

John T. McLean

THE CANADIAN MIRROR

OF PARLIAMENT.

EDITED BY H. FOWLER, Esq. }

Kingston, August 7, 1841.

{ PRINTED AND PUBLISHED AT THE OFFICE
OF "THE NEWS," GRASS & JOHNSON STS.

HOUSE OF ASSEMBLY.

TUESDAY, August 3.

COURTS OF REQUESTS—CONTINUED.

Hon. Mr. DRAPER rose and addressed the committee. He did not think it necessary to go again into a discussion of the different clauses of the bill. He would confine himself rather to the arguments which had been made use of to do away with the bill. Hon. gentlemen in speaking upon this amendment seemed to view it not as an amendment to this bill, but as an amendment to the old existing law. But if it be intended that these resolutions shall form the basis of a new system, it will be found that it will not work well—in fact you cannot get it into operation at all. It will be not so much an improvement as an impediment.

One of the arguments made use of against the bill, and which strikes me with no inconsiderable degree of force not as an argument against the bill, but as an admission, which really surprised me not a little, involving the principle that members of this house stand here not to exercise their own deliberate judgments, but to act as the mere recorders of the wishes of their constituency, as those wishes may be expressed to them from day to day. (Hear, hear.) When I find myself in this situation I shall cease to consider myself worthy of representing a free people. (Hear, hear.) The hon gentleman has stated as an objection to this bill that under its provisions the courts will not be held often enough to benefit transitory persons. Now although I admit the principle that, as far as possible, justice should be brought to every man's door, yet we are not legislating for transitory persons, for a mere shifting, travelling population, but for those whom we represent; the settled residents of the country. (Hear, hear.) I think, therefore, this argument is not entitled to very great weight. There are some objections which I anticipated when I brought in this measure. I expected the opposition of the Commissioners of the present court; and not only of those who are Commissioners, but of those who hope to be so; and not only of those who hope to be so, but of those who hope to have a voice in their appointment. (Hear, hear.) This is an opposition which I fully expected—an opposition arising from the destruction of that little local patronage which is possessed by the Commissioners. (Hear, hear.) I have not been disappointed in the slightest degree, and I thank those hon gentlemen for the candor with which they have admitted the grounds upon which their opposition rests. (Hear, hear.) Another remark of the hon gentleman from South Lincoln which is well worthy of notice as an argument against the passage of the bill, is, that although it is true it may be a good measure, and well calculated to promote the better administration of justice, yet the people do not ask for it, and therefore we should not pass it. (Hear, hear.) We are here, then, not to exercise our free and independent judgments, but to record the wishes of perhaps two or three meddling individuals amongst our constituency, who take upon themselves to express to us the wishes of that constituency. (Hear, hear.) If there

are the duties of hon gentlemen its legislative will pass; this shows very evidently that lettors, such are not my duties. (Hear, hear.) has been laboring to convince them; and it The hon gentleman proposes by his amendment is this very fact of his having crusaded against to extend the jurisdiction in some cases against it, without producing the effect which to twenty-five pounds, and give the power he desired; which shows plainly that the pec- of granting executions against lands; but ple are desirous that it shall pass. [Hear, he should recollect that unless the court be hear.] One would have supposed that the made a Court of Record, there can be no energy with which they would have resisted evidence of title to such lands sold by the the bill, if they considered it obnoxious, would Sheriff, except the bare recollection of par- have been proportionate to the danger which ties, which amounts to no evidence at all, they considered there might be that it would Let hon gentlemen reflect upon the conse- become a law. I have often heard it asser- quences of such an alteration as this, and it ted that it was easy to obtain petitions upon will not, I think, be difficult to discover its any subject provided they entailed no ex- impropriety. When you take away any part pense upon the petitioners; and as this is one of an arch, the chances are the whole super- of those which do not require a tax, it strikes structure will come about your ears. An me that it would have been an easy matter hon gentleman proposed, when this measure to procure petitions, if there had been the was discussed before, that it should be de- least anxiety respecting it on the part of the ferred to the succeeding session of Parlia- people at large. The hon gentleman goes ment. If that hon gentleman had made use further and calls on the house not to crush of argument instead of declamation, I could the yeomanry of the country. If it be an have replied to him as I have already to one oppression upon the yeomanry of the coun- hon gentleman, and as I intend doing to the try, that an efficient judicial system should observations of another. With regard to be invented; if this be doing them an injus- that hon gentleman I will merely remark tie, I am totally at a loss as to the meaning that if he had read the bill he would have of the term. Far be it from me, or from any found that he was wrong in the position he one with whom I act, to do that which would took. I shall not waste time in replying to inflict an injury or an injustice upon that those remarks which hon gentlemen some- valuable portion of the community. If to times indulge in, which apply to the ordinary provide for the administration of justice by prejudices against the legal profession. I those who are free from prejudice, and who have lived long enough to know that the are by education fitted for the discharge of credit of the profession of which I am a mem- the important duty, be to commit an injus- ber will rest not upon the sarcastic repro- tice, I confess I have yet to learn what the es which may be applied to it in popular dis- meaning of injustice is. In the next place cussion, but upon the conduct of its members. we are accused of endeavoring to make pro- Therefore I am quite careless with regard vision for young lawyers. If the hon gen- to observations of this nature. An hon gen- tleman means to apply the term to my hon- tleman who has favored us with a "great and learned friend from Hastings and my- shot," told us he had not lost all hope of self, I apprehend he means young in infor- being able to throw out this bill. I think mation, not in years; but, he speaks as if there was a legion to be provided for by this can hold out to him a hope, not that it will bill. Now, what new office does it create? not pass, but that he will be disappointed in its operation. It would be ridiculous to ven- Not one: the judges of the District Courts ture to hope that in a single session a mea- are to be the judges of these courts. [One sure could be so well matured that all its man is judge of several districts.] Yes; that provisions would be perfect; but that is not is precisely the evil which I wish to cure. I a consideration which should induce us to wish to secure to the public the services of forego endeavoring to make it as perfect as efficient men, and to do this we must provide possible. And it must assuredly be admitted that those services shall be suitably paid. At present it is not so. The judge of a Dis- that a system of uniformity is better than one which has no uniformity at all. A sys- trict Court is not remunerated, unless he tem which gives some degree of certainty as holds an appointment for more than one dis- to the extent of the jurisdiction of the court, trict. If I can effect this object without tax- cannot do otherwise than effect a beneficial ing the country or diminishing its general revenue, I shall accomplish what I desire. change. I am not quite convinced, notwith- standing all the arguments I have heard, as The hon gentleman amused me when he to the absolute necessity of frequent sittings, declared as one of the peculiar objections to It is a difficult matter to steer between two evils, that of encouraging too frequent litiga- this measure that it is introducing in place tion, and of admitting even the show of de- of the present commissioners a set of men who would make their decisions according priving suitors of the opportunity of obtaining to law. If the hon gentleman objects to this speedy justice; and I will frankly put it to let him refer to the act itself, and he will find the hon gentleman from Prince Edward, it is one of the first provisions that the deci- who praises so highly the operation of the sions shall also be according to equity and present courts in his own neighborhood, good conscience; and this is one of the lea- whether it has not been owing to his own ding features of the bill from beginning to discretion and judgment in the department end; and will the hon gentleman tell me both of Commissioner and Clerk of that court, that it is any hindrance of justice to have (for he has filled both offices,) rather than to men, providing who fully understand the any other circumstance, that tho evils which principle, both of law and equity? The hon gentleman admit that there are complaints the system is so well calculated to produce have not an, on in that particular. But the Court of Re- The hon gentleman asserts that the paper quoted that it is not more name- ble to make the people believe that the bill was the result of the decision