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No. 6.

Legislature of Newfoundland.

HOUSE OF ASSEMBLY,
January 10.

At 2 o'clock, this day His Excellency the Governor transmitted a message to the House with the following Memoranda on the Judicature of Newfoundland, and on other subjects connected with that Colony.

No. 1.—JUDICATURE.

Forty years have elapsed since by an Act of the British Parliament, the first Supreme Court of *General Criminal and Civil Jurisdiction* was erected in Newfoundland; previous to the passing of that Act, the statute 10 and 11 William III. (which for a considerable period of time comprised the whole body of Newfoundland law) provided, that all persons guilty of thefts, robberies, murders, and other felonies in Newfoundland, should be carried to England, and there tried, in any County, at the General Assizes of Oyer and Terminer.

But the execution of this provision was constantly found impracticable, owing to the great expense and difficulty of procuring and sending to England the witnesses required to establish the proof of such crimes against the accused, who, therefore, commonly escaped unpunished.

About the year 1729, Courts of Sessions of Justices of the Peace were erected, with very limited powers, for the repressing only of petty crimes and breaches of the peace of ordinary occurrence.

But these Courts being found insufficient for the ends of justice, it was deemed expedient to resort, on particular occasions, to the institution of Courts of Oyer and Terminer, which, under his Majesty's Commission to the Governor, were first instituted about the year 1750.

In the year 1775, the statute of 15 Geo. III. c. 31, gave jurisdiction to the Courts of Session of Justices of the Peace, and, also, to the Vice Admiralty Court, in respect to the contracts, wages, and services of seamen and fishermen; but, in a few years afterwards, this species of jurisdiction, given to the Vice-Admiralty Court was withdrawn, and left altogether with the Justices of the Peace.

In the mean time, the necessity of establishing a more efficient system of Judicature for the Colony, became more urgent; and under the immediate superintendance of Chief Justice Reeves, the Act of 32 Geo. III. c. 26, was passed, under the sanction of which a *Supreme Court* of criminal as well as civil jurisdiction only, were established. The erection of these Courts, both being itinerant, proved eminently beneficial to the Colony, having been soon found remedial of most, if not all, of the evils that had been complained of as incidental to other Courts which had preceded their establishment.

This Act of Parliament for the erection of the Supreme and Surrogate Courts, was also made to endure but for one year, which manifested the earnest wishes entertained by his Majesty's Government to establish a practically-beneficial system of judicature.

In the year 1793, therefore, another statute was made by the British Legislature, on the same general basis as the last preceding law, but containing some useful additions and revisions.

The provisions of this act continued to be the judicature law of the Colony until the year 1809, when the Statute of 49 Geo. III. c. 27, was passed, having been framed on the same principle as the former law, but varying in a few particulars, which were considered improvements in the local law.

It must, I conceive, be evident by the provisions of these several acts of Parliament, that His Majesty's Government were earnestly solicitous that the judicial institutions of the Colony should be settled on a basis best calculated to place an *efficient, prompt, summary, and cheap administration* of justice, within the reach of every man, rich and poor, throughout the Colony. The Supreme Court itself, was itinerant, no less than the Surrogate Courts; and the operations of the latter were facilitated, during a period of 30 years, by means of the numerous ships of war, then retained constantly cruising on the coast of the Colony, carry-

ing to the door of every man, the administration of a summary and cheap justice; and I think it was not too much to assume, was generally found efficiently adapted to the ordinary wants and circumstances of the scattered inhabitants employed in the trade and fisheries of the Island.

Changes in the mode, as also in some of the principles, of our local judicature were, however, again called for by a considerable portion of the inhabitants of the colony; and, in the year 1824, the provisions of our present Judicature Law were enacted, and considerable changes made in it, and also in the Fishery Laws of the Colony, the ancient laws having then been almost entirely repealed; and the whole comprised in the Statutes of 5 Geo. III. c. 51, and 5 Geo. IV. c. 67. The latter, being the judicature law, although passed in 1824, did not come into operation until 1826.

What have been the advantages or disadvantages which the public have derived under the administration of the present system forms an important subject for consideration. Complaints generally prevail in all the settlements of the Island, removed beyond a convenient distance from St. John's, of the inefficiency and failure of that system, no less in regard to the Labrador and Circuit Courts, than as relates to the protection and practical utility of the Justices of the Peace, and their Courts of Session, which are of late years, I regret to say, become almost extinct in the numerous out-ports of the Colony.

The unsettled state in which the criminal law, applicable to the Colony, has, for some years past, been held, is also a subject of very important and serious consideration; and I think it is become obvious, either that particular laws of England should be expressly adopted, or a code of laws made especially adapted to the more effectual repression and punishment of crime.

These subjects were under the consideration of His Majesty's Secretary of State for the Colonies, at the period it was determined to confer on Newfoundland a Local Legislature, whose province it will now be to legislate upon them.

No. 2.—POPULATION.

The population of this Island has been variously stated at different times. Formerly the number of fixed inhabitants was small in proportion to those who came from England every summer, and returned thither every fall. The annual increase of the former and the decrease of the latter, have inverted the order, and the number of those who resort to these shores, in the spring and summer, has not, on an average exceeded 1350, of whom those who have not settled in Newfoundland, have proceeded, either to British North American provinces, or to the United States. The Governor caused a very careful return of the population to be taken in 1827-8, which his Excellency has reason to believe to be as correct as circumstances and the existing state of the country would admit of, and which limits the population to 60,083, to which will have now to be added the supposed increase since that period, either by the excess of births over deaths, or that of new settlers, over those who have left the Island, of which, it is apprehended, the numbers are not considerable.

No. 3.—QUARANTINE.

No laws connected with Quarantine have ever existed in the Island,—and, from the great distance it lies from those trans-atlantic countries, where infectious diseases have generally prevailed, and the uniform salubrity of the adjacent parts of the Continent of America, little inconvenience has been felt from this circumstance. But the experience of the last twelve months has shewn that diseases do exist, against the attacks of which distance is no security, and the scourge which has made such havoc over many parts of the Old World, having crossed to the New in the most malignant form, it was necessary to adopt such means as circumstances would admit, to prevent its introduction into this hitherto most healthy colony, and those restrictions which could not be enforced by any existing law, have generally been very cheerfully submitted to

by the community at large. Yet cases have occurred in which individuals, regardless of the welfare of their fellow-men, felt no scruple at placing their lives in jeopardy, rather than forego some trifling advantages these regulations might interfere with, and availed themselves of our defective institutions to violate them. It will, therefore, be a fit object for the early consideration of the Legislature, to adopt such laws as, under Providence, will prevent the introduction of contagious diseases, and the Governor has obtained from Nova Scotia a copy of those laws which experience has there found to be most efficacious, and which his Excellency will most readily desire to be laid before you should you wish to possess them.

No. 4. MILITIA.

No militia or militia laws exist within this Government. At the same time it becomes extremely desirable that a Militia, upon a small scale, should be established—if not at present to repel a foreign enemy, yet for the purpose of keeping peace and order in the various detached districts of which this colony is composed, and which no adequate protection from a military or naval force can reach, even were those establishments respectively upon a more extended scale than they are now or are likely to be. A plan adapted to the peculiar situation of this island was, a few years ago, laid before his Majesty's Government by his Excellency, and approved of; but the heavy expenses that devolved upon the mother country for the support of the different establishments of the Island disinclined them to add to it the moderate charge that the formation of a Militia would involve.

No. 5.—SAVINGS' BANKS.

The institution of a Savings' Bank has been long an object of the Governor's serious consideration and desire;—and the more his Excellency has reflected upon the subject, the more persuaded he has been that there is no part of the world to whose condition they can be made so peculiarly suitable, or where they would effect so desirable a change in the moral habits of the lower orders, as in the Island of Newfoundland. There are few individuals of industrious habits who cannot earn sufficient during the summer to support themselves through the hardships and severity of the following winter; and the invaluable and increasing source of wealth to be found in the Seal Fishery, places, at the end of a few weeks, a sum of money—equal to many months' industry—into the hands of several thousand men, which, if economized, would rapidly place them in a state of independence; but this source of wealth, like the hard earnings of the summer's toil, is too often squandered within a few days of its receipt, and leaves the unfortunate sufferer to add to his poverty all the consequences arising from dissipated habits. From every information his Excellency has obtained, he is led to believe, that one great and leading cause of this poverty in the midst of wealth, springs from the individual not knowing where or with whom to deposit his money in security—and that if some simple and well-planned arrangement were made by which he could deposit his money with confidence, and obtain it, when required, with facility, many would immediately resort to it with deposits; and that when the value of the institution became known, the numbers who would avail themselves of it would increase in a corresponding proportion, and that ultimately a great and desirable change would be effected in the character and conduct of the lower orders; and so impressed was his Excellency with the truth of these opinions, that he took much pains to obtain from those towns in England possessing Savings' Banks upon the most approved and simple plan, information respecting them—and his Excellency submitted to His Majesty's Government a proposition for their establishment here, which they entirely approved of, but were not able to overcome the difficulty of there being no public officer or accountant through whom the payments and receipts arising from the Bank could be conducted. The form of Government now established in the Colony will facilitate the

introduction of the above measure, and which the Governor recommends to the serious attention of the Legislature.

No. 6.—ROADS.

On the arrival of his Excellency in this Colony it was impossible to pass, except on horse-back, two miles from the town.— Since that period the very limited funds at his Excellency's disposal have allowed him to do little towards their improvement, with reference to Roads on an extended scale— although much by comparison with their former condition. The chief improvements have been dedicated to the great line of communication with the extensive and populous shores of Conception Bay. An excellent road has been completed to within two miles of Portugal Cove, and another portion of it has been contracted for, and is in progress towards completion, which when finished will leave little more than three-quarters of a mile to complete the whole line.

While differences of opinion may exist as to the extent to which it may be desirable to carry the roads in this Island, there is the direction, that of the head of St. Mary's and part of Placentia Bay, to which hereafter it may be very desirable to direct your attention. The late spring has shown, that the eastern coast of the Island may be blocked up with ice, and its ports closed to the entrance of the usual supplies, for many weeks after navigation is in other respects perfectly safe, while the ports in Placentia and St. Mary's Bays are at all times accessible, and from thence a road of eight or ten feet in width would allow cattle of all kinds, and even other supplies, to reach this part of the island, and from thence be diffused in other directions when all other modes of communication were cut off.

No. 7.—SCHOOLS.

With the exception of that institution called the St. John's School, established in the year 1804, by his Excellency Lord Gambier, few establishments worthy the name of schools existed in Newfoundland until the year 1824, when, through the instrumentality of an enterprising individual, a society was formed now called the "Newfoundland and British North America School Society," which commenced in 1825, with a school in this town, and since that period has extended its operations to various other places, and now employs 22 teachers, who give instruction to 1756 children and 242 adults. It is difficult to say which most to admire, the persevering endeavours of this gentleman to uphold what he so laudably commenced, or the kindness and good feeling with which the British public have answered his solicitations. To the first of these institutions His Majesty's Government have allowed the sum of £104, and the latter* £100 annually towards their support. Another school has since risen called the "Orphan Asylum," which gives education to a great number of poor children; and the whole are open to children of all religious persuasions. There are also 35 schools under the Established Church, and 35 teachers.

It must be unnecessary to dwell upon the blessing such Establishments are calculated to confer upon the rising generation, or to recommend them as objects for your consideration and protection.

While such laudable provision is making for the education of your poorer fellow-countrymen, it is much to be regretted that not a single Seminary exists for the education of the young of the higher classes of society; whose parents are in consequence obliged to send them to other countries for that tuition they ought to receive at home, at the risk of returning with feelings estranged from the land of their birth, and with prejudices which may never be wholly removed; and the Governor feels persuaded this important subject will, in due time, receive from you that attention it is so well entitled to.

No. 8.—PORT REGULATIONS.

No Port or Harbour Regulations exist in any of the Ports of this colony, and although
(See last page.)

* In addition to a grant of £500 to build schools.