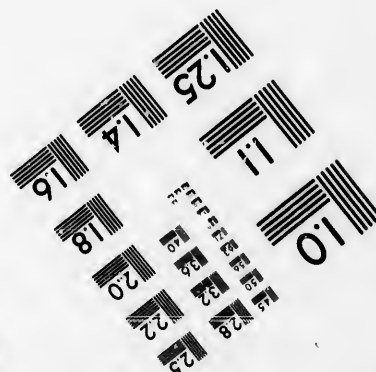
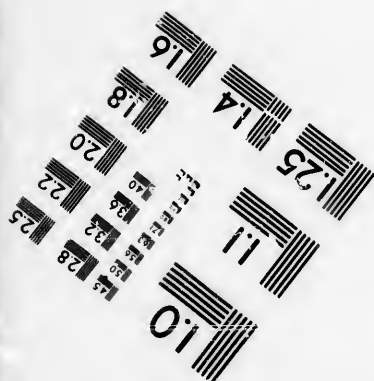
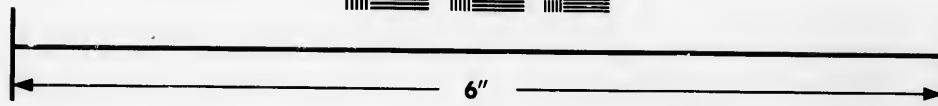
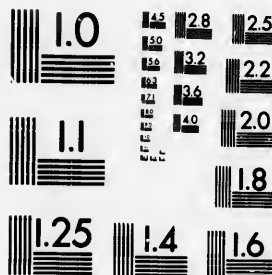


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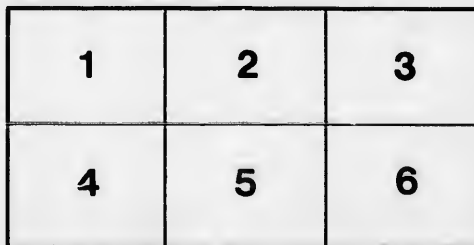
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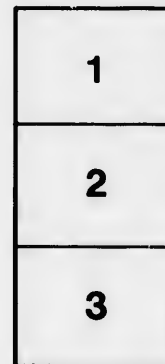
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House of Commons Debates

FOURTH SESSION—SIXTH PARLIAMENT.

SPEECHES OF HON. EDWARD BLAKE, M.P., ON THE SEAMEN'S ACT.

FRIDAY, MAY 2ND, 1890.

Mr. BLAKE. I quite agree with the observations of my hon. friend. A number of years ago, I think in 1882, this class of persons was subjected to extremely stringent legislation at the hands of this Parliament; and the legislation was framed with special reference to a difficulty which existed in the port of Quebec. It was then provided that a stipendiary magistrate might convict without appeal, and without any method being given for reconsideration, in cases in which penalties of from two to five years' imprisonment in penitentiary could be inflicted. Upon that occasion I was unsuccessful in endeavoring to secure a trial by jury to persons who were subjected to so grave a penalty. It was upon the 15th of May, 1882, that the Bill to amend the Seamen's Act of 1873 was moved by the right hon. the First Minister, seconded by Sir Leonard Tilley; and upon the second reading I moved, seconded by the hon. member for Bothwell, to recommit the Bill to the Committee of the Whole House with instructions to amend the same, so as to provide for a trial by jury of any person liable to be sentenced, under the said Bill, to from two to five years' imprisonment in the penitentiary. My motion was defeated upon that occasion, as, I presume, any like effort will be upon this, the ground given for the exceptional rigor of the procedure, which deprives the parties accused of those securities that exist in ordinary cases, being the transitory nature of the occupation of the parties who would be the principal witnesses, and the fact that the offence having generally to be proved by captains and crews of ships, an appeal would mean a defeat of justice. I cannot reconcile to myself the view that the circumstance that there is a difficulty in prosecuting an appeal successfully, should leave the party accused without some protection against the possible injustice of the primary and sole tribunal analogous to that which exists in other cases. It may require some special legislation as to expedition of the trial, some special legislation as to the facility of taking and recording evidence; but I hold that that protection which the subject at large has against injus-

tice inflicted by primary magistrates, should, in some shape or other, be given to the class of subjects treated in this Bill as well as to the others; and I maintain that the simple alleviation which the Minister rightly proposes in this Bill, and which restores to the subject in this case the right to a *certiorari*, is but an imperfect and inadequate alleviation; that while other classes of subjects, convicted before magistrates, of the same class of offences, of the same description and gravity, to punishment of the same kind, have other means of redress, we ought not to limit this particular class to the inadequate, partial, incomplete, and oftentimes wholly abortive remedy of a *certiorari*.

MONDAY, 5th May.

Mr. BLAKE. I wish to say a word with reference to this proposed amendment in renewal of the discussion which took place the other day. As I understand the Act which the present Bill is proposed to amend, it has reference only to the inland waters and does not apply to ocean voyages; at any rate it does apply to the inland waters. The great bulk of vessels engaged on inland voyages are engaged on a regular course, in sailing from point to point, and the extreme voyage is, I think, two or three weeks in length, from Lake Superior downward to the port of Kingston, and return. There is, therefore, with reference to the bulk of the cases, an opportunity of reaching once again a point at which the difficulty arises within a very short time, and if I am rightly informed, the bulk of cases which come under the provisions of this Act, arise in the Welland Canal, about midway in the voyage. I make this statement because it seems to me to be not unimportant to consider whether there is, in any point of view, an absolute necessity for what I must call a denial of justice. I think there is in no case such an absolute necessity as that you should wholly deny justice, but I say that here the inconvenience which is suggested as a cause for the denial of justice, is a minor degree of inconvenience altogether, and

that, by the adoption of the right of appeal with reference to the inland voyage, possibly with some further precautions, possibly with some precautions as to the facilities for taking and recording evidence for use on the appeal, and with some other provisions suitable to the case, we could overcome any of those difficulties and prevent the risk of gross injustice resulting. We have found it necessary to establish appeals from courts composed of judges of great experience, of great dignity, of much learning, who discharge their business in the light of day, with the assistance of trained advocates, and with all the advantages, and also with all the checks and precautions, which the ordinary course of a public court provides. How much more important it is that we should, with respect to magistrates such as those who are called upon to deal with the cases, give some better opportunity than a *certiorari* gives—we all know how very poor and narrow that remedy is—against the injustice which such a magistrate may commit. A case which has been laid before me, and, I think, it is a case which has been laid before the Minister of Justice also, I bring before the notice of the House as the kind of thing which may happen, because it is a kind of thing which has happened under the law, and is not remedied under the law as it will be altered by this Bill. At a certain time the person of whom I am speaking was summoned to appear before the police magistrate at Port Colborne, charged with the offence of persuading, or trying to persuade, the crew of a schooner to leave or quit their work. He appeared, and asked that the case might be adjourned till the next day in order to secure the services of a lawyer; but that was refused, and the magistrate declared that the case must proceed at once. The captain, who swore out the warrant, could give no direct evidence that he had seen the person either on board the vessel or talking to the men. The men were necessarily sent for, and when they were summoned, they were asked whether they were under articles, and they proved that they were not under articles, in which case the Act had really no application whatever. The individual charged then demanded to be acquitted, but the magistrate determined that he must be convicted, and he sentenced him to gaol for one month at hard labor. He said to the magistrate that he would appeal, but the magistrate told him there was no appeal for him. He telegraphed for the assistance of a lawyer, and the lawyer came down the next day. He saw him. The lawyer told him there was no appeal under the law. An effort was made to get a copy of the evidence, but there was great difficulty in procuring it, and a threat had to be made to proceed against the magistrate before even a copy of the evidence could be procured and sent to the Law Clerk at Welland, and then it was made clear that there was no appeal or redress. That is the state of things, I am informed, which has happened under the Act, and that state of things may happen under the Act notwithstanding this amendment. It seems to be a blot upon the administration of justice that such a condition of things should continue, and, so thinking, I propose to vote for the amendment, in the hope that, with certain precautions, it may be effectual.

Sir JOHN THOMPSON. I should like to ask if the hon. member is sure that the Act only

applies to inland waters? I was so informed, but that is a mistake.

Mr. BLAKE. The law to which I referred was confined to the waters about Quebec, and it was so stated at the commencement of the statute.

Sir JOHN THOMPSON. It is an Act relating to the shipping of seamen.

Mr. BLAKE. I was told that there was a statute that did so continue it.

Sir JOHN THOMPSON. I, also, was so informed, but I was informed incorrectly.

Mr. BLAKE. There is a statute which contains these provisions.

Sir JOHN THOMPSON. Not that which contains the provisions we are amending. This is an Act in regard to the shipping of seamen, and it refers to sea-going ships as well.

Mr. BLAKE. If that be so, all the observations I made as to the inland voyage would apply to this proposed amendment, and the change might be left to the inland voyage, the outgoing voyage being left as it is.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Mr. BLAKE. I would not object to a provision that if we limit the time to a very short time after the drawing of the cheque within which to ascertain whether it was a forgery, a notice should be given to the bank.

Mr. BLAKE. I move "that the amendment be further amended by leaving out all the words after "one" down to "payment" and inserting the words, "a month after he has acquired notice of such forgery."

Sir JOHN THOMPSON. Before the question is taken I would like to say that, for my part, I would be quite willing to adopt that amendment. Instead of going to the trouble of taking a vote, I would like to have some expression of opinion from hon. gentlemen on the matter.

Mr. WELDON (St. John). I think that amendment seems to meet the case.

Mr. CHARLTON. I would prefer to have the amendment dropped altogether, and leave the law as it formerly stood.

General LAURIE. I should prefer to see the clause dropped out altogether.

Mr. TISDALE. So should I.

General LAURIE. The system at present prevailing has worked exceedingly well in the past, especially for those who live at long distances from banks. Our only means of paying accounts has been by sending cheques, and we have had to trust to parties receiving them endorsing the cheque as a receipt. I have very much to regret that any other plan should be adopted.

Mr. BLAKE. I hope the hon. gentleman will see that the proposed amendment is not open to this objection. The amendment is: that if you have acquired notice of the fact that the cheque is forged, you ought, within a month, to give notice to the bank. You are not to hold it in your pocket for five years and eleven months.

Mr. TISDALE. This amendment is sure to lead to a great deal of trouble and confusion as to what notice is. I think the safer way is to leave the law as it stands at present.

Mr. WHITE (Renfrew). My opinion is, that if the drawer of a cheque gets notice of a forged endorsement, he is not likely to keep it in his possession for five years and eleven months. He is more than likely to give the bank notice just as soon as it comes to his knowledge that the cheque is forged. But the law as it has stood heretofore seems to have worked without any considerable friction, and, for my part, I would prefer leaving it as it is, and striking out the Senate amendment altogether.

Mr. BOYLE. I prefer the amendment of the hon. member for West Durham to the proposition of the hon. Minister of Justice, but I prefer the old law to either of them. But I am in this difficulty, that by voting for the amendment of the hon. member for West Durham, I would commit myself to the amendment of the hon. Minister of Justice. Under these circumstances, I feel that the only safe course for me to take will be to vote against the amendment of the hon. member for West Durham and also against the proposition of the hon. Minister of Justice. The law has worked so well that I think no change should be made, unless some improvement on this amendment is proposed.

Mr. BLAKE. The hon. gentleman will observe that by voting for my amendment, which he prefers, he may carry it; and after carrying it, he is quite at liberty to vote against the amendment as

amended; whereas, if he votes against my amendment, he may have the worse proposition carried, instead of the better.

Mr. WELDON (St. John). A cheque payable to order is really an innovation. The effect of the amendment will be that the bankers, to protect themselves, will revert to the old system.

Mr. DAVIES (P.E.I.) I do not see how anyone can object to the amendment proposed by the hon. member for West Durham. That a man who has drawn a cheque and receives notice that its endorsement has been forged, should give the bank notice within a month, is not an unreasonable proposition. There can be no possible injustice to any one in such an arrangement.

Mr. CHARLTON. With regard to the assertion of the hon. member for St. John (Mr. Weldon), that cheques are generally made payable to bearer, my experience has been quite the reverse. For my part, I never make a cheque payable to bearer, in order to guard the interests of the person who receives the cheque. The amendment proposed by the hon. member for West Durham is a very great improvement, which I am willing to accept, if afterwards I shall be free to vote to leave the law as it was before. I would ask whether we can do that?

Mr. BLAKE. Certainly. If my amendment were carried, the clause as amended would be before the House, and the hon. gentleman could vote yea or nay on the clause.

Amendment of Mr. Blake agreed to.

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