

but, at the same time, I honestly assure those honorable gentlemen, that—although I do not believe myself to be in general, too tenacious of my own opinions—I am not likely to become a convert to their views with respect to the present question, from a review of the arguments, or rather sophistries, which they have advanced in support of the resolution submitted by the hon. and learned member for Charlottetown. However, Sir, allow me to revert, for a moment, to those arguments, if arguments they may be called. Their whole sum and substance are, to me, it appears, to the effect—that the House of Assembly, last Session, passed a resolution, in which it was declared, that a member of this House, on being called to the Council, vacated his seat in this body—that the Act, or clause, of the Act, to which this resolution referred, was clear and explicit, inasmuch as the House had declared it to be so—that the Assembly was the only competent authority to determine this point—that its determination should be absolute—that the right assumed by the Crown, through the agency of its legal advisers, to interpret an Act of Parliament, was unconstitutional, and an infringement on the privileges of the Assembly, and dangerous to the rights and liberties of the people. Opposed to this mode of reasoning, it has been contended by hon. members whose opinions are in accordance with my own—that the question is one of law, and not of privilege—that the House are not the dispensers of the law—that it is for the Government to determine in what particular cases an act is binding or not binding—that the 24th clause of the Act 6th Will. 4th, cap. 24, became inoperative on the separation of the Councils, because a member of the House could hold a seat at the Executive Board, and, at the same time, attend to his duties in the Assembly; whereas, whilst the Councils were joined, it was impossible for a member of the House to sit in both branches—that after the Councils were separated, three members of the House were called to the Executive Council, and still retained their seats in the Assembly—that it is not the practice in the Mother Country, for a member of the House of Commons, on being called to the Privy Council, to vacate his seat in the former, unless he receive an office of emolument, which is, indeed, often the case, in connection with his Ministerial capacity. By a comparative reference to this fact, it will be perceived how deeply read, in parliamentary practice and precedents, is the hon. member for Georgetown (Mr. Haviland), who in a resolution submitted by him, last Session, proposed,—that it was in accordance with constitutional practice, and with the principles of Responsible Government, for a member of the House of Assembly to vacate his seat on being called to the Council. (Here Mr. W. read from the Journals the resolution referred to.) The question of Responsible Government is mentioned in the resolution which I have just read; but it is not necessary to the carrying out of that system of Government, for a member to go back to his constituents on being called to the Council, if Responsible Government means—as I contend it does—British Government, according to the signification given to the term in every other British Colony. That the principle sought to be established, by the advocates of the original Resolution, is not a British one, can be shown by reference to far higher authority than that of the “constitutional” lawyers of this House.

Dr. Conroy rose to order. He said the hon. member was straying from the question then before the Committee, which was, whether Mr. Coles should, or should not, sit within the Bar.

Mr. Rae said Mr. Whelan was not out of order, as he was contending for Mr. Coles's right as a member to sit within the Bar.

Mr. Whelan continued. The hon. member (Dr. Conroy) is somewhat too hasty in his interruption. Other hon. members have been permitted to introduce various topics connected with the principal question. He should practise towards me that forbearance which he shows to others, and which his own speeches so very often require. I have not lost sight of the question incidentally raised, in reference to Mr. Coles's right to sit here, while his claim to act as a member is under consideration; and, I contend, that in arguing upon this major question, we, at the same time, discuss the minor one. I was about to observe, Sir, when interrupted, that Lord Stanley—in a Despatch to the Governor of New Brunswick, in reference to a Bill which had passed the Legislature of that Province, enacting, that a member of the House accepting a seat in the Council forfeited his seat in the Lower Branch—declared that the principle was un-British, and questioned the propriety of making such a measure the law of the land. (Mr. Whelan here read that part of the Despatch which appears in the New Brunswick journals.)

The hon. Speaker here rose and said, that, notwithstanding the opinion of Lord Stanley, the Bill was not disallowed.

Mr. Whelan resumed. Well, although Lord Stanley's Despatch had been before alluded to, the hon. Speaker did not give the information which he has now communicated. But, whether the Bill was or was not suffered to go into operation—be the fact as it may, my position cannot be weakened by admitting it. I assert that the principle is not British, Lord Stanley bears me out in the assertion. Responsible Government has been so often spoken of, in the course of the debate, that I cannot refrain from making one observation in reference to it. I cannot see that the responsibility which a member of this House owes to his constituents, is weakened on his becoming an adviser of the Crown. If he was in reality

worthy of their confidence when sent here yesterday, is it probable that his nature or disposition should be so changed, to day, on his being invested with an honorary distinction, that he should, all at once, become unworthy of that confidence? No: such a moral metamorphosis cannot be, either immediately or so easily, effected. In our debate upon the question of Responsible Government, last year, it was urged that three or four members of the House should hold seats in the Council. Now, suppose that, at the commencement of a new Parliament, four members are called to the Council from the party having a majority—this majority consists of thirteen—the seats of the four members are declared vacant,—then the minority of eleven at once become the majority until the seats of the new Councillors are again filled. The thirteen who supported the policy of Government are reduced to nine, and the eleven may, if they please, pass measures highly prejudicial to the continuance of the Government. Under such a principle, Government must become weak and vacillating,—under the principle of the original resolution, as applied to Responsible Government, the minority is transformed into the majority. As to the office of an Executive Councillor being one of emolument, I look upon it as a mere subterfuge, and not an argument. The Speaker of the House of Commons is *ex officio*, a member of the Privy Council. He never acts. An Executive Councillor in this Colony is *ex officio* a Justice of the Peace—he never performs the duties of one. He is a Commissioner in the Courts of Admiralty and Divorce, but is seldom or never called upon to act. An Executive Councillor holds an office by which he loses, so far as his pocket is concerned, rather than gains. Sir, I consider it an idle task to dwell for any length of time upon such arguments as these. It was my wish to have spoken at an earlier stage of the debate; and, had it been in my power to do so, I would, perhaps, have reviewed more minutely the arguments used in support of the resolution offered by the hon. member for Charlottetown. The most plausible of all these arguments is that which relates to the privileges of this House. In order to support their assumption, that our privileges are involved in the question, gentlemen on the opposite side of the House have entertained us with elaborate reports, setting forth the result of their enquiries through the several authorities in which the privileges of Parliament are set forth and defined. I do not presume to cope, in matters of constitutional law and parliamentary usage, with the honourable gentlemen who have taken a different view of the question from that adopted by my honourable friends and myself, upon this side of the House. Nor am I ambitious of that notoriety which some of the “constitutional” lawyers in this House have attained—and I may remark that I have not my “evil eye” on the learned member for Georgetown)—by their frequent references to Parliamentary authorities—that notoriety, which, I consider, often gives them a claim to be ranked with that class of would-be poets, of whom it was said, they had “just enough of learning to misquote” but I would be regarded as one who cherishes as profound a reverence for the real and unmistakable privileges of Parliament, as may be found to distinguish the conduct of any of those diligent investigators into the mysteries of Black Letter Lore. And I do not, for a moment, suppose, Sir, that the vote which I mean to give upon the resolution now before you, will be in the slightest degree dangerous to the security of those privileges, for the preservation of which they affect so much zeal. Had the Crown dared to dispute our right to pass such laws in this House, as the wants and circumstances of our constituents demanded, and the principles of the Constitution allowed—had it presumed to assert a control over the appropriation of the public money for wise, and necessary, and constitutional purposes—had it insinuated a claim to interfere in our discussions—had it assumed a right to govern the conduct of any member within the walls of this Assembly, I would then have considered that our rights and privileges were invaded, and would have stood boldly forward in their defence. But the matter before you, Sir, involves, in my opinion, rather a question of abstract law, than of privilege—a question that may be embodied in these simple words—Is there any enactment of this Island to compel Mr. Coles to vacate his seat? The Law Officers have distinctly declared that there is not. But we are advised to reject their opinion, and to judge for ourselves. Here, then, we are called upon to act in a two-fold capacity: first, as the makers of the law, and secondly, as its interpreters. We are called upon to renounce the opinions of the Crown Officers. I might as well say to our advisers and instructors on the other side of the House—“Renounce the opinions and declarations with which the Library has supplied you, and upon which you so frequently lean for support.” The writers quoted were, no doubt, learned in the usages of Parliament; but they were no less liable to error than other men. I cannot conceive why men, writing of events now dimly see through the obscurity of the past—men, of whose love of truth and impartiality we have no positive testimony—should be considered more worthy of credence, than those who have equal ability to express an opinion—whose motives we cannot impugn, and whose freedom from prejudice and party feeling, so far as relates to their legal opinion in this matter, is unquestioned. I will now, Sir, ask the supporters of the resolution one simple question. Supposing the ambiguous clause of the Act, which led to the present discussion, had been obliterated from the Statute Book, would they contend that Mr. Coles was bound to vacate

his seat in accordance with the resolution passed last Session?

Mr. Haviland.—Yes.

Mr. Whelan. Then you admit that a resolution is equally binding, in such a case, as an Act of Parliament?

Mr. Haviland.—No.

Mr. Whelan.—No!! Well, I can only say, that after this, I shall not be surprised at receiving a denial from that gentleman upon any point. However we may have all erred in reference to the Resolutions of last Session, we must admit that they are insufficient to confirm Mr. Coles in his seat, or deprive him of it: for if we argue upon a contrary proposition, we are compelled to adopt the conclusion, that the Lieutenant Governor, who issues a writ for the election of a member in the room of one who accepts a seat in the Executive Council, is not bound by law, but by the mere expression of opinion on the part of one Branch of the Legislature. Acting in pursuance of such an assumption, this House, independent of law, might, with perfect consistency, proceed to declare its own permanence, or, in other words, to create itself. But, Sir, I consider it an unprofitable expenditure of time, to argue in favour of the resolution of last Session. It could not possibly have the effect of vacating Mr. Coles's seat; for if it had, the Legislature of New Brunswick might have spared themselves the trouble of passing a Bill which went to establish the principle contended for by the hon. gentlemen on the other side of the House, for on that principle a resolution would have effected their object in a safer and speedier manner, and had the Lieutenant Governor declined to act upon it, the House of Assembly of that Province might then proceed to lecture him against encroaching upon the privileges of Parliament, and the rights of the People. Sir, I am not disposed to give much credit for sincerity to those honourable gentlemen who have raised their voices on behalf of Privilege and Right. Last year, when the contested elections engaged the attention of the House, these walls echoed the same cry—“Protect the Rights of the subject—vindicate the Privilege of Parliament!” But to what did it amount? One of those elections was decided contrary to the views of gentlemen opposite, and I am not aware, Sir, that that decision has proved injurious to the privileges of this House, or to the interests of those who have sent us here. Hon. members may twist and turn as they please—may weave fine-spun arguments to captivate our imaginations—may cull the choicest flowers of rhetoric to adorn their declamation; but their real intentions and desires cannot be wholly hidden from our view. We may admire them for their rhetoric; but we cannot praise them for their ratiocination—we may applaud them for their zeal; but we cannot commend them for their sincerity. I believe it to be their object, not so much to sustain the privileges of Parliament, as to humiliate a political adversary. I do not mean to say that they have completely driven from their minds all consideration of the sacred principles of right and wrong; but, I do think, Sir, that they have used all their ingenuity to make those principles—immutable, unpliant, as they are—subservient to the unfair, indecorous, and implacable hostility manifested towards Mr. Coles. Let us suppose Mr. James McCallum to be in the situation of the gentleman whose name I have just mentioned—that he had held a seat in this House for years past—that he had been a true and faithful upholder of the political principles which distinguish the gentlemen on the other side—that he had been called to the Council—that his seat in the Assembly had been declared vacant, and that he had been sent back to his constituents, and had again polled a majority of votes—and that the Crown Officers had declared that no vacancy had existed, and that the election was illegal,—let us, I say, suppose that all this had occurred with respect to Mr. McCallum, just as it has done with respect to Mr. Coles; and let us then enquire how, in all probability, the hon. members on the other side would have dealt with the case. I feel convinced, Sir, that had Mr. McCallum been the individual whose right to a seat in this House was so involved, those hon. members would have argued in favour of Mr. McCallum's right to sit here, with a zeal and determination equal to those which now characterize their opposition to the claim of Mr. Coles. And, with respect to the course which, in such a case, I should myself have pursued—utterly unconscious, as I am, of being influenced in the consideration of the question as it really stands, either by party or personal feelings—I sincerely think that, had Mr. McCallum, or any other gentleman, stood in the position now occupied by Mr. Coles—awaiting our decision with respect to a right asserted by him to a seat in this House—I would have spoken and voted in favour of that gentleman, as I now do in favour of Mr. Coles: fully persuaded that I was only endeavouring to secure a decision in strict accordance with the principles of justice and impartiality; and, for such a line of conduct, certain I am that I should never either be at a loss for a justification, or fear being called to account by my constituents.

[To be concluded in our next.]

The exports of flour and wheat from the United States since 1790, a period of fifty-seven years, is set down at 16,661,312 bushels of wheat, and 54,385,088 barrels of flour. Boston, in 1820, had a population of 43,000. In 1830, 62,400. In 1840, 93,329. In 1845, it was 114,999, and in 1847, it was 121,000. It is probably increasing at this period faster than ever it did before.