

It will be observed that the allegation of the memorial as to the agreement is not sustained by any evidence, either oral or documentary, establishing any express agreement.

It is contended, however, that an agreement is established by the language of the Act of 1841 above referred to.

It is necessary, therefore, to consider the terms of that Act, in order to decide whether it does or does not support the contention.

It will be observed that the preamble of the Act asserts that the establishment of the House of Correction in its operation is found to be highly advantageous to the City and County of St. John, and that it is found advisable to extend the benefit of its operation to the Province at large.

It will be further observed that the Act provides for the payment by the Province of the whole expense incurred by the Justices in the erection and establishment of the institution, including the various sums borrowed for the purpose.

There is, however, under the Act, a limitation of £4000 as the maximum, but it will be remembered that as this sum was found insufficient it was afterwards supplemented, evidencing an intention on the part of the Province to reimburse the Justices all moneys expended by them.

It will be observed that the 14th section of the Act makes it lawful for the Mayor, &c., of the city, and the Justices of the city and county of St. John to commit rogues, vagabonds, &c., to the House of Correction for a period not exceeding 40 days. That the 15th section makes it lawful for the Justices in any county in the Province to order prisoners in the common gaols or workhouse to be transferred to the penitentiary and kept there until the expiration of their sentences. The effect, therefore, of the 14th and 15th sections appears to be as follows:—

The 14th section empowers the mayor, recorder and aldermen of the city, in common with the Justices of the Peace of the city and county of St. John, to send rogues, &c., to the House of Correction for any time not exceeding 40 days.

The 15th section empowers the Justices of the Peace only for any county or city and county in the Province in general, or special sessions, to cause all prisoners sentenced to imprisonment with hard labor, and all vagabonds, rogues, &c., confined in any common gaol or workhouse by virtue of any conviction, to be removed from such gaol or workhouse and taken to the house of correction.

The agreement relied upon, if established by the Statute at all, must be found, not in the 14th section, as that refers to certain classes of persons only, whose sentences are not more than 40 days.

It contained in the Statute at all it must be in the 15th section, which includes not only rogues, vagabonds, &c., but all persons confined in the common gaols sentenced with hard labor, and is not limited to sentences of 40 days.

If this 15th section proves any agreement it proves that the agreement was as much with all the other counties in the Province as with the city and county of St. John.

It is not pretended that such agreement was made with the other counties. The argument therefore that the 15th section proves the agreement relied upon, or indeed any agreement at all, seems to me to be untenable.

The permission given to the city and county of St. John to send prisoners for not more than 40 days to the House of Correction certainly does not establish the agreement contended for by the Justices, as such permission falls far short of the terms of that agreement. The permission thus given would appear explainable by the fact that the house of correction was situated within the limits of the county.

Had the Legislature not contemplated payment in full of the Justices of the city and county of St. John of the moneys expended in the erection and establishment of the institution, there might be some reason for the contention made that the agreement referred to had been entered into, the Statutes, however, evidently contemplated payment in full to the Justices.

It is indeed alleged in Mr. Frith's letter above set out, that payment in full has not been made, and reference is made to the fact that legislation afterwards took