

dence. He would propose that the criminal jurisdiction should extend to this Island more fully; but to whatever period they assigned that the law of England should apply here, it ought to be fixed, that no uncertainty should prevail in the minds of the Judges. [The hon. and learned gentleman then took a review of the history of the laws of this country.] In the meantime arose a difference about the English statute law. He would begin with Mr Forbes, because he was of a more generally well-known and high character than any who had preceded him. He brought the law under a more just and equitable administration. In the administration of the criminal law he had held so much of the English law as was then in existence, and so far as it was suitable.—When it was proposed to bring the whole of the statute and common law into operation here; it was found that the whole could not be brought, because there were portions of it that could not be rendered applicable.—Doubtless, there were some parts of the statute law applicable, and some were not so.—It was desirable on the part of the Judges to have their present responsibility removed, and before he (the hon. and learned gentleman) would reject the proposition, he thought it well to consider how far the existing evils could be removed. They were certainly left to a choice of evils.—When Mr Forbes left this country, after having acted upon his convictions, he was succeeded by another gentleman, exercising the same high functions. Mr Tucker took a different view of the Judicature law; he thought the criminal statute law had a much narrower operation; and no doubt, Mr Tucker's principles were the best that could govern a Judge, for he (Mr Tucker) thought that a Judge ought never to be endowed with a legislative character. But in fact (said the hon. and learned gentleman) Judges are to a given extent legislators; for although the Judges in Westminster do not alter the laws, yet they decide upon the application of them; therefore they are in their decisions legislators. However, it was no reason because they were so to a certain degree, that they should be made so to a greater and unnecessary extent. It was not only necessary to fix the period down to which the laws should be considered applicable, but also that the particular laws themselves should be fixed. Many parts of the criminal law would operate with much harshness here, because from the frequency of offence at home, it became necessary to be more severe. In Mr Forbes's time the criminal law was considered greatly severe; although that law would meet with a much more ready concurrence, on the adoption of it now, than five years ago. He was of opinion that Mr Forbes's construction as to the criminal law was a just one; he believed that the law of England in criminal matters, as it at present exists, was in force here.—He concurred with Mr Forbes, in his time—a *fortiori* he held the same opinion after the passing of the act 5th Geo. IV., and he was also borne out by the opinions of the Attorney and Solicitor-General in England. If the legislature should come to the decision that the criminal law of England is in force here, there is a cogent reason for tak-

ing it as it at present exists because ameliorations have been introduced and are still going on; besides, many of the criminal acts had been repealed by statutes of voluminous extent, and even some of the recent statutes had been abrogated. If it were taken at any former period, and it were found that some of the criminal laws had been abrogated, we should no longer have the English law in force. The least evil would be to adopt the statute law as it exists at the present day, and also in future to adopt such enactments as may hereafter be created; and if any of them be found inapplicable, let a declaratory law upon the subject be framed. This would make the whole of the proceedings more certain, and more in accordance with those of Westminster-hall.

With regard to the civil jurisprudence which would be affected by the passage of this Bill, both in its practice and in its principles, it was a matter of deep importance. Our local laws would be abolished—our beneficial and peculiar mode of proceedings in attachments against property would also be taken away, and it was a subject for grave consideration before we abolished that. He would rather first enquire what were the defects and deficiencies in the civil jurisprudence of the country, and correct those defects and deficiencies;—he would make no changes on speculation; for those who removed our landmarks might do much mischief. If he were now called upon to say yea or nay to the Bill, he would say nay, until he had time to say yea—it required much consideration. He had endeavoured already to speak as to the criminal law;—but with respect to the civil, especially as it regarded real property, primogeniture, and the rule of descent, the Bill before the House would go to the putting down of all those rules which had hitherto governed our rights to property. The first point for consideration under the law of real property, was that of primogeniture which had not prevailed here since the creation of the earliest laws. It might do well perhaps were it interwoven with the existence of a country and the institutions of it—but it was seen that it had become a bone of contention even in the parent state, where the law of gavelkind, or borough-English formed an exception to the general rule—a law not altogether dissimilar from that which had obtained here. He would warn hon. gentlemen how they introduced laws seriously to affect the tenure of real property here, for now and for years past there had been real property distinguished from that connected with the Fishery. If the law of primogeniture were made to apply here, how would it be with the fishing-rooms? for a large portion of real property was invested and involved in the carrying on of the fishery.—The usages which we have laid down for ourselves is more consistent with the simple ends of justice; for the people here require different rules from those which may be found expedient in the mother country. He (the hon. and learned gentleman) would be content with first taking the criminal law of England; for if the civil law were taken with it, not only would the 5th, Geo. IV., cap. 67, but also the Fishery laws, pass away. Should it be so? Besides the insolvent law

must also pass away, and the insolvent law of England be substituted for it. The present law on that head was certainly imperfect and it would be required that the legislature should alter it; but he was not ready to admit the insolvent law of England;—to that was attached penalties, and those penalties would bring imprisonments, and he could not approve of that. He did not think there would be much difficulty in bringing in the statute criminal laws; but as regards the civil law, if a bill of that kind were persisted in to that undue extent, he must enter his objection to it. It might be modified; but it ought to be modified very greatly.—Before they reject the present laws, let it be seen if it were not possible to revise them; let it be seen if the administration of justice, particularly in the outports, may not be rendered more easy. The subject required more time and the closest investigation, and he would therefore advise the postponement of the measure until a future day. The hon. and learned gentleman would reserve any further observations until a future stage.

The SPEAKER, as the mover of the Bill, would be expected to say something; and he would therefore offer something to do away with the objections which had been raised. He felt that he was addressing strangers, and that he could not expect to have that weight and influence in the community, which the hon. and learned gentleman who had just preceded him, and who was of long standing in it, could be expected to have, and which indeed it would be pernicious to shake. But he came there to do his duty, and he was certainly disposed to do every thing to advance the interests and improve the condition of the colony.—It may be supposed that the Bill which he had introduced was a sort of empiricism adopted by him—a desire solely to introduce changes in the country; but in order to remove from the minds of hon. gentlemen any impression that in concocting this Bill he was bringing forward any of his own views, he would assure them that he was bringing forward the experience of persons who had perhaps better means of judging of their effects than he had. The Bill was not his own, it had not been framed even in his own language; it had been adopted by other colonies, and had been put into their mouth by the parent government. Precisely in the same words was the law of France introduced into Canada, where all the previous laws were entirely swept away, and a new code introduced—into a country thinly populated, entirely remote from the sea coast, and scarcely having anything in common with Great Britain—without roads, without turnpikes, without coaches, &c. and where in such a crude state of society the English laws might have been said to be inapplicable, and yet he had never heard the complaint that those laws had not worked well. It was easy for any hon. gentleman to warn others against running into dangers, where that caution was given to persons not exactly competent to weigh those difficulties and see the dangers. He had no doubt the hon. gentleman believed those difficulties did exist, he had no doubt of his sincerity, because he had perhaps every thing to gain and nothing to lose by their adoption. He