

Tight Binding

Bill on principle. We had everything in this Province but population, and we should get rid of all restraints on immigrants. The Bill was for our benefit.

The Solicitor General supported the Bill. He thought that the law was harsh and cruel. It might be good policy in the United States, to which emigrants were going in flocks, to retain such laws; but it was bad policy in this country, to which but few emigrants came.

Mr. Lawrence said that the Bill approved itself to his mind. The country wanted population; there was but 200,000 people in it, and space for 2,000,000. The Americans would make as good settlers as any we have; but the Bill would not apply to them alone, but also to the Norwegians, whom it was desirable to have come here, as they were from a similar climate, and were generally good farmers; and to the Germans and Swedes, who were an honest, intelligent, and faithful people. In Albert County, one of the most thriving portions of the Province, the resources of the country were being developed by Americans. England owed the origin of her manufactures, which were the source of her greatness, to aliens driven to her shores. He believed that if New Brunswick were an American State, it would be soon made equal to any in the Union.

Mr. Gillmer spoke briefly in favor of the Bill.

The Provincial Secretary moved an addition to the first section confining the amount of land which might be held by an alien to two hundred acres. With this addition he would support the Bill; without it he should vote against it.

Mr. McPhelin said that last session he had voted against the Bill; but he had changed his mind and should now support it.

Mr. Smith.—The hon. member from Kent changes his mind frequently.

Mr. McPhelin.—I wish the hon. member from Westmorland would change not only his mind but his manners. (Laughter.)

Mr. Hanington again spoke against the Bill, contending that the privileges which it contemplated had not been given to aliens in the United States. He would vote for the Bill if the mover would allow to be attached to it such a proviso as he held in his hand, that the privileges of the Bill should be available only to subjects or citizens of such foreign states as have by legislation conferred similar privileges on British subjects.

Mr. Allen said that if the Bill ought to pass at all it ought to pass without either of these amendments. They should be satisfied of the existence of some evil under the present law before changing it. He did not believe that one man was kept out of the country by the law, or that one man would be brought in should this Bill pass. Such a Bill should not be passed until they were satisfied that every state would reciprocate it. The whole effect of the Bill would be that Americans would buy up, for purposes of speculation, our Crown lands. Americans did not want to become settlers in this Province, and if they desired to come here merely to trade, the facilities were sufficient at present.

Mr. McPhelin opposed the Bill.

Mr. End said it was a most extraordinary sight to see the *liberal* members—those who were so full of professions of progress and liberality and whose mouths were filled with fine sounding phrases—joining with the "old fogies" in opposition to this liberal and progressive measure. He did not wonder at the old Tories—the old fogies—the fossil remains, buried sixteen feet below the surface, the puzzle and wonder of the political geologist,—opposing such a measure; but he was surprised at Messrs. Smith, and others, of the Liberals. He objected to both of the amendments. If they desired to relieve the aliens let them not give them a parting kick. Mr. End went on at length to argue that as the Province was in debt to an appalling extent, it needed the aid of every settler that it could induce to come within its borders, and that therefore common sense required them to take off every restriction, real or imaginary, that would interfere with such an object.

Mr. Hanington replied to Mr. End.

Mr. Cudlip said that the Legislature should not wait for petitions or applications to legislate, but should exercise their own wisdom. He was not afraid of the Yankee land speculators; no man could invest money in our country in any way without doing us good. It was better to let these men of enterprise come among us; they would keep business stirring, and do a vast deal more benefit to the country than those croakers who sat with folded hands, cross legs, and an evil day, which they predicted would come upon the country, but which he believed never would come.

The Committee divided upon Tilley's amendment.

Yeas—Lewis, McClellan, McMillan, Hanington, McLeod, Tilley, Tibbitts, Wright, Gilbert. Nays—21.

This being lost, the Committee divided on the first section.

Yeas—End, Kerr, Williston, Lewis, Mitchell, Lawrence, McPhelin, McAdam, Connell, C. Perley, Cudlip, Chandler, Gillmor, Brown, Steadman.—15.

Nays—Kerr, Speaker, McClellan, McMillan, Smith, Allen, Botsford, DesBrisay, McIntosh, Wilmet, Hanington, Ferris, Scovill, Vall, McLeod, Wright, Gilbert, Tilley, Tibbitts.—19.

The Bill was then postponed for three months.—20 to 14.

TUESDAY, March 23.

BILL TO REPEAL INSOLVENT DEBTOR'S ACT.

At 12 the House took up the order of the day. Mr. Kerr's Bill to repeal the Insolvent Debtor's Act, and went into committee upon it, Mr. End in the chair.

The Solicitor General said that he opposed the passing of the Insolvent Debtor's Bill, but it having become the law he was not now disposed to repeat it.

Mr. Wilmot said that his mind was rather doubtful regarding this Bill. Misfortunes in business were very frequent, and he thought that there should be some mode by which persons in difficulties could distribute their estate amongst their creditors, and start again in business. From a volume in his hand he would quote a statement of Gen. Henry S. Dearborn, who was for many years Collector in the Port of Boston, Massachusetts. From his personal observation he found that ninety-five out of every hundred merchants in Boston died poor. Mr. Wilmot went on to quote from other authorities similar statements. The object of the Legislature in this matter should be to legislate against the cruel creditor and the dishonest debtor. He was not prepared to legislate in one direction one year, and to sweep that legislation off the Statute Book the next. He thought that some measure for the relief of the unfortunate debtor was needed, and he could not vote for this Bill.

Mr. Chandler said that he had brought in a Bill to amend the Act in some points in which it was thought defective. There was a doubt in high quarters as to the effect which the Act had upon mortgages, some eminent legal authorities thinking that it discharged the mortgage. In the Bill he had introduced a clause to protect the right of mortgages. As there was another doubt as to whether the order for discharge was a discharge of the property of the debtor forever from his debts, he had in another section declared the meaning of the Act in this respect. He thought that his new Bill would remove objections to the present Act.

The Provincial Secretary said that he had read the statements mentioned by Mr. Wilmot. He had also examined files of St. John newspapers, back as far as 1829, and was astonished to find how large a portion of the merchants doing business in that city had failed. These failures were chiefly the result of commercial panics, and it was because he believed that the recent depression in business had caused many failures that he voted last year for the Bill, with a view of giving them relief. He believed that these persons had taken advantage of the Act, or, at least, had been afforded the opportunity of doing so, and he was now ready to vote for the repeal of the Act. He did not think that such a law should remain permanently on the Statute Book, although it might be useful to have it after these panics. By leaving it in force an opportunity was given for the debtors to threaten their creditors.

Hon. Mr. Smith said that the Act was finally passed last session when there was a bare quorum of members remaining.—Had members remained at their posts till the close of the session he doubted whether it would ever have become law. The operation of the Act showed how iniquitous it was; the average of the compositions was only a penny on the pound. It was only in extraordinary cases that an insolvent could not pay from five to ten shillings in the pound. The truth was that one half the creditors did not think it worth while to attend the meetings; and many lived in distant parts of the Province, which prevented their attending except at a loss and inconvenience to themselves.—He held that it was a clear principle of justice and equity that a man who got the property of another should return it. Honest men who were unfortunate in business were entitled to consideration and sympathy, and almost always obtained it; but an insolvent who had lived extravagantly was not entitled to consideration. Under the Insolvent Act the creditor was really the slave of the debtor. He knew one case in Westmorland in which the person who went into the court was worth £2,000, and did not owe £50. Even where debtors did not get through the court they gave their creditors infinite trouble, and great expense in opposing them. He had before him the returns of cases under the Insolvent Act which had been laid upon the table on an address moved by Mr. Williston. In Carleton County he found that one debtor had offered a composition of three pence, one of a half-penny; and all the rest one penny. In Westmorland there were forty-one cases; in one the composition was one shilling, in another six pence, and in the rest from a farthing to a half penny. In York, he wished that the Attorney General was here; there were forty-five cases. One man had given a shilling in the pound; his name ought to be written in letters of gold; and none of the rest above one penny. In St. John one

person had offered five pounds composition on debts of eighteen thousand. They must have a new coin, less than a farthing, to meet such cases. In face of all this evidence the committee should have no doubt about the propriety of repealing the Act. Doubtless among those who had gone through there were many meritorious objects; but he believed that nine out of ten should never have gone into the court.—The effect of this law was injuring our credit abroad; he could say from his own knowledge that it was causing mistrust in the United States; the tendency of our legislation was entirely in favor of the debtor. Such legislation had a tendency to make men relax their exertions to pay their debts. The greater the facilities given for getting rid of debts the less would be the exertions of debtors to meet the demands against them. They should let every man understand that it was his duty to pay his debt, and he would exert himself to do so in proportion to what he had this law to apply to.

Mr. McPhelin said that he had opposed the Insolvent Bill last year, and he was of the same opinion this year that he was then. He would vote for the repeal of the Act. If a Bankrupt Law was needed it was the duty of the Government to prepare and introduce it. He believed that the majority of those who took advantage of the Act were mostly dishonest in principle and in feeling. When a debtor was unfortunate he would relax the law in his behalf; but a dishonest debtor should be pledged body and soul for the redemption of his debts.

The Speaker was of the same opinion this year as last regarding the Act. He had looked from it, and he would now vote for its repeal, although not agreeing with Mr. McPhelin that the body and soul of a man should be pledged for his debt.

Mr. Allen said that the question was not whether the Act was perfect, but whether there should be an Insolvent Law of some kind. The result of his experience was that if the creditors would attend the meetings and sift the affairs of the debtor there would not be the difficulty of which members complained, and compositions of one penny in the pound would not be so general. The blame rested chiefly with the creditors who would not attend the meetings. Very few of those who had gone through were worth more than a penny in the pound; and if this Act had not passed their creditors would have got nothing from them. The Act gave the creditors ample opportunity to question the debtor as to the state of his affairs, and to obtain through him and from other witnesses the fullest information; in this respect he thought it did not fall short of the English law. Our Act was no doubt imperfect; its details were not sufficiently full. The English law contained no less than one hundred sections. Were they to attempt to get a perfect system they must have a very lengthy Act. The question would have to be taken up during the recess by the Government, or by others. The operation of such a law would necessarily be attended with a good deal of expense. The present Act was, he believed, intended for men of small means. It was necessary that there should be some mode of getting a discharge without much expense. Under the former Bankrupt Law the expense of getting through the court was too great; it was meant for men whose dealings were at the rate of thousands a year and not hundreds. The present Act was not a very profitable one for lawyers; in the only two cases which he had conducted he had not yet got any fees. The money for the payment of the clerks' fees and for printing was generally got from friends. He would go for the amendment of the Bill, but he could not vote for its repeal. He thought that it furnished ample means for the punishing of fraud.

When we entered the House, after dinner, Mr. Cudlip was speaking on the Bill. We lost the commencement of his remarks.

Mr. Cudlip said that people in St. John thought it not worth while to oppose insolvents under this law. In the list of persons in St. John who had taken advantage of the law, he found the names of many persons who had failed through extravagance. They kept fast horses, and went on excursions to the Nine Mile House, instead of attending to their business. He saw among them the name of one man who, two years since, had transferred his house to his wife. He saw among them the names of men who had gone into the markets, and bought right and left recklessly, raising rents on others, and bringing failure upon themselves. Was this a proper state of things? And many men who came into the court produced books which no one could understand.—Men should be made to keep their books in such a state that if misfortune overtook them, they could refer to them as evidence of their honesty. The Act placed every man—the honest and the roguish, the careful and the careless—on the same footing. So much was this so that it was looked upon as a disgrace by an honest man to go into it. If any man in that House, by some uniform calamity, had all his property swept away, and was reduced to absolute poverty, he would still result against taking advantage of this Act. There is going into the court were continually held out by debtors to their creditors.

Mr. Steadman said that that was a rule

which worked both ways. If the existence of the law gave a debtor power to hold out improper threats to a creditor, it also gave a debtor power to prevent any one of his creditors from sacrificing his property to the prejudice of his other creditors. When any one creditor came down upon him, and endeavored to drive him into a sequestration of his property, in order to satisfy his debt, he had a right to say to that creditor, "You shall get your own, but only in connection with others. They could not argue this question on the narrow foundation of a few cases; they must look at both sides, and discuss it upon broad principles of justice and equity. Trade was just like a game of chance; it was a matter of speculation; the creditor trusted, as the debtor got trusted, because he expected to make a profit by the transaction, and both should take the liability. They could not be sure of what was to happen; a man might be worth thousands this week, and be thousands worse than nothing next. He knew all the forty insolvents in Westmorland, except about half a dozen. He had no hesitation in saying that there were not more than six of them who could have paid more than a penny in the pound, had he stripped the very shirts off their backs.—He was acquainted with the case of the person worth £2,000, mentioned by his colleague (Mr. Smith), and the circumstances were such as to clear him from all blame. In England they had both an insolvent and a Bankrupt law. If a trader owed not less than a certain sum he could be put into the bankrupt court; if he did not owe so much his creditors could not force him into that court, but he could take advantage of the law of insolvency. Our Insolvent Act he thought sufficient to take every thing out of a man that he owed, and he thought that quite enough; he would not go to give the debtor's body and soul in addition. If Mr. Chandler intended to propose an amendment to the Act, he might suggest to him that the minimum of composition might be fixed at seventy-five per cent. of the assets.

Mr. Chandler said that he thought of proposing to strike out the composition entirely.

Mr. Steadman thought that this would not be wise. No man could make so much out of the assets as the debtor could himself; certainly assigns could not be expected to make seventy-five per cent. out of them; and therefore if the insolvent should offer a composition of seventy-five per cent. of his assets it would be for the advantage of the creditors to accept it. Very much had been said about the injury done by the law; but members had not shown the cases. They talked about one penny and one half-penny composition; but they did not attempt to show that the insolvents could have paid more. If this law was made permanent debtors could struggle on, and endeavor to extricate themselves, so long as there was hope; for they would be cheered and strengthened in mind by the knowledge that if all efforts failed they had a refuge at last. And the very same knowledge would induce rapacious creditors to restrain themselves, and to allow the debtor a fair opportunity to recover himself. He believed that had not this limitation of two years been attached to the Act so many persons would not have hastened to take advantage of it. He thought that there should be a permanent insolvent law, that both those who took, and those who gave credit, might know under what conditions they were transacting business. He could not understand the propriety of the Provincial Secretary's doctrine of an Insolvent Law for a special occasion.

The Speaker agreed with Mr. Steadman that there should not be Insolvent Laws enacted for special occasions. He could prepare the machinery of a Bankrupt Law in an hour were the question of what should be considered an act of bankruptcy once settled. His experience of the Insolvent Act before the judges was that in nine cases out of ten in which insolvents had been turned back it had been from technical objections arising from the artificial manner in which the details of the Act were drawn up. Many improvements could be made in the Act if it were allowed to remain. The meeting of creditors presided over by the Clerk of the Peace should be made a court.

Mr. Chandler said that in his amended Bill he had made it a court.

Mr. Steadman moved that the further consideration of the Bill be postponed for three months.

Messrs. DesBrisay, Hanington and Lewis said a few words upon the subject.

Mr. Steadman then moved by motion, and substituted a like motion with a lengthy preamble, setting forth the necessity for a proper Insolvent Law. Several members who desired to vote for the Bill but who were not willing to vote against the principles of the preamble to the motion, complained that Mr. Steadman was taking an advantage of them, and wished him to withdraw his motion, which he refused to do.

The Atty. General moved as an amendment that the Bill be postponed for six months. This was lost, 13 to 22.

Mr. Steadman's resolution was then put and lost 11 to 24.

Yeas—Messrs. Chandler, Gillmor, Mitchell, McIntosh, Allen, Wilmot, Read, Wilmot, Botsford, Tapley, Steadman, Scovill, Tibbitts, Wright, Gilbert. Nays—21.

Mr. Gillmer moved the postponement of

the Bill to the next session of the Legislature which was lost, 13 to 22; all the yeas in the above division, and Messrs. Fisher and Brown voting for it.

The first section was then taken up, when Mr. Chandler moved his Bill in amendment. This was vigorously objected to, and at length withdrawn, and the first section was carried.

Nays—Chandler, Gillmor, Brown, Fisher, Wilmot, McIntosh, Tapley, Botsford, Mitchell, Steadman, Watters, McClellan, Read, Allen.

The Bill was then agreed to.

A Government Bill relating to the Provisional Lunatic Asylum was agreed to in committee, as was a Bill to enlarge the jurisdiction of the City Court of the City of St. John, and a Bill to divide the Parish of Brighton. Progress was reported upon a Bill for the sale of Hebe Lands.

The Provincial Secretary moved to suspend the 12 o'clock rule, which was carried.

WEDNESDAY, March 23.

The Bill to exempt the County of Gloucester from the action of the Parish Election Law was postponed for three months, at the desire of the members for Gloucester.

Mr. Chandler moved for the petition of Mrs. John Wilson, praying the Government for relief in respect to a claim by her late husband against the New Brunswick and Canada Railway and Land Company. Motion agreed to.

Mr. Kerr's Bill to repeal the Insolvent Debtor's Act was read a third time.

Mr. Williston moved a rider to protect the rights of mortgages under the Act, which was agreed to.

Mr. End said that having been in the chair when this bill was in Committee, he had not an opportunity of giving his opinion of it; but he had committed his ideas to writing, and should read them. Mr. End then read the following:—

"Having been Chairman of the Committee when this Bill was under consideration, he had no opportunity of expressing his opinions upon it. He took this occasion to say that he entirely disapproved of the repeal of the Act, introduced by the hon. member from Charlotte, (Mr. Chandler), and he considered that the arguments advanced in support of its repeal were extremely superficial. It had been urged that the Act had been made for a time of mercantile panic, which had now happily passed; that many persons had availed themselves of its provisions; that it had done its work, and was, therefore, now no longer necessary; that the contingencies and disturbances of trade required an act of this nature every five or six years, to be in force a year or so and then repealed. He (Mr. End) protested against legislation of that description. The remedial justice of the country should be of a more fixed and certain character. Persons about to make mercantile contracts at home and abroad could have no faith in our laws, and would avoid transactions with us, if it was understood that every five or six years laws would be enacted whereby liability could be avoided, and like the Jews of old, a general indemnity would be effected. He thought such legislation would be extremely injurious to the legislative, as well as to the mercantile reputation of New Brunswick. Returns had been moved for and produced on the debate, showing the great number of persons who had availed themselves of the Act, and the small amount of compromise, not averaging more than a penny in the pound, which appears to have been offered and accepted. These circumstances had been adduced as reasons for the repeal of the law, but they afforded, in his mind, very conclusive reasons for not repealing it. As to the large number of applicants, that only proved that a large number availed themselves of the law; that it was no dead letter on the Statute Book, and therefore that it was required by the public. As to the smallness of the compromises, it must be remembered that those settlements had been effected by the vote of a majority of the creditors in number and amount. The returns, therefore, conclusively proved that a great number of persons of whom their creditors, the parties most deeply interested, thought they could not pay more than a penny in the pound, and accepted that amount, have been rendered free men, cast loose from the paralysis of debt, saved from the terrors of law suits and incarceration by this law; and yet these effects, alike beneficial to the individuals and the community, are urged as reasons for the repeal of this Act. He desired to see such an Act permanently on the Statute Book, and was decidedly hostile to its repeal."

Mr. End concluded by saying that of course he did not expect the reporters to take any notice of anything he might say; but he should take some means of getting the memorandum which he had read into type.

MEMBERS' ALLOWANCE BILL.

At 12 the House went into committee on the order of the day. Mr. Cudlip's Bill limiting the pay of members to £40 each for the session.—Mr. Gillmor in the chair.

Mr. Cudlip said that he should say very little about the Bill; it explained itself. The expenses of the Legislature were extremely large. The effect of the Bill would be to shorten sessions, and shorten all the other expenses. The Bill did not effect the pay of members of the Legislative Council; but that body could not sit longer than this, and it should not

the time taken by the House he would not ask members to contribute their own expenses; but he would cover a member's session of over 80 days.

Mr. McPhelin wished to know the extra expense of a few people put into competition with the enacting of one salary law, rather the evil of that expense compared to the evil of hurrying the Legislature one pernicious man was his duty to be one of the wants, but he would never be the member's pay, and thus put persons of wealth from having that floor. A man might be of discharging the duties of a and might be the choice of the yet from his pecuniary circumstances prevented by this action of from becoming a member. The effect would be that every man estate or a Bank behind him would of the House. If no more were more important requisite than brains this might do. The longer he stayed in this more he found to prevail among a spirit of self accusation in rers in which they were never their constituents. Where were complaints from the people about pay? where were the petitions of such a Bill as this? He would not keep a member for If Mr. Cudlip would tell him baskets of champagne could be £20 he would tell him how long keep a member. He was not become the slave of the people going into alleys and back streets for a cheap lodging; while service of the people he should be house he could find, and name a gentleman.

Mr. DesBrisay said that he had been done since the commencement of the session could have been done had members applied themselves same diligence as they do in business, rising at six in the morning till late in the evening. Mr. End said that Mr. D. did not look like a man who goes and worked such long hours. He did, and still present the appearance he did, he must be made of able kind of pottery than other had seen the Legislatures of and Massachusetts at work, seen Congress, and he could that this House did more work of these bodies. But there were who set themselves on a high of patriotism than others. In this, and there were several in the House, were brought in who were mostly young men, not expended all their patriotism, but had preserved force in this House. The Bill appeared to be one of the ed to mount the very high of the Temple of Patriotism. A point out to him a snide of p on a still higher pedestal, tterly were this Bill passed, rrefuse to touch one fr own pay, and then he could constituents and say, I could these wretches whom most in in an evil day the people have House to represent them, to selves of pay; but I, at le touched with the end of my of this filthy lucre. Were n open to the mover he should ed to support his Bill; but a this plan, could elevate him higher position of patriotism, self at liberty to vote against

The Provincial Secretary thought the principle of fixing pay for members' pay desirable. If the *per diem* allowance was to be increased to shillings was too much let The maximum principle had former years, and worked

The Surveyor General said had been tried in former years worked well at all. The m was £50. The House found to get through in less than and the consequence was th bers pocketed their £50 a leaving a few members to a penny more than they got that it was not possible to get on faster with the public they had done this session were confined to four or f have done the work in ten so many members desired opinion time must necess There were a number of scarcely spoke at all, who speaking of others as a mer he thought this an improper matter. He did not think he right in him, who was worth £600 a year, to vote down the pay of members. to curtail they should fly to the Surveyor General for it

Mr. Hanington contended ple in the rural districts of reduction in members' pay strict the choice of repr