

## HOUSE OF COMMONS

Thursday, April 16, 1868

The Speaker took the Chair at three o'clock.

### MR. J. J. ROSS IN CUSTODY

Mr. J. J. Ross appeared at the Bar in custody of the Sergeant-at-Arms, and made affidavit that his absence yesterday, when he should have been sworn as a member of the Joliette Election Committee, was owing to a detention of trains.

Mr. Walsh moved that the excuse be deemed sufficient, and that Mr. Ross be discharged from the custody of the Sergeant-at-Arms.—Carried.

### JOLIETTE ELECTION COMMITTEE

Messrs. Tremblay, J. J. Ross, Stirton, J. S. Ross, and Scatcherd (Chairman) were then sworn at the Clerk's table as a Committee to try the Joliette Election.

### MONTREAL EAST ELECTION

Mr. Walsh, from the General Committee on Elections, reported the following as the names of the Committee appointed to try Montreal East election—Messrs. Dunkin, Hagar, L. H. Masson, McConkey and Blake (Chairman).

### TOO MANY DEPARTMENTS

Mr. Jones (Leeds) gave notice that when any of the Bills for the organization of any of the new departments was before the House, he would move a resolution to the effect that in the opinion of the House it is for the interests of this Dominion that the number of His Excellency's advisers who should be in the receipt of salaries, should not exceed nine.

### HEMLOCK TIMBER

Mr. Pope moved to add Hon. Mr. Blanche to the Committee on the subject of protecting hemlock timber.—Carried.

### FIXING A SALARY

Sir John A. Macdonald moved that to-morrow the House will resolve itself into Com-

mittee of the Whole to consider a resolution relating to the salaries of the officials mentioned in the Act respecting penitentiaries.—Carried.

### CONTINGENCIES

Hon. Mr. Langevin moved that on Monday, immediately after routine proceedings, the House will resolve itself into Committee of the Whole to consider third report of the Committee on contingencies.—Carried.

### CRIMINAL LAW

Sir John A. Macdonald introduced six additional Bills relating to the Criminal Law.

### MILITIA BILL

Hon. Mr. Cartier intimated that he would move the second reading of the Militia Bill on Tuesday, and would then explain the views of the Government with reference to fortifications, and the amount of money they were to ask for that purpose.

### THE ESTIMATES

The House was moved into Committee on the Estimates—Mr. Jackson in the Chair—commencing with the estimates for administration of justice.

On the item Circuit Allowances and Contingent Expenses, Ontario, \$13,000.

Mr. Blake said the doubt expressed by the Auditor-General in his letter of the 5th December last, as to the liability of the Consolidated Revenue Fund of the Dominion, for certain charges appeared to have been solved, so far as the Government could solve it in these estimates, by the determination that any payments authorized by Acts of the late Province, were payments not merely to be considered as liabilities of the Dominion of Canada, but payments authorized to be made from time to time as charges on the consolidated revenue, without any vote of Parliament at all. He apprehended, so far as his investigation of the meaning of the Union Act enabled him to judge, that this was an erroneous view. He thought the proper course

for the government to have taken was to have asked a vote for any payments which were not distinctly enumerated in the Union Act as charges on the Consolidated Revenue Fund. The question was a very important one, as it affected the annual expenditure of four or five millions, whether Parliament was to have an opportunity of pronouncing upon it and revising the scale of expenditures, or whether it was to be held as authorized by Acts of the late Province.

**Mr. Johnson** said he would not assert that the salaries of the Judges should be reduced; but he held most emphatically that the salaries of Judges in the various Provinces should be the same. If the salaries in Ontario and Quebec were too large, let them be reduced; if in New Brunswick and Nova Scotia they were too small, let them be increased. But at all events let all the Provinces, as regarded their Bar and Bench, be put on the same footing. If justice was to be equally administered throughout the Dominion, the salaries of the Judges should be the same.

**Sir John A. Macdonald**, in reply to Mr. Blake, said the list of charges on the Consolidated Revenue Funds in the Union Act should be looked at from an Imperial point of view. The Imperial Parliament had certain interests to protect, and they therefore provided that the first charges should be expenses of collection, interests of public debts of the Province and the salary of the Governor-General. These having been protected, others had to be protected from the colonial point of view. This was accomplished by the provision that all acts of the various Provinces existing at the time of the Union should remain in force until modified or repealed. Under this provision he held that the Judges of the various Provinces had precisely the same right to their salaries as fixed by statute in the quarter succeeding the 1st of January last, as they had in the quarter previous to that date. He thought, however, it was advisable that the whole civil list should be revised and re-enacted, and the Finance Minister had prepared a measure for that purpose. The list of judicial salaries would thus come to be revised, but of course the utmost care should be taken to preserve good faith with those who had interests sanctioned by statutory enactment.

**Mr. Blake** agreed that the Dominion should fulfil the obligations transferred to it from the various Provinces; but still held that the expenditures to which he had referred should

[Mr. Blake (Durham West).]

not have been made charges on the Consolidated Revenue Fund until distinctly placed on it by the Parliament of the Dominion.

**Hon. Mr. Rose** said whatever might be the technical construction of the Union Act in spirit, it required the Dominion to meet the obligations created before the Union by the statutes of the various Provinces. He agreed, however, that it was desirable that this Parliament should take the earliest opportunity of re-enacting the statutes under which these obligations existed.

**Mr. Johnson** said the Government, without any authority from Parliament, had increased the number of heads of departments to 13, at a salary of \$5,000 each, with thirteen deputies at \$32,000. If this could be done under the Union Act, there was nothing to have prevented the salaries of the Judges in the Maritime Provinces from being placed on the same footing as those of the Judges in Ontario and Quebec.

The item was agreed to, as also the corresponding items for the other Provinces.

On the item of secret and detective service, \$50,000.

**Mr. Mackenzie** asked an explanation of the entries in the public accounts with reference to the expenditure of \$100,000, voted as secret service money for 1866-67.

**Sir John A. Macdonald** said fifty thousand dollars had been placed at the disposal of a sub-committee of the Privy Council, consisting of four members, for secret service. At the 1st July last they had expended \$41,600, and the balance of appropriations was considered to be wiped out. In the previous year there had been a vote for frontier service, and some of the accounts, properly chargeable against that vote, had been erroneously charged against the secret service. This occurred during his absence in England, and on his return he at once said that these accounts ought not to have been so charged.

**Mr. Mackenzie** said that in the list of unexpended appropriations, on page 101 of public accounts the unexpended balance of secret service money of 1866-67 was stated to be \$34,526. This would make the expenditure to have been \$66,000 instead of \$41,000.

**Sir John A. Macdonald** said the difference between the \$41,000 and the \$66,000 should have been charged against the ordinary administration of justice.

**Hon. Mr. Rose** explained that the difference consisted of payments of accounts from the stipendiary magistrates, Messrs. Ermatinger and McMicken.

**Mr. Mackenzie** said, according to these explanations there must be an extraordinary system of bookkeeping in the Finance Department. Did Ministers mean to say that in the estimates of 1866-67 no provision was made for the stipendiary magistrates?

**Sir John A. Macdonald**—For their salaries, but not their accounts.

**Mr. Mackenzie**—If the whole \$100,000 had been expended on secret service, would the stipendiary magistrates have remained unpaid? He also begged to ask whether the vote of \$50,000 now proposed included provision for the salaries and accounts of these gentlemen?

**Sir John A. Macdonald**—No; no; there was nothing secret or detective so far as these salaries were concerned. Certain of the accounts of these gentlemen appeared under the ordinary administration of justice, but there were special charges for which no vouchers were produced.

**Hon. Mr. Holton** complained that the public accounts committee had not been called together again to consider this and similar matters in the public accounts.

**Hon. Mr. Howland** said the committee at its meeting a few days before the adjournment asked for certain information which there had not been time to furnish before the adjournment. They would be called together on an early day.

The item was agreed to.

In connection with the next item—arrears of 1867, \$13,937.

**Mr. Blake** inquired if the Finance Minister included among the receipts an account of the Province of Ontario the law fees and law fee fund?

**Hon. Mr. Rose**—No.

**Mr. Blake** said when the Finance Minister made his budget speech in December he remarked that he was not sure whether the member for Cornwall might not consider these funds as belonging to the Ontario Government. These were local funds consisting of fees levied from the suitors in order that the suitors might pay a fair proportion of the expenses of the administration of justice, and we ap-

prehended they both properly belonged to the Province. They ought at least to be included in the suspense account.

**Sir John A. Macdonald** said these funds were created by separate statutes for separate purposes. One of them was the Osgoode Hall fee fund. He supposed the Dominion Government was responsible for the debt on account of that building, and that the fee fund should go in payment of the interest or towards a diminution of the obligations. As regarded the County Courts fee fund, that he apprehended must belong to the Dominion. The law provided that the salaries of County Judges of Upper Canada should be defrayed from a certain fee fund. There was a provision that if the fund was insufficient, the deficiency should be charged on the general revenue. The fee fund, therefore, he considered must be looked upon as a fund to be received by the Dominion Government towards payment of these salaries. If handed over to Ontario the Government of that Province should apply it to the payment of County Judges so far as it went, and the Dominion Government would be liable for the deficiency. The County Judges in the other Provinces were paid by the Dominion Government without a fee fund; but as the law now stood in the case of Ontario, the liability of the Dominion Government was to pay any deficiency in the salaries, after the law fee fund was exhausted.

**Mr. Blake** said, under the Statute of the late Province of Canada, the Consolidated Revenue was chargeable with any deficiency as regarded the salaries of County Judges remaining after the fee fund was exhausted; but the Union Act directed how the salaries of the Judges—not merely any deficiency in their salaries—should be paid by the Dominion Government; and this was the only reasonable provision that could have been made. It would have been unreasonable to say that as regards one Province there should be illusory provision for the payment of the Judges by the Dominion Government, while as regarded the others there should be a substantial provision. He hoped such an obvious injustice would not be suffered to exist. As regarded the future, he took it for granted it would be rectified.

**Sir John A. Macdonald** said the subject of stamp and fee funds generally in connection with legal proceedings would shortly be dealt with in a Bill to be introduced by the Minister of Inland Revenue.

**Hon. Mr. Dunkin** said the law of fee funds in Lower Canada went to the payment of officers who were entirely chargeable on the funds of that Province. The Dominion Government had nothing to do with them. If the Government, however, would be kind enough to take these funds and pay the officers chargeable on them, they would be welcome to do so.

**Mr. Wood** said the officers in Upper Canada corresponding to those in Lower Canada whose salaries were chargeable on its fee funds were paid out of the revenues of Canada corresponding to those in Lower Sheriffs, Clerks of the Peace, Clerks of the Courts, etc. The fee funds referred to by the member for West Durham were peculiar to Upper Canada. The Finance Minister had assumed that these funds should go into the revenues of the Dominion, but if there was a correct principle it should extend to the whole Dominion, and similar funds should be collected from other Provinces for payment of the Judges. They amounted to a very considerable sum, and to say that Ontario should contribute a fund nearly sufficient to pay its Judges, while the Judges in the other Provinces were paid their whole salaries out of the Dominion Treasury was so monstrously unjust that he could not believe the Finance Minister would persist in including these funds in the Dominion revenues.

**Hon. Mr. Rose** said the Treasurer of Ontario had pressed his views very strongly on the Dominion Government, and it was his (Mr. Rose's) intention to go into a thorough examination of the whole subject, with a view to arriving at a just conclusion.

**Mr. Blake** remarked that he had suggested in another place that the readiest method to settle the difficulty would be for the Ontario Legislature to repeal the Acts creating these funds and then to re-enact them, appropriating the funds to Provincial purposes. (Laughter).

The item was then agreed to.

On the item, Montreal River Police, \$16,-100.

**Hon. Mr. Smith** asked why this should be charged against the Dominion?

**Hon. Mr. Rose** explained as to this and a similar item for Quebec, that there were certain funds arising from tonnage dues, etc., which went towards payment of this charge; that the services of these police had been

availed of for certain purposes by Government, and that the Dominion Government would settle with the Quebec Government and the local Harbour authorities how much of the expense it should bear.

**Sir John A. Macdonald** said after the close of navigation last year, Government gave orders that these police should be discharged on a fortnight's notice, as they were not required during the winter, but before the notice expired it was necessary on account of circumstances which arose to employ them on frontier service. A similar provision might require to be made for some of the ports in the Lower Provinces, although he did not think such a necessity existed with reference to Ontario.

**Mr. Mackenzie** held that every port from the profits of its trade should pay for the force necessary to preserve order among the sea-faring men who brought it that trade, but if the Dominion Government was to pay a police force for Quebec, Montreal, Halifax, and Saint John, he insisted that the same provision should be made for Ontario ports. It was not right that Ontario, which paid so much of the taxation, should not have her fair share of the expenditure.

**Mr. Dunkin** thought it unfortunate that there should be so much sensitiveness exhibited as between the Provinces. If any ports in Ontario could be shown to be in analogous circumstances to those of Quebec and Montreal, let a similar provision be made for them. But he held it to be clear that the responsibility of making the provision for preserving the public peace rendered necessary by the large influx of sailors at our ports for sea-going vessels should not be thrown on local municipalities. If the City of Quebec was required to make such provision she could not do it, and it would not be done. The Union Act threw on the Dominion Government the responsibility of caring for the interests of navigation, and this charge properly belonged to it. The Dominion Government received certain funds for that purpose and ought to discharge the duty in connection with which these funds were created.

**Hon. Mr. Fisher** contended that the Union Act never contemplated throwing on the Dominion Government such expenditure as this, the first charge in which was the salary of Judge of Sessions of the Peace, \$2,400. Such a charge as that clearly belonged to the Local Government.

After the recess,

**Mr. Beaty** said that before giving a vote on this subject he desired more information. He did not see why the people of the West should be called on to pay for these river police, and he warned the Government that by their present course they were only furnishing another weapon to the disaffected anti-Union party. But having decided on it, he knew the Government would carry it. Now, his constituents sent him there to support the Government; but he had told them distinctly that he would not be passive in the hands of any party. He was a party man (hear, hear), and would only support the Government when he found them dealing equally and fairly by the whole Dominion. But while saying he was a party man he would also state that he did not take his motto from Yankeedom, or any other "Dom". He believed the interest of the State to be superior to party, and would vote accordingly.

**Mr. Johnson** was surprised to hear such an argument from a member of that House. (A voice—"Louder.") He thought he could make himself heard in that House, although judging honourable members by their statements, he doubted whether he could make himself understood. (Loud laughter.)

**Hon. Mr. Smith** contended that the River police should not be a charge on the Dominion. It did not seem to him that because the General Government had control over trade and navigation generally that the Government of Quebec could not from harbour dues and other sources raise enough to support these River Police.

**Hon. Mr. Chauveau** said the Dominion received the dues which ought to go to the support of this police. Hence the Dominion had to furnish this River Police.

**Hon. Mr. Cartier** said the term "River Police" was a misnomer. They should have been called "Government Police." The corporations of Quebec and Montreal had no jurisdiction on the water, could not protect property off the land. Hence the necessity for a system of Government police, with privileges to enable them to act in these cases. The river police were under the charge of Local Justices, Coursol & Maguire, but the expenses of the police were necessarily a charge on the Dominion. This was for the present, but hereafter the charge for the officers superintending would not be a charge on the Dominion.

99038—33

**Mr. Wood** opposed the vote, thinking it most extraordinary that there should be such a difference between land and sea in the matter of police.

**Hon. Mr. Anglin** took a similar view, and was glad to hear an explicit statement that hereafter the salaries of these justices would not be a charge on the Dominion.

**Mr. Young** contended that it was very unfair that the Government should pay for the police forces of one Province while the other Provinces paid for their police out of municipal funds. He hoped that these items would not appear in the estimates of next year.

The items, after further discussion, were agreed to.

On the item—Penitentiary, Kingston, \$130,561.

**Hon. Mr. Anglin** called attention to some extraordinary items in the public accounts under this head. One was a payment to **Mr. Litchfield**, for use of his horse and carriage for nine years, \$720. This looked like some of the jobs to which they had been accustomed in the Maritime Provinces before Confederation. Another was a payment to a **Mr. MacDonell** for seven years' services, \$2,800. Another clearing up of old scores was a payment to the warden for seven years' service in connection with Rockwood Asylum, \$2,800. He found also salaries of two chaplains at \$1,600 each; he thought this was a large amount. The allowance for the New Brunswick penitentiary, \$8,200, he thought was not enough.

**Hon. Mr. Rose** said the estimate of \$8,200 corresponded with the grant which had been usually given, and he had no other data to go on.

**Mr. Young** hoped some explanation would be given of the payments in the two cases for seven years' services.

**Sir John A. Macdonald** said this was the first time attention of the Finance Minister had been called to these payments, and he would make enquiries about them. He (Sir John) did not know anything about them. The salaries of the chaplains as given in these estimates were fixed by law, but they were considerably reduced in the resolutions he was to submit to the House in connection with his Penitentiary Bill.

**Hon. Mr. Fisher** considered the salaries of the chaplains were too high.

**Sir J. A. Macdonald** said his honourable friend a little ago complained loudly that the Judges of the Maritime Provinces did not receive more than the salaries they had been accustomed to get, and now he was shocked that poor clergymen should get 400 pounds a year. It was evident he thought more of the law than of the Gospel.

**Hon. Mr. Fisher** said he had taken no part in the discussion about Judges' salaries, and had given no opinion on the subject. As to the chaplains, he did not see why two clergymen having the charge of parishes for which they received stipends, could not perform the duty for half the money.

**Hon. Mr. Holton** expressed his surprise that the payments for seven years past services in the Penitentiary, which belonged to the Department of the Minister of Justice, should have been made, and yet that honourable gentleman could not explain why they were made. The public accounts stated that they were made by Order-in-Council, and that Order-in-Council must have been based on a report by head of the department.

**Sir John A. Macdonald** said they were not made on his report, and he knew nothing about them.

**Mr. Connell** complained that there should be an appropriation for the Criminal Lunatic Asylum, which by the Union Act must belong either to Ontario or Quebec. If this course were pursued, the dissatisfaction existing in the Maritime Provinces would be greatly increased. In New Brunswick the asylum was maintained by the Local Government.

**Sir John A. Macdonald** said that if there was dissatisfaction about this item in New Brunswick, or in the honourable gentleman's own mind, it was a very unreasonable dissatisfaction. The Union Act provided that Penitentiaries should be maintained by the Dominion, and lunatic criminals, as well as other criminals, must be provided for by the Dominion.

**Mr. Connell**—It is not so in New Brunswick.

**Sir John A. Macdonald**—It ought to be so and must be so. There could be no doubt as to the propriety of having a separate prison for lunatic criminals, and it was as necessary that such a prison should be maintained by the Dominion Government as the Penitentiary itself. In New Brunswick and Nova Scotia there might not be a sufficient number of that class to require separate prisons; but proper provision for their safekeeping, sepa-

rate from the other prisoners, must be and would be made by Government.

**Mr. D. A. McDonald** said he had gone through the Rockwood Asylum and was not satisfied with what he saw there. Many of the lunatics were peaceable and quiet, but there was no provision whatever for their getting out to breathe the fresh air. He hoped the leader of the Government would see to having a remedy provided for this state of things.

**Sir John A. Macdonald** said the Asylum had been growing by degrees by annual votes. He believed the peaceable inmates were allowed to work in the grounds outside. As regarded those with suicidal, homicidal, and other disagreeable propensities, it might not be safe to let them outside, even if there were walls about the grounds.

The items for penitentiaries and criminal lunatic asylums were agreed to.

On the item of prison inspection, salaries of 4 inspectors, with salary of clerk and contingencies, \$10,800.

**Mr. Mackenzie** said Ontario had passed a law appointing inspectors of its own prisons—surely the Dominion was not to pay other inspectors for the same purpose.

**Sir John A. Macdonald** said the inspectors of the late Province of Canada continued their duties, and were entitled to their salaries, even so far as Ontario was concerned, until the law referred to was passed. They had still also duties to perform with reference to the penitentiary.

The item was agreed to.

On the item Senate, Salaries and Contingencies \$68,458.

**Hon. Mr. Anglin** called attention to the fact that while the mileage charged for members of the House was \$28,500, that for members of the Senate, who were not half the number, was \$28,182.

**Sir John A. Macdonald** said the charge seemed inexplicable.

**Hon. Mr. Rose** said his attention had been called to the matter, and he had made inquiries without receiving a satisfactory explanation. It was a delicate matter to interfere with the contingencies of the Senate, but he would make further inquiries about it.

The item was agreed to, as also \$200,740 salaries and contingencies of the House of Commons.

**Hon. Mr. Smith** objected to the item of \$840 for pensions.

**Hon. Mr. Rose** said this was an obligation which had to be met. Whether it might not be put to the debit of Ontario and Quebec was another question.

**Hon. Mr. Smith** insisted that the Dominion could inherit no liability from the late Province of Canada unless it was created by statute.

**Hon. Mr. Fisher** also contended that pensions given by annual vote in the late Province could not devolve on the Dominion.

**Hon. Mr. Dunkin** said there was a machinery for dividing this obligation between Ontario and Quebec unless it devolved in the first instance on the Dominion.

This and the other items under the head of legislation was agreed to.

On the items Quebec Observatory, \$2,450, do. Toronto, \$4,800; do. Kingston Queen's College, \$500; do. Montreal McGill College, \$500.

**Hon. Mr. Smith** objected to paying grants to observatories in connection with colleges in Ontario and Quebec, while those connected with colleges in the Maritime Provinces got nothing.

**Hon. Mr. Rose** said the observatories at Kingston and Montreal had been got up by private subscription, and were not properly connected with the colleges named.

**Mr. Mackenzie** thought it a dangerous principle to commence making grants for local institutions. If observatories in connection with Queen's College and McGill College were to be aided, those in connection with colleges in the Maritime Provinces had an equal right to be aided.

The items were agreed to.

On the item of six months' grant in aid of schools of medicines and certain other institutions of Ontario and Quebec.

**Mr. Mackenzie** said he considered it most extraordinary that the Dominion Government should assume to provide for these institutions. They had no right to assume that Ontario and Quebec would or would not grant appropriations to these institutions, and had no right to pay away the money of Ontario and Quebec for such a purpose.

**Hon. Mr. Rose** said these grants were simply to pay a debt which had accrued in

consequence of the change of the fiscal year. The grant was for the six months from 1st January, 1867 to 1st July, 1867, and was as much a debt as any other liability of the late province of Canada. The amount had not yet been paid, but Government considered they were bound to pay it.

**Mr. Mackenzie** said this was a matter which belonged to the Parliament of the late Province of Canada, which had assumed to make all the appropriations it considered necessary up to 1st July, 1867.

**Hon. Mr. Holton** thought this was a matter with which the Dominion Parliament had nothing to do. There was no legal or moral obligation even on the part of the late Province of Canada to continue these grants, except from year to year; and under the Union Act, the Dominion Parliament was altogether incompetent to make them.

**Sir J. A. Macdonald** said that a six months' grant had dropped out in consequence of the change in the fiscal year, and this was only found out when the check came by introduction of the new system when Confederation went into operation. He contended that there was an obligation on Parliament to make up the deficiency.

**Mr. Mackenzie**, seconded by Mr. Whitehead, moved that the item be struck out. He again strongly objected to the extraordinary proposition of the Government that the Province of Ontario and Province of Quebec should be coerced into these grants. It was for these Provinces to make them or not as they pleased.

A lengthy discussion ensued, when—

**Hon. Mr. Rose** said he would not press the item that night, and there seemed to be a good deal of feeling on the subject.

**Mr. Mackenzie** said he was obliged to the honourable member.

The Committee then rose and reported progress.

#### MONTREAL WEST ELECTION

**Sir J. A. Macdonald** moved that the Speaker do issue his warrant for the election of a member for Montreal West, in the room of the late Hon. T. D. McGee.

The House adjourned at 1 o'clock.