

The Examiner.

"THIS IS TRUE LIBERTY, WHEN FREEBORN MEN—HAVING TO ADVISE THE PUBLIC, MAY SPEAK FREE."—EURIPIDES.

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CHARLOTTETOWN, P. E. ISLAND, SATURDAY, FEBRUARY 19, 1848.

[No. 29.]

HOUSE OF ASSEMBLY.

WEDNESDAY, FEBRUARY 2.

PRIVILEGES AND ELECTIONS.

(Continued.)

Mr. Rae. The hon. member for Georgetown is mistaken with respect to my expression. I did not say, I wished I had found it out before; but I said the clause *must be repealed*; and my reason for saying so, was that I feared it might be twisted and turned to serve party purposes. On the subject, I consulted those with whom I generally act, and, in consequence of my doing so, a short Bill was introduced; but it had not been properly drafted; and, as it was late in the Session, it was not proceeded in. I never, for a moment, considered the clause as applicable to the Executive, from the time that that body was separated from the Legislature; nor do I consider that any mind free from party feeling, would so construe it. A few words would have amended the Act; but to do so was not permitted me; and the predicament in which we are now placed, is the consequence. The hon. member explained, in detail, his motives for moving, and the part he took relative to the resolution; and then continued, Had the other side allowed the ambiguity to be explained away, what we now witness would not have happened, and the obstruction to the business of the House, and the expense to the country, which the question now creates, would have been obviated. I will not undertake to say, that a Justice of the Peace does not derive some emolument from his office; but I would like the question to be answered by the Home Government. My appointment to the Magistracy, I declined, because I would not put my constituents to the trouble and expense of re-electing me; and, therefore, I have nothing to be ashamed of. In respect to the contempt with which we are invited to treat the opinion of the Attorney and Solicitor Generals, (particularly by our Speaker,) I am sorry to remind him, that, when his seat was in jeopardy, he did not scruple to seek such advice, or set so little value upon it, as he now seems to entertain for it. (Mr. Speaker explained. The case alluded to, he said, was joined in by the whole House.) **Mr. Rae** resumed. I am sorry I am obliged to contradict the hon. Speaker; but I fearlessly assert, that the House was not met, and that the hon. Speaker took the matter solely upon himself. For my own part, I should regret being bound by lawyers at all times; but I have heard it asserted by hon. gentlemen on the other side, that we could not do business in this House without them; and yet, by those very gentlemen, we are ridiculed, because we would treat with respect the legal opinions of those who are even at the fountain-head of the law. The House, sometimes, can do nothing without them; and yet we are now to be called very silly, very weak, and men of most contracted minds, if we (even the very least amongst us) do not consider our judgment superior to the highest of them; I, therefore, confessing my inability to comprehend these things, shall move an amendment to the resolution of the learned member for Charlottetown, Mr. Palmer.

Dr. Conroy. I do not rise to occupy the time of the Committee by again going over the same ground, we have already traversed. We well know in what haste the writ was issued, and likewise the unusual shortness of time allowed for its return; both of which circumstances were studied to cheat and chisel the public, by the late Governor, who, I do not hesitate to say, in so exceeding his duty, unwittingly rendered the election void.—The hon. member quoted an authority to shew that, at some former time, the shortness of time allowed for the return of the writ had upset an election, and then proceeded to shew, from quotations, that any person sitting within the bar of the House, without book or warrant, was positively a stranger and an intruder; and such, continued the hon. member, I contend Mr. Coles is at this moment. He possesses neither the one nor the other; and, according to those precedents, he ought to be placed in the custody of the Sergeant, till the House shall have determined the question now at issue. This is not my opinion, or that of the Crown Law Officers; but it was a rule as long ago as 1557, and must, therefore, be preferable; for, at that period, great attempts were made to infringe upon the liberties of the people. We, Sir, are not now going to surrender them for the paltry service of party. If an attempt were made, by the Queen or her Representative, to cheat only one freeman out of his rights, I, Sir, would stand up in defence of the privileges of that single individual.

Mr. Mooney. According to the learned Doctor's argument, Mr. Douse and Mr. Maclean have no right to seats in this House; for, if I recollect aright, the writ for their District was returnable in three days less time than that now in question. It would follow, then, that (as he disclaims all personal or party feeling, and would have us

believe that he is actuated by the purest motives, and the strictest impartiality,) that he should, therefore, demonstrate this to us by his endeavours to upset the election of Messrs. Douse and Maclean.

Mr. J. Longworth. I do not think the question decidedly one of dry law. On the other hand, in my opinion, it affects the people at large, and, in dealing with it, we are bound to consider whether we, as their representatives, can be justified if we forfeit the trust reposed in us. I hold that the cases of the three hon. gentlemen, the Speaker, Mr. Macdonald and Mr. Palmer, have nothing to do with the present enquiry; inasmuch as the House took no action on those cases at the time of their occurrence, even if—but which I do not for a moment imagine—any one of those gentlemen knew of the existence of the clause in question. No one, however, it is certain, thought proper to put it in operation then; and, therefore, I do not consider it sound argument to refer to those cases now. In what has fallen from several gentlemen on the other side, I discover a change of opinion. They no longer adhere to what they subscribed last year; and I ask them what has brought this change about, as I, for one, Sir, will never yield up my opinion on a question of privilege, be the emergency ever so great. The question is one of an extra-judicial nature, and nothing should influence us in deciding on the rules and regulations of parliament, but a due and full regard to our constitutional privileges. The Supreme Court cannot interfere with us; and, in a work, which I hold in my hand, so lately published as 1844, it is said, that even the Judges cannot; but that all the laws of minor Courts must be in accordance with the laws of parliament, and no court whatever can control parliament. In whatever point of view the case is looked at, the conclusion is the same. When the writ issued there was an end to it; and, had the Sheriff returned either of the candidates, whichever it was, he would have been entitled to the vacant seat. Had Mr. Coles never gone to the hustings, he could have sat here by virtue of his former Indenture; but, once having acted under the writ, he must abide by the result; which result, I conceive, to be that his seat is still vacant; and, consequently, I feel bound to vote for the original resolution.

Mr. Roe. I shall vote for the retention of his seat, by the Hon. George Coles, not simply because I consider him to have been duly elected; but, also, because I think he has been arbitrarily and oppressively dealt with. I am rather at a loss to understand what is meant by the opposite party, when they pretend to have taken their present stand, in order to oppose the selling of the people's rights. But when a large body of people have given their suffrages, and placed their candidate at the head of the poll, to refuse to admit him to take his seat in the Assembly, I can well understand to be a most unjust interference with the rights of the people. I wish to be guided by the law, because, were I not so directed, I should not be certain that I was pursuing the path of justice. Many of the precedents which have been brought forward, I do not much value. We desire to follow the practice of the Imperial House of Commons, as nearly as possible; but, at the same time, we must admit, that, in a variety of cases, we can follow their example only at a humble distance. Their power is immensely greater than ours; and, conscious of our great inferiority, we ought to act as becomes our weakness; and, as the Canadians did, submit to the law. With vision unobscured by party prejudice, we ought to act prudently and uprightly. If we do otherwise, the result must be adverse and injurious, both to the interests of the country, and our own credit as legislators.

Mr. D. Maclean addressed the Committee, in favor of the original motion; and, from the little we could gather, said he had opposed the Government in 1843, and he did so still; and, as to the opinion of the Crown Law Officers, that he treated with contempt. For a justification of his contempt, it was only necessary for him to refer to the Report of the Commissioners on the Currency question, in which the Attorney General had displayed his ignorance on that subject.

After a short debate, as to whether or not the question should be brought to a close this night, the Chairman reported progress, and asked leave to sit again, and then the House adjourned till

THURSDAY, FEBRUARY 3,

When **Mr. D. Macdonald** opened the debate by requesting, that the reply of His Excellency, Sir Donald Campbell, to the communication of the hon. Speaker, apprising His Excellency of the vacancy, should be laid before the Committee.

Mr. Rae briefly addressed the Committee, and then moved, that the Sheriff and some others be examined touching the return of the writ.

Mr. F. Longworth said, this is, evidently, a move to obtain time, as Mr. Fraser is not arrived; I hope that

the House will not treat as nothing their solemn Resolution of last year; and I might have hoped that as the Resolution proceeded from Mr. Rae he would have been the last to oppose its operation. To my surprise, however, he now contends that the clause, as explained by the Resolution, is not the law of the land. I, on the contrary, contend that it is the law of the land, according to the interpretation given to it by his own motion. I do not think we should ever have heard of this opinion of the Crown Law Officers, had not the late Governor been disappointed in the result of the Election. I, however, set very little value upon it; because, in the Chambers below, we, one day, hear the gentlemen of the long robe arguing that one thing is law, on the next, they may be heard contending for the very reverse. From what had fallen from Mr. Maclean, it was clear the Attorney General was not an infallible legal authority. Having maturely considered what has been advanced, on both sides of the House, I see no reason to admit the evidence sought for by the hon. member for Prince County, and shall, therefore, vote against his motion.

After several other members had addressed the Committee, the question on Mr. Rae's motion was put and lost. The House then adjourned till three o'clock, and, being met,

Mr. Palmer again called the attention of the Committee to the fact of the Hon. George Coles' remaining within the Bar of the House; and said it was treating the House with contempt, and if he longer persisted in doing so, he (Mr. Palmer) would divide the House upon the question.

Mr. D. Maclean thought that, as his colleague had been allowed to keep his seat for three days, it was then a matter of no consequence.

The **Speaker** could not remain silent. He declared that Mr. MacCallum, or any person from the street had as much right as Mr. Coles to remain within the Bar; and protested that, if he stood alone, he would divide the House upon the question.

Mr. Longworth followed on the same side, and Mr. Le Lacheur and Mr. Rae referred to several cases in which members, similarly circumstanced to Mr. Coles, had been allowed to remain within the Bar.

Mr. D. Macdonald did not intend to take up the time of the Committee with arguments which have been already so often used on this measure; but would beg to remind the Committee of the consequences that would result from declaring the seat of the Hon. Mr. Coles vacant. We have before us the Letter of His Excellency the Lieutenant Governor, in answer to an application of the hon. the Speaker for the issuing of a Writ in the case of the Hon. Mr. Warburton, wherein he positively states that he cannot comply with that application, as he is advised by the Crown Law Officers (whom he is bound to consult) that he, Mr. Warburton, had not vacated his seat in this House by his accepting a seat in the Council. If Mr. Coles' seat in this House be declared vacant, owing to a slight irregularity in his Election, he will then stand in the same position with Mr. Warburton; and His Excellency will be placed in the same difficulty with regard to the issuing of a Writ of Election to fill up such vacancy. The consequence, he (Mr. Macdonald) feared, would be that no election could take place. It was very easy to say that these gentlemen had only to go back to their respective Districts, and that they would be sure to come back again; but he would like to be told how this difficulty was first to be removed.

Mr. Whelan said he had not yet offered his opinion on the question before the Committee, but that he would not take up much time in expressing it; especially, as so much had been said on both sides, and since the evening was so far advanced. He had, indeed, risen several times, with the intention of taking part in the discussion; but until then had not been so fortunate as to obtain a hearing. Whether this was attributable to the remoteness of his place from the chair; or to the extreme anxiety, displayed by gentlemen on the other side of the House, to make themselves seen and heard, he was not prepared to affirm; but certain it was that "the eye" of the Chairman had not been on him—he would not quote the words of an honourable gentleman opposite, and say, "the evil eye." "For my own part (continued the hon. member) I have no desire to travel at any great length over the various topics introduced in the course of the debate; for to do so, I know, would be useless; for, as was well observed, by an hon. member, on this side of the House, at the commencement of the debate—however forcible, and however clearly expressed, might be the arguments brought forward in opposition to the resolution before the Committee, they would be urged in vain, a majority of members being, no doubt, predetermined to carry the question, right or wrong. This consideration, however, apart, I am not so vain as to imagine that I possess the power to make proselytes of honourable gentlemen on the other side;