

The Examiner.

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

Vol. I.]

CHARLOTTETOWN, P. E. ISLAND, SATURDAY, FEBRUARY 12, 1848.

[No. 28.]

HOUSE OF ASSEMBLY.

WEDNESDAY, FEBRUARY 2.
PRIVILEGES AND ELECTIONS.

On motion of *Dr. Conroy*, the House went into Committee on Privileges and Elections, with reference to the Election of the Hon. George Coles, *Dr. Jardine* in the Chair.

The Return of the Writ having been read, *Mr. Palmer* moved the following resolution:

Whereas, It appearing to this Committee, that the Writ issued on the twenty-seventh day of April last, for the return of a Member to serve in the General Assembly of this Island, for the First District of Queen's County, in room of the Hon. George Coles, having been made returnable on the tenth day of May then next; and at the Election held thereunder, that objections had been taken by the said Hon. George Coles, a Candidate thereat, and entered against the votes of forty persons who had voted as electors at the said election; and that objections had been taken by James M'Callum, Esquire, the other Candidate at the said Election, and entered against the votes of fifty-four persons who had voted as electors at the said election; and it appearing to this Committee that the time limited by the said writ for the return thereof was not sufficient to admit the Returning Officer to enter upon and complete the scrutiny of votes demanded by the said James M'Callum, Esquire, that neither of the said Candidates has been returned by the said Returning Officer as duly elected:

Resolved, therefore, That a new Writ do issue for the return of a Member for the said District, in room of the said Hon. George Coles, and that the Speaker of the House do proceed thereupon accordingly.

Mr. Rae. I am, Sir, of an opinion quite the contrary; and I call upon the hon. member to produce his precedential authorities for what he has advanced. I ask him where the practice exists, according to which a member of the Lower House must vacate his seat therein on his acceptance of one at the Council Board. It cannot be shewn that the same law is not now on the statute book that was there at the time the hon. Speaker, *Mr. Palmer*, and the Hon. J. S. Macdonald were elevated to seats in the Council; yet those gentlemen never perceived that on that account, they had vacated their seats in the Assembly. How then can it apply to others? Perseverance in error is no justification of it. And hon. members must see that error has been, and, it seems, will still be, committed. I will not surrender the rights and privileges of my constituents to the opinions of the legal members of this House; and I trust others will not be swayed by them, when they are not based on common-sense. I acknowledge that I was a party to the notification to the Speaker that a vacancy existed; but if he will produce my letter, it will appear that I was not a convert to the doctrine, according to which there existed a necessity of a re-election, but that I merely acted in compliance with the expressed opinion of the majority of the House. Some try to lessen the importance of the matter, by telling us that these gentlemen will be again returned. But, Sir, I would ask, is it nothing to lose their services in this House for the intervening time. Any one who recollects my arguments of last year, must be satisfied I did not construe the act as the majority construed it, or recognize the principle of its being the law of the land. We are but one of the smallest Parliaments; and I do not think it does us much credit to be so over nice or so to magnify trifles. Larger bodies have allowed much more important matters than the question now before us, to lie over. If it be held to be the law that all members of the House of Assembly, accepting seats at the Board of the Executive Council, must forfeit their seats in the Assembly; then all the laws passed since the hon. Speaker and two others accepted seats at the Executive Council Board, are null and void, they having unconstitutionally sat in this house, and assisted in making the Laws. I will not longer detain the Committee until my questions shall be replied to.

The Hon. Speaker. Sir, from what has fallen from the hon. member who has just sat down, I feel called upon to state my opinion on the question now before the Committee. In the first place, I regret it is not in my power to produce the letters alluded to by the hon. member, as, at the present time, they are not in my possession. I refused to act upon the first communication, because I could not find any published notice of *Mr. Coles'* appointment, and supposed he had got his information through back-stairs influence. The issuing of the Writ, and the shortness of time allowed for its return, seemed like a conspiracy of the Governor and those who unconstitutionally advised him. I took an active part in opposing the return of *Mr. Coles*, and con-

sidered I was doing right in endeavouring to keep out a person who had assisted in the scheming relative to the Election, and I am sorry others did not follow my example. It has, Sir, been said that if it was necessary for *Mr. Coles* to return to his constituents, that it was equally necessary that I should have done so on my appointment; but, I contend, it was not for me to take up the question, even had I known of the existence of the clause in the Act. In the Law Courts, when a judgment is given, it is final: it cannot be reversed. In like manner, when two members of this House notify the Speaker that a vacancy exists, upon that notice he must act. I shall leave to the learned member for Charlottetown to shew that we are a Court of ourselves, and cannot be influenced by any other body. We are our own judges, and are not answerable to any; and I, for one, will never surrender our and the people's privileges to the paid officers of the Crown. I am sorry those gentlemen did not go further into the law; for I cannot but think they knew better than what they declared. I do not think the taunts of the hon. member, relative to my seat came with a good grace from him; for, I believe, he was the first to discover the clause that makes it compulsory for *Mr. Coles* again to appeal to his late constituency. I have no fear of meeting my constituents: they have, for eighteen years placed me at the head of the poll; and my several elections never cost me five pounds. Were the opinions of Colonial Secretaries or Ministers of State found to agree with that of the Crown Law Officers, I would, Sir, disregard them, I would laugh at them; and treat them as my ancestors and countrymen did in the reigns of the Charleses. I care not how high or exalted they may be; I will not allow our privileges to be frittered away, even if the dictation came from the Sovereign. We may be, as it is said we are, a small body; but that is no valid reason why we should not be entitled to equality of rights and privileges; or, possessing them, that they should be surrendered. Sir, is a Resolution deliberately come to by this House to be set at naught? It was introduced by the opposite party. It was they who called for the Election; and it was six or seven of the Snatchers who recommended *Mr. Coles* to the office; [*Mr. Coles* observed, "That was more than the hon. Speaker had to recommend him,"] and, if he does not fear meeting his constituents, why does he wish to hold his seat under the rose as it were? I, Sir, contend that anyone accepting a seat at the Council Board, accepts a situation of emolument. The members thereof are privileged to sit in several Courts, and to receive fees of more consequence than many Small Debts Commissioners. It is not reasonable that the House should abide by the opinion of the Crown Law Officers. Suppose they had differed, who, I would like to know, could then have taken up the question, if it were not vested in the Assembly? Our power is unlimited. We could, if we felt so disposed, object to a man's sitting amongst us, because he happened to have an ugly countenance. I do not hesitate to declare, that the shortness of the time allowed was the doing of Governor Huntley, in order that, as the roads were bad, the opponents of his bosom friend, *Mr. Coles*, should not be able to reach the hustings in time to vote. This was a trick worthy of the man, and in common with many other of his acts. Let any man look to the list of the late appointments to the Magistracy and to the Courts of Small Debts Commissioners; and he must say, the country has been degraded. I, Sir, have heard of one of these favoured individuals who possesses not sufficient learning to subscribe his name to Summonses. ("Name! name!" called for by *Mr. Rae*, met with no response.)—At the Election at Brackley Point, I was assailed by 400 ruffians; and, had it not been for recent events at Belfast and daylight, I have no doubt I should have been murdered upon that occasion. I told them that they were thirsting for my blood. These are the persons whose rights as freemen were regarded, and whose superiors were disfranchised, by the issuing of a Writ, at a time when the roads were impassable. If the truth could be got at, no doubt it would appear that many have to thank the position they took at *Mr. Coles'* Election for their exaltation to the Magistracy; and I hope it may have the effect of making them better subjects. By any change that may be brought about, I want to see the people benefitted more than the Government. I wish to see the majority governed by British rule and practice. Thus, I disclaim any intention of injury to Responsible Government. How often have I heard the vain boasting of some, that, if they did not enjoy the confidence of the people, they would resign office. But only let them get a foot in, and they stick to their seats like leeches to the human frame.—(*Mr. Coles* said, "You judge by yourself.")—The Speaker appealed to the Chair for protection, intimating that he would not be interrupted by one who, he considered, was not a member of the House. I was, Sir, about to say, that the resolution of last year

accords with my opinion. All who accept office should go back to their constituents, or corruption might creep in through bad men. We have nothing to do with the opinion of the Crown Officers. There is the Writ and its Return. The suffrages of the people were appealed to. True, *Mr. Coles* had a majority of votes; but it was thought some were not good. A scrutiny was demanded; but, as the Election finished on Saturday, and the writ was returnable on Monday, the Sheriff could not go into it; and, consequently, *Mr. Coles* was not returned as duly elected. I, therefore, contend the Committee will surrender their privileges, if they do not declare the election to be of no effect, and order a fresh writ to be issued. I shall, therefore, give my support to the resolution.

Mr. Mooney. I, Sir, regret that this debate is not now likely to assume a peaceable aspect. The hon. Speaker, since last Session, has taken a journey to England, but he is still the same. He cannot forget the old grievances. He must still deal in personalities, and attribute bad motives. He cannot forbear going into matter that has nothing to do with the question. He must talk about "back-stairs." He must indulge in designating peaceable men, ruffians. That those to whom he applied this abusive epithet, were peaceable men, I can honestly maintain; for I never saw people more peaceably collected than at Brackley Point; although the hon. the Speaker maintains that, on that occasion, but for lack of opportunity he would have been murdered. With how bad a grace does this come from the hon. Speaker, who, if the members of this House, ever become excited and forget themselves, is the man who brings it about. I cannot allow those electors at New London to be such worthy characters as the Speaker represents them; for I never saw such a set of miscreants; yet I did not feel alarmed for my safety. But in reality, I believe the Speaker felt no more alarm at Brackley Point than I did at New London.

Mr. Palmer requested the Chair to keep the hon. member to the question.

Mr. Rae observed had the hon. member interfered when the hon. Speaker was transgressing the rules, he would allow him to do so now. The rule of the morning must be the rule in the afternoon.

Mr. Palmer rejoined, that if error had been committed by the Speaker, it should not be followed up.

Mr. Rae contended that it was expecting too much from human nature to think that members should sit quietly and hear fall from the hon. Speaker such totally irrelevant matter, without an attempt to reply to it, particularly by a man of *Mr. Mooney's* feelings and inexperience. Allowance should be made for him; but none ought to be made for two such old members as the Speaker and the learned member for Charlottetown. Better things should be expected from the former than wrong doing; if he transgressed against the rules of the House, the latter ought not to wink at his transgression.

Mr. Mooney explained at length the occurrences at New London, and accused *Mr. D. McLean* of prejudicing the people against him by misrepresenting his votes in the House, and by having declared a letter he wrote to New London to be a forgery. [Much confusion now ensued, several gentlemen rising at the same time.]

Mr. D. Maclean explained relative to the letter. *Mr. N. Conroy* had witnessed many elections, and thought the least said the soonest mended. The hon. member was proceeding, when *Mr. Thornton* rose to order, but not, as he said, in vindication of the hon. Speaker, who, he was willing to admit, had used severe language, but without mentioning names as was then done.

Mr. Mooney resumed. The doings and sayings at New London were different from those at Brackley Point. (*Mr. D. Maclean.* I shall expect to be heard in reply.) *Mr. Mooney* continued. You shall, and not meet with the interruption I have met with. I beg to state, that, however much learning or parliamentary wisdom others may assume, I will not be put down. I only want fair play, which I claim, though termed a Snatcher. I deny the statement of the Speaker. I was often near to him, and had it been as he has stated, I must have seen it. Unusual means were resorted to, on that occasion, to defeat *Mr. Coles*; but we, his supporters, did not follow the example with respect to his opponents; for I assisted an aged man out of a cart, and led him up to vote for that opponent. The opinions of Lord Stanley and the highest legal authority in this Colony, are, it would seem, to be as nothing to those of the Lawyers in this House. But I am bound to say, that I see enough to convince me that, sometimes, what applies in one case, does not apply in another; and I frequently find myself at a loss to reconcile such differences of application. Precedents without number have been quoted; but I fail to discover their applicability to the present question. Why, then, should I be bound, or guided by them, especially when our