

THE STAR

WEDNESDAY, JANUARY 21, 1835.

If there be no power within this country to abrogate all or any of the Provisions of the Royal Charter, what is meant by this passage, contained in the Governor's speech at the opening of the General Assembly?

"Another object of moment is the improvement of the Judicature, and this for various reasons, becomes daily of greater importance." Or, what is the meaning of the following? "An act was passed in the last session of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, by which it is declared and enacted that a certain other act made and passed in the fifth year of the reign of his late Majesty George the Fourth intitled "an act for the better administration of Justice in Newfoundland, and for other purposes, shall be continued in force until the same shall be repealed, altered or amended, by any Act of Assembly, which may for that purpose be made by his Majesty, with the advice and consent of an House or Houses of General Assembly, which his Majesty may at any time see fit to convoke within the said Colony of Newfoundland."

We would suppose, that the "Royal Charter," contemplated the frequent absence from the Supreme Court, of two of the Judges during the sittings of the Circuit court; and that the Supreme court, if constituted only with three Judges, could not possibly, by the terms of the Charter, be open "every hour in the day, and every day in the week, and every week in the year." The Charter constituting the Supreme Court, must in many respects be similar to the Charter of a corporation, aggregate, 1st. in having perpetual succession. This is the very end of its incorporation. 2d. In having a common seal. For, a corporation, being an invisible body, cannot manifest its intentions by any personal act, or oral discourse; it therefore acts and speaks only by its common seal. In aggregate corporations also, the act of the major part, is esteemed the act of the whole.

We should conceive, that when two of the Judges of the Supreme Court were absent from St. John's one on the Northern, and the other on the Southern Circuit, that the chief Judge sitting in chambers, and having the custody of the common seal, could legally, and effectually exercise all the power of the Supreme Court, in the granting probate of wills, and letters of administration.

The following passage, taken from the Royal Charter, appears to us to favour our opinion, that the three Judges were necessary only; because the Charter intended, that they should, at particular periods exercise their functions severally and separately, in the Circuit Courts, as well as in Chambers during the interval that would occur, between the different sessions of the Supreme Court.

"And the said sheriff, by himself or his lawful deputies, is hereby authorized to execute the writs, summonses, rules, orders, warrants, commands and process of the said Supreme court, and the said circuit courts, and make return of the same, together with the manner of the execution thereof, to the said supreme court, and circuit courts respectively to receive and detain in prison all such persons as shall be committed to the custody of such sheriff by the Supreme court and circuit courts respectively, or by the chief Judge, or assistant Judges, or either of them."

John Taylor Coleridge in his notes on Blackstone, says; "by the 37 Ge. 3, c. 18, the chief baron, and in his absence from sickness or other unavoidable cause, any puisne baron specially appointed by warrant, is authorized to hear and determine alone all causes and matters pending in the exchequer, as a court of equity; his decrees, orders, and acts, are decrees, &c., of the court, and subject to alteration only by appeal to the Lords. Under this act a great proportion of the equity business of the court is now done by the chief baron, and probably some advantage is gained to the public by the despatch which this division of the court is calculated to produce."

Now here is a court which is supposed to receive its charter from one of the Anglo Norman Kings. It is held in the exchequer chamber before the Lord Treasurer, the chancellor of the exchequer, the chief baron and three puisne ones; and yet the chief baron alone or one of the puisne barons specially appointed, may hear and determine all causes, &c. What would Lord Coke say to this; would he say that the meaning of the charter ought to be construed according to the law when the charter was made, and according to ancient allowance? "Miseria est servitus ubi jus est vagum aut incognitum."

THE GLORIOUS UNCERTAINTY OF THE LAW.

The court of Sessions was opened at Harbour Grace, with all due formality, according to notice, on Thursday the 15th inst. Six magistrates sat on the bench. The Grand Jury, (of whom the foreman, and thirteen others were gentlemen belonging to Carbonear) were duly sworn; lawyer and client, plaintiff, defendant, and witness, from every part of this extensive and populous District were there, snow storms, and want of roads were no impediments to the administration of justice. Those who had given bail, hoped that their responsibility for the appearance of their good friends was nearly ended; but an unfortunate and unexpected circumstance doomed them all to experience disappointment.

The legal gentleman who had undertaken drawing up the indictments and the conducting of the Crown prosecutions, refused to proceed unless he were paid more for the use of his legal knowledge, than the usual fee paid to the clerk of the peace. The lawyer's bill then, was the only bill submitted to the consideration of the Grand Jury, and a letter from his Excellency the Governor, stating that the duty of crown officer ought to be performed by the clerk of the peace, and that if the clerk of the peace could not perform the duty he should pay the person employed for that purpose was handed to the Jury, after an appropriate address had been given to them by the acting chairman. The Jury retired ignored the "bill," and stated to the court that they did not think the subject one of which they ought to have cognizance.

The court was then adjourned, to the 11th of February next.

"Nihil quod est inconueniens est licitum."

We agree with his Excellency the Governor's speech, in as far as that the Road Bill requires a more concentrated superintendance for the carrying of it into useful and extensive operation. There should, in every populous place at least, be one of the Surveyors appointed as a general Superintendent over the other surveyors; he should be a person of some intelligence, and some judgment for directing the operations of the workmen, should be paid a yearly sum out of the fines and forfeitures; and would then

have a direct interest in carrying the law into operation.

That the improvement of the Judicature is necessary, is in some measure proved by the present state of the Supreme Court, and the inefficiency of the Circuit and Sessions Courts. The fees in the Sessions are regulated by a scale furnished during the time of Governor DUCKWORTH, added to which is a duty of one shilling per mile, for the travelling expences of process, which, where the Court is distant, is almost a denial of Justice.

We have been, and still are of opinion that the issuing of the "Treasury Notes," were far from contributing to the "establishment of a sound and wholesome system of finance," and we hope that the Representatives of the people will not again resort to such an "expedient."

We hope the time may not be far distant, when "the united endeavours of the different branches of the Legislature, will realize our fondest expectations." That a steady, economical, liberal, and judicious management of the affairs of the Colony may produce such a system of finance as shall warrant the application of a fund to the purposes of education, and thereby raise our long neglected native youth, to their proper sphere of usefulness; and to the councils of their country. The practice at the bar is become a monopoly, we hope the lawyer's corporation, will be a dignified, and respectable, and talented one.

(From the Royal Gazette, Jan. 13.)

OPENING OF THE LEGISLATURE.

His Excellency the Governor proceeded yesterday to the Court-House to open the Session of the Legislature, which ceremony had been unavoidably postponed from Thursday last in consequence of the inclemency of the weather. His Excellency arrived at the Council Chamber about two o'clock, and being seated on the Throne, the Usher of the Black Rod was directed to command the attendance of the House of Assembly. Mr. Speaker and the Members having accordingly appeared at the Bar, His Excellency delivered the following Speech:—

Honourable Gentlemen, and Gentlemen,—

I have assembled you at this early period to enable you to devote sufficient time to the public business, without injury to your private pursuits.

Our situation is, happily, one of tranquillity; and therefore your deliberations, unoccupied by matters of a temporary nature, may be directed to such as shall conduce to the permanent advantage of the Colony.

The Road Bill, passed in your second Session of the last parliamentary year, though excellent in principle and in much of its detail, nevertheless seems in some degree to fail in its intention, from want of a more efficient and concentrated superintendance. You will determine whether any alteration can be beneficially made in that particular.

Another object of moment is the improvement of the Judicature; and this, for various reasons, becomes daily of greater importance.

It will behove you, also, to consider what enactments may be requisite in consequence of the Fishery Act having expired.

Under more prosperous financial circumstances, I should have been induced to draw your attention to the support of general education, which, is highly essential to the best interests of society, well merits your protection; especially as it might be fostered here in a spirit of perfect liberality, unfettered by invidious distinctions of any description.

Mr. Speaker and Gentlemen of the Assembly,—

My predecessor, when closing the last Session, expressed a hope that he should be able to defray the public charges without having recourse to the issue of Treasury Notes, until he could meet you again in this place; but I found the remaining funds totally inadequate to the existing claims, and was consequently compelled, almost immediately after assuming the Government, to avail myself of that resource. You will, I am confident, feel, with me, that the sooner these notes can be called in the better, and that no subject so imperiously requires your present application as the establishment of a sound and wholesome system of finance.

We may be said to have reached a crisis; but a crisis in which we are cheered by many encouraging considerations connected with the Fishery, Agricultural produce, and general state of Trade. I trust that the difficulties in your way will only operate as incentives to exertion, and that you will fix the Revenue on a scale proportioned to all such demands as shall consist with a strict but rational economy.

I have directed an estimate for the ensuing financial year, and various other documents, to be prepared for your information; and you may rest assured that I shall always be anxious to prevent unnecessary expenditure, and to enforce every due provision for that purpose.

Honourable Gentlemen, and Gentlemen,—

This being the first time of my addressing you, I gladly embrace the opportunity of expressing the great satisfaction I feel in having been appointed to administer the Government of this Island at a time when its independent Legislature is fully established. The prosperity of Newfoundland is the wish nearest to my heart; and my most ardent desire is, that by your united endeavours you may realize the fondest expectations of those who petitioned for the present constitution, and fulfil the paternal hopes of the beneficent Monarch who granted the boon.

Be convinced of my cordial concurrence on every occasion, and of my constant readiness to promote all public measures, and to listen to all private suggestions which shall have for their object the well-being of this community.

The Assembly having withdrawn, the Governor retired from the House.

The Speaker then addressed the House, and said he had obtained a copy of His Excellency's gracious Speech, which was read, and he thereupon moved that a committee, consisting of the Attorney General, Mr. Spearman, and Mr. Thomas, do prepare an Address in answer thereto.

Adjourned to Wednesday.

ABERDEEN, Nov. 15.—The Ariadne, of Liverpool, bound to Newfoundland, was driven on shore in Dantzic Bay, during a gale about the 10th Oct., and remained on the strand until the 17th, with the water above her hold beams.

The Barque Manlies, of Belfast, from Quebec, bound to Greenock, with a cargo of square timber, flour, potash, &c., ran on shore on the night of the 9th December, in Golden Bay, near Cape St. Mary's and became a total wreck, with the loss of the Captain, eight of the crew, and four passengers. The remainder of the crew (eleven in number including the Mate) were all severely bruised and frostbitten before they succeeded in reaching the shore, but were afterwards conveyed to Placentia.—Newfoundland.

Notices

Notice to Creditors.

SUCH Creditors as have proved their Claims on the Estate of GEORGE EDWARD JAKUES, of Carbonear, Merchant, Insolvent, may receive THREE SHILLINGS Currency, in the Pound, on the amount of their respective demands, on application to

JOHN ELSON, } Trustees to said  
JAMES LOW } Estate,  
By his Attorney  
JAMES HIPPLISLEY.

Carbonear, Jan. 21, 1835.

KELLYGREWS PACKET.

JAMES HODGE OF KELLYGREWS,

BEGS most respectfully to inform his Friends and the Public, that he has a most safe and commodious Four-sail BOAT, capable of conveying a number of PASSENGERS, and which he intends running the Winter, as long as the weather will permit, between KELLYGREWS, and BRIGUS and PORT-DE-GRAVE.—The owner of the PACKET will call every TUESDAY morning at Messrs. BENNETT, MORGAN & Co's. for Letters and Packages, and then proceed across the Bay, as soon as wind and weather will allow; and in case of there being no possibility of proceeding by water, the Letters will be forwarded by land by a careful person, and the utmost punctuality observed.

JAMES HODGE begs to state, also, he has good and comfortable LODGINGS, and every necessary that may be wanted, and on the most reasonable terms.

Terms of Passage:—

One Person, or Four, to pay Twenty Shillings Passage, and above that number Five Shillings each.

Not accountable for Cash, or any other valuable Property put on board.

Letters will be received at Bennett, Morgan & Co's. at St John's.

January 14, 1835.

BLANKS of every description for SALE at the Office of this Paper. Carbonear, 1834.