

mult case? So little was I aware of what had taken place, or what was going on, but let us look at a specimen of those extraordinary extra-judicial proceedings—(his honor then read to the House the substance of the letter which he had written to him by the Committee of the House of Assembly and the answers he had given—)

Extract from the evidence before the Committee of the House of Assembly, in the Petition of Neil Darrach.

COMMITTEE ROOM, March 21, 1853.
Present, Mr. DAVIES, Mr. MACLEOD, Mr. FRASER, Mr. LAIRD, Mr. LEITCH, &c.

Hon. CHARLES YOUNG called in and examined. Question. You retained by Neil Darrach to defend him in an action at the suit of B.M. Cumberland?

A. I was retained by his son Archibald as agent for Neil Darrach, some time in the year 1851, in May or June, in an action brought by Bontineck Henry Cumberland and Wife against Neil Darrach on a Bond of Covenant.

Q. Was the case tried in Court and did you defend it?

A. To the declaration filed I put in two Pleas. One, the general issue, and the other a Plea of Payment. The case was tried on the 12th of June, and I was not called in Court, because the agent of the Defendant authorized me to confess the suit, which I did.

Q. What was the Agent's reason for authorizing you to confess judgment?

A. 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 or Defendant informed me that he had frequent conversations with the Plaintiff's Attorney, Mr. W. H. Pope, to whose office he had been referred, and that he was effecting a compromise, and that he would show 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 1848. Mr. Pope alleging that by Capt. Cumberland's Book the money was paid and the Receipt given in the year 1848. 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. He said that it was a forgery, the Receipt would be impeached, and that he would make it his business to see that a Verdict would be passed against his father which would carry costs and that unless he satisfied me the Receipt was bona fide I would not allow him to go into the Witness box.

He positively asserted that the Receipt was not a receipt, that the figures had never been altered—that the money had been paid in '48, and that the Receipt had been given at the time, and that he would swear to it. No compromise could be effected between the Plaintiff's Attorney, and the Defendant. Notice of Trial was given for Hilary Term '52. I was ready for trial on the part of the Plaintiff. On the morning before going into trial, I showed the Receipt to the present Chief Justice, who examined it, and stated that it had not been altered; but that the figures were 1848 and not 1849, and intimated that he could give evidence to that effect. I then took Darrach, the Defendant's Agent, into a Lawyer's room, and told him that Mr. Hodgson had said and again intimated him as to the consequences. He still persisted that the Receipt was bona fide. I asked him if he had paid the money in '48, and for the first time he prevailed on me to accept of the Receipt as a positive answer to my question, and he refused to give me any. I then advised him not to run the risk of appearing himself, and of procuring a Receipt at that hour to be false. He said that he would run all risks or words to that effect. I then told him I was satisfied the Receipt was for '48 and not for '49, and that I could not give evidence to that effect. He then advised me, 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 of consulting with his Counsel. I believe he did, and got from them they were two I believe, a similar opinion. He then returned and authorized me to make the best settlement that I could with Mr. Pope and himself together.

In the Report of the House of Assembly there is a clause accusing me of neglect of duty, and thus has this Honorable Body presumed to pass a condemnatory judgment upon my character as a lawyer by asserting that I signed a Cognovit or confessed a debt without the consent of the Plaintiff or his son. I now hold in my hand a certificate of a person who most fortunately for me happened to be present on that occasion. And before I received it, I cannot tell your Honor the agony of mind that I had experienced and even now I can scarcely express the indignation that I felt at the base imputations that had so unwarrantably been cast upon me.

[Here his Honor read the Certificate of Mr. William Pope, testifying that the judgment was signed when the Court was sitting, the Petitioner being present, and he thereunto consenting.]

—What has the House of Assembly done! They have not hesitated to brand me with being incapable of conducting a suit in the Supreme Court, thereby endeavouring to fasten a charge upon me from which every lawyer would shrink with horror, but they have done so in the face of the evidence of two disinterested Barristers, who prove that this man had given his consent before the document was signed. Yes, this House of Assembly, or, more correctly speaking, a majority of it, was willing to believe that man, who was quite ready to perjure himself, by passing off a false receipt, rather than two totally disinterested parties. I have said, and I think I shall establish this assertion to the entire satisfaction of Your Honor. This very man—the Neil Darrach—to whom the House of Assembly have lent so willing an ear, would, had I not restrained him by pointing out the sinfulness of the act and the temporal pains and penalties he would thereby subject himself to, actually have sworn, as indeed he professed himself willing to do, that a certain Receipt which had been given in the year 1843 by Capt. Cumberland, was given in 1840—the figure 3, having been in form similar to the shape of the figure 8. That Receipt several persons saw, for at the time to which I am referring the Supreme Court was sitting, and amongst others it was shown to the present Chief Justice, then a practicing Barrister, who also was of opinion that an imposition had been attempted. And now, forsooth, merely because I would be no party to so infamous a fraud, that had no regard of every obligation, and in violation of the strictest duty, I have been branded as a perjurer, bastards to the House of Assembly, and that honorable body, by the course they have thought proper to adopt on the occasion, have bolstered up his unrighteous cause far beyond, I dare say, even his most sanguine expectations. I have been told too, it was asserted by a very prominent member of the government in the House, that if those proceed-

ings had been brought under the review of the Supreme Court, that the govern of the Attorney General would have been taken from him! Now your Honor, if ever I acted conscientiously in any way, did you not see that I was not a party to it? Now the only kind of a present that has been found, in one solitary case, in which there was an equal division; and I remember myself that in that case the Bill was said to have been "hung up"—that was the expression used at the time, and I remember distinctly, as to the fact of that Bill. My purpose is to ascertain whether we are competent to go into this Bill at the present juncture. With respect to the Bill, I have mentioned, no further proceedings were taken, and it was laid. I asked you, Sir, the other day, whether you could state what was the proper way to take with regard to the Bill was under discussion, and you very properly asked the permission of the House to adjourn, in order to go and consult with our late President. I certainly did not mean that you were to take his advice. Well, you asked that gentleman, and when you were in the House, the practice, of this House which was never to take advantage of absent members, is now to be departed from. Sir, I would never take the least advantage of the absence of any hon. member; nor have I ever done so. I could have carried the vote I took of the Compensation Bill, and I do not regret that I was appealed to and reminded that an hon. member who had taken an interest in it was sick. I was restrained by a sense of honor and of justice, and cheerfully consented to its postponement.

The Hon. the PRESIDENT. And have you not yourself equal courtesy in return?

The Hon. Mr. SWABY continued—I have, Sir, and up to the present moment it has been the pride and the boast of this House that we have given to each other every courtesy and consideration, but, Sir, without the slightest intention of using offensive language I do assure that this is a violation of that understanding.

The Hon. the PRESIDENT explained that the only case they could find where there was an equal division, was that of the Fishery Reserve Bill which was sent up to the Council several years ago.

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The Hon. the ATTORNEY GENERAL. I remember the Fishery Reserve case well. I, with some others, took a deep interest in the Bill, and I recollect we were sadly displeased and mortified at its having been "hung up" and that in the absence of two or three members I got up and made a motion that it should be gone into; and I recollect too that his honor, our present President, said to me "will you Sir, take such an undue advantage as this in the absence of other honorable members?" He quitted upon me the subject, and after getting into a towering passion, his Honor went into a detail of the injustice of the Bill, when I retorted that he could not have read a word of it. High words ensued, and the upshot of it was, that we were both referred to custody for an hour and a half—I remember too that we made to bow to each other and to apologize. The matter then dropped—our present Chief Justice was then the President of the Council, and he explained to us both, that he did not consider it fair to bring me then forward again in the absence of members.

The Hon. the PRESIDENT. I put that question to the Chief Justice the other day, and he said that he had not the least recollection of it. But he considered that the House is not prepared to take the present Bill into consideration, notwithstanding the division the other day.

The Hon. the ATTORNEY GENERAL. Then I move that absent members be sent for.

The Hon. Mr. HOLL. This has been fully discussed by the majority in the other way. The Bill has to be disposed of.

The Hon. the ATTORNEY GENERAL. Surely you will not refuse the motion!

The Hon. Mr. HOLL. I have no objection, but it is necessary to explain how the matter was brought under my observation. On Wednesday morning on my way to the House, I met the Clerk and he told me that the Bill was not disposed of, and I replied that if such were the case, the usual course must be taken, and that I find it, that the Bill be recommitted.

The Hon. the ATTORNEY GENERAL. What has become of the Will Bill!

The Hon. Mr. HOLL. This is not the only Bill. The Tenant Compensation Bill is precisely in the same position.

The Hon. the ATTORNEY GENERAL. His Honor knows that the majority in the other way.

The Hon. Mr. HOLL. In both cases there is the same majority.

The Hon. the ATTORNEY GENERAL. Yes. In one case you will have 5 to 3, and in the other 3 to 5. The Salary Bill will be gained and the other lost.

The Hon. Mr. HOLL. Be that as it may, the Bills have to be disposed of, as they have been left by the proceedings of Tuesday last precisely in the position they were previous to the action that was taken on them upon that day.

The Hon. the ATTORNEY GENERAL. His Honor the President has decided that the Bill should be gone into. It is a dead lock, and in my opinion one of your Honor should retire.

The Hon. the PRESIDENT. If you had not resigned your situation as Attorney General I should have said that you were the member who should retire.

The Hon. the ATTORNEY GENERAL. It affects not only the present Attorney General but his successors, and the Solicitor General and Clerk of the Crown. Had the Bill only referred to the Attorney General I would have retired.

The Hon. Mr. HOLL. After the proceedings which took place the other afternoon, we all went away under the impression that the Bill was disposed of, and I should have been happy if the matter had rested there, but when I received information that it was still in existence, it was our duty to proceed. Why should we pause? If the hon. Mr. Dingwall chose to go away, is that our fault?

The Hon. the ATTORNEY GENERAL. He (the hon. Mr. Dingwall) thought it was settled. I, the Hon. Mr. HOLL. When we came to the Council and found those Bills still in existence, we had a plain public duty to perform, and we were bound to dispose of them. His Honor the Attorney General had said something about a combination, but we have been left in the lurch as to the measure of it. From the marked emphasis of his Honor one might have expected some reasonable combination, but as yet, nothing of the sort has been revealed. His Honor has also been pleased to notice an undue degree of excitement in me; if so, all that I can say is, that I am quite unconscious of it.

The Hon. the ATTORNEY GENERAL. I see to explain. What I meant to say was, that his Honor exhibited great excitement on the occasion of the second reading of the Bill, before he knew whether it was my intention to vote against it. Now, the only kind of a present that has been found, in one solitary case, in which there was an equal division; and I remember myself that in that case the Bill was said to have been "hung up"—that was the expression used at the time, and I remember distinctly, as to the fact of that Bill. My purpose is to ascertain whether we are competent to go into this Bill at the present juncture. With respect to the Bill, I have mentioned, no further proceedings were taken, and it was laid.

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The Hon. Mr. HOLL. I stated that if it went into Committee our intention was to raise the salary to £350. From what has fallen from the Hon. the Attorney General, the subject under discussion has assumed a different aspect. The Bill will go into committee under much more favorable circumstances—a great difficulty is removed by the resignation of his honor, the Attorney General, the further consideration of the matter dispensably. It has reference solely to his successor.

The Hon. Mr. SWABY. I repeat, I am not aware of any reason which has led your Honor to come to a conclusion different from what you arrived at the other day. As I have all along maintained I conscientiously think that the compact with the crown is inviolable, but notwithstanding all that, if you had the power of changing from fees to a fixed salary, it would be essentially necessary, I should think, to complete the arrangement by entering upon such an investigation—but whoever heard of legislators or business men taking a step such as, as you now seem bent to do! It is entirely wrong, and most assuredly it will receive no sanction from my lips.

The Hon. Mr. HOLL. It will be remembered by your Honor that a determination was come to, in the event of the suggestion of the Council not being agreed to by the lower House, that the Bill should not be lost. We all considered that the salaries were not upon so high a scale as to be a burden upon the House of the Colonial Secretary, the Treasurer and the Postmaster who is so shamefully ill paid, he had no right whatever to complain.

The Hon. Mr. HOLL. It appears that "with the consent" of his Honor the Attorney General, (as he has just stated) that the compact under the Civil List might be broken. Now, if it be a compact, all including that officer himself, are equally bound by it—but if with his consent it can be interfered with, according to his admission, it is evident that it is quite in our power to alter the Act in question without his consent, as it effects the future occupant of the office equally with himself. I cannot admit that we are effecting our object in an improper manner or that we can be fairly charged with taking an unfair advantage. The Bill has to be disposed of, and we cannot be held accountable for the absence of members of Council—With a large majority of the Government and nearly the whole of the House of Assembly supporting the measure, and stating it to be their opinion that the proposed Salary will afford adequate remuneration for the services performed by the Attorney General, I feel imperatively called upon to press the motion for recommending the Bill. It has already been allowed by the Council that the salary under the Civil List is too low, and his honor (Mr. Swabey) had admitted the principle of the Bill by advocating an increase of the salary to £400. [Here the Hon. Mr. Swabey explained, that he had moved that the amendment of the Council which had been proposed to be adopted by the House of Assembly, should be adhered to; but was, at the same time, opposed to the Bill. The Hon. the Attorney General also interposed in support of the Hon. Mr. Swabey.] The Hon. Mr. HOLL continued—I really must decline the interference of the Hon. the Attorney General. The Hon. Mr. Swabey and I are able to fight our own battles, and it will be early enough for his honor to render his aid when called upon; admitting, however, the explanation, the amendment for raising the salary to £400 emanated from that side, and was supported by us. This being the case, I cannot see upon what grounds your Honor can object to what will be proposed in Committee, namely, to raise the salary to £350, and to allow the fees under the Land Assessment Act to the Attorney General, in addition. By this arrangement, the emoluments of the Bill amount to perhaps £50 less than was proposed by your own amendment; and it is not improbable that it will reach the full amount of £400. Under such circumstances, and with a firm belief that our suggestion will be agreed to by the House of Assembly, I can discover no sufficient reason for further opposition. If I considered it right to support this measure on a former occasion, much more do I do so now.

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The Hon. the ATTORNEY GENERAL. I see to explain. What I meant to say was, that his Honor exhibited great excitement on the occasion of the second reading of the Bill, before he knew whether it was my intention to vote against it. Now, the only kind of a present that has been found, in one solitary case, in which there was an equal division; and I remember myself that in that case the Bill was said to have been "hung up"—that was the expression used at the time, and I remember distinctly, as to the fact of that Bill. My purpose is to ascertain whether we are competent to go into this Bill at the present juncture. With respect to the Bill, I have mentioned, no further proceedings were taken, and it was laid.

The Hon. Mr. HOLL. I would have pressed the motion had time permitted, but in yielding to the convenience of the legislature I would only remark that it is incomprehensible to me how your Honor can possibly have your present intention of passing the Bill with a Salary of £300 after your vote of £400 as suggested to the House of Assembly.

The Hon. Mr. HOLL. I stated that if it went into Committee our intention was to raise the salary to £350. From what has fallen from the Hon. the Attorney General, the subject under discussion has assumed a different aspect. The Bill will go into committee under much more favorable circumstances—a great difficulty is removed by the resignation of his honor, the Attorney General, the further consideration of the matter dispensably. It has reference solely to his successor.

The Hon. Mr. SWABY. I repeat, I am not aware of any reason which has led your Honor to come to a conclusion different from what you arrived at the other day. As I have all along maintained I conscientiously think that the compact with the crown is inviolable, but notwithstanding all that, if you had the power of changing from fees to a fixed salary, it would be essentially necessary, I should think, to complete the arrangement by entering upon such an investigation—but whoever heard of legislators or business men taking a step such as, as you now seem bent to do! It is entirely wrong, and most assuredly it will receive no sanction from my lips.

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