

might be, would be made amenable to the law, he felt perfectly satisfied to leave the decision of the matter in the hands of the Committee, confident that they would do justice between himself and the late opposing Candidate. On repairing to the Court House on the day of declaration, he found the poll book open, and the seal broken. The Deputy Sheriff informed him, that it had happened accidentally. He then, in presence of some friends, whom he called as witnesses, stated that he would be satisfied with the explanation, if the book agreed with that kept by his own clerk. On examination they were found to correspond. He, on that occasion, objected to some special votes given for Mr. Davies; that gentleman, or his agent, did not object to any,—he had sworn some votes, but did not object after they had taken their oaths; yet these very votes were marked as objected in the poll book. As only four votes given for him had been marked objected, he did not think it worth while to object to those of his opponent, as allowing that the whole number was struck off he would still have a majority.

Hon. Mr. YEN was present on the occasion referred to, and was positive no scrutiny was demanded. Mr. John Ramsey was also present, as Mr. Davies' agent, and made no such demand. He was satisfied that the Hon. the Speaker was legally elected.

Hon. Mr. COLES—There must be some mistake, as a protest against the return of the Hon. the Speaker had been entered within the hour after declaration, embodying the same objections as those set forth in the petition. Therefore, the inference was, that the objections preceded the protest. That protest, he presumed, would be found in the Sheriff's book, returned to the Colonial Secretary's Office. As the law required that the books must be sealed, and the votes added up, and the result declared in open court, it was not probable that the Sheriff would attempt, or if the attempt were made, could not succeed in falsifying the record in presence of numbers of people, among whom would be found the Candidates and their representatives, who would readily notice any such attempt. After declaration, an hour was given for demand of scrutiny. If, therefore, the poll books coincided when compared, as the Hon. Speaker had stated, they must have been altered subsequently. It appeared by the book before them, that 26 votes in favor of the Hon. Speaker had been objected to, and but six of Mr. Davies's, the majority of the former was but eight. In the present position of the matter, he considered that the Committee could only take the book as they found it before them, and then send for the Sheriff and poll clerk, and examine them on oath at the bar of the House. He hoped that the matter of the alleged improper alteration would be thoroughly sifted, and whoever was guilty of such conduct, be punished to the utmost extent of the law.

Hon. SPEAKER—Although the declaration was made in open Court, the petitioners remained near the door. He remained some time after the declaration, then went out, and on his return found that a protest had been entered in his absence. The principal portion of the audience also went out; he could not, of course, say what had taken place during that period of time, it was not done in presence of many people.

Hon. Col. GRAY was surprised to find, by reference to the poll book, that numerous interpolations had been made in the Sheriff's poll book; and while the word "objected" was not to be found recorded in the book kept by the Hon. Speaker's clerk, there were no less than ten consecutive votes, purporting to be objected, found in the other. Was such a discrepancy likely to be caused unintentionally, or through inadvertence? He had run two elections, and he knew that his clerk recorded all the objections which were taken down by the returning officer. Another remarkable feature was the fact which justified him in asserting that the Sheriff's book contained interpolations, viz: that while the law prescribed that the vote should be marked "objected," the instances to which he referred consisted of a mere abbreviation of the word, and several of them were written across part of the word "sworn," showing that the additions had been made to the contents of the book after the first entry. He most cordially agreed in the desire expressed that the guilty perpetrators of the fraud should be detected, and punished to such a degree as effectually to deter others from following the wicked example. If such practices were suffered to go unpunished, there would be no security for the seat of any hon. member.

M. COOPER—It was admitted that some objections had been made, otherwise no votes would have been sworn; but as no particulars of qualification were taken down, parties could not ascertain the right to vote in each case.

Hon. Mr. LONGWORTH expressed his conviction that a heinous offence had been committed. He had no doubt that fraudulent additions had been made to the Sheriff's book. The word "objected" was not written in full, as it should have been, but merely the letters "obj" in small size, because there was not space for more at the time of the addition. Apart from that objection, the petitioners did not allege that the Returning Officer had been requested to record the particulars of qualification. That being the case, their application must fall to the ground, for the law was very precise on that head—for the Candidate against whom the vote is tendered is to question the vote, and direct the Sheriff to the enter qualification, and record the name as "objected." It is not necessary to record the qualification unless a request to that effect should have been made; and no difficulty could arise from that, as the entry of the word "objected" was all that was requisite to a scrutiny. The allegation in the petition that no scrutiny could be held for want of the specification of qualification, was false, and there was nothing to bar the right to a scrutiny. He trusted that the Hon. Speaker would cause a thorough investigation to be instituted before the proper tribunal.

Hon. Mr. COLES—The form of affidavit prescribed by the election law proved, by necessary implication, that the qualification should be specified, and taken down by the returning officer, for he is compelled to swear to his qualification, "as taken down in the poll book and read to him." Therefore the electors must be supposed to have sworn falsely, if the qualification was not taken down, or they must have been very remiss. The whole proceedings appeared to have been conducted very irregularly.

Mr. SINCLAIR, in justice to his hon. colleague, was bound to state the truth on the subject, more especially as he had been personally referred to by the Hon. Speaker. He was surprised at the appearance of the poll book. He would not presume to say what was the precise number of votes objected to at the day of election, but could not suppress the expression of his opinion, that some names appeared now as objected to, to which no objection had been made at the time of voting. The votes of those electors who were sworn, were marked so; but it might be that the poll clerk may have thought it his duty to mark each sworn vote as objected. The appearance of the book certainly suggested to his mind doubts as to its authenticity. Having been present at the Court on the day of declaration, he could not well have avoided hearing any request to record any vote as objected, if such had been made. He sincerely trusted that a searching investigation would be made, and that the parties guilty of the malpractices attributed would be punished.

Hon. Mr. COLES—It was usual, and reasonable, to ask the particulars of the voter's qualification before swearing him to it.

Mr. HOWAT denied that, as far as his personal experience went, such was the practice. The Candidate requested the returning officer to administer the oath, after which, if not content, he can have it marked "objected," as the foundation of future scrutiny. As to what had been said by the Hon.

Mr. COLES, to the effect, that there was no opportunity of altering the poll book during the hour after the declaration, he differed from him on that point. He was present at the Court House at St. Eleanor's on the day of declaration, and had left the Court House in company with the Hon. Speaker and other gentlemen, to take dinner at Mr. Ness's Hotel, and there was ample opportunity to falsify the book during their absence. He did not, by those observations, intend to convey an accusation against the Sheriff, or any particular individual, because he was not in a position to prove who was the guilty party.

Hon. Mr. THORNTON would not enter into consideration of the technical objections which had been taken to the entries in the Sheriff's poll book. From what had fallen from the hon. member, Mr. Sinclair, and from his own observation of the book, which certainly did not present the appearance which it ought to have done, he had strong doubts of the authenticity of its contents. Had the votes been objected to, and so marked at the time, there would have been no occasion for the apparent interpolations of the letters "obj," which did not appear to him to have been inserted at the proper time, or in the proper manner. There was plenty of space between the different columns of the book to have inserted all the various observations which the law required, without abbreviation.

Mr. CONROY was satisfied that the abbreviation "obj" for "objected" had been crowded in subsequently to the time of entering the respective votes. As he believed that an attempt had been made to falsify the book, he thought it most important and desirable that the guilty parties should be discovered and punished.

Hon. Mr. COLES—The petitioners complained that they could not institute a scrutiny, on account of the qualifications of the electors not having been taken down. No less than 140 electors had declared themselves aggrieved at this omission, and even the Speaker's own book did not contain the qualifications referred to.

Hon. SPEAKER—No request was made to have the qualifications recorded.

Hon. Mr. HAYLAND—One thing was evident beyond dispute—it was impossible to believe that the letters "obj" were placed in the book at the same time as the entries "sworn." The latter were written in full, and in a comparatively larger hand, very different from the style in which the other abbreviated entries were made. With reference to the non appearance of the particulars of the qualifications of electors in the book, even if the returning officer had been requested to record them, and had done so, yet they could not be scrutinized, unless they had been objected to, and the entry of the objection made as the law required, by the word "objected" in full. Unless such had been done, the votes could not be subsequently investigated. He gave credit to the hon. member, Mr. Sinclair, for the candid expression of opinion which he had given. He joined in the wish for the detection and punishment of the guilty party, whoever he might be.

Hon. Mr. PALMER had read the petition, and could see nothing in the petition to warrant the investigation sought for. It is required that every such petition should set forth reasons in support of its allegations. The one under consideration did nothing of the sort. It merely expressed the opinion of the petitioners themselves. How was the House to decide on the sufficiency of these reasons to set aside the election? The House cannot tell what were the illegalities complained of. Had specific charges of violation of the law been made, the duty of the House would be to decide whether, if substantiated, they would be sufficient to invalidate the election—if so considered they could then go into the consideration of them. The petitioners did not say that they demanded a scrutiny. The law prescribed that such demand must be made within the hour after declaration. Had such demand been made, the petitioners would doubtless have stated it. It was the duty of either Candidate to demand that the qualification of an adverse elector be recorded, and to see that it was done,—it was not the province of the Candidate for whom the vote was given. In this case it appeared that no such demand, nor one for a scrutiny, had been made; so that it was unnecessary to occupy the House in an enquiry which could have no practical result. The petitioners allege that a protest was presented to the Sheriff—that was a document of no effect whatever. It was quite unnecessary. It is of use to protest in such a case as that of the improper reception of evidence by the Sheriff, but a protest on the day of election could reserve or confer no right. If the returning officer, or his poll clerk, had been guilty of omission of duty, the petitioners might well come to the House; but there was no case before the House on which they could take action. He concluded by expressing his conviction that the poll book had been falsified, and he based that conviction on the same grounds as other hon. members who had spoken on the subject.

Hon. Mr. THORNTON thought that the gentlemen of the long robe were determined to have an argument on whatever subject came before the house. When they had a bad case, they wished to make it good; when they had a good one, they could not rest with endeavouring to make it better. He agreed that there was no ground on which the House could be justified in going into a scrutiny. The first question was, what vote were they to scrutinize? If the Sheriff could not do so, how could the House? He had previously expressed his opinion of the suspicious appearance of the poll book, but after what had fallen from the hon. member, Mr. Sinclair, he was prepared, without further argument, to support the motion which had been made, that the Speaker take the chair.

Mr. SINCLAIR liked to see all matters argued fairly and impartially. The hon. member, Mr. Palmer, had read the petition fully, would have seen that the petitioners specified particular causes as to the groundwork of their complaint—for they state that votes questioned, and marked objected, had not been so recorded—as required by law. His main objections were to the poll book itself.

The Committee then rose without reporting.
W. M. HOWE, Reporter.

LEGISLATIVE COUNCIL.

MONDAY, 25th April, 1859.

DEBATE ON THE FISHERY RESERVE QUESTION.

(His Honor the President's Speech Continued.)

The second, third, and fourth clauses of the Bill, only further provide, on the same obvious principles of reason and justice, for the carrying out, in different cases, of the one object of the Bill,—the relieving of tenants from their liability to rent for Fishery Reserves,—whilst, at the same time, most carefully guarding against giving to such tenants any right or power to impugn their landlords' titles to any lands not being Fishery Reserves.

The fifth clause properly provides that the right of the Government to such Fishery Reserves shall not in any way be affected by the Act; and how, with anything like due consideration of this clause, Sir Edward Bulwer Lytton could arrive at the conclusion that the Bill merely provides for the abolition of the claims of the proprietors to the Fishery Reserves by bestowing them upon the Tenants, I cannot possibly, for one moment imagine. In fact, for Sir Edward's enunciation of this opinion, I cannot account on any other supposition than that of his having consented, without due investigation of facts, to adopt the views concerning it which the proprietors, with no regard for anything but their own interests, had anxiously endeavoured to instil into his mind. Grants for Townships Numbers 8, 12, 20, 23, 44, and 46 are not on record in this Island; and the sixth clause of the Bill therefore provides—

"That if, at any time after the passing of this Act, any

grants of the said Townships shall be placed on record, and it shall appear that such grants contain a reservation similar to, or to the same effect, as the reservation set forth and recited in the preamble of this Act, then the land mentioned and reserved in and by any such grant, so to be recorded as aforesaid, shall be subject to all and every the enactments and provisions in this Act contained."

The sixth and last clause of this Act provides "that it shall not go into force or operation until Her Majesty's assent thereto shall be known, and notification thereof published in the Royal Gazette newspaper of this Island."

His Honor (Mr. Johnson) having professed almost entire ignorance of the nature of the Fishery Reserves question, and of the facts and interests involved therein, and having, at the same time, expressed a desire to be better informed upon the subject and to be made acquainted with the reasons which induced the Legislature to pass the Bill intitled An Act relating to the Fishery Reserves, and the Government to send it home for Her Majesty's assent,—in my very sincere desire to satisfy His Honor, I have, perhaps, been rather more prolix than some of your Honors may have thought it was necessary I should be. If so, the object which I have had in view will, however, I trust, successfully plead my excuse. The reasons which induced the Government to introduce and the Legislature to pass the Bill, I have, I believe, stated correctly; and sounder or better,—plain and simple as they are,—have scarcely ever, I think, in any case, influenced legislators. The Bill, had it been allowed to go into operation, would have been only a simple act, a simple concession, of justice to the tenants who have had included, under rent, in their leases, any parts of the Fishery Reserves or lands which belong to the Crown, or rather, now to the Government of this Island, which has the sole control and management of them; and all its enactments and provisions have been framed upon principles so perfectly in accordance with reason and justice, that—I again repeat it—I cannot possibly conceive how any public man, professing, as respects his public acts and decisions, to be governed by principles of sound reason and impartial justice, could, unless through adventitious or undue bias of judgment, give his voice against such a measure.

His Honor on my right (Hon. Colonel Swabey) has distinctly adverted to animadversions which have been made elsewhere, not only without, but within, the walls of this building, relative to the constitution of this House and its individual composition. With any remarks, made with the intention of impugning the legislative character of this House for integrity and efficiency, in which individuals outside may choose to indulge, under what pretence soever they may be uttered, we can here have nothing to do; and neither can we, without a positively gratuitous sacrifice of self-respect, vouchsafe reply. Our legislative acts are not only duly recorded, but duly made public also; and, by the estimation in which these acts are held by the thinking, intelligent, and discriminating portion of the community, must our legislative character be established, as entitled to honor, or deserving reprobation. None, as we well know, are found perfect, whether they be tried in their individual or in their collective capacity; but although, as legislators, we may, at times, have erred in judgment, I am happy to think that we can safely point to the records of our public acts, and ask the intelligent and candid whether these records do not afford the most satisfactory and convincing evidence, that the improvement of the social and political condition of the people, the protection and extension of their natural and constitutional rights and liberties, and the advancement of all their real interests, have ever been the peculiar objects of all our deliberations and resolutions. As respects what may be said in another Branch of the Legislature, in the course of debate, by any of its members, derogatory to the legislative dignity and character of this House, the case, in some points of view, is widely different. If members of another House so far forget that self-respect by which men in their position should be governed, if they so far disregard parliamentary courtesies and decorum, as, when speaking of this House, either collectively or individually, to asperse them in their legislative capacity and characters, in language the most unparliamentary and ungentlemanly, as some of Your Honors now present have, I understand, heard them do,—the only course, with reference to such unbecoming and unprovoked breaches of parliamentary propriety, which we can feel at liberty to pursue,—as I am sure Your Honors will all most readily admit—is, whilst both condemning and deploring that unjust and ungenerous spirit in which they seem to have their origin, most carefully, most guardedly to avoid, in the course of our own debates and deliberations every expression or word which might justify, although only for a moment, lay us under the imputation of being governed by any such motives or principles as those, the manifestation of which in another quarter we at once censure and regret. Your Honors must be aware that, in thus expressing myself, I am by no means merely simulating a moderation by which, as the President of this House, I have not hitherto been governed. On the contrary, I have never myself, in any of our debates or discussions, as Your Honors I am satisfied will bear me witness, indulged in any reflections injuriously affecting either the private or the public character of any individual member either of the Executive or of the Legislature; and neither, on any occasion when, through momentary inadvertence, any of Your Honors may have been on the point of lapsing from parliamentary propriety, have I failed to make the admonitory call to order,—a call, to which the most prompt and cheerful acquiescence has ever been accorded. But, Your Honors, when, after long and deliberate preparation, a direct attack is made, by a majority in another House, upon our clearly defined and well established constitutional rights and privileges as a Branch of the Legislature, and no recognition of our existence as such, which can, by any possibility, be avoided is accorded to us by that ruling majority, it is time, high time, indeed, to assert the dignity and independence of our position; and never, when such attempts to defraud us of our due constitutional weight and importance, as the Upper House of the Legislature, are brought immediately before us, and are properly under our consideration, will I fail individually to use my best endeavours to repel and defeat them, or hesitate to make manifest, according to the best of my ability, the insidious and dangerous character of the designs which they are intended ultimately to effect; and neither, I am certain will your Honors fail to interpose every constitutional barrier to any arrogant assumption of misconceived authority, and to every attempt at encroachment upon our parliamentary power or privileges, which may characterize or proceed from an overbearing majority in another House. I shall never make any factious oppositions to the party now in power; and never will I, to promote any merely party views or designs, offer opposition to the passage through this House of any good and wholesome legislative measure which may be sent up to us, for our concurrence, by the majority of the House of Assembly, much as I am opposed to the political views and principles on which they base their power; and neither, I trust, will any of your Honors. But the very moment in which any measure shall be laid before us, the object of which is the disruption or violation of the compact into which the Legislature of this Island entered with Her Majesty when she was graciously pleased to concede to us the establishment of Responsible or Departmental Government,—that very moment will it be our duty to become positively obstructive, to lay our hands upon the measure, to arrest its progress, and,—in the legitimate exercise of that independent power and judgment with which the constitution has invested us, for holding the even balance between the popular and the executive branches of the Legislature,—to

say it shall not become law. So long as the conscientious political convictions of the majority of this House shall call upon them to oppose the general or ruling policy of the party now in the ascendant, so long, to them, must an open, straight-forward, and uncompromising persistence in a course of opposition to that policy be the evident, the unmistakable path of public duty; and in it, I doubt not, they will steadily, honestly, and honorably persevere; for their continuance in such a course of opposition, is quite compatible with their full recognition of the merits of any legislative measure proceeding from that party which may evidently be for the public good; and every measure of that character which they may send up to this House, will, I am certain, be most readily and cordially entertained by your Honors. As yet the dominant party have not gone so far as to call upon us to sanction, by legislative enactment, the infraction or disruption of the compact entered into by and between Her Majesty and the Legislature of this Colony, in 1851; but they have really done much worse. By that compact Departmental Government, as at the time in practice in Nova Scotia, New Brunswick, and Canada, was established in this Colony; that is Responsible Government was, by that compact, conceded to the people of P. E. Island, on the very principles on which Parliamentary or Responsible Government subsists in Great Britain, and in that form, and according to that system, in which alone any real or direct responsibility to the people has been found, or can be made, to exist—government by heads of departments, having seats in the legislature, and the chief or major portion of them in the popular branch, having been confirmed in their official appointments by the approbation of their several constituencies.

R. B. IRVING, Reporter.

(To be Continued.)

The Examiner.

CHARLOTTETOWN, P. E. I., JUNE 6, 1859.

SIR DOMINICK'S PROTEST.

The following is the document referred to in our last No., which was entered on the Minutes of the Executive Council by the late Lieut. Governor, Sir D. Daly, in which he gives the grounds of his dissent to the change recently introduced into the Government of this Island. The reasons for dissenting to the change are very forcibly but concisely put, and were it not for the very embarrassing position in which Sir Dominick would be placed, with respect to the financial affairs of the Colony, we believe that he would have risked another dissolution, rather than submit to the unconstitutional proceedings to which he has so emphatically given his dissent.

EXTRACT FROM THE MINUTES OF THE EXECUTIVE COUNCIL.

"COUNCIL CHAMBER, 8th MAY, 1859.

"At a Meeting of the Council,

PRESENT:

"His Excellency the Lieutenant Governor, &c., &c., &c.

"His Excellency laid before the Board a Memorandum, which was ordered to be entered on the Minutes, and the same was read, and is as followeth:

"I deem it necessary to record on the Minutes of the Executive Council, in order to guard against future misapprehension, the grounds of the opinion which I entertain with reference to the exclusion of all Office-holders from both Houses of the Legislature, and consequently from the Executive Council; and also my reasons for having acquiesced in the adoption of that principle in the formation of the present Executive Council.

"I consider the change of system to be unwise and impolitic, for the following among other reasons:—

"Because the absence of the heads of Departments from the Executive Council deprives it of much of its efficiency.

"Because, in the same proportion, the utility of the Executive Council to the Lieutenant Governor and the other branches of the Legislature is diminished.

"Because experience has ever shown that it is not consistent with the best interests of a Government, that onerous and important public duties should be performed gratuitously.

"And, lastly, because the change is directly at variance with the great model afforded by the British Constitution, upon which all Her Majesty's Colonial Possessions in the enjoyment of free institutions, have striven, as far as practicable, to construct their respective Governments—a course which experience has shown to be that which is best calculated to promote the welfare and contentment of the people, which is manifested by its successful operation in the neighbouring Provinces.

"In acquiescing in the exclusion of the heads of the principal Departments from the Legislature, and consequently from the Executive Council, I have been solely actuated by a desire to maintain the harmonious action between the Executive and Legislative authorities, which is so essential to the general welfare—by permitting the trial of an experiment, (for such I must consider it,) and trusting to the effect of experience, and the increasing intelligence of the constituencies, to discover at no distant period that this change is not an improvement in any sense; and that there is more wisdom in endeavouring to render a well-known and tried system applicable to the circumstances of the Colony than in seeking for improvement from the introduction of changes unsupported by the test of experience, and being, as I believe, without any precedent that would justify their permanent adoption.

(Signed) "D. DALY, Lieut. Governor."

THE HON. COL. GRAY'S SETTLEMENT OF THE LAND QUESTION.

The resolutions proposed by the Hon. Col. Gray when the House of Assembly was in Committee on the despatches sent down by the Governor, will be found in our present No. amongst the Parliamentary reports. A very hasty perusal will enable the reader who has not yet seen them to arrive at a just estimate of their merits, and we imagine that he will not be slow in coming to the conclusion that he has seldom if ever read more bunkum upon any important question.

The preamble—which occupies nearly as much space as the resolutions to which it purports to be a preface—contains nothing more than a few platitudes such as Hon. Members of the Government might make in a hustings speech, seasoned with abuse of those who have advocated the claims of the tenantry, or proposed any measure that was not perfectly in accordance with the views of the Land Proprietors, abounding in false premises, and consequently illogical conclusions.

The first resolution recommends the appointment by the Crown of "a discreet and impartial person, not connected with this Island," to act as Commissioner, to negotiate with the proprietors for an abatement of the tenants' arrears of rent, and for the agreement to such terms as will enable the latter to become freeholders without infringing upon the rights of the landlords, &c.—So long as the Colonial Office is under the influence of Sir Samuel Cunard, and other absentee Proprietors, with respect to the affairs of this Island, it is all folly to suppose that any person could be appointed as Commissioner independent of proprietary control. The idea of making the tenants freeholders on such terms as may be agreed upon by the proprietors and their nominated Commis-