



Legislative Proceedings.

HOUSE OF ASSEMBLY.

MORNING SITTING.

MONDAY, February 16.

HOUSE IN COMMITTEE ON PRIVILEGES OF ELECTION.

Mr. DAVIES, in the Chair.

REPORTS CONSEQUENT UPON THE ENTERTAINING OF THE PETITION OF MARTIN BYRNE, ESQ., AGAINST THE RETURN OF ROBERT M'CALLAN, ESQ., AS A MEMBER FOR GEORGETOWN.

Mr. FRASER, as Chairman of the Committee appointed to ascertain the amount of said Expenses, and report thereon to the House, submitted the following Account of Expenses and Subsidies.

Resolved, As the opinion of the Committee, that the Fine incurred by the High Sheriff of King's County, for not complying with the Provisions of the Election Law, when conducting the Election held in Georgetown in December last, be commuted on his paying the Expenses attending said Election.

Disbursements of the Sergeant at Arms in procuring the attendance of Witnesses for the Honourable the House of Assembly, relative to the Georgetown Election.

Travelling 40 miles to serve Peter M'Callan, Esq., with Summons, at 6d £1 15 0

Service of Summons 0 2 6

Travelling 40 miles to serve Wm. Sanderson 1 10 0

Service of Summons 1 2 6

Paid Wm. Sanderson his travelling expenses, and two days' attendance 1 5 0

Attorney General £5 15 0

1 10 0

£7 5 0

House of Assembly, Feb 4, 1852.

Hon. Mr. COLES thought the amount was so small, that it might very well be thrown in with the contingent expenses of the Session.

Mr. THORNTON thought, that as the election had been declared void on account of a misapprehension of duty on the part of the Returning Officer, that officer ought to be called upon to refund the £2 paid to him by each of the Candidates.

Mr. WIGHTMAN. He would have reason to congratulate himself on his good fortune and the lenity of the House, if he got off so easily.

Mr. PALMER. It would be beneath the dignity of the House, to insist upon the payment, by the Returning Officer, of so paltry a sum as that of the £2. Mr. M'Callan had freely admitted, that he had not complied with a certain provision of the Election Law; but it was quite evident, that he had not (as he had himself stated in his apology), acted through willful or culpable negligence, but solely in consequence of his having misapprehended the meaning of the law, when, as Deputy Sheriff, discharging the duties of Returning Officer. Under such circumstances, it would be positively wrong to impose any penalty whatever upon the Returning Officer. Many elections had not been void, owing to similar mistakes and irregularities on the part of the Returning Officers; but yet no penalties had ever been exacted from the defaulting parties. Then, why should it now be thought proper to punish upon Mr. M'Callan in this case? He had honestly confessed the mistake, in consequence of which, the election had been made void; but he has given a good reason for the omission. The Sheriff cannot personally attend at all elections; although he may judge of the validity of all. Mr. M'Callan is the Deputy Sheriff of King's County, and when acting, at the same time, as Returning Officer at the Georgetown Election, he omitted, as Returning Officer, to swear to, and subscribe the Return to the Sheriff; thinking it unnecessary, because such Return would actually have been from himself to himself, as he expressed it, when under examination. He is in the capacity of Sheriff, and he is not to be punished from himself, in the capacity of Returning Officer, or what had taken place before his own eyes in the latter capacity. A better reason could not possibly have been given for any error; and acting as we profess to act, under the influence of impartial and equitable feelings, it appears to me, that Mr. M'Callan's explanation of his conduct ought to be received by us, as fully satisfactory; and accounted a sufficient exoneration of him from all penal liability. It was with the greatest reluctance that I voted the election void. The only irregularity proved to have occurred in connection with it, was that admitted and accounted for by the Returning Officer, Mr. M'Callan; and is of that nature which has occasioned so many instances of injustice, either to the Candidates or to the Electors. If it be determined, that Mr. M'Callan shall be punished, it will be first time of a Sheriff's being treated with so much severity. Suppose we assume to ourselves the power of a Court of Law, and having decided, that he ought to pay the expenses, how are we to act, if he refuse to do so? Our decision will not have the effect of a Court of Law; but there appears to be a disposition on the part of the Government Majority, to act in a manner ten times more arbitrary, than would be pursued in a Court of Law. If the Candidates think they have cause of complaint, each of them can seek his remedy by an action at law; but it would be beneath the dignity of the House, to call upon the Sheriff for payment of so trifling a sum as falls on the Government, or to persecute him, for what is assuredly an error in judgment alone.

Hon. Mr. POWE. The hon. member for Charlottetown is the worst enemy the Sheriff has in the House. If he goes on in his defence much longer, he will render it impossible for us, with due regard to justice, to do otherwise than decide, that Mr. M'Callan is liable to all the expenses attendant upon the past election, as well as those consequent upon the enquiry concerning it before this House. He says, the Returning Officer committed no offence. How then comes it, let me ask the hon. member and learned member, that we have not decided the election, on the motion of the hon. member, solely on account of his, the Sheriff's having omitted to take and subscribe the oath required by the Act? He accuses the Government of a disposition to act towards the Returning Officer in a very harsh and arbitrary manner; but I say, Sir, that no Government was ever more willing to set lawfully in such a case, than the present one. That Officer has admitted his neglect of duty, and apologized to the House for it. His apology has been received, although not to the extent of fully exonerating him from all the consequences of his omission; and it remains to be determined, by the House, how far he should be called upon to defray the expenses which have arisen out of his neglect of duty. But that apology he would not have made, had he followed the advice of the hon. member and learned member for Charlottetown; and the consequence in himself, would have been his being left in a much less desirable position than that in which he now stands with respect to the House. But the hon. member and learned member says, throughout the whole of the affair, the Government majority have acted in an arbitrary and unparliamentary manner. He has told us, that we had no right to entertain the Petition against the Return for Georgetown; and that the power of enquiry did not rest with us, but, by the election law, had been conferred upon the Sheriff; and has concluded by reading us a lecture upon parliamentary practice and privilege, in the style of the poor party-fogging lawyer, who has lately taken upon himself, in *Essex's Gazette*, the authority of judge and dictator, with respect to the duty of the House; although the estimation in which both his professional character and opinion are held, has left him as destitute of practice, as he is of principle. The hon. member and learned member has besides taken leave to insinuate, that we have exercised an undue assumption of authority, and prejudged the case, through the influence of party spirit. His allegations are a mere repetition of the charge of subservience and political partiality, which have been uttered against the majority of the House, by the despicable creatures who are retained, by the obstructive adherents to the cause of the late Government, as writers for *Essex's Gazette*, and

This Resolution has been agreed to in Committee at a previous sitting.

Blasphemy—man equally destitute of moral principle, and altogether regardless of truth; two degraded wretches, who would soil themselves, souls and bodies for a crust of bread; contemned and despised, even by those who employ and pay them; and who nevertheless (such is their shameful effrontery!) dare to impeach the motives of the House for their unscrupulous determination in entertaining a Petition to institute an enquiry affecting the validity of an election,—a matter of all others which of right belongs to the House alone, and directly to accuse the majority of a prostration to decide in favour of one whom they style a deponent and a petitioner to the Government. The only question now before the Committee is, what amount of fees and expenses the Returning Officer ought to be called upon to pay; and I believe, the general feeling will induce us to act with lenity. One fact was elicited, however, at the end of the examination, which I think, was quite as much against the Returning Officer, as having omitted to take and subscribe the affidavit required by law; and that is, that the Poll Book returned to the Secretary's Office, and here produced by him, was not the original, but only a copy. I do not assume this, however, to induce the Committee to judge the Returning Officer with greater severity, but as a caution to other returning officers for the future. I myself do not entertain any feeling to the prejudice of Mr. M'Callan. For the last twenty years, whenever his public conduct has been the subject of enquiry, which has been the case several times, I have invariably stood forward in his behalf, because I believed him to be an honest man, who has endeavored to do his duty. But I will say, that if he gets off with the payment of his expenses, and without the payment of a charge as the hon. member (Mr. Moore) has professed against Mr. M'Callan, based upon no better ground than mere insinuation, on the part of his accuser, should be allowed to go abroad.

Mr. MOONEY. I solemnly declare, that such are my thoughts concerning Mr. M'Callan's refusal of the scrutiny. His well known partiality, on many former occasions, fully warrant my suspicion concerning his conduct in the present instance; and I hope it will go abroad.

Hon. Mr. WHELAN. If it do, it shall not go forth without an antidote. I was present at the election, and I positively declare that, throughout the whole, the proceedings were conducted by Mr. M'Callan, as Returning Officer, with the greatest impartiality; and then, to the property and cordiality of his deponent, I believe, much of the good feeling and harmony which prevailed on the occasion, may fairly be attributed. The error into which he fell, I feel persuaded, and I believe such is the general impression in this House, was an error in judgment, and by no means a willful neglect or omission of duty; and there is not the slightest ground for supposing that he acted otherwise throughout the whole of the proceedings, than conscientiously.

After Messrs. Dewar, Clark, Montgomery, Thornton, & Wightman, the hon. the Colonial Secretary said each, in succession, said a few words, all in favour of a lenient consideration of Mr. M'Callan's case, and the account had been reduced to £ 2, the Hon. Mr. Coles moved, that the whole be struck out, which motion was carried on a division of 13 to 5; and so the matter ended.

HOUSE IN COMMITTEE ON WAYS AND MEANS.

REPORT OF THE AUDITORS OF THE PUBLIC ACCOUNTS.

IMPOST OFFICE.

Extract from the Auditors' Report on Public Accounts, 14th February, 1852, to which the subject of the Speech of Mr. Fraser is referred.

In the Import and Excise Office, we compared the Importers' Entries, with the Books and the furnished accounts, and find them to correspond. This Office being that which the greater part of the Revenue of the Colony is collected, cannot be kept with too close vigilance, on the part of the officer in charge of it, to counteract the attempts at fraud which may be made by individuals to evade the payment of Duties. Impressed with this consideration, we feel it our duty to offer the following remarks:

1. In few instances, the Report of the master corresponds with the Entries made by the Importers. We would respectfully submit, that some means should be adopted to compel the Master of each Vessel to furnish an accurate account of his Cargo.

2. The Merchants' Entries are frequently altered and show marks of erasure. We consider this objectionable, inasmuch as in any Action for false Entry, a difficulty would be experienced in the want of any proof, save the Entries by the same individual.

3. We notice in some cases, two Entries by the same individual of dutiable Goods, arriving in the same Vessel—in such cases a more particular form of Oath, for the Post Entry, would be necessary, as in such cases the Entry is attested to by the whole Importation.

4. A custom prevails, at this Office, of granting Permits to land Dutiable Goods, before the Entry is filed or attested, or the Duties secured. This practice, we conceive, is not only objectionable and contrary to Law, but liable to abuse, and injurious to the Revenue.

5. In the conversion of Newfoundland Carriage into that of this Island, 20 per cent is added. As the Spanish and Mexican Dollar is current in that Colony at Five Shillings, and other coins in proportion, it appears to us, that the Par of Exchange is 25 per cent.

7. Two Entries of Watch Machinery have been made, on which the Duty stated was 5 per cent. There is a doubt on our mind, whether these Goods should not have been cleared under Wood Machinery, paying 15 per cent.

Mr. FRASER. Mr. Chairman, since the Report just read remarks more particularly upon the office under my charge, I will, with your leave, make some observations on it. The first is a disagreement between the Master's Report and the entries made, which is not accounted for, and cannot be otherwise, so long as masters of vessels allow articles to be shipped on board after their vessels have cleared out; for it must be seen, that every article so shipped, is over the amount stated in the clearance; and of consequence, the Master's Report, which is invariably a copy of the Clearance, will not tally with the quantity of goods on board. And, sometimes, when it is not known, that such articles are on board till the vessel is nearly discharged, the person owning them makes a post entry, it being sometimes the same kind of Goods for which the Clearance was issued, and which accounts for the same person making two entries of the like nature.

And whenever there are articles wanted for which the master will not account, although they are mentioned in the Clearance, he is unable to swear, according to the account, that to his knowledge such articles were not shipped on board his vessel. And sometimes it happens, that articles mentioned in the clearance of one vessel arrive in another vessel.

As respects the Watch-machinery mentioned, saying that the duty ought to be 15 per cent, the Auditors are under a mistake. The Entries made and sworn to, are watches, which clearly come under the 5 per cent, as may be seen by any person who reads the Act. (Here the hon. member read part of the Act bearing on the case.) The next is, giving Permits before the Entries are sworn to. It is well known, that the Treasurer gets a copy of the Entry, with the amount before he signs the Permit, which is a check that will not be altered, unless a necessity for so doing shall be clearly shown by the person making the entry. The officer can have no object in letting the importer go, without swearing to his entry, as his account must necessarily tally with the Treasurer's. It is possible, the Auditors may have had in view, articles coming on board the steamboat. When the boat arrives in the evening, of such articles as are on the deck, an account has to be taken; and sometimes, the owners are allowed to take them in their own dwellings, as the Government has no Store to put them in; trusting to the owners until next morning to make their entries, which they have always done, so far as we are aware; and so long as the Government does not have a Store to store such articles, this practice must prevail. As to giving Permits otherwise, it is well known, I am responsible for the Duty according to the Master's Report, and can have no object in raising the risk of obliging the importers to my own disadvantage. As regards the Books in which there may be a few instances, it is hard to offer Books in which there are several columns, composed of a variety of items, in which there will not be some such instances; but taking the Books as a whole, I will venture to say, they are as clear and fairly written out as the nature of the business will admit of. The accounts before the House are a specimen of what the books are; and, I think, there is not a member in the House, but who will admit that for legitimacy and correctness, they will not lose in comparison with any accounts before the House. There has not been found one party wrong upon the most strict examination, still I admit the possibility of error in where there is such a multiplicity of figures; no man is infallible.

subjected to the penalty of £200, he should be let off with the payment of £5 for expenses, and £5 to reimburse the two candidates he would serve very easily. The lenity of such a proposal, could not be disputed by any one, if he called to mind the great trouble to the House, the annoyance to the country, and the inconvenience to the people of Georgetown, which the misconduct of the Returning Officer had occasioned.

Mr. MOONEY. My belief is, that Mr. M'Callan's error was a willful one; and that he lost sight of his official duty, blinded by his zeal as a political partisan. When Mr. Byrne applied to him for a Scrutiny, he was afraid that, if he should grant it, the decision would be against Mr. M'Callan; and he said to himself, "I will fit the return, so that none of you shall get in this time." The Sheriff refused the Scrutiny for no other reason than this,—he thought that if it was granted, Mr. Byrne would be the successful candidate; at least this is my opinion of the case. If the Government wink at the misconduct of any public officer, in what capacity soever he may act, they shall not have my support.

The hon. the SPEAKER, in offer but forcible words, pointed out the very great impropriety of which he conceived the hon. member for the Second District of Queen's County had been guilty, in giving expression to his suspicion of motives, as if his suspicion had been justified by direct and conclusive evidence; and said, it would be a pity if such a charge as the hon. member (Mr. Moore) had professed against Mr. M'Callan, based upon no better ground than mere insinuation, on the part of his accuser, should be allowed to go abroad.

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5. In the conversion of Newfoundland Carriage into that of this Island, 20 per cent is added. As the Spanish and Mexican Dollar is current in that Colony at Five Shillings, and other coins in proportion, it appears to us, that the Par of Exchange is 25 per cent.

7. Two Entries of Watch Machinery have been made, on which the Duty stated was 5 per cent. There is a doubt on our mind, whether these Goods should not have been cleared under Wood Machinery, paying 15 per cent.

Mr. FRASER. Mr. Chairman, since the Report just read remarks more particularly upon the office under my charge, I will, with your leave, make some observations on it. The first is a disagreement between the Master's Report and the entries made, which is not accounted for, and cannot be otherwise, so long as masters of vessels allow articles to be shipped on board after their vessels have cleared out; for it must be seen, that every article so shipped, is over the amount stated in the clearance; and of consequence, the Master's Report, which is invariably a copy of the Clearance, will not tally with the quantity of goods on board. And, sometimes, when it is not known, that such articles are on board till the vessel is nearly discharged, the person owning them makes a post entry, it being sometimes the same kind of Goods for which the Clearance was issued, and which accounts for the same person making two entries of the like nature.

And whenever there are articles wanted for which the master will not account, although they are mentioned in the Clearance, he is unable to swear, according to the account, that to his knowledge such articles were not shipped on board his vessel. And sometimes it happens, that articles mentioned in the clearance of one vessel arrive in another vessel.

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We found there was an error in the Auditors' own account laid before the House of about £9 0 no doubt it was inadvertently made; and, of consequence, an error occurred. In respect of the Exchange between Newfoundland and this Island, there may be a difference which affects the ad valorem duty a little. The practice has heretofore been to convert the Currency of all the surrounding Provinces into Island Currency by adding 20 per cent, although Notes of one Province have been sometimes at a premium in another; as, for instance, New Brunswick Notes are considered preferable to those of Nova Scotia; and at times have borne a premium in Halifax. But this not having been permanent, the general rule has continued in converting the whole into Island Currency by adding 20 per cent. Yet, I believe, that of Newfoundland is preferable to any other which may affect the ad valorem duty a little. The principal articles imported from Newfoundland are West India produce, which it will not affect. Upon more particular enquiry, if I find that 5s. is the current value at which Dollars go there, the Exchange of course will be altered.

Miscellaneous.

A FEW WORDS FOR FARMERS.

As we have always a practical object in view in our disquisitions, we now wish to direct the attention of our farmers, for a few moments, to the subject of Agriculture. The great discoveries yet to be made in agriculture, will be the result of sound sense, close observation, and study of natural phenomena. One very eminent chemist (Liebig), who has devoted nearly his whole attention to agricultural chemistry, has changed his opinions more than once on certain questions relating to agriculture, especially fertilizing substances. Although chemistry is of vast importance to the farmer, a most excellent chemist would make but a very poor farmer if he did not pay attention to more than the mere chemistry of his business, as the carbon is the main substance of that low combination of silicon, potash, carbon, lime, and nitrogen; one says, "I shall make my fertilizers of such a compound;" he does so, and fails to obtain satisfactory results; why? Because he has not been a profitable observer of nature's operations. The human body is composed of nitrogen, carbon, water, phosphorus, lime, silicon, and some other substances; carbon, nitrogen, the phosphate of lime, but especially water, are the principal substances of which it is composed, and carbon and water form the greatest portion of its nourishment, as the carbon is the main substance of that low combination which keeps up the heat of the body; yet who would be so foolish as to prescribe anthracite coal, phosphorus, lime, and nitre for his daily food? No one. We cannot tell why it is that man must plow, sow, and reap grain, and why he must dry the ox for his food, when the same substances of which his body is composed, can be dug from the dust beneath his feet; we only know that such is the fact. The grain of wheat requires sunshine, moisture, and the blanket of mother earth, to make it germinate, grow up, and ripen into harvest; but what manner of an acre of ground is it, that every farmer should have a few acres of his farm set off for model experimental agriculture; and this period of the year, we believe, is the proper time to commence such a system, hence our present remarks.

BEAUTIFUL EXTRACTS.

The following beautiful extracts, says the Western Recorder, we copy from an Agricultural Address, recently delivered before the Lewis County (N. Y.) Agricultural Society; by Caleb Lytle, the poet.

1. Permit me, said the speaker, to call your attention to a subject intimately connected with the comfort of your own hours, and which would ask what manner of an acre of ground is it, that every farmer should have a few acres of his farm set off for model experimental agriculture; and this period of the year, we believe, is the proper time to commence such a system, hence our present remarks.

2. The Chinese have floating gardens, the Persians hanging gardens, the Arabian fountain gardens, but ours are Household Gardens—and often life's happiest moments may be in the memory of the flower plucked from thence to adorn a bride, or to grace a bier. . . . Adam was a farmer, while yet in paradise, and after his fall, was commanded to earn his bread by the sweat of his brow. Job, the honest, upright and patient, was a farmer, and his stern education has passed into a proverb. Socrates was a farmer, and he wedded to his calling the glory of his immortal philosophy. St. Luke was a farmer, and divides with Prometheus the honor of subjecting the ox for the use of man.—Cincinnatus was a farmer, and the noblest Roman of them all. Burns was a farmer, and the muse found him at his plough and filled his soul with poetry. Washington was a farmer, and retired from the highest earthly station to enjoy the quiet of rural life, and present to the world its sublimest spectacle of human greatness. To these names may be added a host of others who sought peace and repose in the cultivation of their mother earth. The enthusiastic Lafayette, the steadfast Pickering, the scholastic Jefferson, the fiery Randolph—all found an Eldorado of consolation from life's cares and troubles in the green fields and verdant lawns that surrounded their homestead."

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Mr. FRASER. Mr. Chairman, since the Report just read remarks more particularly upon the office under my charge, I will, with your leave, make some observations on it. The first is a disagreement between the Master's Report and the entries made, which is not accounted for, and cannot be otherwise, so long as masters of vessels allow articles to be shipped on board after their vessels have cleared out; for it must be seen, that every article so shipped, is over the amount stated in the clearance; and of consequence, the Master's Report, which is invariably a copy of the Clearance, will not tally with the quantity of goods on board. And, sometimes, when it is not known, that such articles are on board till the vessel is nearly discharged, the person owning them makes a post entry, it being sometimes the same kind of Goods for which the Clearance was issued, and which accounts for the same person making two entries of the like nature.

And whenever there are articles wanted for which the master will not account, although they are mentioned in the Clearance, he is unable to swear, according to the account, that to his knowledge such articles were not shipped on board his vessel. And sometimes it happens, that articles mentioned in the clearance of one vessel arrive in another vessel.

As respects the Watch-machinery mentioned, saying that the duty ought to be 15 per cent, the Auditors are under a mistake. The Entries made and sworn to, are watches, which clearly come under the 5 per cent, as may be seen by any person who reads the Act. (Here the hon. member read part of the Act bearing on the case.) The next is, giving Permits before the Entries are sworn to. It is well known, that the Treasurer gets a copy of the Entry, with the amount before he signs the Permit, which is a check that will not be altered, unless a necessity for so doing shall be clearly shown by the person making the entry. The officer can have no object in letting the importer go, without swearing to his entry, as his account must necessarily tally with the Treasurer's. It is possible, the Auditors may have had in view, articles coming on board the steamboat. When the boat arrives in the evening, of such articles as are on the deck, an account has to be taken; and sometimes, the owners are allowed to take them in their own dwellings, as the Government has no Store to put them in; trusting to the owners until next morning to make their entries, which they have always done, so far as we are aware; and so long as the Government does not have a Store to store such articles, this practice must prevail. As to giving Permits otherwise, it is well known, I am responsible for the Duty according to the Master's Report, and can have no object in raising the risk of obliging the importers to my own disadvantage. As regards the Books in which there may be a few instances, it is hard to offer Books in which there are several columns, composed of a variety of items, in which there will not be some such instances; but taking the Books as a whole, I will venture to say, they are as clear and fairly written out as the nature of the business will admit of. The accounts before the House are a specimen of what the books are; and, I think, there is not a member in the House, but who will admit that for legitimacy and correctness, they will not lose in comparison with any accounts before the House. There has not been found one party wrong upon the most strict examination, still I admit the possibility of error in where there is such a multiplicity of figures; no man is infallible.

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