

I do not think that a contract for the delivery of 100 bushels of oats at twenty pounds per bushel, would be a legal contract.

Mr. MILLS. That is a question for the courts.

Bill read the second time, and the House resolved itself into Committee.

(In the Committee.)

Mr. WELDON. A very nice constitutional question is involved in this Bill. Assuming that the Dominion Government have power to regulate weights and measures, the present Bill is not to regulate weights and measures, but to regulate the contract. It is to make a contract illegal unless entered into in a certain way. It has been decided by the Privy Council that laws relating to contracts come within the powers of the Local Legislatures. We are, therefore, in this Bill trenching on the rights of the Provincial Legislatures, and it strikes me that the Privy Council, in the Parsons case, ruled that contracts were within the powers of Local Legislatures.

Mr. MILLS. In the Parson's case, the learned Lord who gave judgment, Sir Barnes Smith, said the law of contract is within the power of the Local Legislatures. A provision of this Bill deals with the subject of contracts, not with that of weights and measures. We may just as well, under the provisions of the law regulating weights and measures, undertake the control of the whole subject of the transfer of real estate. We have the right to say what shall constitute an acre, but we have not the right to deal with real estate, and say on what terms it shall be transferred. In the present case we may state what number of pounds shall constitute a bushel, but we cannot go on and say what the contract shall be in regard to any particular article. That is a matter wholly relating to the provision of the constitution with respect to civil rights.

Sir JOHN A. MACDONALD. This constitutional question had better not be taken up in Committee, but the clause may be perhaps allowed to pass without reference to the constitutional question at the present time.

Bill amended and reported.

#### WEIGHTS AND MEASURES ACT AMENDMENT.

Mr. COSTIGAN moved the second reading of Bill (No. 120) to amend the Weights and Measures Act, 1879.

Some hon. MEMBERS. Explain.

Mr. COSTIGAN. The first change made by the proposed Bill is in the fourth line of section 24, where instead of a \$25 fine, the fine is made not less than \$10. In the eighth line the following words are inserted: "shall be forfeited and forthwith seized as being so forfeited." By the second section of the Bill the words "not exceeding" are to be struck out of the fourth line, section 23. I may say that the Bill is composed of a number of small amendments mostly with a view to better enabling the collection of penalties under the present Act.

Mr. MACKENZIE. This appears to me to be an exceedingly inconvenient mode of amending an Act. The first section of the new Act should repeal the various sections to be reconstructed, and the reconstructed clauses should then appear as they would appear in the Statute. This plan has been followed on several occasions, as for example, the amendment to the Banking Act. I think it would be the best plan in this case, as it is almost impossible to ascertain from the hon. gentleman's explanations what the proposed amendments are.

Mr. COSTIGAN. I may say that I myself would prefer the mode suggested by the hon. gentleman but as the

amendments are not very important, and make no change in the principle of the Act, perhaps it may be allowed to pass in the present form, as it is getting well on in the Session.

Mr. WELDON. It seems to me that the suggestion is a very good one, as even the legal members of the House have very great difficulty in construing these amendments so as to understand them. This case is worse, because the penalties provided for by this section are to be recovered before a magistrate or justice of the peace. The justice of the peace may not be able to construe the Act, and he may impose a fine or forfeiture, and afterwards discover that under the amended Act he has had no power to do so. It seems to me that Acts which are likely to come before persons who have not a legal education should be made plain, by repealing the old sections and inserting the new sections in the repealing Act, so as to show what the new law is.

Sir JOHN A. MACDONALD. I quite agree that the more convenient mode of repealing is by means of an amended Act; that is to say, when we can do so, the clause should be repealed and the amended clause substituted. I think my hon friend will take that view of the case. The principle of the Bill will be adopted by the second reading, and as objection is only taken to the form of the clauses, my hon. friend will be able to remodel them according to the suggestion of the hon. member for East York before he moves the Committee of the Whole.

Bill read the second time.

#### CUSTOMS ACT AMENDMENT.

Mr. BOWELL, in moving the second reading of Bill (No. 123) to amend the Customs Act, 1883, said: The plan adopted in this Bill is the one suggested by the hon. member for East York, and approved by the leader of the Government; that is, the clauses which are amended are repealed, and others are substituted in lieu thereof. The first clause repeals section 188 of the Customs Act, and the only change it makes is to add the words "or Court of Vice-Admiralty." When I introduced the Bill, I explained that when the Customs Act of last year was before the House, the Nova Scotia Court of Appeal had decided that the Vice-Admiralty Court had no jurisdiction in cases affecting the Customs. The Supreme Court, however, reversed that decision; and as the Vice-Admiralty Court has jurisdiction in matters affecting the inland revenue it has been thought proper to insert these words in this Bill, in order that that court may try offences against the Customs Act. The second clause amends section 153 of the Customs Act by adding these words:

"And such conviction may be had in a summary manner before any two justices of the peace, or before any judge or magistrate having the powers of two justices of the peace."

This merely gives the power under this clause that is given under other clauses, in cases of violation of the Customs Act. The offences provided for are smuggling goods, using false invoices, &c. The 86th clause of the Act is repealed, because in any suit that may be brought for the violation of the Act or for under-valuation, it provides that no evidence shall be adduced to show that an invoice is incorrect or fraudulent. The old law had these words added: "except by the Crown," which prevented a merchant from adducing any evidence to show that his invoice was correct. When this question was under discussion last year, it was suggested that the importer and the Government should be placed on an equal footing, and those words were struck out. But it has been found that the effect was to prevent the introduction of any evidence into court at all; and the repeal of the clause altogether will leave the importer and the Crown on the same footing, to be governed by the law of evidence. The 4th clause simply applies this Act to suits which are now in litigation.