House of Commons Debates

FOURTH SESSION, FIFTH PARLIAMENT.--49 VIC.

HOUSE OF COMMONS.

TUESDAY, 20th April, 1886.

The SPEAKER took the Chair at Three o'clock.

PRAYERS.

FIRST READINGS.

Bill (No. 112) to consolidate the borrowing powers of the Western Canada Loan and Savings Company, and to authorise the said company to issue debenture stock.—(Mr. Beaty.)

Bill (No. 113) to consolidate the borrowing powers of the Freehold Loan and Savings Company, and to authorise the said company to issue debenture stock.—(Mr. Beaty.)

THIRD READING.

Bill (No. 100) respecting the transfer of the Lighthouse at Cape Race, Newfoundland, and its appurtenances, to the Dominion of Canada.—(Mr. Foster.)

SUMMARY PROCEEDINGS BEFORE JUSTICES.

House again resolved itself into Committee on Bill (No. 84) to make further provisions respecting Summary Proceedings before Justices and other Magistrates (from the Senate).—(Mr. Thompson, Antigonish.)

(In the Committee.)

On section 6,

Mr. THOMPSON (Antigonish). I explained to the committee that the object of this section was to provide by legislation of our own the same enactment as is contained in the Statute of 5 George II., which has been recognised in various decisions as in force in the Province of Ontario, and may, probably, be in force in some of the other Provinces, although its operation may not have been recognised in any other Province. The object is, as I have said, to embody that enactment in this Statute and then declare in section 8 that the English Statute would no longer be in force. It was considered desirable that an enactment of that kind should be declared to be in force all over Canada, and in force by our own statute, rather than to have any doubt as to the operation of the English Act in any part of the country. It was suggested in the committee that the passage of clause 6 as it is would probably have the effect of preventing any motion being made to quash a conviction until a general order in the terms of clause 6 was passed. If that is still the sense of the committee, I propose to amend the clause in such a way as to provide that the enactment which is contained in that section should have force of law when so ordered by the court having authority to entertain the motion and quash the conviction. The section then would read:

> The court having authority to quash any conviction, order or other proceeding by or before a justice or justices, may prescribe by general order that no motion to quash any other conviction, order or other proceeding by or before any justice, or brought before the court by *certiorari*, shall be entertained, unless the defendant is shown to have entered into recognizances, with one or more sufficient sureties, before a justice or justices of the county where such conviction or order has been made, or before a judge or other officer, as may be prescribed by any such general order.

The balance of the section being as printed.

Mr. MILLS. I thought when the committee rose that the fifth clause was under discussion.

Mr. THOMPSON (Antigonish). We carried it, but with an amendment confining it to cases where the jurisdiction was in question.

Mr. MILLS. The same question, I think, applies to this—that is, in any proceeding of this kind the party criminally affected must certify that he will not proceed on any civil right of action he may have, before redress will be given.

Mr. THOMPSON (Antigonish). That is not the present clause. The present clause is clause 6, which provides that security shall be given before a motion is granted to quash a conviction.

Mr. MILLS. But as the fifth clause now stands, as amended, is it not such that the party must waive his civil right before the order is granted?

Mr. THOMPSON (Antigonish). Yes.

Mr. MILLS. Upon what ground can we insist upon a party waiving his civil right, which is a matter under the jurisdiction of another Legislature. How can he be bound by it?

Mr. THOMPSON (Antigonish). Of course we could not take away—and should not attempt to take away—the civil right of the party, but the effect of the clause is to enable a judge, before making an order to set aside a conviction, to lay down, as a condition of that order, that the party shall waive his right, and I think it is clearly competent for us to do so, as the procedure relative to the setting aside of the conviction is criminal procedure.

Mr. CAMERON (Huron). I think the Minister should consider this matter again. We are doing indirectly what it is admitted we cannot do directly; we are taking away a civil right by giving the judge before whom the application is made power to compel the applicant to forego his civil right, in order that he may get redress for a wrong committed. I do not think Parliament has the right to do so; at all events, it is open to great question. With regard to the sixth clause, as I understand the amendment, I do not think it helps the matter very much. Instead of Parliament prescribing directly that the security for costs shall be given before an application for a *certiorari* is granted, the hon. gentleman proposes that it shall be a matter of discretion with the judge to require security for the costs.

Mr. THOMPSON (Antigonish). Not quite so. There is no doubt a judge before whom an application is made for a writ to issue has the authority to prescribe security,