

LANDS.

SALE.

QUABLE Lot of LAND, in the Parish of Springfield, of Kings, six miles from forty-two from St. John's House, and twenty-five to be divided into two Lots more convenient for purchase.

HOLMES, St. John.

WITH Work and House with despatch at his Shop, Cove, Feb. 8.

OR TO BE LET, on the 1st May next: HOUSE, fronting on Charter Street, adjoining the property of Benjamin Smith. The house is a very good one, and is situated in a very healthy and airy locality. It is now in perfect repair, and is ready to receive any person disposed to purchase it. Apply to HATHAN GODSOE, 1831.

of May, the STORE, in the premises of G. HATHFIELD & SON, OR TO LET, Lower-Cove, fronting on Upper-Cove, fronting on Upper-Cove.

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SUPPLEMENT TO THE OBSERVER.

TUESDAY, MARCH 15, 1831.

HOUSE OF ASSEMBLY, FREDERICTOWN, Friday, March 4.

BILL TO EXTEND THE JURISDICTION OF MAGISTRATES.

(In Committee.)—Mr. Hill stated the nature of the bill, which is that mentioned in our report of Wednesday last.

Mr. Cunard thought some provisions of the bill very good. But there were objections before the House, which he (Mr. C.) hoped and believed would be settled in the next Session of the House measures would be brought forward for the purpose of regulating the fees, and defining the limits, of all the Courts in the Province. He thought therefore, the object of this bill might and would be included in those enactments.—As to Magistrates in general, he (Mr. C.) was aware that there existed a crying evil against them. Too often, instead of being what they ought to be, peace-makers, they were promoters of litigation, by issuing warrants, summonses, &c., on every trifling application, for the sake of the fees. This fact he (Mr. C.) had observed in this Province, in the Canada, and in the U. States. He knew to wit more generally declaimed against. He thought therefore, the House should be very cautious how it extended the jurisdiction of Magistrates. He was at a loss to point out what would be the best step to remedy the evil, but it was one which called for very great attention.—Justices' Courts already possessed very great power, and this bill would give a great increase of power to Justices of the Peace. The hon. Member thought it very probable that this bill would tend to encourage litigation, and he described a case in point of a very litigious nature, which might arise under the bill.—There was a great propensity to litigate in many men, and people were often induced, where too great facilities presented themselves, and threw away more money than was justifiable, in prosecuting petty causes. The honorable Member was convinced, from practical observation, that it was greatly in the power of Magistrates, where they chose to prevent the effects of the litigious spirit; and he detailed a method which, as a Justice of the Peace himself, he had frequently pursued with the best effects. The honorable Member's plan consisted in not immediately granting warrants, summonses, &c., whenever applied for, but advising the applicant to wait a little while, then giving notice to the parties complained against, of the nature of the complaint, calling both parties together, and endeavoring to persuade them to make up their differences in a friendly manner, without incurring the expense and unpleasantness of legal proceedings.—This plan the honorable member thought the duty of every Justice of the Peace; and he also thought that at this particular time the proposed bill was not advisable.

Mr. Clinch thought that if Mr. Cunard were correct in all his views, it would be better at once to abolish the office of Magistrates, and establish a new order of some other kind. As to the charge of litigation, he (Mr. C.) did not think it was the fault of Magistrates that people worried each other so much by litigation. He had been a Magistrate himself, and had, perhaps, on an average, examined into about five hundred or six hundred cases, but he had certainly never promoted litigation. If a party came before a Magistrate, and demanded a summons, or capias, or other legal authority, it was the bounden duty of such Magistrate, according to the Law, to grant it.—If a man owes another a small debt, and the creditor cannot get payment, he goes to a Magistrate to obtain legal aid. What was the Magistrate appointed for, but to attend to such cases, and to keep people, by his attention, from going into the higher courts? Such attention to small matters in fact prevented litigation. If a Magistrate should investigate the nature of a case before granting a summons, he would cause himself very great trouble, he would be going out of his proper track, and would perhaps obtain an improper view of the case. He (Mr. C.) used sometimes to give himself much trouble in that way. He used to hear the statements of complainants, and would sometimes even write letters to parties, informing them of the complaints against them, and urging them if possible to settle the matter between themselves. But he found the inconvenience of such a course. Parties on both sides would come and tell him long stories, and lose what was possible for him to form an opinion. He had therefore at last found it better to proceed strictly according to the law, and to grant summonses, &c., whenever they were demanded. If a summons were improperly taken out, the aggrieved party would have his action against the aggressor, who would be punished by having to pay the costs. [We had some remarks of the hon. Member.]—He (Mr. C.) thought some very good amendments might be made to the present act for the recovery of small debts; but perhaps not quite to the extent contemplated by his honorable colleague, (Mr. Hill.) [The hon. member's tone again departed, and he used the advantage of several observations.]—He agreed with the honorable member for Kent, that it would be very dangerous to allow Magistrates to investigate accounts without limitation.—As to the proposed jurisdiction of Magistrates in certain cases of trover, he (Mr. C.) believed that legal gentlemen at present insisted, that Magistrates must strictly confine their jurisdiction to cases of debt;

that is to say, in the strict sense of the term, questions arising from buying and selling. But the proposed bill under the term "trover," would include certain kinds of trespasses such, for instance, as taking away a horse or a boat for a time, and using it, and then restoring it to the owner. Such acts could not be called "trover"; but they were certainly very proper cases for the jurisdiction of Magistrates. It would be much better that such cases should be decided, than carried into higher courts. Such a provision would be a great benefit to the community, and would do away with great inconveniences.

Mr. Speaker considered this a subject of very general interest.—He (Mr. Speaker) had also had a little to do as a Magistrate, and he had had seen and felt the difficulties alluded to. He had no doubt that the motives and intention of the honorable member of this bill were truly laudable; but he was rather fearful, that in attempting to remedy the evil, the bill had gone rather too far. As to matters of account, unless the jurisdiction of Magistrates in this respect were limited, dealings of a very considerable extent might be involved in a question of debt on a petty balance before a Magistrate, and also, as the honorable member for Kent had observed, great principles of law. He (Mr. Speaker) had no expectation that the bill in its present shape would pass in another quarter. But certainly a remedy was very requisite, as respects petty trespasses. [The hon. Speaker here detailed a case in point, to prove the inconvenience and hardship of the present law.]—Another serious inconvenience was, that the act for the recovery of small debts was coupled with an act to prevent the recovery of debts in inferior courts. Where a man held a note of hand for £10, on which £5 had been paid and endorsed, it had been held, by some Magistrates, that he could not sue in inferior courts, because the document on which he founded his claim was for a greater amount than £5.—The same case extended to notes originally given for £5, on which £2 had been paid. Credit for that amount was obtained by the plaintiff; but if the defendant did not choose to avail himself of this credit, but should say he owed £6, the plaintiff would be cheated. This he might go into the higher court, and risk all the expense and uncertainty, or put up with the loss. [The honorable Speaker also detailed other cases, proving the "monstrous hardship" of the present law in this respect.]—There were really serious evils, which, in this young country, were increasing every day. Some remedy was surely necessary. He was, however, disposed to agree with Mr. Cunard, that it would be best that a few more bills should be proposed by the next Session, to obviate all these difficulties. Such bills would be prepared with the greatest care and attention by legal gentlemen appointed for the purpose; and they would, he so proposed, as to be adapted to pass in another quarter.—In his (Mr. Speaker's) opinion, proper care should be enabled to settle the cases of petty trespass before a Magistrate.—The honorable Member for Northumberland (Mr. Cunard) had alluded to an assertion, lately made in debate, that there were, in the Province, many of what had been called "trading Magistrates"; persons who were inclined to encourage litigation for the sake of the fees. He (Mr. Speaker) could assure the honorable gentleman, that in the country of Westmorland there was no man of that character, and he hoped there were not now many such in the Province. He very much approved of what that honorable gentleman had said, respecting the course which he (Mr. Cunard) had himself adopted in cases which had come before him.—[The honorable Speaker concluded with some general observations as to the duties and office of Magistrates, and also made some allusions to certain foreign petty courts, mentioned by the present Lord Chancellor, in his late speech on the state of the law; which observations we did not hear.]

Mr. Brown observed, that the present Committee was composed almost wholly of Magistrates and Lawyers, who must be well acquainted with the subject. Any observations from him, therefore, might appear presumptuous and superfluous. But, from the experience of those around him, it seemed that something ought to be done in this case. The Committee had evidence to show that there were great irregularities, great ambiguities, and great difficulties in the present law for the recovery of small debts. He believed this bill was partly intended to remedy these evils. The hon. Speaker had shown the difficulties in which he and others had been involved, in the construction of the act; and this proved that it ought to be clear of its ambiguity, so that all might clearly understand it. The honorable Member for Saint John, (Mr. S. Humbert,) had also detailed the protractedness of the law, and had alluded to matters which might and would have been settled by that bill, if it had been in existence. That honorable Member, however, had been involved in litigation many years, for want of such a provision.—These were crying evils; and they were intended to be remedied by this bill.—He (Mr. B.) therefore did not think it necessary to wait for the contemplated general reform of the law; but he thought the Legislature should do all it can now. He should be happy to see this bill go into speedy operation.—He was no Magistrate, and no Lawyer. He was but a plain man, looking on to see what was passing in the world around him.—He hoped, however, the committee would seriously consider this matter.—It had been stated by the honorable Member for Kent, that this bill would give too much power to Magistrates; that matters of account even to the amount of 100l. might come before a Magistrate, and that such power of adjudication would be dangerous; but

he (Mr. Weldon) seemed to admit that if the respective items were under £5, they might safely be entrusted to a Magistrate, but not beyond that amount.—The idea had also been advocated by others, that it would be dangerous for a Magistrate to enter into accounts beyond £5 in amount. But look at the second section of the present law. By that section parties are now allowed to plead a set-off to any account, and may therefore bring any sum before a Magistrate as a set-off. Thus, if a person happened to be plaintiff in an action for the recovery of £4 10s., the defendant might bring a charge of £10 as a set-off, and thus bring the former plaintiff £5 10s. into debt. Well; the Magistrate certainly could not decide the case now; because the debt thus claimed, was above £5.—By this section, the defendant might bring a set-off to any account, and may therefore bring any sum before a Magistrate as a set-off. 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