

## THE LEGISLATURE.

[Having doubled our Sheet this week, we are enabled to give some space to the Reports of Proceedings in the Legislature. We have an immense mass of MSS. in our Drawer, furnished by the Reporters of the two Branches; and, from time to time, we shall select from these such portions as are likely to prove generally interesting to our readers. We recommend to their perusal the following brief but instructive Debate, now published for the first time. The principle of paying members of the Legislative Council is very ably discussed, and shown to be wholly untenable. The sentiments expressed by the several speakers will find, we have no doubt, a ready response in the breasts of all who desire to see the Legislative Council filled by men of independent and liberal minds, no matter whether they reside in Charlottetown or not.

We shall insert in our next No. a part of the Debate which took place in the House of Assembly, on the resolution providing an increase to the Salary of the Lieut. Governor.]

## Legislative Council.

28th APRIL, 1848.

## PAY TO LEGISLATIVE COUNCILLORS.

House in Committee on the Appropriation Bill.—The clause providing Pay for Legislative Councillors being read—

The Hon. Mr. *Swabey* said. The item now under the consideration of their honors was not only a novel one, but one which, if passed, would deservedly bring this branch of the Legislature into disrepute. It was not to be forgotten that the same subject had been discussed by the Legislature of Nova Scotia some two or three years ago, and even petitioned for; but fortunately for the credit of the Colonies, that extraordinary and in his estimation, mean attempt, fell to the ground, not having found that favour with the Imperial Government which it expected it would, and without which it could not become law. This might yet be seen by a reference to the Despatch which the then Secretary for the Colonies, Lord Stanley, transmitted to Lord Falkland on the subject. But he hoped their honors stood in no need of those exterior aids to admonish and urge them to serve their country as they had undertaken to do when they accepted their situations, without fee or reward—he knew, or he was never more mistaken, they would discharge the duties of their highly honourable office independently, and spurn the very name of pay; for he who could deliberately take his place at that Board, influenced by such mercenary motives, was—he had no hesitation in stating it—altogether unworthy of a seat at it; and if the principle of pay were once admitted, it would, without a doubt, deprive their branch of the Legislature of its independence. It had been asserted elsewhere, because the members of the House of Assembly took pay, that Legislative Councillors had as good a right to do so, and might, with equal propriety accept of it; but this was quite a fallacy, for there was no analogy whatever between the two Houses. A reason had been assigned for a departure, in this Island, from the general rule; it was this, that unless Members from the Country were paid for their attendance, they could not afford to remain for a month or two in Charlottetown at their own charges, and that thereby the Council was unjustly deprived of country members. Now, this was more a specious than a correct argument. He did not believe that the pecuniary consideration adverted to, was the principal difficulty—a fitness for the office he imagined was the chief one. No doubt it was very desirable to have members from all parts of the country; but the remedy at present sought, instead of conferring a benefit, by their adopting a system so un-English and pernicious in its very essence, it would entail on the country consequences tenfold more disastrous and inconvenient than any they had ever yet experienced; but, in fact, practically no inconveniences had resulted from the system now in operation. The Legislative Councillors were not sent there as the members of the other House were, to represent the local opinions and wants of particular districts. Were their honors to suppose so, or act on that position, they would place themselves in a very false position. The duties assigned them by the constitution were dissimilar. Each individual member of the lower House is presumed to know and to carry out the views of his constituency, so in this way the whole of a country may be said to be represented. It imposes, however, on each individual member the necessity of his devoting the whole of his time and talent for the advancement of the particular locality he sits for. His sphere, therefore, although he had a voice in the Councils of his country, was, to a certain extent, circumscribed;—the duty of Legislative Councillors was of a somewhat different kind; it was more their's, he imagined, to review the different and not infrequently conflicting views and opinions of the several members of the lower House, and then to decide on them, and this, from the position they occupied, from

their not having mingled in the exciting scenes inseparable from popular assemblies, and being free from the local interests and prejudices he had alluded to, they were enabled to do so with that calmness and dispassion so essentially necessary in the enacting of laws, which had so powerful a tendency either to advance or retard the prosperity of a country. Such, at all events, he considered to be the duty of Legislative Councillors; and he, for one, would never consent to place that branch of the Legislature in dependence on the other; but if they received pay, there was not a doubt they would soon become merely the echo of the House of Assembly. All would go on smoothly so long as they were subservient to its wishes—so long as they were good boys and did what it wanted, but no longer. Such would inevitably be the result if pay were accepted by members of that board. A Bill had been sent up to them for that very purpose; to the honor, however, of the Council, be it said, not a single member would—he had almost said, contaminate his fingers by touching it; but no member would take it up or advocate it—so far from this every one seemed to be ashamed of and repudiated it. That Bill could only affect one of their number; and he would, indeed, form a very unjust estimate of that gentleman's character, whom he had known long and well, if he would accept of any interest or benefit that might have been intended for him by it. And even at the risk of periling this Bill (the Appropriation), and none would more than himself deplore an event so truly embarrassing, he would not consent to it nor to the passing of the Legislative Council Pay Bill, nor anything at all that is either analogous to, or that may belong to it. He knew that in the other end of the building there was a party which habitually arraigned their honors, in terms he would not condescend to describe, and if they consulted only their own respect, it might be as well, perhaps, not to notice it. The movement of a straw indicates the direction of the wind, and that Bill might be considered as indicating the commencement of a system of intimidation, which he equally detested and despised. It would seem that they judged the moral principle and courage of the Council by the standard they applied to themselves; but in this matter, more particularly, perhaps, than in any other, involving so thoroughly as it did, their very independence as a separate branch of the Legislature, they would find they were made of sterner stuff than they gave them credit for, and that they had reckoned without their host.—He moved that the Grant be disagreed to.

The Hon. Mr. *Holl*, in seconding the motion, begged leave to draw their honors' attention to the Despatch which had just been alluded to, and which had been transmitted by Lord Stanley, then at the head of the Colonial Department, to the Governor of Nova Scotia, in August, 1845. (Here Mr. H. read the Despatch, as far as it related to this subject):

MY LORD;

I have laid before the Queen the Address to Her Majesty, from the Legislative Council of Nova Scotia, enclosed in your despatch of the 19th of June last, No. 323.

In deliberating on the advice which it has been my duty to tender to the Queen on this occasion, Her Majesty's confidential servants have observed, with much regret, how serious are the difficulties which oppose the entrance into the Legislative Council of Nova Scotia of those inhabitants of the Province who are the best qualified by their education, their fortune and their rank, to occupy a station at once so arduous and so honorable. We should regard the general and settled reluctance of those gentlemen to assume such duties as one of the most serious evils with which society would be visited, in that part of Her Majesty's Dominions. However considerable, and however just, might be the apologies for declining a service required only by the consciousness and by the honor of contributing so largely to the general welfare, it is scarcely possible but that such an example, from so high a quarter, should seriously impair, throughout the Province at large, the public spirit and the self-forgetfulness which, in Nova Scotia, as in every free Government, constitute the first and most essential element of all public prosperity.

Her Majesty's Government have adverted, anxiously, to every suggestion offered by the Legislative Council collectively, by an individual member of it, or by your Lordship, for averting, or for diminishing, so great a disaster.

The first proposal made with that view—is that the members of the Legislative Council should be remunerated for their services in that capacity on the same terms as a similar remuneration is granted to the members of the House of Assembly. It is most remote from the design of the Ministers of the Crown to entertain, or to suggest a doubt that the duties imposed on the members of the Legislative Council well merit such a pecuniary acknowledgment, but we must venture to doubt whether their acceptance of it, even if it were offered, would be judicious. The members of the Assembly are elected by the people, and may, I doubt not, without any disparagement to their position, receive from their constituents a direct pecuniary reward for the services they are so chosen to render. It is otherwise with the members of the Legislative Council. They are the nominees of the Crown. Their high and delicate duty is to arbitrate between the opposite tendencies of the Monarchical and the Democratic branches of the Constitution, and when necessary, to control and to harmonize both. To become pensioners, either of the Crown or of the People, would be to extract materially from their qualifications for the uncompromising discharge of this important trust.

Our great solicitude is to secure to the Legislative Council the weight so justly due to their suffrages on the measures of the Local Legislature. We conceive that the absolute independence of their position is mainly conducive to that end, and that to assign salaries to them would be to diminish that independence, and consequently would be unwise and impolitic.

No arguments of their honors could place the subject in a clearer light. For his part, he would consider that if he acquiesced in the present Grant, he would be instrumental in dealing the deadliest blow that could be inflicted on the Constitution of the Council, and he trusted that there was not a member of that Board who

would consent thus to barter his independence. He thought the House of Assembly had taken an extraordinary course in interfering with this branch of the Legislature in this matter. It was to be observed that the sum voted in the Appropriation Bill, applied only to one member of the Council, but he would express a hope that the day was yet distant when an individual member of the Board would consent to be singled out as an object for the charitable consideration of the other branch of the Legislature. It was obvious that such was the light in which the subject had been viewed in the present instance by their honors, as the Bill had not been taken up by one of the Council since its arrival from the House of Assembly, but had, in fact, been allowed to die a natural death. The subject ought not to have originated in that quarter. It would be time enough for an exhibition of its liberality out of the public purse, when their honors sought remuneration for their services, and not before. If ever the subject be mooted at all, if ever in the altered circumstances of the country, it might be deemed advisable to abandon the course pursued by preceding Legislative Councils, it should emanate from the Imperial Government, and be based on permanency alone, and not depend on the fluctuating opinion or caprice of the popular branch of the Legislature. It was his opinion, however, that members of the Legislative Council should not be paid; and he thought the reasoning of the Despatch perfectly conclusive on the subject. In the case referred to in the Document he held in his hand, the Legislative Council of Nova Scotia had itself petitioned for pay, but the Imperial Government had very properly declined to accede to it, even with the concurrence of the House of Assembly. Nothing could be more explicit than the views entertained by the Government, sufficiently so he would hope to set the question at rest as far as their honors were concerned. It wisely thought that to assign them salaries would be to diminish their independence. Besides, they should bear in mind their honors were the nominees of the Crown—in mind the people; and in order that their actions should be above even the imputation of mercenary motives, they should tenaciously adhere to that position which enabled them to decide on all matters brought under their consideration without fear, favor, or affection.

The Hon. Mr. *Swabey*. He believed that arguments had been urged, both in the House of Assembly and elsewhere, with regard to the difficulty of getting members from the different parts of the country to sit in the Council. He would particularise a few cases of gentlemen, whose names had been brought before the public, and who had once held seats at that Board. There was his late friend, Mr. Peter McNutt. Now, it so happened that that gentleman, so far from advocating the propriety of Councillors being remunerated for their services, he actually protested against members of the House of Assembly receiving pay. It had also been alleged that Mr. Warburton had declined a seat from the expenses he would be subjected to; but this he knew was not the fact, for that hon. gentleman had denied it in the public prints, and that was sufficient. There was Mr. Green, too. Now, from the published correspondence of this gentleman, it was perfectly clear that he refused to sit, not on account of his not being paid, but on account of his being called upon to pay for his Mandamus, and by the bold stand he as well as the Hon. Mr. Hensley then made, they had exonerated all other Councillors from paying such a tax for gratuitously devoting their time to the service of their country. Mr. Hensley still claimed the right of being a member of the Board, and he, by no means, felt clear that he was not. He would now come to the case of Mr. McGowan. With respect to that gentleman, if not misinformed, for he did not in his case, as in the others, speak from his own knowledge, he believed that such a thing as pay to a Councillor never once entered into his mind, nor did the expense of staying in town, in any degree influence him, or operate as a difficulty. He did not believe that it was true. So that the plea of expense, and that was the only one, was not established by evidence.

The Hon. Mr. *Hensley*. The proceedings relative to this matter have an unusual and peculiar character. First, there was sent up to their honors a Bill to pay all Legislative Councillors residing at a greater distance than 20 miles from Charlottetown. This Bill their honors permitted to remain unnoticed and untouched upon their table, thereby exhibiting an almost ungrateful indifference to the spontaneous and unsolicited interest which some of the members of the House of Assembly thought proper to bestow upon their pecuniary concerns. They had now before them an appropriation of £30 for the object contemplated by that Bill; intended, no doubt, by a friendly coercion, to induce their honors to accept that bounty. Their honors would observe the singularity of that appropriation—that it was confined to such of their honors as might reside at the distance of 20 miles. The difficulties and inconvenience of attending to their legislative duties was to be meted out, measured and recompensed, so soon as they passed the imaginary line which separated the conclusion of the twentieth mile from the commencement of the twenty-first. Perhaps, in some future session, 100 miles might put in its claim to some consideration, or even further, that 19 miles might not be entirely excluded; in short, he saw no reason (if such a principle were at all admitted) that there should not be established a sort of sliding scale, apportioning to each of their honors such a remuneration from the overflowing Treasury of the