

POETRY.

BALLAD.

Once, on a cloudless summer-day,
Beneath a mantling vine I lay,
When Cupid came by chance that way,
And aimed at me an arrow.

He laid the dart upon the bow,
And drew the horn and sinew so—
And said, "my friend, you soon will know,
How keenly stings my arrow."

His cheek was gay, his eye was bright,—
And shot a piercing, bitter light—
He drew the nerve all tense and tight,
And then let fly his arrow.

The bow twanged sharp, and with a bound
At once its mark the weapon found;
I tingled with the fiery wound
Of that soul-kindling arrow.

He flapped his wings, away he flew,
And turning backward looked me through,
And slyly laughed, as forth I drew
The heart-encrimsoned arrow.

I felt my blood like lava glow,
I writhed, and twined, and wrestled so,
As madmen in their dying throes—
I broke and cursed the arrow.

It is indeed a cruel thing,
When early youth is on the wing,
To feel, and keenly feel the sting
Of such a poisoned arrow.

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16th Section. I am of opinion that attachment of the goods or other property of a debtor should be allowed in cases where the debt sworn to is of the amount of £5. Such was the provision under the act 49 Geo. III., c. 27, and I have never heard any reason alleged against such rule, which I consider a good one for this Colony, where arrest of the person is seldom resorted to, and only in cases of absconding debtors or imputed fraud.

17th Section. The provisions contained in this section, and in his Majesty's Charter, for the admission of Barristers, have, under the construction of the Judges, and the practice that has been pursued, not given satisfaction to the parties admitted to practice in the courts, whose acquirements are, as might be expected, of varied degrees. Some of the gentlemen are of long standing (from ten to twenty years); but the Judges consider that the provisions of the charter authorized them to admit and enrol as barristers, &c., *de facto*, no persons but such as have been previously admitted barristers at law, or advocates, &c. in Great Britain or Ireland. I do not consider that such a rule meets the fair merits and reasonable claims of several parties, or that it has a tendency to promote the respectability of the Bar, by exciting laudable emulation, and enabling the Judges to distinguish those whose integrity, skill, and diligence they might deem worthy to mark by those public testimonials usually conferred.

18th Section. Labrador Court. The coast of Labrador has comparatively but few resident inhabitants, and those scattered along a considerable extent. There are several mercantile houses in England, and also in St. John's who occupy permanent establishments there; and from St. John's and the ports of Conception Bay, now that the French occupy the "French Shore," as it is called, running from Cape John, northward, numerous vessels, with fishing crews, repair to their respective fishing-rooms, or stations, about the first week of June in every year, and pursue their occupations on that coast, returning in October to their homes, with the fruits of their voyage—cod-fish, oil, salmon, and some furs and skins, caught by British winter-crews, or furriers, or bartered from Esquimaux or other native tribes. The inhabitants and frequenters of this coast need, during a period of three or four months of the summer, the same species of protection, in respect to its fisheries, that is required for the distant outport-settlements of Newfoundland, which the present Labrador Court, as it is now constituted, cannot, I conceive, administer.

The act of 51 Geo. III., c. 45, recited in this section, is a misrecital. The 49 Geo. III., c. 27, re-annexed the Labrador to the Government of Newfoundland.

Section 23. Proceedings under insolvency, I am of opinion, require, in all their fundamental and leading details, to be prescribed, so as to render them more regular and efficacious in their administration. And I consider that it would be an improvement in this department of the Colonial law, if

two-thirds in number and value of the creditors were required to assent to the insolvent's being certified by the Court, instead of one-half of the creditors, as required under the existing provisions of the act. In Newfoundland, the law is leniently administered, and I have never known a body of creditors, or any number of them, combining to oppress an insolvent debtor.

Section 25. This section involves a point which, of late years, has given rise to the expression of divers opinions, viz.—*Privileged claims of Debt*. When Newfoundland was altogether, or for the most part, a transitory fishery, carried on by ships, then these distinctions, growing out of maritime law, were well applied. But, I conceive that, as the principal reasons on which they were originally founded, no longer prevail as a general rule under the altered mode of trade, that it would benefit the community at large, to abrogate privileged debts and claims of this sort altogether, as well in respect to fishermen and other servants in the fishery, as to the merchant or current supplier.

I have reflected much on this point, and my long experience in the Colony has, I think, enabled me to estimate justly the degree of good and evil produced by the law as it now exists, during the course of the last twenty years. And my opinion is, that these distinctions have been productive of more evil than good. Their abrogation would leave untouched any priority of claim, or election of parties to sue, which seamen, as such, possess under the maritime law of England. Fishermen and other fishing servants, doubting the character or responsibility of the hirer, would have the election of hiring on the shares (in lieu of wages); and good masters and good servants would acquire a better and more just station than that now held under the present rule; and so also would it prove with the honest and industrious planter. The bad or dubious among each class would find the necessity of reformation; or at least have a strong incitement to retrieve and sustain character and confidence; and I am persuaded that it would diminish greatly the frauds but too frequently practised, but difficult to detect, of collusive claims contrived between dishonest planters and their servants.

Independent of those considerations, the frequent embarrassments growing out of all deviations from general principles of law, so numerous, and often recurring in this Colony, would be obviated by making, where it is found possible, the Colonial law uniform with, and dependant on, the general law of England.

If it should be deemed proper to make the change here suggested, I think that it ought to have a prospective operation, so as not to commence until the termination of one clear fishing season, or year, after the termination of that year in which such new law may be made, in order that the people, who are to be affected by it, may be prepared to incur the change with as little prejudice as possible to subsisting contracts.

Section 27. Registration of *Deeds and Wills*. On these subjects there is a considerable feeling of dissatisfaction throughout the public mind; and, on the whole, I conceive not without reason.

First, because, under the *very general* provisions of this law, leases and agreement for leases at *rack-rent* are required to be registered, which, in public opinion, is deemed unnecessary and uncalled for.

And, secondly, that the fees are, in some instances, so high, that they assume the character of a tax, and doubly so in some cases of wills and administrations.

Thirdly, that the party executing a deed, is required to appear before the registrar of the district, at his office, within the district where the property may be situate, to acknowledge the same within six months. In great numbers of instances this is found to be *impracticable*, for want of facilities of communication or conveyance, unless procured at a cost that would very commonly exceed the value of the property conveyed or charged; for, in general, the communications between one out-port and another (except Conception Bay and a few other instances) are merely accidental and casual. All the principal settlements have intercourse, more or less, with St. John's; and I am of opinion that an acknowledgment by the party executing, before any magistrate there, or in the neighbourhood of the party's residence, might suffice as to the actual execution of the deed, &c.

Section 34. Licences to retailers of spirituous liquors, &c. I consider this to be a wholesome regulation: and I am not aware that it could be put on a more useful footing, or that, at present, any change could be effected for the better. But, least of all, could I advise, that masters, or hirers, or suppliers in the fishery, should be allowed to supply, on sale, by retail, *small quantities to their servants, &c., without license*; for the utility of the law would thereby be greatly impaired. The retailing of spirits, wines, &c., yields great profit. Hirers and employ-

ers of servants in the fishery, would often (especially among the lower orders) gratify the propensity of their servants for drink, for the sake of profit by its sale; the servant would become drunk, and the hirer would impute neglects to him, and mulct his wages, although such hirer had virtually been the cause of such neglect.

If a small portion of spirits, &c. be (as is by some said to be) really necessary to fishermen, &c. it is easy for hirers and employers, who always diet their servants, to make a moderate and proper portion of liquor, an article of allowance in the diet of servants and pay them wages in proportion.

Section 35. His Majesty may grant Charters of Incorporation, &c.

This is a provision that I regret having hitherto failed to become available; although, at one period solicited by many. But I am of opinion that it might yet be rendered of benefit. I have already submitted my suggestions on this head, in a report which I made in April, 1831, to his Excellency the Governor, on the "Policy and Expediency of granting to Newfoundland a Local Assembly." And after an anxious consideration of the subject, I feel a strong persuasion that even now that the call for a Local Legislative Assembly is become more general the public at large might, by what appears to me to be moderate concession, be made satisfied without resorting to such uncertain experiments.

1st—By granting to St. John's and two or three other of the more populous settlements, the charter contemplated by this section, together also with the appropriation of the license tax paid by retail spirit-sellers and of the rents arising out of the once public ships' rooms, in each location respectively, as may be deemed expedient; in aid of such funds as might, and would, I think, be willingly paid, by small assessments on the inhabitants (landlords and tenants).

2dly—By the appointment of a *practical, efficient Council*, in aid of the Local Government, as well to advise on the propriety and expediency of important measures, as in the expenditure of the colonial revenues, under such limitations as may be found expedient.

I feel it my duty to state to his Majesty's Government, that there has been, for some time, a feeling of discontentment festering in the public mind of the inhabitants of St. John's particularly, in reference to matters connected with these suggestions; and which in my opinion, can be allayed only by some measure of pacification, tending to produce such effects as these concessions seem calculated to promote. And, concurrently with the opinion which I ventured to submit in my report of April last, I still believe that, if some such course as this, which I have again taken the liberty to submit, had led the way, when the present Judicature Law, and His Majesty's Charter were first promulgated, very few voices would have been raised in the cry for *Local Legislation*.

It is now become of urgent importance to consider what system can be devised, so as to place within the reach of the inhabitants of the out-ports, the administration of that portion of criminal and civil judicature, which His Majesty's Government may consider suitable and requisite to their condition.

The present system of Circuit Courts is no longer considered as delusion: it is found to be, to a wide extent, a total failure; and I am unable to discover how, *of itself*, it might be modified or directed, so as to suffice throughout so wide a range of coast. Nor can I conceive any plan can be devised whereby general itinerant Courts could be made available for the every-day demands of justice; unless upon such a scale as would involve an enormous expense in conveyance now that numerous ships of war are no longer required to cruise on these coasts for other purposes. The settlements are all situate on coasts, which, throughout the island, run along numerous and deeply indented bays, so that if even roads were made to a partial extent, but at great expense, they could conduct but for a small space. I am reduced to believe, that none other than *sedentary Courts* can answer a sufficient and permanent purpose, and that in the end they will be found the least expense, although a greater number may be required. Chief Justice Reeves, in his evidence, as before referred to, speaking of the necessities of the people then resident at Harbor Grace, says, "I should recommend that, in the absence of the Chief Justice and Surrogates, there should be some Court for the recovery of debts to any amount, and for the determining of causes of any sort or kind; and that there should be an appeal from such Court to the Supreme Court at St. John's."

At this time the Court of Session of Justices of the Peace, had jurisdiction at Harbor Grace, &c. in criminal matters, and also fishermen's wages. What Harbor Grace forty years ago then was, relatively to St. John's, several other places are now become.

Whatever description of Courts may be established, I would earnestly recommend the liberal allowance of appeal to the Superior Court, on reasonable conditions of security, to be given either by the party appellant, and against whom judgment may be

given, or by the party who may obtain it, if the Court should consider (in cases of poverty or litigious appeal) that the amount, for which judgment may have been given ought to be paid.

I am of opinion that ten district courts would be requisite; but I consider that several of them would be required to hold an occasional sitting, for a fortnight at some other than their ordinary location within their respective district. The locations I would designate are, Harbor Grace, Trinity, Bonavista, Twillingate, Bay Bulls, Ferryland, St. Mary's, Placentia, Burin, and Fortune Bay.*

Such Court might be held by one Judge, or such Judge might be joined with two of the Justices of Sessions of the Peace of any location, and constitute a court of general civil and limited criminal jurisdiction. The latter plan might be found a means of improving the knowledge and utility of the Courts of Sessions of Justices of the Peace, by inculcating among the magistracy, a greater regularity of proceeding, than has been usually incident to such courts; and would, moreover, add to the weight of their respectability and influence as magistrates, where their discretion proved correspondent to the same effect. It might be expedient, that such District Judge should not preside two years in succession in the same district, in order that he might not become obnoxious to the imputation of bias or favour, arising out of any particular personal connexions or prejudices.

I had proposed to myself to enter further into the details of the formation of these Courts, both in the event of their adoption on the plan of their having one sole Judge for each Court, leaving to Justices of the Peace and their Courts of Sessions, a limited jurisdiction also,—and in the plan above suggested, of two Justices of the Sessions being associated with such Judge, to form a Court. But I am not now able to continue further, for I am sensible that the occasion for transmitting this report is become urgent, and the only opportunity for its conveyance, that will occur for some time to come, is at hand. Anxiously desirous to render this, as an exposition, practically useful to those on whom may devolve the charge of new-modelling the judiciary system of this colony, I proposed to myself, in the outset, a wider range of examination and discussion than, amid the discharge of my every-day duties of office, I have been able to fill up.

The matter-of-fact data, relating to the character and incidents of the country, and the condition and necessities of the inhabitants, together with the outline, which I have endeavoured to trace, of the progression of the jurisprudence and judiciary systems that have been given to the colony, are, I consider, materials of importance, and such as will, I trust, be found useful.—I am sensible that, in treating these subjects, my observations may, in some instances, be liable to be considered too diffuse, and in others, perhaps, prolix. As respects the opinions which I have ventured to express, they are submitted, with diffidence, on many points; and all I can say is, they are the best I have been able to furnish.

(Signed) JAMES SIMMS,

H. M. Attorney-General of Newfoundland.

St. John's, Newfoundland, }
February, 1832. }

* It must always be borne in mind, that a respectable unpaid Magistracy cannot be supplied in Newfoundland as in England—both intelligence and wealth are wanting.

Persons of education are nowhere to be found among the settlers, whose intelligence, in their several degrees, is limited to a knowledge of their own business, or pursuits in trade; and out of these none can be selected as Justices of the Peace or Magistrates, to decide in civil causes between master and servant, but such as would be obnoxious to that exception of all others to be avoided, *interest in the questions at issue*; and which, in the act 6 Geo. IV., c. 129, is, by special provision in the last section, guarded against in matters relating to the "combination of workmen and others." Persons engaged in trade cannot afford to give up their time to the public gratuitously in the discharge of magisterial duties; and when they have, in some instances, undertaken to do so, there is too much reason to believe that the inducement has been mainly the benefit and convenience derived thereby to the party himself in his business. While the selection of magistrates is made from the people in trade, no civil causes ought, in strict propriety, to be subject to their decision; and all such had much better be determined by the one District Judge; and the Justices of the Peace, if associated with him at all, be associated with him in the trial of public criminal offences only.

In England bankruptcy is a ground of immediate removal of a J. P. from his office; but in Newfoundland, insolvency has been no bar to the appointment; and this practice, against all propriety, I conceive, has descended to the present day, although it has been often publicly reprobated, and, as I consider, with great reason, for an insolvent magistrate, surrounded by his creditors, is not a subject of pleasing contemplation.

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