COLONIAL LEGISLATURE.

HOUSE OF ASSEMBLY, Saturday, April 9, 1853.

NIEL DARRACH'S PETITION.

(Continued.)

House in Committee on the Report of the Special Committee appointed to report on the Petition of Niel Darrach—Hon. Mr. Jardine in the Chair.

Hon. Mr. TREASUROR. It is indeed quite gratifying to hear the hon. member from Port Hill (Mr. Yeo) speak as he has done: considering his position as a proprietary agent, it is indeed quite refreshing. It would, however, be still more gratifying, were we assured that no such cases of extreme hardship as he has spoken of ever occur in Prince County. I agree with the hon. the Treasurer that the Report of the Special Committee is not as full as it ought to have been. In its present form, it is certainly calculated to affect injuriously the private and professional characters of the Attorneys who were connected with the case. I was present in the Committee Room when Capt. Cumberland's Agent was being examined, and I heard and remember what was stated by him. He said Capt. Cumberland had taken the original Rent Books with him to England, but that copies of them, containing statements of all open accounts, were left with him. He stated that Darrach's account showed a certain balance of arrears of Rent, and that the proceedings instituted against him (Darrach) were for the recovery of such arrears. The report is certainly too meagre as respects the evidence. Mr. Pope, as Capt. Cumberland's Agent, being principally concerned in the matter, it was due to him that the substance of his evidence should be fairly laid before the House, in the Report; that it might go forth to the public. His evidence it is true, is appended to the Report; and it will be printed in the Appendix to the Journals of the Session; but that will render little or no service to Mr. Pope, for very few, besides members of the House, will have an opportunity to consult the Journals. Mr. Pope, stated to the Special Committee that, at the time a Lease was given to Darrach, in 1849, there was due to the landlord the sum of £51 4s. 4d.. It was also stated, in evidence, that although confession was made for £50, that was only a nominal sum, and that the costs of the Plaintiffs' Attorney were £15, on the first action; and that the second judgment was in default. Now all these facts, as well as other particulars, should, I think, have been stated in the Report; and, yet, it makes no mention of them. In order to remedy the defects of the Report, with respect to evidence, I will take leave to read such parts of the evidence as I think should, in justice to the Attorneys, have been set forth in the Report.

The following is the substance of what was then read, by the hon. gentleman, from the minutes of the evidence.

"William Pope, Esq., called in and examined. The two judgments against Neil Darrach were obtained at the suit of Capt. Cumberland. In the first action—the action of Covenant—the Judgment was signed on the 21st. Jan., 1852, for £50, with £15 18s. 10d. Costs. On the Judgment, Execution issued on the 21st Jan., 1852—Levy £44 12s. 6d.—As to the second Judgment, it was marked by default, on the 11th Feb., 1852. Execution issued on the 18th Feb., 1852: Levy marked on the Execution, £37 10s. 6d. The two Levies amount to £82 5s., being £58 8s. 4d., the amount of Debt sued for, together with £23 16s. 8d. costs.—Both Judgments were not obtained at the same time. One was an Action of Covenant, on a Lease dated 9th Nov., 1846; the other an Action of Debt for 1 year's Rent, due under the same Indenture, from the 1st. Jan., 1851, to the 1st. Jan., 1852, and on an account stated.—I was Capt. Cumberland's Agent and Attorney.—The Action of Covenant was defended by the present Attorney General (Hon. Charles Young). The other action was undefended.—No payments were made on the Action of Covenant, that I am aware of.—Mr. Pope here explained that Neil Darrach had occupied, as Tenant of Capt. Cumberland and the Misses Fanning, a farm of 50 acres, for a number of Years, previously to his getting the Lease, and paid Rent for it. In 1846, the time at which the Lease was given to him, there was due to the Landlord, the sum of £51 4s. 4d. The party, between the date of the Lease and the year 1849, made several payments, in money and otherwise, which, if appropriated to the payment of Rent under the Lease, would be more than sufficient for the payment thereof, but which were put to the credit of his former account, and which I believe to have been chiefly for arrears of Rent.—I do not know that Darrach acknowledged that he owed any back-rent at the time he took the Lease—I obtained Judgment for the amount sued for: Judgment passed by default.—I recovered the Rent for the years 1846 to 1850, sued for. Judgment was confessed in open Court for £50, and Costs.—The party's Counsel confessed the Judgment.—For the amount paid by Darrach, I gave him credit on the second Action.—To the question, Do you know the hand-writing of the Receipt now produced, dated 28th, Jan., 1842?, Mr. Pope replied, Yes: it is Capt. Cumberland's.—Quest. It appears from the evidence before the Committee that the sum of £34 was due to Capt. Cumberland on the Covenant for Rent, for the years from 1846 to 1850, and sworn to by Capt. Cumberland's Agent, which Rent appeared to be £4 3s. 4d. per annum, which makes a difference of £17 6s. 8d: how was that difference made up? Ans. I can't tell. It was an error in the Affidavit under which the party was held to bail. Quest. Have you obtained payment for the amount of the two judgments and Costs? Ans. Yes: I accepted a surrender of the Lease as a full discharge, at the instance of Archibald Darrach, who has taken a Lease, and Mr. Stewart—which Lease was prepared by Mr. Stewart—the said Archibald Darrach having always acted for his father, who is incapable of speaking English. Quest. What amount of consideration do you charge Archibald Darrach for the farm? Ans. Seven Pounds Currency. The judgments and Costs were over £80. An offer was made to accept £30 in lieu of the amount of both judgments. I offered, a few days since, to accept £40, and give the parties a Lease at the original Rent. Quest. Where was Neil Darrach when the second judgment was obtained against him. Ans. I can't say. It is very probable that he was in Prison under the first Execution."

Hon. Mr. TREASUROR then resumed his speech, and said; Now, there is not, in the Report, any notice whatever taken of Mr. Pope's explanation of the error in his Affidavit. The Special Committee state, with respect to his Affidavit, that they find the sum of £3 18s. 2d. only was due and owing to Capt. Cumberland, under the Lease, but that his Agent and Attorney made an affidavit to the sum of £34 and upwards being due under the Covenant of the Lease. This is not all, however, which they ought to have stated on this head. It was due to Mr. Pope, to give also, in connection with it, his explanation of the error, and what he stated respecting the dreams of rent, and the way in which Darrach was credited for the payments, made, by him, on account of Rent, after his obtaining a Lease. The amount set forth as due under the Lease, in the Affidavit, was obviously an error; and to shew how easily and unintentionally errors are sometimes, made in documents, I wish to call the attention of the Committee to an error in the Copy of Mr. Pope's Affidavit. The Affidavit was dated "22d. May, 1851;" and yet, in the certified Copy thereof, the date given is "22nd. May, 1835." The hardship of the case has been strongly insisted upon by some hon. members; but without sufficient cause, I think. It would have been a hard case indeed, had it been clearly proved that the sum of £3 18s. 2d. was all that was actually due by Darrach to Capt. Cumberland; but the features of the case are altogether changed by taking into account that, at the time the Lease was given to Darrach, the sum of £51 4s 4d was due by him, as arrears of Rent, to Capt. Cumberland. And notwithstanding some hon. members appear to be of opinion that, even although one action might have been justifiable, two actions could not be so,—I am satisfied, by the explanations which have been given, that both actions were necessary.

HON. THE SPEAKER. It has been said that the Report of the Special Committee ought to have contained something like a detailed statement of the evidence of the Attorneys who were employed in this case; and that, had that evidence been allowed due weight and prominence in the Report, the whole affair would have worn an aspect much less favorable to the Petitioner, and much more creditable to the other parties concerned. I do not think so, however. On the contrary, it appears to me that the Report instead of being in any way invalidated by the evidence of the Attorneys, is, in all essential points, sustained and confirmed by that very evidence. It is true that Mr. Pope, the Agent and Attorney of Capt. Cumberland, states, in his evidence, that, in the copy of Capt. Cumberland's Rent Book, left with him, he found a balance for arrear of Rent, amounting to £51 4s. 4d. stated to be due by Darrach; but it must be remembered that, in his evidence, he also states that he knows nothing at all about Darrach's ever having acknowledged himself to be indebted to Capt. Cumberland, in any amount for arrears of Rent. Besides, Mr. Pope, by his evidence, fully establishes the genuineness of the Receipts produced on behalf of Darrach, and the evidence afforded by these Receipts, would be conclusive, in any Court of Law, against any demand, on behalf of the Landlord, for arrears of Rent, alleged to be due at any anterior date. These Receipts consist of two regular and complete series, and each Receipt is, not only for a year's Rent, but for the land-tax also. The first series consists of Receipts for a period of years, antecedent to, and up to the time of granting the Lease. The other is a series for a period of years, subsequent to that time; shewing that the Rent, with the exception of a small balance, had been duly paid under the Lease, up to the time of the commencement of the first Action. Could the evidence, either of the Attorneys, or of Capt. Cumberland's statement in his Rent Book, have set aside or nullified that of these Receipts? Certainly not; for the evidence afforded by them is irrefragable, and quite conclusive as to the injustice of the Action: and, had the evidence of those Receipts and of the Lease been relied upon by Darrach's Attorney, as it ought to have been; and, had he, otherwise, discharged his duty to his client, by a proper defence to the Action, based on that evidence, the result, in the Supreme Court, would, doubtless, have been one, in full accordance with the principles of law and justice, instead of one, loudly calling for the interposition of those superior powers with which this House is invested, for the remedy, if it can possibly be effected of a grievous wrong, effected, by an undue working of the machinery of the law, in the very face of justice herself. We have been told that the error in the Affidavit, by which it appears that Mr. Pope, the Agent and Attorney of Capt. Cumberland, swore that the Defendant was indebted, to Capt. Cumberland, in the sum of £34 and upwards, under the Lease, when the facts, set forth in the Affidavit itself, proved its incorrectness, and plainly shewed that such a sum could not possibly be due under the Lease, was an error of no consequence, and did not, and could not, injuriously affect the interests of the Defendant. Such an assertion, coupled with the admission that the result of the proceedings, consequent upon this Affidavit, was the issuing of an Execution against the Defendant for £44 12s. 6d. is truly surprising. It may be the practice of the Law Courts to allow Affidavits to be made in so loose and incorrect a manner; but the evidence of this case shows, that, however harmless such a practice may be accounted amongst lawyers, it is one which may be productive of great wrong, and give validity and effect to claims which have no foundation whatever in the principles of law and justice. Had the case been properly brought before the Court; had the Counsel for the Defendant, addressing the Bench, said "Here is the Affidavit of the Plaintiffs' Agent and Attorney, by which it is sworn that my client is justly and truly indebted to the Plaintiffs, in the sum of £34 and upwards, for arrears of Rent, under a certain Indenture of Lease, dated 9th, Nov. 1846; and here are my client's Receipts for Rent, paid since he came under the covenants of that Lease, which clearly prove that he has discharged all the Rent accruing under the Lease, with the exception of a balance of £3 18s. 2; and I have to request that your Lordships will examine and compare the Affidavit and Receipts before the trial of this Action shall be proceeded with:"—had, some such course as this, I say, been pursued, is it at all likely that the Bench would have allowed Judgment to be entered up, either for £34, or for £50, as confessed by the Defendant's Counsel? I am very certain they would not; but, how leniently soever they might have dealt with the Plaintiffs' Attorney, on account of the error in his Affidavit, they would have taken care that the Defendant should not be made a victim to it. How, then, the Defendant's Counsel could, consistently with a due understanding of the merits of his client's case, and a proper regard for his interests and the dictates of justice, throw up the defence, and confess judgment, I am utterly at a loss to comprehend; and that the judges would not yet take such cognizance of the whole affair,—were all the facts of it fully brought before them—as would tend in some way, to redress the wrong sustained by the Defendant, and to vindicate the character of the Court, by a proper manifestation of their power to punish an abuse of their confidence, is what I will not believe. The reasons assigned by the Counsel for the Defendant for his abandonment of his case are flimsy and ridiculous in the extreme. He appears, it is true, according to his own shewing, to have taken it into his head that one of the Receipts produced by his client was a forgery. Now these Receipts are all here before us; the writing of that one which was supposed to be a forgery, has been satisfactorily proved to be Capt. Cumberland's and, on the strictest examination, it will be found to have nothing upon the face of it, either in the color of the ink, or in any other way, which can afford the smallest ground for a suspicion of its having been fraudently altered: but, on the contrary, it is evidently such, in all respects, as it was written by Capt. Cumberland. It appears that the "3" in the date "1843," was supposed to be a "9," and when Archibald Darrach was questioned about the Receipt, he maintained it was genuine. Mr. Young's own account of it is that when he asked him (Archibald Darrach) if he was prepared to swear that he paid the money acknowledged by the Receipt, in 1849, he maintained that the Receipt was genuine, and that it was given when the money was paid; and this he calls prevarication. To me it appears that the facts of the case, in this particular, as respects Archibald, may be very easily comprehended, and without casting the smallest imputation on his honesty or veracity. He found that not only was the Plaintiffs' Attorney disposed to accuse him of forgery or of fraudulent intentions, as respected the Receipt, but that his own Attorney influenced by the representations of the other, was disposed to become his accuser also, on the same grounds; and, puzzled and disconcerted no doubt, but well assured that all the Receipts were genuine, he declared that the money was paid when the Receipt was given. This—although, perhaps, evasive—was nothing but the truth; and ought not—particularly on the part of an illiterate, uneducated man— to have been taken as any evidence of a fraudulent intention. The scruple of conscience by which Mr. Young professes to have been actuated, on the subject of this Receipt and Archibald Darrach's declarations concerning it, is certainly a very singular one, and utterly, I must confess, beyond my comprehension. It has been very earnestly declared and maintained that this House can have no power to deal with such a case as that which is now before us; and the Hon. the Treasurer, amongst other unfortunate expressions, in which he has thought proper to indulge, concerning the Special Committe and the course adopted by the House with reference to it, has told us that we may shew our teeth, but we cannot bite, and that, if we do not wish to make fools of ourselves, we will abandon the investigation of it. I am myself of opinion that enquiries of private nature have, sometimes, been too hastily entered upon and carried, perhaps too far; but I am thoroughly convinced that, with respect to the case now under our consideration, we are legitimately and constitutionally engaged. Were any representative of the people to have such a case of rank oppression and injustice as that of the Petitioner Niel Darrach, laid before him, and were he requested to bring it, by Petition, on the part of the sufferer, before the Assembly, and were he to refuse to do so, he would prove himself unworthy of the confidence reposed in him by his constituents. And, were the Assembly, on having such a case brought before them by Petition, to refuse to make due enquiry concerning it with a view to the procuring of that redress for the complainant which, without their interference, he could not obtain, it would, at least, afford a proof that, whatever individual capacity and talents there might be amongst them, they were either, as a body, wanting in a due regard for the individual rights and liberties of the people, or strangely misapprehended the extent of the powers with which they are invested for the redress of private and public wrongs. We have been told by the hon. and learned member for Charlottetown (Mr. Palmer) and the Hon. the Treasurer, that we are not competent to deal with the case of the Petitioner. If the hon. members had merely intended to say that we are not capable of dealing with it, in the way in which lawyers would treat it, I would not have disputed their assertion; although I might, perhaps, have replied that, for that very reason, we would be the more likely to arrive, by a direct course and straight forward investigation, at the real merits of the case: but, as they evidently mean that we have no power, no authority to investigate the case, I think it right to remind them that we are superior to the Courts of Law. The Courts of Law are merely the interpretors and executors of the laws which are framed by us; and, as their interpretations of the laws are not always correct, so neither is their enforcement of them; and, whenever it shall have been made evident to us that, from any such cause, either the public in general, or individuals, have sustained loss or damages, or are made the victims of injustice, for which they can obtain no redress, by means of any of the prescribed modes of proceeding in the Courts of Law, they have a right, as a last resort, to appeal to us; and having the power to interfere, it is our duty to exercise it for the rectification of the wrong or injustice, sustained through any misinterpretation or misapplication of the laws. Let any hon. member who is disposed to dispute that such a power is constitutionally inherent in us, make himself acquainted with the records of the most remarkable and most popular proceedings of the House of Commons; such as those with respect to Warren Hastings and others; and he will find that they have frequently asserted their supremacy over Courts of Law: and an impartial consideration of those proceedings will not fail, I think, to convince him that they afford us precedents which fully justify the course which we have adopted, with respect to the case now before the Committee.

Hon. Mr. PALMER. The Hon. the Speaker has said that Mr. Young gave it in evidence before the Special Committee as his reason for throwing up Darrach's case, that his client's son, Archibald Darrach, had attempted to impose upon him by a forged or altered Receipt. Now that is not what Mr. Young said. He did not say that Archibald Darrach had attempted to impose upon him by a forged or altered Receipt; but that he attempted, by misrepresentation, to lead him (Mr. Young) to make such use of a Receipt as would have been improper and fraudulent. To make this point clear, and in justice to Mr. Young, with respect to the whole matter, I will read his evidence before the Special Committee. The hon. and learned gentleman then read as follows:

"HON. CHARLES YOUNG called in and examined.—Quest. Were you retained by Niel Darrach to defend him in an Action at the suit of B. H. Cumberland?

Ans. I was retained by his son, Archibald Darrach, as agent for Niel Darrach, some time in the year 1851—in May or June—on an Action brought by Bentinck Harry Cumberland and Wife, against Niel Darrach for a breach of Covenant.

Quest. Was the cause tried in Court, and did you defend it?

Ans. To the Declaration filed, I put in two Pleas: one the general Issue, and the other a plea of payment: both Pleas being issueable. The cause was not tried in Court, because the Agent of the Defendant authorized me to confess the suit, which I did.

Quest. What was the Agent's reason for authorising you to confess Judgment?

Ans. When he first came to me, he produced certain Receipts on account of Rent, severally signed by Capt. Cumberland and his Wife, which Receipts, when added together, would exceed the amount of Rent claimed under the Lease. On the face of these Receipts there was no apparent cause for supposing that they were incorrect. The Agent of the Defendant informed me that he had had frequent conversations with the Plaintiffs' Attorney, Mr. W. H. Pope, towards effecting a settlement, and authorised me to shew Mr. Pope those Receipts for that object. Mr. Pope, shortly after, came into my office; and, for the purpose of endeavouring to effect a compromise, I exhibited to him the Receipts in my possession So soon as Mr. Pope saw one of the Receipts, he positively asserted that one of the figures in the year had been altered—from recollection, I think it was the year 1849—Mr. Pope alleging that, by Capt. Cumberland's Books, the money was paid, and the Receipt given, in the year 1843. Some time afterwards, when I saw the agent of the Defendant, Archibald Darrach, I asked him particularly about the Receipt, desiring him to tell me the whole facts connected with it, and telling him the consequences to himself and to his father, if that Receipt could not be substantiated in evidence—that, if it were proved to be a forgery, the Receipt would be impounded in Court, and he himself made liable to an Action, and that a Verdict would be passed against his father which would carry Costs; and that unless he satisfied me that the Receipt was *bona fide*, I would not allow him to go into the Witness-box. He positively asserted that the Receipt was substantial—that the figures had never been altered—that the money had been paid in '49, and that the Receipt had been given at the time, and that he would swear to it. No compromise could be effected between the Plaintiffs' Attorney and the defendant. Notice of Trial was given for Hilary Term,' 52. I was ready for Trial on the part of the Defendant. On the morning before going into Trial, I shewed the Receipt to the present Chief Justice (then practising at the Bar), and asked him if he thought it had been altered, knowing that he was acquainted with the hand-writing of both Capt. and Mrs. Cumberland. He carefully examined the Receipt, held it up to the light, and stated that it had not been altered; but that the figures were "1843," and not "1849," and intimated that he could give evidence to that effect. I then took Darrach, the Defendant's agent, into the Lawyers' robing-room, and told him what Mr. Hodgson had said, and again cautioned him as to the consequences. He still persisted that the Receipt was *bona fide*. I asked him if he had paid the money in 1849; and, for the first time to me, he prevaricated, and stated that the Receipt had been given when the money was paid. I insisted on a positive answer and he refused to give me one. I then advised him not to run the risk of perjuring himself, or of producing a Receipt that he knew to be false. He said that he would run all risks, or words to that effect. I then told him that I was satisfied that the Receipt was for '43 and not for '49, and that I could not consequently ask the Court to assume that the Receipt was *bona fide* for '49. I then advised him, by all means, to compromise; and told him that he would be certain to lose his suit. He seemed dissatisfied with my advice, and left me, for the purpose as he intimated, of retaining other Counsel, which, I believe, he did, and got from them—there were two—I believe a similar opinion. He then returned, and authorised me to make the best settlement I could with Mr. Pope, and which I effected, after much consultation with Mr. Pope and himself together. Quest. What settlement did you make, for Darrach, with Mr. Pope? Ans. Time having elapsed, and keeping no written memoranda, I do not now distinctly remember the terms of settlement! but, whatever they were, they were with the full concurrence and sanction of the Agent of the Defendant."

(To be concluded in our next)

R. B. IRVING, Reporter.

AUSTRALIA.

We have a month's later intelligence from Australia by way of San Francisco. The dates are from Melbourne to Feb. 16, Hobart Town Feb. 25, and Sydney Feb. 8.

The first of the lumps of gold found at Balaarat was weighed on Thursday, at the Bank of Australasia, for shipment by the Sarah Sands, and found to be 1, 519 ounces. or 134 lbs. 11 oz.; the escort charge for transmission to Melbourne amounted to £40 10s., and the freight to Britain will come to £30 10s. The fortunate diggers also return home by the vessel which conveys their treasure. Two of the party came out by the Great Britain in December last, and are now enabled to return with their fortunes made, after only ten weeks labor at the Victoria gold fields. Two more immense pieces of gold have been found in the same locality, and rumour has it that another and still larger lump has been dug up.

Socially, our condition is much about the same as at the date of our previous summary. Yet there is a great deal of interest in watching our singular progress day by day. Ten thousand souls were added to our population last month. Houses are still unobtainable, rents extravagantly high, social discomforts very numerous and crime prevalent. The social aspect, as it strikes a person newly arrived, must be confessed to be far from attractive.

The moral condition of the colony is still sufficiently gloomy, notwithstanding the extensive body of police and military, and the self-congratulations of the Executive upon our peaceable state. The criminal calendar for the present month shows a list of one hundred and forty prisoners for trial in Melbourne, although a separate Court has been established at Mount Alexander. The principal crime is robbery, generally with violence; but murders of peculiar atrocity are shockingly frequent. The Act for preventing the immigration of Van Dieman's Land convicts, however, has been enforced in some instances lately, and its salutary severity has struck terror into that depraved class. We look for decrease of crime from this circumstance as the criminal part of the population is almost wholly composed of escaped convicts from the neighbouring island.

The Legislature has very wisely refused to sanction the sale of spirits at the diggings, rightly judging that increased crime would be the result of permitting it. The diggers are almost of necessity a peaceably disposed body, if they are not provoked to violence; but upon occasions they can exhibit a spirit of retaliation. At the Ovens the other day, a constable accidentally shot a man; the populace supposed the act was intentional; they gathered in great force, and were very nearly lynching some of the constables. It is creditable to the diggers that they have always repressed the tendency to lynch law, although they have more than once been sorely tempted to adopt that wild system of summary justice.

Extract from a letter of an Australian correspondent of the *Canada Globe*:—

"You cannot impress too much on your readers, how serious a thing it is to leave a country like Canada to go gold-digging—let every man who thinks of it, ponder the matter over well before he concludes to take such a step. Let a man, for example, dig a hole five feet diameter and forty feet deep, in soil as hard the whole way down as a well-beaten Macadamized road, then undermine to a distance of 30 feet all around at the bottom of the hole—and after doing all the labour of carrying and having no gold, let him go on like a philosopher and dig another, and so on, until he digs a dozen, before he comes on a rich spot. Let him do all this, exposed to burning hot sun, living on a poor diet at a high price, paying 30s. sterling per month license, and having paid £40 or 50, and spent three or four months at sea, for the privilege of getting to the spot, then if even an average profit will satisfy him, let him come here, but if not he had better stay with ordinary prospects any where else."

NEW BRUNSWICK.

THE COMMENCEMENT OF OUR RAILWAYS!—The long-continued efforts for Railways in New-Brunswick are now about to have a practical result—this week the actual work will be commenced! By the "Creole" from Windsor on Saturday night, the first detachment of Engineers arrived from England, consisting of Frank Giles, Esq., as Engineer-in-Chief, Mr. MacMahon Cregan, and eight assistants. These gentlemen leave here by land this morning for the Bend, where they will immediately commence the construction of the short line from that place to Shediac. We are enabled to state that the iron for this line has been shipped in England; and Mr. Giles has received instructions to spare no exertions to complete it fully by the end of the year. This then is the actual beginning of that great system of railways which is to spread over this Province, connecting Halifax with Montreal by Amherst, Miramichi, Trois Pistoles and Quebec; and also connecting Halifax with Montreal by Amherst, the Bend, St. John, Calais, Bangor and Portland! The railway now nearly completed between Portland and Montreal has been leased in perpetuity by Jackson & Co., at £60.000 per annum; and they have contracted for the construction of the line to Trois Pistoles.—*New Brunswicker*.

HASZARD'S GAZETTE.

Wednesday, June 8, 1853.

By the mail on Saturday we have received some late news from Australia, via California, and also undeniable evidence that the New Brunswick Railway will be commenced forthwith.

DISSOLUTION OF THE ASSEMBLY.—A HINT IN SEASON.

The Lieut. Governor, by Proclamation, has dissolved the General Assembly of this Island, and ordered Writs to be issued to the Sheriffs for a new Election. The 7th July is appointed for the nomination of candidates; and the 14th., for the Polling of votes.

Since, under the *new* System, they who compose our local Government, as well as they who fill the most important and lucrative of the Government Offices, are, principally, members of the Lower House, it behooves the electors to weigh well, and closely to examine, the merits and pretensions of all who may solicit their elective suffrages. Great abilities are not always associated with integrity of principle; and neither is it to be always inferred that, because a man is not endowed with extraordinary talents, or shining qualities, that he is destitute of such acquirements and abilities as are necessary to enable him to discharge faithfully and well, the obligations and duties of a public man. We have often been told that, in considering the qualifications and pretensions of public men, we are not to be influenced by a consideration of their private lives and conversation. A compliance with this injunction, we, however, will never recommend. It is in the more private and retired of his avocations and practices—in his every-day dealings and conduct—in the social and domestic circle, that the only reliable evidences of his true character can be found; and, unless we possess some knowledge of a man's real nature—of his dispositions and propensities—we shall certainly be very ill qualified to judge concerning the manner in which he may be expected to discharge the duties of a public trust. The man whom we know to be artful designing, treacherous, or dishonest, in private life, we need never expect to be able—whatever abilities he may possess—to assume a new and more worthy nature with his assumption of a public office of trust, honor, or emolument; and to trust in him would be most foolishly to put confidence in the stability of such *seeming* virtue as mere love of power and a desire of gain can produce. None but the truly good are truly wise; and national prosperity, as the result of good legislation and good government, can never be so confidently anticipated, by a free people, as when they are assured that they have delegated the power to rule them, to men, whose private lives have afforded a sufficient guarantee for the wisdom and integrity of their conduct in the management of public affairs.

With respect to the General Election, we shall scarcely, we believe, be led, by any circumstances likely to occur, to interfere so far as to presume to say, to any body of electors, "You must choose this man, and reject that." But we are convinced that it is our duty earnestly to remind the people, that, under the Responsible System, our Government must be *parliamentary*; and that, therefore, it entirely depends upon the manner in which they shall exercise their great political privilege, at the elections, whether we shall have to submit, for another period of four years to the control of a *good* or a *bad* government. We merely wish them to think and act for themselves; to be cool, cautious, and deliberate; to lay aside, if possible, all undue prejudices; and to determine, in each case, according to their own well grounded estimation of the characters and qualifications of the several candidates for their suffrages.

By these observations we certainly mean nothing invidious; and we trust they will be received, by such of our readers as they more immediately concern, in the spirit in which we have penned them, and as a *hint in season*, the observance of which may, here and there, tend to prevent mistakes which, if made, the people might long have occasion to regret, before they could find opportunities to remedy them.

Magistrates' Court, for the Trial of Common Assaults, Trespasses, &c.

Friday, June 3.

The above Court held its usual Semi-monthly Meeting in the Court House, this day, when there were present on the bench the following Magistrates, viz: Hon. D. Macdonald, Hon. Capt. Swabey, Charles Stewart, Theophilus DesBrisay, John Morris, Thomas Pethick, Robert Hutchinson, Peter MacGowan and John Lyall, Esquires. Mr. Macdonald, being the Plaintiff in the following case, of course he did not act therein.

Hon. Donald MacDonald, vs. [illegible] Donald MacDonald.

This was an Action for a Trespass [illegible] been committed by the Defendants, [illegible] of the Plaintiff, situate at Tracadie, [illegible] ty. The case occupied a considera[illegible] attention of the Court, but was ch[illegible] from an altercation, which took plac[illegible] the proceedings, between the Ch[illegible] Swabey) and Theophilus Stewart, [illegible] and Attorney of the Supreme Co[illegible] claimed—as a matter of right—to a[illegible] for the Defendants, and was prec[illegible] such, in a way that did not appear [illegible] cide with the Chairman's views of [illegible] cases. Mr. Stewart's claim was [illegible] and energetically resisted by him, a[illegible] the other sitting Magistrates, who [illegible] heard at all, it could only be by the [illegible] Court, and not as an abstract righ[illegible] however, still persisting that he h[illegible] heard as the counsel of the defendan[illegible] tired to an adjoining room, to de[illegible] matter. In the interim, however, it [illegible] that Mr. Stewart had the best sid[illegible] and on the Magistrates resuming t[illegible] allowed, without further interruption [illegible] interrogate the witnesses, and othe[illegible] case as he thought proper. Ultima[illegible] ded by their Worships that the ca[illegible] within the jurisdiction of the Cou[illegible] was nonsuited accordingly.

The Hon. Capt. Swabey then to[illegible] serve, that he deemed it due to Mr. [illegible] public to state, that he found he ha[illegible] supposing that counsel could only [illegible] such as that just decided, as a matt[illegible] and that it was perfectly optional [illegible] allow or disallow of such a course. [illegible] been founded upon what he knew [illegible] formerly, in England, where he ha[illegible] years, acted as a Magistrate; and [illegible] time, not aware, that an Act had [illegible] passed by the Imperial Parliament, [illegible] acknowledged, clearly conferred a[illegible] right contended for by Mr. Stewar[illegible] tleman then read the following extr[illegible] *Guide to Magistrates*, pp. 501-2 [illegible] capacity a Justice might be acting, [illegible] by the Court of King's Bench, bef[illegible] the recent statute for allowing co[illegible] that no person had a right to act as [illegible] a magistrate, or to take any part i[illegible] without his permission—on the gro[illegible] of the Peace, like any other Judge, [illegible] regulate the proceedings of his own [illegible] terden observing, that even in sum[illegible] the ends of justice would be sufficie[illegible] by hearing only the parties themse[illegible] dence, without that nicety of discu[illegible] of argument which are likely to be [illegible] sons more accustomed to legal qu[illegible] Adol. 663.) But now, by 6 & 7 [illegible] 2, it is declared, that in all cases o[illegible] tion, persons accused shall be adm[illegible] full answer and defence, and to ha[illegible] amined and cross-examined by co[illegible]

Mr. Stewart acknowledged the [illegible] in which Capt. Swabey had made [illegible] proper attempt to prevent his exa[illegible] signated "a common law privile[illegible] ceeding to urge the absence of an [illegible] the cases cited and the one which [illegible] this discussion; but the Bench [illegible] rous of listening to any further arg[illegible] ject, the matter here dropped.

Nicholas Vass, v. Jam[illegible]

T. Heath Haviland, Esq., appe[illegible] tiff, who resides in Halifax, N. S. [illegible] if the Rule respecting counsel di[illegible] Stewart's case, there could be no [illegible] pearing in the present one, as he [illegible] Mr. Vass. This action was brou[illegible] of a Trespass committed by the d[illegible] possession of a house, fronting on [illegible] this Town, belonging to the plaint[illegible] his attorney's permission, and co[illegible] He (Mr. Haviland) had brought a [illegible] a fortnight before, against the de[illegible] occasion he had only sought the im[illegible] nal fine. Judgment was accordi[illegible] sum of 10s. and costs. The defen[illegible] gone to Jail, and having remained [illegible] required by law, he had again tak[illegible] premises in question, where he na[illegible] present was, therefore, their W[illegible] ceive, a reiterated and aggravate[illegible]

Mr Hutchinson here intimated [illegible] rised to state, that if Mr. Havilan[illegible] wait a few days, the defendant [illegible]

Mr. Haviland said he did not k[illegible] meant by the words "a few da[illegible] not acting for himself in the matt[illegible] consenting to any further extens[illegible] of the defendant. He must ask [illegible] hands of their Worships, the im[illegible] fine, in the present instance, as we[illegible] vent his being again compelled to [illegible] plaint before them. This might, [illegible] a very hard case, but when it [illegible] he had obtained Judgment again[illegible] far back as July, 1851, and the [illegible] months to run before issuing the [illegible] perhaps, be disposed to modify th[illegible] Defendant now wanted a furthe[illegible] This, however, was now impos[illegible] letter in his hand from Mr. Vass, [illegible] peremptorily, that the defendant [illegible]

Mr. Kelly here handed in so[illegible] stating that he had lost £700 by [illegible] that he should throw himself up[illegible] Court.

Mr. Haviland thought that, in t[illegible] would not be doing their duty if t[illegible] a nominal fine. A heavy penalty [illegible] cessary to prevent the defendant [illegible] time in Jail. He thought that thi[illegible] called for no particular sympathy [illegible] Worships; but should they see [illegible] with him, they could, of course, [illegible] ever, be done without his consent [illegible]

The Defendant was thereupo[illegible] £5, and, in default of payment, to [illegible] months.

The Queen, at the prosecution of [illegible] vs. John McK[illegible]

This was an Action for an al[illegible] particulars of this case were [illegible] uninteresting character. Dismis[illegible]

Charles Wright vs. *Francis Tr[illegible]* and *Peter Tr[illegible]*

This was an Action of Tresp[illegible] evidence that the defendants, [illegible] last, had illegally entered upon [illegible] Wright, at Elliot River, and e[illegible] therefrom six logs of pine and s[illegible] were subsequently identified as [illegible] the Witnesses.

Defendants convicted: each p[illegible] 7s. 6d., and his portion of costs, [illegible] to be imprisoned one month.

It was then stated, by one of t[illegible] that a certain party had that d[illegible] Subpœna by a Constable of the C[illegible] to attend and give evidence, on [illegible] fees had not been tendered to h[illegible] however, that in order to comp[illegible] Witness, it was not necessary [illegible] first be tendered by the party [illegible] but that, in order to the infli[illegible] each neglect or refusal, it w[illegible] party aggrieved should prove [illegible] pursued was a material witness [illegible] present instance, however, as [illegible] entitled out of Court, no further [illegible] in the matter.—The Court ch[illegible] J. B. [illegible]

The Steamer Rose called to [illegible] for Pictou, and will return [illegible]