Provincial Parliament.

LEGISLATIVE ASSEMBLY.

MONDAY, AUG. 18.

MR. WM. H. BOULTON'S SPEECH ON THE PARTY PROCESSIONS ACT.

Mr. Boulton of Toronto, in moving the third reading of the bill "To repeal the Party Processions Act," said that as the chief of Legislation should be the administration of such a law as impartial justice, he felt it his duty to introduce a bill to repeal a law which was enacted by all classes to act unequally, unjustly, and most partially towards our particular class, the Members of the Loyal Orange Institution in Canada. Although he brought in the bill, he hoped it to be understood that he did so, not at the request of the Orange Association, but upon his own responsibility. At an early period of the session a petition from Orangemen, praying for a repeal of that obnoxious law, was presented to the Legislature, and was presented in the Upper House by an hon. member, who, although not a minister, might almost be considered to act officially for the Government—he alluded to the Hon. Mr. Ross, who for years past had acted as the Crown Officer employed by the present Government to conduct the criminal business in various parts of the country, and that business had by him always been conducted in a manner worthy of notice, but vindicated so far thought the course the government should pursue in regard to this question.

"The Hon. Mr. Ross did not think this Act had done the good its originators hoped it would; when it was passed he was in favor of it, but now that the members of the Institution had certainly given tangible proof of their determination to support the constitution and institutions of the country, as connected with England, he did not think it right that this act should remain in force against them. He was opposed to all societies and processions of this kind; but it was well known that this Processions Act, as against Orangemen, was perfectly inoperative. He was concerned in the investigation of the outrageous affair at Shakerton, and although very clear evidence was sent to the jury, they refused to find bills against the Orangemen. He also saw in Hamilton, last year, where the fact of a procession was clearly proved, yet the jury refused to find the parties guilty; and he believed juries were generally averse to find verdicts against parties violating this act. He would be anxious to try the effects of conciliation now, and he hoped the result would be a speedy end to all such processions in Canada. From the fact that the Orangemen always stood firm in their allegiance to the Crown, he thought them entitled to some consideration from this House."

After the Petitions had been presented some weeks and no action taken upon them, he felt it his duty to introduce a Bill to repeal this most obnoxious and unconstitutional law, declared by so high an authority to be utterly inoperative, and under which he believed no convictions could take place; he had asked himself frequently why was so obnoxious a law ever enacted? he had recollected in early days prior to the Union, all parties living together in Upper Canada, in harmony and good feeling, and not unfrequently Catholics joining Orangemen in processions on the 12th July; in Lower Canada he had never heard that prior to the Union Orange Processions had given offence to the Catholics of Lower Canada. Then why was this law passed after the Union, when before it was not considered necessary? he could only account for it from the fact, that when Lord Sydenham resolved upon the Union, and resolved on carrying it out by the misconduct of both Provinces—the British population of Lower Canada and the Reformers of Upper Canada—a contest took place at the elections in 1841, which was more fiercely and bitterly maintained than on any former occasion;—in Upper Canada the staunch opposition made by the Loyal Orangemen to the government of the day, necessarily procured for them the hostility of those in power, and the passing of the passing of the Act he thought sought to repeal. Members must bear in mind that this Act, in preambling to suppress certain Processions therein described as Party Processions, had since its passage very generally been declared to apply only to the annual demonstration of the Orange Association of Canada, and that what was perhaps intended as a law applicable to all classes, had been made to assume a most prominent and offensive element towards all the members of that body, and since its enactment the only cases in which it was attempted to be enforced were against Orangemen—not only were they the only parties aimed at, but so obnoxious was the law considered throughout the land, that all attempts to enforce it have failed, and the laws, by means of Juries, have brought into disrepute. It was well known that since the late war passed, the officers of the Institution and many of its members had endeavored to prevent the law being set at naught, but the taunts of others, themselves permitted to walk in procession undisturbed, have induced many members of the body in almost every part of the Province to infringe the requirement of the law; not the fact of a political or social character, but discriminating between Protestant and other processions, cause or lose of a party or political character. The Institution is not a political one for the support of opposition of any particular political party. Their watchword is loyalty to their Sovereign and attachment to their Institutions and connexion with the mother country. And upon a recent occasion the manly stand they took in their defence was fully recognized. Since the law has been in force, the Institution has not diminished, but increased throughout the Province; and during the last year, he heard it stated their numbers had increased by some 2000 members; it must therefore be conceded that the law was not only wholly inoperative, but if the Institution was a bad one, as some ventured to allege, it was largely on the increase. He would quote the Honorable Inspector General of Language used by him in a former debate on the Usury Act, in advocating the Usury Laws were daily violated and never enforced, and he then declared it to be the bounden duty of the Legislature to interfere and repeal a Law which could not be enforced—the language of the Inspector General he now repeated, and urged its adoption by the House. If applicable to a question affecting only monetary transactions between man and man, in which no breaches of the peace, no open violation of the law take place, how much more was it applicable to the present case, where the law not only could never be enforced, but where it is admitted all hands it cannot be enforced; and where it is borne in mind, that collisions frequently take place and even lives are lost—the transgressors not being the aggressors, he considered it most demoralizing in a community, that a law should exist, which the Government and authorities were obliged to admit they could not enforce. If one man executing a law bad, is allowed to violate it with impunity, others will think another law bad, and with the same right set it at defiance, and then there would soon be an end to all law. He referred to several papers to be had noticed the proceedings of the twelfth of July last, and though some condemned the demonstration, all regretted the violation of the law; and though in that city we had a very large Roman Catholic population, he had not heard of any party taking offence at it, nor any application to the magistracy for a violation of the law; nor did the repeated cryes of the Catholics in Toronto even concerning the procession or view it, in the light of offering insult or annoyance to their sa y body.—From this he inferred that a better day was dawning upon Canada, that, as was formerly the case, good feeling would be restored, and the Orangemen and Catholics live in unity together; the repeal of this law would go far to increase this feeling; and he sincerely trusted that all parties within the House, viewing the measure in this light, would record their votes in favor of the final passing of the bill.

The following was the division on the motion for the third reading:—

YEAS—Messrs. Boulton of Toronto, Cameron of Norfolk, Boulton of Toronto, Cameron of Cornwall, Christie, Cayley, Chapleau, Chauveau, Christie, Solicitor General Drummond, Dunkin, Day, Hall, Holmes, Letellier, Lapran, Letellier, Lyon, Macdonald of Kingston, Markham, McLeod, McCannell, McFarland, McLean, Meyers, Morrison, Robinson, Sherman, Scott of Two Mountains, Seymour, Sherwood of Brockville, Sherwood of Toronto, Smith of Durham, Smith of Frontenac, Smith of Wentworth, Steven, Thibodeau and Wilson—35.

NAYS—Messrs. Bell, Bouthillier, Burritt, Dumas, Ferguson, Fournier, Foresyth, Guillet, Hincks, Lacoste, Attorney General Lafontaine, Panneton, Malhot, Polette, Richards, and Viger—16.

The bill was then read the third time and passed.

DEBATE ON THE SEIGNIORIAL BILL.

Mr Solicitor General Daumasson said, the subject of the present Bill is the reform of the Seigniorial Tenure in Lower Canada—an evil complained of for more than half a century, which applies to almost every lot of land throughout large tracts of country, which retards progress and prevents settlements, and which it is the bounden duty of the legislature to remedy. These abuses, he continued, have arisen from a system unknown in England and Upper Canada, importated from France under the ancient regime, which has continued to exist in Lower Canada to the present moment. To understand the position of the question of land *en roture* in Lower Canada, it is necessary to take a retrospect of the seigniorial law in France. The Parliament of France at the time of the selection of the Superior Council in Canada—in fact long before New France was colonized—had lost almost all its most obnoxious features. It had had its origin in the middle ages, when the chief, surrounded by his vassals, decided among his follows the land of each, and the chief was the judge. These lands were held by vassals on the conditions imposed by his arbitrary will, which often became degrading alike to the vassal and the chief. In France indeed they were always more anxious than in England, because in the latter country, the crown always exercised a control over the chiefs as the sovereign suzerain, to whom the chief must first take an oath of fealty, before he exacted the like oath from his vassals. In France this was reversed; for in that country the oath of the vassal to the Lord was held to be prior and superior to that of the Lord to the King. It was this state of things which made it the interest of the Kings of France to crush the proud nobles—to intervene between the seignior and the vassal, till in the end the rights of both became well defined by law—long before New France was granted to the company bearing that name, the time had passed away when the seignior could insolently put his golden spur into the bridal bed of his vassal, or when the Lord could call out his tenants in the dead of the night to beat a pond where the frogs disturbed his rest. Whatever evils therefore arose out of this law, it is not fair to reproach the people of Lower Canada with slavish submission to the law which prevailed at the time when feudality was in its most rampant condition.—When established in Lower Canada, this system had been crushed by the subtle genius of Richelieu, and ground to nothing by the iron heel of Louis XIV. As it was transported into Canada, it was better adapted than perhaps any other system for the settlement of a new country, and it was regulated by special laws of the most beneficial kind, which gave every acre of wild land throughout the colony; for each settler could claim such an extent of soil as he might require, without paying a six-pence immediately to the Lord. It was thus the Lord held the land not for himself; but for all comers, upon the strict condition of settlement. It must here be recollected too, that the whole of this system was regulated by the laws of the Vicomte of Paris, where feuds itself had never exhibited its worst features, because the Vassals were immediately around the Throne and beneath its shelter, and because the Crown therefore protected and defended them from the encroachments of their seignior. There, therefore, the Lord exercised far less power, than in other customs such as that of Brittany. It was the feudal system that was modified by successive ordinances of the Crown, restrained by the *coutume* of Paris; modified and rendered more paternal by edicts, and decrees especially applicable to the colony, under which Lower Canada was to be governed; and I say that the results were, in the beginning, most beneficial. Indeed, if complete freedom had existed in other respects no country could have been settled more rapidly. In eighteen years after the Conquest, for instance, it was found that the population had doubled, and from 65,000 souls had risen to 120,000; for it is not every where that all and every man can go and select a piece of land—to take his pitch as it is familiarly called in this country, and claim from the seignior a title, which the seignior could not refuse. Now come to the propositions, that the conditions under which this could be done were perfectly well defined—that there could be no doubt about them—that they are to be found established in the decrees of the Kings of France, consecrated by judgments of the Superior Court, and by opinions pronounced since the conquest for the purpose of directing Lord Dorchester's conduct on the matter of the land tenure; so that there is an unanimity and concatenation with respect to these conditions, which is perhaps to be found in very few branches of the law. The first condition of the tenure was that the seignior should concede not only *a titre de redevance*—for a small annual rent—but that he would make it his business to obtain settlers for his lands; and it was clearly understood, that notaries especially stated in their titles, that if, after a certain time, he had not settled his seigniory, it was to revert to the Crown. It follows from this, that the seignior being bound to concede could not concede at an arbitrary rent. The one condition excludes the other. If you say he could charge any rent he pleased, you must say that he could keep his land. But the law is positive, that the right strictly and equitably fixed. If you go to the ordinance you will find that in France there was a small *cens* stipulated merely as a recognition of the fact that the land was held of another; and that there were also certain rents regulated perhaps more by custom than by law. You will then find that Louis 14th, who made such great efforts to settle this colony—who devised such admirable theories, which were not only in the law, but carry them into effect—issued an *arret* from Marly, dated 6th June, 1711, in which speaking of the seigniories granted the persons who had made no efforts for their settlement, he provided that seigniors in Canada should be bound to concede their lands at the customary rates. These are the words:—

"His Majesty ordains that in one year from the date of publication of the present *arret* the inhabitants of New France to whom the Kings have conceded lands in seigniory, and who have not cleared of their land nor established settlers, shall be held to put the said lands in a state of cultivation, and to establish settlers thereon, in default of which they will be reunited to the Royal domain, by the difference of the Intendant to the ordinances rendered by the Governor, Lieut. Governor and Intendants of His Majesty in the said seigniors shall concede to the habitants the lands which they may demand in their seigniories for a quit rent, without requiring from them any sum of money by reason of the said concession, in default of which His Majesty permits the said habitants to demand the said lands by summons, and in case of refusal to proceed before the Governor, Lieut. Governor, and, Intendant of the country, whom he directs to cause the said *habitants* the lands asked for by the taxes in the said seigniories, at the same rates as are imposed on other lands conceded in the said seigniories."

I will call the attention of gentlemen from Upper Canada anxious to view themselves masters of this subject, and without preconceived prejudice, to the words of the *arret* and I will tell them at the same time, that it proceeded from the only legislative authority of the day, all such authority being then centered in the French King. If, then, this be not law, we are reduced to the proposition that there were at that time no laws in the country. We have then a clear provision that lands in Canada were to be granted at a rate certain—the customary rate. I know that some doubts have arisen as to the word "said" in this document, which by some is held to make the *arret* apply only to certain seigniors, while others think it applied to all, and that is my opinion; for the King has been speaking of all seigniors, and here provides that all lands should be conceded at the customary rates. But whether this applies to some seigniors or to all, it makes no difference as to the conclusion, because it can be clearly shown that at any time no rent exceeded two sous the ordinarial arent. The difficulty has arisen from this circumstance, that the precise amount of rent has not been established in this decree, but there can be little doubt as to what that rent was. It may indeed be difficult to know what rent was demanded in single cases; but it is easy to be known that none exceeded a certain sum. The seignior, whoever he be, was bound to concede it at a low rate, and that low rate, who might demand it, and he deems went still further and provided that when seignior refused to concede lands, he might be compelled by a court organized for that purpose, consisting of the Governor and the Intendant. These officers were authorized to concede lands if the seignior had refused without just reason; and when they did so, they conceded not for a single sous but for the Crown. The question of sous was merely nominal, how came this law not to be universally acted on? This is the answer. By the 6th Article set of the country, after the conquest, it was provided that the King's Bench should thereby be invested with all the attributes, which had been of the longed to the Intendant; and the Governor and the Intendant, who had concurred in the ordinance, "who had concurred in the ordinance" which alone could not be enforced by courts of justice. It was in the opinion of three courts, they ceased to exist, or, perhaps, wrong. The two officers, or, as the concurrent power invested only with saying that they had been resident. It is no that which belonged to the Intendant. It is no doubt strange that the Legislature sitting for half a century has not remedied the want, and gentlemen from Upper Canada must be satisfied to find such neglect in a country possessing of representative institutions; but, Mr. Speaker, I need not tell you that great efforts have been made in the Assembly of Lower Canada to compel the courts to exercise the power in question. In 1824 a Committee was appointed to inquire into the abuses of the seigniorial system, and the causes which prevented settlement in Lower Canada. You, Sir, were one of the active members in that Committee, and you reported a bill which was passed in the Lower House and thrown out in the Upper. I have been unable to find any trace in the journals of the House which I possess of any other attempt of this kind; but I find on reference to the evidence of Mr. Neilson before the House of Commons that two such bills were passed and rejected; and the late Mr. Andrew Stewart speaking of this subject once declared that the a was no longer that the powerful party who then controlled public affairs would ever consent to redress the grievances complained of. It is for this cause then that 100,000 acres of fertile lands ready for the plough have hitherto remained unfilled; for, let gentlemen go into the wild lands of Lower Canada, and they will pass sometimes through five or six miles of uncovered forests and will then come upon some beautiful settlement made up of humble tenants. There is no means even of opening a road through the unconceded wilds, though the laws on our statute book require that the seignior should concede every acre, when he should demand them; and I now ask you,—whatever may be wrong in other parts of the bill,—whether any time should be lost in giving to the seigniors your will and that in France there was a small *cens* stipulated merely as a recognition of the fact that the land was held of another; and that there were also certain rents regulated perhaps more by custom than by law. You will then find that Louis 14th, who made such great efforts to settle this colony—who devised such admirable theories, which were not only in the law, but carry them into effect—issued an *arret* from Marly, dated 6th June, 1711, in which speaking of the seigniories granted the persons who had made no efforts for their settlement, he provided that seigniors in Canada should be bound to concede their lands at the customary rates. These are the words:—

"His Majesty ordains that in one year from the date of publication of the present *arret* the inhabitants of New France to whom the Kings have conceded lands in seigniory, and who have not cleared of their land nor established settlers, shall be held to put the said lands in a state of cultivation, and to establish settlers thereon, in default of which they will be reunited to the Royal domain, by the difference of the Intendant to the ordinances rendered by the Governor, Lieut. Governor and Intendants of His Majesty in the said seigniors shall concede to the habitants the lands which they may demand in their seigniories for a quit rent, without requiring from them any sum of money by reason of the said concession, in default of which His Majesty permits the said habitants to demand the said lands by summons, and in case of refusal to proceed before the Governor, Lieut. Governor, and, Intendant of the country, whom he directs to cause the