

The Examiner.

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EDWARD WHELAN]

This is true Liberty, when Free-born Men, having to advise the Public, may speak free.—EURIPIDES.

[EDITOR AND PUBLISHER.

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Colonial Legislature.

HOUSE OF ASSEMBLY.

SATURDAY, April 11.

Mr. Perry, from the Committee appointed to wait on His Excellency with an address in accordance with the report of the Special Committee on new lines of roads, informed the House that they had waited upon His Excellency with the address, and that he had been pleased to say that he would attend to the same.

On motion of Hon. Mr. Whelan, it was resolved that the Legislative Council be requested to appoint a Committee to join a Committee of this House to prepare a Joint Address to Her Majesty on the subject of the Fishery Convention affecting the interests of Newfoundland.

On motion of Mr. Macdonald, a special committee was appointed to prepare an Address to His Excellency thanking him for the various Messages received from him during the present session. Committee—Messrs. Macdonald, Macintosh, and Hon. Mr. Whelan.

Hon. Mr. Wightman, from the Committee appointed to prepare an Address to His Excellency in accordance with the report of the special committee on Lighthouses, presented the draft of an Address on the subject, which was agreed to by the House, and the same committee were appointed to wait on His Excellency with it.

Adjourned for one hour.

R. LAIRD, Rep.

AFTERNOON SITTING.

Hon. Mr. Mooney submitted a report in relation to the construction of a "draw" on the Mount Stewart Bridge, to the effect that as the members for the District have subscribed the sum of £25 towards the carrying out of the same, and requiring the Superintendent of Public Works to oversee the construction of said "draw," which report, after some discussion, was adopted.

The standing order was suspended to enable Mr. Laird to present a petition from John Doirant, asking for an addition to his salary as Road Commissioner, for his services as Superintendent of the construction of the Bridge over the Oyster-bed, Rustico. Mr. Laird moved the said petition be received, and its prayer granted. To which, after a short discussion, Hon. Mr. Palmer moved as an amendment that the petitioner have leave to withdraw, the remedy being elsewhere, which amendment was adopted.

Hon. the Speaker presented a memorial from the citizens of Charlottetown, on the subject of the Convention recently entered into between the Governments of Great Britain and France, making certain important concessions to the latter nation, which concessions are deemed highly prejudicial to the interests of not only Newfoundland, but to the other Colonies of British North America. Referred the Committee appointed to report on the several communications received from the Speaker of the House of Assembly of Newfoundland on that subject.

INDEPENDENCE OF THE LEGISLATURE.

On motion of Hon. Mr. Palmer, the House went into the 3d order of the Day, viz: the second reading of the Bill to secure the Independence of the Legislative Assemblies, by the exclusion of office-holders therefrom.

Hon. COL. SECRETARY.—Before going into Committee on this Bill, I wish to make a few observations. This bill is of so sweeping a character, that I can not support it. Indeed, it strikes at the very root of Responsible Government. Such a measure as the present one, I am convinced, is not desired by the country or by this House. We have had a long battle to fight in order to obtain Responsible Government; and there has as yet been nothing shown but that the Colony has prospered under that system, or that it has not worked advantageously for the interests of the people. Its opponents have failed to show that the country has not prospered better since its introduction than under the old system. It is said that when members holding office are excluded from the Assembly, that the members will be more independent. I do not believe it. Is it likely that the mere fact of an office-holder not being a member of the Government will make him better calculated to advance the interests of the country, than if in possession of a seat in this House, being returned by the confidence of the people? It is absurd to suppose he will. I therefore move that the House do go into the order of the day "this day three months."

Hon. T. H. HAVILAND.—I do not agree with the hon. Col. Secretary that the Bill under consideration is of so sweeping a nature. I would not go for excluding all office-holders from the House; but I think there are certain office-holders who should not hold seats in the House of Assembly. I therefore think the Bill should be committed to a Committee of the whole House.

Hon. Mr. PALMER.—It is very evident that the hon. members on the opposite side of the House have as much hostility to this measure as they had last year. It is not, however, my intention to enter into the expediency or policy of this Bill at present. The hon. Col. Secretary says the present Bill is of too sweeping a character. Now, the principal objection to the former one was that it was not sweeping enough in its character. It would be extremely difficult to please some hon. members; indeed, it would be labor thrown away to try to give them satisfaction, and our efforts would have the same result as those of the Irish drummer, who exclaimed, "If I strike high, it won't please ye, and if I strike low it won't please ye; and even if I strike on one side or the other, it will not please ye." I do not, therefore, intend to enter into any arguments in support of the Bill; but will merely content myself with discharging a duty imposed upon me by many persons who feel an interest in the measure, and whom I have the honor to represent. If the objection that the Bill is of too sweeping a character were the only one against it, there is nothing more easy than to remove that objection. If the Bill were committed, it could soon be decided as to what officers should be retained in the House, and how many rejected. I think it is unnecessary to follow the hon. member in his eulogiums on Responsible Government, nor can I indorse the assertion that the present state of the Colony is owing to it. On the contrary, we do not owe a particle of our prosperity to it, and it would be much better if there was no Responsible Government. What is there to show for the great change said to be wrought by Responsible Government? The Public business is not done cheaper, neither are office-holders honest, than formerly. What then, I ask,—what great change for the better has been wrought by the introduction of Responsible Government into this Colony?

Hon. Mr. WIGHTMAN.—There is nothing before the House to induce us to consider a measure of the character of this Bill. We have had no petitions presented to the House on the subject; and it is a significant fact, that every member who has accepted office under Responsible Government, has been re-elected by his constituents. Until I hear better arguments in favor of this Bill than have been adduced, I will not support it.

Mr. COOPER.—The change proposed by this Bill would not answer well in this Colony. I do not approve of that long-standing system of corruption which has prevailed in this Island, where the public offices descended from father to son; and the only party which has done anything for the good of the country is the party at present in power.

The question was then put on the Col. Secretary's motion, that the Bill be read "this day three months," which was carried on the following division:

Yeas—Hons. Col. Secretary, Col. Treasurer, Wightman, Whelan, Mooney, Lord, Messrs. Macdonald, Munroe, Perry, Dingwell, Cooper, Muirhead, Clark, Macintosh, and Laird.—15.

Nays—Hons. Palmer, Haviland, Longworth, Montgomery, Messrs. T. H. Haviland, and Yeo.—6.

ELECTIVE LEGISLATIVE COUNCIL.

On motion of Mr. T. Heath Haviland, the second order of the day, viz: The Bill to extend the Elective principle to the Legislative Council, was taken up.

Hon. COL. SECRETARY.—If this Bill had been introduced at an earlier period of the session, I might have given it my support; but at this late stage of the proceedings, it is not likely that hon. members will give it the attention it merits. I am favorable to a moderate change in the constitution of the Legislative Council. I am of opinion, however, that an alteration, compelling all the members of that honorable body to go out of office at once, would not work well. I am aware that an alteration has been made in the constitution of the Legislative Council of Canada, which I will explain: The Act says that the names of forty-eight members, as candidates for the Legislative Council, shall be put in a hat, and drawn by the President. Of these there are four classes, to be elected at different periods,—the first to be elected one year; the second class in two years; the third in four years, and the fourth in six years. We have now twelve members composing our Legislative Council, and of course they would not agree to go out all at once; but if we add three members,—one for Prince, one for Queen's, and one for King's County,—to be elected for eight years, this would give the whole Island an Elective representation, and give the people a chance to test the claims to popular confidence of those who might be elected, and as vacancies occur in the present number they can be elected.—the first vacancy to be filled up by an Election for Prince County, the second for King's, and the third for Queen's, and so on, until the whole are elected; thus the first nine could be elected at the end of eight years from the first election, and the remaining six could be elected four years from that time, so as to have an election of a portion of the Council every four years. I hope the time is not far distant when all men holding offices of trust or emolument will be elected by the people. I am in favor of extending the elective principle to the Legislative Council, and it may be said it is an innovation on the principles of the British Constitution; but it has been tolerated in Ireland and elsewhere, and why not here? If the system I have laid down be adopted, it will be a long time before the Legislative Council will be wholly composed of men elected by the people, and in the meantime we will have an opportunity of observing how the elective principle works. But I would not be in favor of all the members composing that body going out of office at once. Even only one-half going out of office would be better; but it is now too late in the session to enter fully into the merits or demerits of the Bill. I am sorry that some of my friends are not in favor of any alteration in the Constitution of the Legislative Council; but I must confess I am partly wedded to the change, and have a Bill prepared to carry out my views. As it is so late in the session, however, I move that the Bill be read "this day three months."

Mr. COOPER.—I am favorable to the extension of the elective principle to the Legislative Council, and did intend to propose a way of my own for carrying out that measure; but as the hon. Col. Secretary has given, I think, a very feasible plan for carrying out such a measure, and has embodied his views in the shape of a Bill, which I hope will receive a favorable consideration, not, however, with the intention that such should become law, but for the purpose of having it published and sent to the people. We have already sent two Bills to the people, and this one ought to be sent too, before any definite action be taken upon it.

Hon. Mr. MONTGOMERY.—I agree with what has been said by the hon. member (Mr. Cooper); but I think the session is too far advanced to take up a Bill of this nature, as it would necessarily involve the expenditure of much time and discussion. As to the plan of making the Legislative Council an elective body, I think it is good, and the time is not far distant, I trust, when such a change will become general in all the Colonies of Great Britain. As the provisions of the Bill is comprised in a very small space, the better way would be to publish it for general information, and it can be taken up at an earlier day next session. This course, I think, it would be preferable to pursue, than to reject it summarily. I am convinced the country generally,—judging from the opinions of the people of that part of it in which I am acquainted,—is decidedly in favor of a measure of this kind.

Hon. Mr. WHELAN.—The hon. member, Mr. Montgomery, ought to have said that both bills (Mr. Haviland's and hon. Col. Secretary's) should be published. I am opposed, however, to any measure of this nature, and would oppose both bills, or a dozen of them if presented. I question very much if it be our province to interfere with the constitution of the Legislative Council. I have expressed my opinion to the Col. Secretary on this subject years ago, and then urged the same arguments against it I shall now use. The hon. member, Mr. Montgomery, said it was generally acceptable to the country at large; but I do not believe there is a single constituency in this Island—no, not even ten or fifty individuals in any constituency, who are in favor of such a change. If the public opinion demanded such a change,—and a change of this nature has been agitated for several years,—at the very least we should have seen some marked indications of the public opinion. A few printed petitions, sent out of Charlottetown, signed very sparingly in a few localities, at the request of some of the Conservative party—are no index to popular feeling on this important subject. I repeat that it is not the province of one

branch of the Legislature to interfere with the constitution of the other. The question at issue is not affected by what may be adopted or carried out in another country,—not whether this or that mode of government, because it prevails elsewhere, is worthy of imitation; but, whether a system of this nature is required,—whether it be consonant with our rights as British subjects,—demanded by the popular voice,—called for by necessity and a want of harmony between the two branches of the Legislature,—whether, in fact, it constitutional or unconstitutional. Let us look at the question more closely.

What would hon. members say, if a message were received from the other end of the building, to the effect that their honors had passed a Bill to alter the Constitution of the House of Assembly? If such a message were received at all, it would not be read a second time. It would be treated probably with disrespect. How, then, would their honors receive a similar message from this House? Would they not view it in the light of an infringement on their most sacred rights? It may be said that the people's representatives in Parliament have power to alter the constitution of the country. Yes—if the other branches of the Legislature—the Legislative Council and Lieut. Governor—will concur with them in making the alteration; but the House of Assembly is powerless by itself to change or alter the constitution of another branch, quite as independent as themselves. Even if we had the right to interfere with the constitution of the Upper House, we ought at least to have the delicacy of first ascertaining their opinions in the matter. Recollections of the past, too, ought to deter a liberal House like ours from seeking to force a change upon a body who desire no change—a body to which we are indebted for the preservation in the most difficult times of our constitutional rights. It is from a thorough conviction that Responsible Government cannot be carried out, if the two branches of the Legislature are dependent on and swayed by the popular will, that I oppose such an innovation. Make the Legislative Council an elective body,—and I have no doubt hon. members will say they will be more independent; but they will not be so. They would be as dependent on the will of their constituents as we are. If a measure were originated in this branch, and sent up to an elected Legislative Council, they might say, "Our constituents do not wish the enactment of this measure, and we cannot therefore give our assent to it." What would be the cause of such action? It would spring from a fear that if they passed a measure of any particular kind, contrary to the wishes of a majority of their constituents, they would not be well received by them. If the hon. and learned member, Mr. Haviland, were convinced that every one of the people were opposed to it, would he bring forward this measure? But he knows they are indifferent, and this indifference he presumes upon. If we introduce the elective principle into the Legislative Council, we place it in the same position as ourselves,—we would make them creatures of the popular will; and not only that, but we would place in their hands a power, that might often prove dangerous to our rights and interests. If they are to be elected, they will represent the same, or nearly the same, constituents as we do,—will be swayed just as much by the same popular voice as we are, and therefore will be but a reflex of this branch of the Legislature, and consequently a useless appendage—a trammel on our actions. Why, it would merely be the multiplying of the members of this House, from 30 to 42. Even admitting that as their qualifications are different from ours, they would still preserve the august and independent character they now sustain, yet parties may be sent to the upper branch representing a different class of opinions from those entertained by the Lower House. A clash, in such a case would be inevitable; for, they would say, do we not represent constituents, and knowing what they expect of us, we will maintain our independent character, and never succumb. A step of this nature would embolden them to assume more license, and the next thing they would claim, would be to have a finger in the public purse. If, then, the Legislative Council be made elective, they being the people's representatives as we are, would be continually opposing the acts of the Lower House, and encroaching upon its rights and privileges; and taking whatever view I will of such a change I can see nothing in it but confusion, dissatisfaction, discontent, and interruption in the harmony which has hitherto so happily prevailed between the two branches of our Legislature. I am perfectly satisfied with the working of the two branches under the present system; and I am surprised at the remarks offered by the hon. Col. Secretary. I never heard of a successful party in power, legislating for their successors. If the majority are under obligation to them, this is not the way to discharge it. I think such remarks come with very bad grace from any hon. member on this side of the House.

Mr. T. HEATH HAVILAND.—I did not anticipate, when I entered the House this afternoon, that I would be so soon engaged in a debate on the Elective Legislative Council Bill; but there is at least one thing I have to congratulate myself on, and that is the conversion of the Leader of the Government to the principles of the Bill. It appears, however, that the Queen's Printer (Hon. Mr. Whelan) is opposed to it. I am surprised at the doctrine which comes from the mouthpiece of Responsible Government, that the House of Assembly has no right to tinker with the Constitution of the Legislative Council, and also the assertion that there were not ten persons in any constituency in this Island who were in favor of the proposed change. My constituents are all advocates of a responsible Council, and I might appeal for proof of this assertion to Mr. Wightman, who at one time was in favor of it; but a change has come "o'er the spirit of his dream," and he is now as much opposed to it as he was then its advocate. The hon. member (Mr. Whelan) asks what right have the House of Assembly to interfere with the Constitution of the Legislative Council. It is true that the House of Commons are the sole judges of the Constitution of their own body; but the same usage can not be pleaded for the Legislative Council of Prince Edward Island. (The hon. member then cited an instance of the House of Lords passing a Bill not to increase the representatives in the Lower House, which was rejected by the latter; who said that they were the sole judges in the event of the Constitution being altered.) The hon. member further says, that the public business could not be carried on if both branches of the Legislature were dependent on the popular voice; but the politicians of Canada have arrived at quite an opposite opinion on that point. In their Resolution [which the hon. member read] to the Queen, they state that they have come to the conclusion that it is impossible to work Responsible Government with a nominated Chamber or hereditary councillors. Many of the British Colonies have already adopted this system, and it is now in force in Australia, Cape of Good Hope, and Canada. Who are the Legislative Council? They are merely the nominees of the Government of to-day; and no matter how they are selected, they can not possibly attain to the same amount of influence which they would possess were they elected by the people. It has been affirmed by eminent statesmen, in the House of Lords, of Great Britain, that there are only two systems upon which they could be founded: They must be either an hereditary or an elective body. The nominee system has failed. It was advocated in Prussia and Belgium, has been tried, and has been

found not to work well. The Hon. Col. Secretary deserves, and I accord him, credit for more liberal and enlightened views on this subject than the Queen's Printer. The hon. member (Col. Secretary) has looked upon the question in the true light, and if all other hon. members on that side of the House looked upon it in the same light, they would be willing to go into Committee on the Bill. It is better to get half a loaf than no bread. With reference to the debt of gratitude which the hon. Queen's Printer said we owed to the Council, I wish it could be paid, if it cost us £5000. If the hon. member will make out the bill for the debt of gratitude we owe the Legislative Council, and present it, next session I will vote for its being paid.

Mr. COOPER.—The House of Lords, I believe, are chiefly hereditary; but by whom are our Legislative Councillors appointed? By two or three individuals. Another thing, the members of that branch of the Legislature, having accepted pay from the people, are, in my opinion, no longer the independent body they once were.

Mr. YEO.—I am certain that in nineteen out of every twenty of the people of this Island are in favor of an elective Legislative Council. The hon. member (Mr. Whelan) said if they were elected by the people, they would be so many more members—a mere reflex, &c.; but at present they are nothing more to the House of Assembly than the Clerk is to the Minister, and merely respond "amen" to all we do. In my opinion the Legislative Council, as at present constituted, is not of the slightest service to the public.

Hon. Mr. WIGHTMAN.—The Legislative Council pass measures originated by this Assembly because they agree to the principles therein enunciated. The hon. member (Mr. Haviland) says his constituents are in favor of this measure; but I can inform him to the contrary. When the petition from the inhabitants of Georgetown, &c., in favor of a measure of this kind, was formerly presented to the House, it did not contain more than thirty signatures, from Georgetown to the White Sands. The hon. member is mistaken about the sentiments of his constituents in regard to this measure, and he may find my words verified at the next general election, when he gets the "cold shoulder" from many who have been his supporters heretofore. I do not see any necessity, at the present time, for any alteration in the Constitution of the Legislative Council. If the Constitution of that body were altered, they would claim the privilege of interfering with the management of the public purse. In short, they would assert the same privileges, with regard to that matter, as the House now possesses. As I can see no necessity for any change, I will support the motion of the hon. Col. Secretary.

Hon. Mr. MOONEY.—The people of Georgetown must be a very ungrateful set, as they had rejected their former representative (Mr. Macaulay) the father of this scheme of an elective Legislative Council. This was and is still the "forlorn hope" of the minority, who, having lost the confidence and the votes of the people at so many elections, wish to place an aristocracy in the other end of the building.

Mr. MACINTOSH.—I have been favorable to an Elective Council since the year 1848. The reason why no petitions in favor of the proposed change had been presented during the present session is this: the people believed the measure would be favorably entertained by the House of Assembly. I am well aware of the opinion of the people of my district on this question. Their wish is to have an elective Legislative Council. I was instructed, last year, by my constituents, to support this measure; and they reminded me of the same thing this year. As, however, it is brought in so late in the session, it may be better to let the matter stand over. Whenever it is brought up, it shall have my support.

Mr. CLARK.—I will vote against that Bill in whatever shape it may be presented, for I think the principle upon which it is based is unsound. I do not believe, either, that it is generally acceptable to the people; and fully agree with Mr. Whelan, that it is out of our province to alter the Constitution of the Legislative Council.

Hon. Mr. LORD.—I must confess, I am undecided in my opinion as regards this measure; but I would be opposed to its being passed this session. However, if it were brought up next session, I might be in favor of the proposition of the Hon. Col. Secretary.

[Hon. Mr. Whelan rose to speak again, but was met with cries of "spoken! spoken!" The hon. member, however, persisted in addressing the House, saying that he had a motion to make, when the hon. Speaker said the hon. member must submit his motion before he could speak on it. Mr. Whelan then resumed his seat.]

Hon. Mr. PALMER.—I think that were we to analyse the principles put forth by hon. members in the course of this debate, we must come to the conclusion, that at present, we have no second branch of the Legislature,—that the Council is nothing more nor less than the hump on the dromedary's back, so to speak. It has been said that the Council should harmonize with the House of Assembly,—that the two branches should work in unison. If so, where is the necessity for that body at all? Why not have one individual in the other end of the building, to receive and record bills, and pay him a salary for so doing? Such an arrangement would answer all the purposes as well as a Legislative Council, of the character described. The hon. member (Mr. Whelan) asserts that the House of Assembly possessed no right to interfere with the Constitution of the Legislative Council,—that it was not the province of this House to interfere, to "tinker" with it. Under whose authority then should it be done? (Hon. Mr. Whelan—Under their own.) He admits then that it can be done. The Hon. Col. Secretary, however, admits that there is some cause why this House should tinker with it; and circumstances may yet arise when it would, even in Mr. Whelan's opinion, be necessary to tinker with it. (Hon. Mr. Whelan—No.) Then that hon. member must imagine the Council to be infallible. But if, nevertheless, such a contingency should arise, who are to be the tinkers? Can the Council themselves pass such a law, and is it to go into operation without the concurrence of the lower branch of the Legislature? I think not. The tinkering must be done by the whole Legislature, and in neither branch could the initiatory steps be more properly taken than in the House of Assembly. If the House waited until the Council thought fit to move in this matter, they would, I fear, have to wait a long time indeed. Is the change then to be effected by the Imperial Government? (Hon. Mr. Whelan—Yes.) Some persons imagine that the people of this Colony possess the powers of self-government; but this, it appears is not the case, for if they wish to effect an alteration in the Constitution of their Legislative Council they must, according to Mr. Whelan, apply to the Home Government to do it for them. In my opinion, they might just as well apply to the Home Government to alter the Constitution of the House of Assembly. They might as well surrender their civil and political rights at once, for on such a supposition their boasted self-government is a phantasm! Are we to apply to the House of Commons? No. I take it, that being favored with self-government,—or that which we take to be self-government,—the power to effect all necessary reforms in our local institutions is vested, not in the House of Commons, but in our own House of Assembly; and I really did suppose that the hon. member (Mr. Whelan) would have exhibited more shrewdness than to assert, that it is out of the province of the lower branch to alter the Constitution of the Council. One principal advantage will, in my opinion, result from the proposed change. The members of the Council will be enabled to exercise their rights with some show of independence, which is not the case at present. It has been objected that no petitions have been presented in favor of this measure during the present session; but an Act was passed a short time since to increase the number of representatives in the House of Assembly from twenty-four to thirty; although no petitions had ever been presented in favor of such a measure. Nevertheless, this House took upon itself to say to the people, that if they did not like it, they ought to do so for it was good for them. That