His Excellency Sir T. J. Cochrane

THE CARBONEAR STAR, AND CONCEPTION-BAY JOURNAL.

VOL. I. WEDNESDAY, APRIL 3, 1833. No. 14.

REPORT OF THE JUDGES OF THE SUPREME COURT OF NEWFOUNDLAND, TO HIS MAJESTY'S GOVERNMENT, UPON THE JUDICATURE BILL.

(*Continued.*)

Supported in her prayer to the mother country for assistance by pretensions like these, it seems to us next to impossible that any reasonable suit she may prefer can be denied to her.—The motives which call for the adoption of the most rigid system of PUBLIC ECONOMY that may be consistent with the eternal rules of Justice, are doubtless at this time *peculiarly forcible;* and were the necessity for it even less imperative than it is, we should still feel, that, as the wants of this country are *greater* than could conveniently be removed at once, much care and judgment ought to be exercised in the selection of the objects which are most immediately conducive to her happiness; and that even upon these not *one farthing* should be expended more than is absolutely requisite to the attainment of them upon that moderate scale of expense which, on many accounts, should be inviolably adhered to in *every department* of this Government.—Strictly guided, therefore, by these principles, and thoroughly convinced, not only that an improvement in the Judicature of Newfoundland would be the *first* and *greatest blessing* she can now expect to receive: but also that the *mode of effecting this improvement* which we have suggested is the *best* and *least expensive* that can be contrived, we beg leave respectfully and earnestly to recommend the foregoing observations to the favourable consideration of his Majesty's Principal Secretary of State for the Colonies.—Should his Lordship however, contrary to our ardent hopes and wishes, find himself restrained by a sense of duty from adopting the measure we have now proposed, on account of the expense that must attend it, our views of improvement in the Judicature of this Island must be confined entirely to such alterations in the existing system as will not demand any increase of the machinery to be employed in it: and as this must chiefly be effected *by introducing some changes into the* 5 *Geo. IV., c.* 67, we shall now turn to those provisions of that statute which seem to us to call for *amendment* in the precise order in which the several sections succeed to each other in the Act of Parliament.

5 *Geo. IV., c.* 67, *s.* 1. Under this section the Supreme Court possesses criminal jurisdiction throughout Newfoundland and its dependencies, as ample, to all intents and purposes, as His Majesty's Court of King's Bench hath in England; and it may therefore unquestionably try all misdemeanours and crimes of the same magnitude or degree, that the Courts of King's Bench can; but it does not seem to be equally clear and certain, that an act which would constitute an offence of a particular degree by the law of England, if committed there, is by this section rendered penal in the same degree if committed in Newfoundland; or, in other words, that *the whole criminal Law of England* is, through the operation of this section, transferred *en masse* to Newfoundland, and made as binding and obligatory here as there. From *the structure of the clause*, as well as from the omission to specify what parts of the criminal law of England shall be enforced in this Colony, it may be strongly inferred, that the WHOLE was to be extended to it: whilst on the other hand, the total inapplicability of a large portion of that law to the circumstances of this country, and the absolute impossibility of carrying many penal statutes into execution here without violating that fundamental rule of literal and rigid construction which has always been observed in regard to them cannot fail to create *doubts*, as to the real force, meaning, and effect of this section, which ought not to exist on a subject of such vital importance. We would, therefore, recommend, that these doubts should be entirely set at rest by a clear and explicit declaration of the Legislature upon this very interesting point; and at the same time we would suggest, that only some select members of the criminal statue law of England, and not the whole body of that law, ought to be extended to this Island. The compilation of such a code would, we are sorry to add, require much more leisure, and opportunities for calm reflection, than we are permitted to enjoy; and it would consequently, be utterly impracticable for us, *situated as we now are*, to enter upon an undertaking of this sort even if we could bring, what we hardly presume to suppose we can, an adequate share of talent and knowledge to the execution of it.

5. *Geo. IV., c.* 67, *s.* 3. The *Chamber of Commerce of St. John's*, have expressed a wish, that Juries shall only be resorted to for the trial of civil suits and actions when they are prayed for by either the Plaintiff or Defendant: but, though we are disposed to attach due weight to the suggestions of that body, upon a question like this we are yet too anxious to form the SUPREME COURT upon the model of the common law courts of Westminster Hall to consent that Issues of Fact shall be tried *in it* in any other way than by a JURY. We think it, indeed, of the utmost importance, that order, regularity, consistency, and an uniform course of proceeding, should be as much as possible maintained in *that* Court, which ought to be set apart for the most solemn criminal and civil trials, whilst questions of a less grave character may obtain a more summary adjudication in the CIRCUIT COURTS. In *them*, therefore, we are so far from objecting to the proposal that both the LAW and FACTS of a case should be left to the *Judge*, where neither of the parties to it desire to refer the latter to a *Jury*, that we conceive the use of a Jury in these Courts may more properly be made to depend on the *wish of the suitors to have one*, than to rest on the footing upon which it now stands by the 3d and 12th sections of this Statute.

5. *Geo, IV., c.* 67, *s.* 4. As long intervals must necessarily occur between the sittings, or terms, of the Supreme Court, in consequence of the absence of the Judges thereof on their several circuits, we entirely concur with the Chamber of Commerce in thinking, that the power of trying all informations and suits for the breach or violation of any law relating to the trade or revenue of the British Colonies in America, ought to be vested in each of the Judges, instead of being committed to them jointly as it now is.

5. *Geo. IV., c.* 67, *s.* 5 *and* 6. Upon reasons somewhat similar to those which have been expressed by us under the foregoing article, we incline to think, that the grant of the administration of the effects of Intestates and the Probate of Wills, together with the appointment of guardians for infants and lunatics, ought to be rested *solely and exclusively in the Chief Judge* of the Supreme Court.

5. *Geo. IV., c.*67, *s.* 9. In addition to the jurisdiction conferred on the Circuit Courts by this section a power may be given to the Judge thereof, during its sittings of hearing and determining, according to the course of proceeding in similar instances in the Courts of Vice Admiralty in the Colonies, all informations and suits for the breach or violation of any law relating to the trade or revenue of the British Colonies or Plantations in America, in all cases where such breach or violation of any such law shall be alleged to have been committed *within the limits of the District* for which such Circuit Court shall be held; with a provision, that the said Judge may also defer such trial until his return to St. John's if any circumstances should exist to render it, in his opinion, necessary, or desirable to do so.

5. *Geo. IV., c.* 67, *s.* 10 *and* 11. At many of the Out-harbours it is *difficult*, and at some of them *altogether impossible*, to procure a GRAND JURY; but there is no place at which the Court can sit where a PETIT JURY may not be empanneled if there shall be a real occasion for one; and we would therefore suggest the *repeal* of the provision which the 11th section contains for the trial of crimes and misdemeanours by the Judge and three Assessors.

5. *Geo. IV., c.* 67, *s.* 12. As we have before mentioned, a *Petit Jury* may be assembled at all the settlements in which a Circuit Court is held, if there be an absolute necessity for one, but as a frequent attendance upon Court is certainly inconvenient to persons in that class of life from which Petit Juries are drawn, and as the partial compensation which is necessarily made them for the time they lose by their attendance adds considerably to the expense of a trial, we think that it should be left to the option of the Plaintiff or Defendant to refer the case to a Jury if either of them should wish to do so; and that where neither of them is disposed to do it, the Issues of Fact shall be tried by the Circuit Judges alone, agreeably to the suggestion of the *Chamber of Commerce*.

5. *Geo. IV., c.* 67, *s.* 16. The provisions of this clause have always appeared to us to be *dark* and *obscure*. Its *primary* object certainly is, *to prescribe what sort of process* shall be used both for the purpose of bringing parties into Court, and also for enforcing any judgment or decree which may afterwards be given or pronounced; but *together with this object* it has contrived to blend some *regulations respecting the* MODE OF TRIAL which seem to be at *direct variance* with the rules previously laid down on this head in sections 3, 10, and 12. The only method, indeed, by which we could reconcile it with those sections was by supposing, that whilst they prescribed a more regular course of trial in actions for sums exceeding *ten pounds*, this clause was designed to confer a *summary jurisdiction* on the Courts over all suits below that amount; and by examining the structure of the clause very closely we thought it would well admit of such interpretation, by including the long sentence between the word "*abode*," in the ninth line, and the word "*and*," in the twenty-ninth line, in a *parenthesis;* so as to connect the process to be used in actions under ten pounds immediately with the power which is afterwards given of trying the case without a jury. We accordingly framed *rules of practice* for the *Supreme* and *Circuit Courts* in conformity to this construction: but though His Majesty was pleased to confirm the one for the *Supreme Court*, he yet disallowed the similar one which we had made for the *Circuit Courts*, on the alledged grounds that a different mode of trial in those Courts had been pointed out in section 10 and 12. So, however, had the 3d section also done in respect to the Supreme Court, and that too in a much stronger manner; for whilst the facts as well as the law of a case are submitted to the Judge of the Circuit Court, in a particular instance, by the 12th section, the *trial by jury* appears to be peremptorily established in the *Supreme Court*, by the 3d section, in all cases whatever, without a single exception. We confess, therefore, that this confirmation of one with the rejection of the other, of our rules, has exceedingly increased our perplexity in regard to the true meaning of the 16th section; and, we consequently, feel it necessary to draw Lord Goderich's attention very particularly to it, in order that it may be rendered more plain and intelligible than it now is.—We likewise consider it proper to mention here that after weighing as well as we are able, and certainly with strict impartiality, all the reasons that have presented themselves to our minds both in favour of and against the application of the Chamber of Commerce, (with whom we believe nearly all the merchants in the island agree on this point) that process of *attachment* may issue in all actions for sums above *two pounds*, we cannot bring ourselves to concur in it. In the plan of a *District Court*, which we have described in another part of this letter, we have indeed proposed, that an *Attachment* might issue where the action was brought for more than *five pounds;* but in doing that we took care to impose a sufficient check, or what, at least, we hoped would act as such, upon the too frequent and vexatious use of this form of process, by compelling a plaintiff to pay for it, whilst, an option is offered him *of obtaining a summons gratis:* and even where the use of the writ of attachment is accompanied by a restraint like this, we still feel some reluctance in recommending the application of it to so small a sum as *five pounds*.

5. *Geo. IV., c.* 67, *s.* 17. By the terms of the Charter which His Majesty has been pleased to make for the Supreme Court, in pursuance of this section, the Judges thereof are authorized, in case there shall not be a sufficient number of Barristers at Law to act as such in the Colony, to admit so many other fit and proper persons to appear and act as Barristers as may be necessary: and under this authority several persons who had previously practised for many years in the Courts of this Island, together with a few others whom the Judges have since deemed worthy of the same indulgence, have been admitted to *general practice* in the Supreme Court. These persons, however, feeling themselves to be not *real*, but only *quasi* Barristers; and of course excluded from some important privileges—such as the succession to the Bench, and the powers of qualifying Clerks for admission to the Bar—which by the Act of Parliament, and by the Charter, are confined to an enrolled Barrister; are naturally anxious to obtain a more perfect title to the character of Barristers than it is possible for them to acquire under the present regulations; and as we think that practice in the Supreme Court may, at least, be put upon the same footing with a Clerkship to a Barrister in respect to qualification for enrollment, we would respectfully suggest, that authority should be given to the Judges to *enrol as Barristers* so many of the persons who may already have practised, or shall hereafter practise in the Supreme Court for the term of *five years*, as they may deem to be fit and qualified, both by professional knowledge and moral character, to discharge the duties, and to sustain the respectability, of a regular Colonial Barrister.

5. *Geo. IV. c.* 67, *s.* 18. As we do not possess any information respecting the LABRADOR, derived from personal observation and experience, we shall *entirely refrain* from offering any opinion upon the Judicature now established there; but we think it right to notice, that the 51, Geo. III., c. 45, has been erroneously referred to in this section as the statute by which the Labrador is re-annexed to the Government of Newfoundland, such re-annexation having really been effected by the 49, Geo. III., c. 67.

5. *Geo. IV., c.* 67, *s.* 22. Among the various relations which spring from the social compact there is none which more loudly calls for regulation in this country than that of *master* and *servant* in all the different departments of life in which it can exist; and we would therefore very urgently recommend that the jurisdiction which by this section is given to the courts of session over all disputes concerning the wages of servants in the *fisheries* should be extended to *all other sorts of servants*, that the summary jurisdiction over all complaints and disputes between master and servant which, by numerous statutes, is confided to the justices of the peace in England, should also be granted to the *courts of session in Newfoundland:* or, *should the plan of district courts be adopted*, to the Judges of those courts. It is impossible for us, by any language we can command the use of, to convey an adequate idea of the inconvenience now felt and loudly complained of by the members of this community from the want of some tribunal to which they can resort for a speedy adjustment of the differences which almost daily occur between masters and their servants of every class; but most especially *apprentices*. It would be useful too, we conceive, that the Courts of Session should be invested with authority to compel the *putative father of a bastard* to make some allowance for the maintenance of it; or to inflict some corporal punishment upon him in the event of his refusing, or being unable to do so. As the provisions to that effect which prevail in England seem to rest altogether on the *poor laws;* and as those laws *do not extend to this country;* we have been obliged to hold, that those provisions cannot be enforced here, although we are exceedingly anxious, that some similar restraints should be opposed to an evil of very