commissioners thought it prudent to withdraw the action which had been commenced, and have not, therefore, as yet, recovered any debts due to the institution by means of legal process. In consequence of this circumstance, the Commissioners are also unable to declare, whether any change in the Law is absolutely necessary to enforce compliance with its just provisions. They, however, feel themselves called upon most respectfully to state the observations which have resulted from their progress. They are impressed with the conviction that every doubt as to the construction of the Law must prove in a great degree fatal to its due effect. The peculiar circumstances which not only cause to many persons the immediate loss of large capital embarked in the speculation, but also require from them what they conceive a second payment of it, renders many of them most willing to adopt any legal expedient of avoiding it. The remedy therefore cannot be effectual which is of doubtful operation and admits a possibility of evasion.

At the commencement of the late establishment on the appointment of Smith Barlett as Cashier, a bond was given by Benjamin Whitney and Patrick Smyth, to secure the due performance of his duty in that office. By one of the last acts of the Directors, that bond was in part cancelled, and Benjamin Whitney alone released from its penalties. A doubt has arisen, whether by Law it is restored to its full validity in the hands of the Commissioners, and, if not, whether the release does not extend to both parties.

It has been urged, that the provision in the first section, which invalidates all transfers, &c. made by certain persons therein named in contemplation of the failure of the said Bank, contains so much obscurity in the phrase "notwithstanding a further day may be given for the payment thereof," as to render it liable to a construction wholly different from what the Commissioners conceive to have been the true intent of the Legislature.

It may be also matter for consideration how far it would be proper to release the Commissioners from their charge of cancelled Bills, which they are not at present authorised to destroy.—In consideration of the liability which still attaches to persons concerned in the late institution, it might in justice to them be deemed fit to direct, that from time to time, such quantity of Bills of the pretended Bank of Upper Canada, as may have been redeemed by the Commissioners, shall be destroyed in presence of one or more of the late Directors, after such manner as will best conduce to the satisfaction of all parties.

Having thus furnished such material information as came within the knowledge of the Commissioners in performing the arduous duty assigned to them, they trust every difficulty will be removed which may impede their progress, while they sincerely hope that the final result will not disappoint the just expectations which induced the Legislature to extend its relief to the public creditors of the pretended Bank of Upper Canada.

All which is most respectfully submitted.

GEORGE H. MARKLAND,
(Signed) JOHN KIRBY,
JOHN MACAULAY.
Kingston, 8th November, 1823.

A true Copy. G. HILLIER.
(Signed)

Provincial Parliament of Lower Canada.

LEGISLATIVE COUNCIL.

Tuesday, 25th November, 1823.

THIS day at two o'clock, His Excellency the Governor in Chief came down in state to the Legislative Council Chamber, and being seated on the Throne, the Gentleman Usher of the Black Rod was sent to command the immediate attendance of the Assembly, which being come up, His Excellency was pleased to open the last Session of the Eleventh Provincial Parliament with the following SPEECH:

Gentlemen of the Legislative Council, and Gentlemen of the House of Assembly;

It is painful to me to meet you in each succeeding year with statements of difficulties in our financial affairs, but as they still exist, it is incumbent upon me to bring them before you in the fullest detail—it is for that especial purpose I have called you to meet at this early period.

Placed as the Executive medium between the Imperial Treasury and this Provincial Parliament, I am to be guided by the decisions of both in financial matters—and having the satisfaction to know that the course I have pursued in the difficulties of this summer, has been approved by His Majesty's government, it remains for me, to submit to your consideration, in order that Parliament here may adopt such measures as to it shall seem best.

Gentlemen of the Assembly;

I shall direct the proper officer to lay before you the annual accounts of the Province to the 31st October last, so soon as they can be prepared—also estimates of the probable expenses of the Civil Government for the year now commencing, in the same form as I presented them in last Session—and in His Majesty's name I am to call upon you to make provision accordingly.

Gentlemen of the Legislative Council, and Gentlemen of the Assembly;

It is with great satisfaction I have to state that the Revenue continues equal to what it has been for several years past, and that I consider the Province essentially prospering, even to a degree far beyond what is generally imagined.

Under existing circumstances, it may be unnecessary for me to recommend the improvement of Roads, or the Canal now nearly completed, or indeed any works which spring from public pecuniary aid, nevertheless, I trust they will not be omitted in your deliberations.

There are other subjects not so dependent, and no less important, to the public interests.—The Judicature bill, and that for the establishment of Register offices, have been already under your consideration and I hope will be again resumed.

We are already arrived at the last Session of this Parliament; let it be the anxious desire of all to close our labours in that harmony and effectual concert, which always promote public good and ensure public prosperity. In that desire, I think, I need not assure you of my cordial concurrence.

FOREIGN EXTRACTS

From the Commercial Advertiser, Nov. 25.

European Intelligence.

The Packet ship *Cortes*, Capt. De Cost, arrived at this port last evening from Liverpool, whence she sailed on the 24th of October. By this arrival the editors of the Commercial Advertiser have received their regular files of London Papers to the 23d of October, and Liverpool papers of the 24th, 25th, and 26th, and Price's Current of the 14th. The contents of these papers are not of any great importance, but such articles as appear of the most interest are given below, or the substance of them comprised in the following summary.

SPAIN.

The complexion of affairs in Spain is not very cheering; but whether the country will settle down in the calm repose of despotism, or whether the King will grant his subjects something in the shape of a Constitution, or whether the Constitutionalists will again renew their struggle for freedom, are points upon which it would not be prudent to hazard an opinion. The papers are as full of rumours as at any time during the season, and probably, as heretofore, ninety-nine hundredths of them are untrue.

The decree of the King, issued from Xeres on the 4th, (published here a fortnight since) is much complained of at Madrid, as the general opinion was that an amnesty would have been granted. But it is so rigidly enforced, and the order has been given by the Intendant de la Vigilancia, to all persons included in this decree, to provide themselves without delay with the necessary passports. A catalogue of the proscribed in Madrid, it is said has been made out, and it was supposed 15,000 people would be compelled to go into exile. A new decree is spoken of, which will send away a great number of great persons; among them the Count of Onante, the Dukes of Altamira, of Abrantes, and of Medina Celi, the Duchess of Benavente, the Marquesses of Alcaniz, of Santa Cruz, of Villa Saturna, of Villa Franca, and the Prince of Anglona are mentioned.

In our foreign summary published last Saturday week, it was stated that San Miguel (ex minister of the Cortes) had been wounded and taken by the French. The London papers of the 23d, contain the official account of the affair, as reported to the French Minister of War by Marshal Lauriston.—Gen. San Miguel, (acting chief of the staff of the army of Catalonia) left Tarragona with from three to four thousand men, comprising the whole, or nearly the whole, garrison of that place. He was closely pursued by the French, and the Spanish Royalists, under the Baron d'Eroles, and driven about until he was forced to a general engagement near Tramacid, on the 7th of October.—The result was a total defeat—the French, *avansal*, sustaining but a very trifling loss, Miguel, severely wounded, was taken prisoner.

Speaking of the constitutional spirit manifested at Cabra, a private letter from Bayonne of the 14th, says, "the impulse has been given by Ballasteros, who is with a respectable force in the neighbouring mountains. The cry in all that country is, 'the constitution or death!' and they wear the green ribbon. Jaen is not tranquil. The desertion is considerable, and the prisoners of Riego's corps escape as if by miracle from their prison. Ballasteros, it seems, circulates as an order of the day, copies of the Royal Decrees, both that of the 30th September, and those since published. The officer at Madrid can scarcely deliver the number of passports applied for." [Another account states that the corps of Ballasteros has been disbanded by the King's order; and that the order was quietly obeyed. We hear nothing further of the arrest of Ballasteros in consequence of the disclosures of Riego; nor indeed is any thing said of the latter which can be depended upon. One rumour states that the Baron d'Eroles has fallen into the hands of Mina, who holds his head responsible for the safety of that of Riego. But this story is entitled to no credit whatever.]

The news of the fall of Cadiz reached the Head Quarters of Marshal Momey, at Mataro in Catalonia, on the 7th. The result was announced by the artillery, and it was believed that the inhabitants of Barcelona, would generally declare for the King. It is stated (by the French) that the Governor of Barcelona, Rotten, and Mina the Captain General, have declared that they will surrender, when commanded by the King. The Duke of Angouleme is to proceed to Catalonia, for the purpose of concluding the war there (if it should not have previously closed,) and does not return to France but with the French troops.

The proclamation of the King, declaring all the acts of the Constitutional Government null and void, including all the loans made by that government, continues to create much excitement among the capitalists, who have been dealing in Spanish Bonds. The British Traveller of the 21st, says—"Overtures have been already made, by the new Government at Madrid, for another Spanish Loan—but it is confidently stated, that the leading monied interests, both in London and Paris, will unite in resisting every effort, until the loans already contracted for, shall be ratified by the King of Spain—and guaranteed by Austria, Russia and France!" Let but the monied men be true to their interests, and Ferdinand must, from sheer necessity, succumb. Not only Spain, but France will probably require pecuniary aid—especially if what is now asserted with increasing confidence be true—that mutual pledges have been given in respect of what was once Spanish America. Appearances unquestionably corroborate the suspicion, that France meditates on this point, more than has yet been avowed. It is supposed however, by some, that the British Government will compel Ferdinand to preserve the good faith of the nation; and in corroboration of this opinion, it is stated in the Paris papers of the 20th, that an under Secretary of State has been promptly sent into Spain, to deliver to King Ferdinand a positive demand on the part of the English Government, on the subject of the claims of England upon Spain. It is affirmed that this demand leaves no other alternative than the following—either that Spain pay what has been promised, or England will pay herself.

An opinion seems to be gaining ground that France, Spain and Portugal, have it in contemplation to restore the American colonies of the two latter to the legitimate sway of their respective mother countries. Transports it is said, were preparing at Lisbon, to carry troops to Brazil, and Governors have