

Friday, 23rd December, 1831.

SIR JOHN COLBORNE, K. C. B. *Lieutenant Governor.*

Clause 3d.—The Legislative Council observe, that the persons to be elected Members of the Corporation, with power to impose assessments, and with other important powers are not required to be resident in the Town, or to be possessed of any property therein or elsewhere. As a qualification is required for the persons electing, the Council are doubtful whether there may not have been an unintentional omission in this respect.

Clause 6th.—A clerical error appears to have crept in, and the Legislative Council are in doubt whether it was intended to prescribe an oath of Office which the Members are to take, or whether as no oath is afterwards mentioned, the penalty was to be imposed for not accepting the office, in which case the words "hereinafter contained" are inapplicable.

The Legislative Council further observe, that no direction is given for the mode of recovering the penalty mentioned in this clause, and as the sum is small, it probably was not intended that it should only be recoverable by information in the King's Bench.

Clause 7th.—Some words seem to have been accidentally omitted, which are necessary to complete the sense—and the Legislative Council are in doubt what is meant by providing that the Corporation "*or the Members thereof*," shall issue their precept for the election, as they conceive that when the Corporation is constituted, it is not intended that any such act shall be done otherwise than by the Corporation in its corporate capacity.

Clause 10th.—It appears to the Legislative Council that some express provision is necessary for authorising the levying the Assessments by distress (in case of non-payment,) either by warrant, under the seal of the Corporation or otherwise—and they observe that under this Bill, persons residing out of the Town, and possessing rateable property within it, will not be made to contribute to the charges of the Police.

Clause 12th.—The Legislative Council assume, that from the nature of the provision, and from the words used, it is intended, that the Corporation shall have power to pull down houses or out-houses, without which it will generally be impracticable to widen the street of a Town, or alter its direction. But as that is a greater power than is given under the general Road Laws of this Province, and as acts of this nature are construed strictly, the Legislative Council apprehend, that persons may be disposed to contest the right of the Corporation, to carry their powers to that extent, unless it is expressly given by the Act. In this clause, the word "Arbitrators" is by a clerical error inserted instead of "Arbitrator."

Besides these points, in some of which it appears to the Legislative Council, the Bill requires amendment, in order to make its provisions effectual, there are some alterations which it appears to them might be beneficially made in a measure—to the general principles of which they are favorable, and these are with all deference, suggested to the consideration of the House of Assembly, in case their attention should be again given to the subject.

It appears to the Legislative Council, that it might be convenient to prevent the necessity of a second election, in case of an equality of votes, by giving to some officer or person a casting vote.

That the Sheriff and his Deputy, or other person appointed by him, might for convenience, be required to hold the first election, but that it would be more proper and convenient to provide for the holding of future elections, by a bailiff to be appointed for each Ward,—as the Sheriff is a high public officer for the District, whose duties might occasionally be interfered with by those imposed upon him by the Corporation.

That the method provided in the 4th clause, for choosing a fifth Member, seems open to abuse, as three members might designedly exclude the fourth from an opportunity of concurring in or opposing their choice, and that if the presiding Officer at the election, were to appoint at the close, a time and place for the first meeting of the four Members, in order to choose a fifth, any such practice would be guarded against.

That the Legislative Council doubts the prudence, either as respects the Corporation or individual inhabitants, of allowing the award of Arbitrators to be final, under all possible circumstances of misconception, partiality, imposition or unfair practice, particularly if the power is to extend to pulling down houses.

A power of going before a Jury, either in the first instance or by way of appeal, or at all events, a power of obtaining a revision of the award by some authority, seems necessary to the ends of justice, where the rights involved may be so important.

And it appears to require consideration, whether on the principle of our general Road Act, a party should not have the means of being heard, in opposition to any projected street leading through his property, before it is determined upon.