



IS YOUR REMEDY? MAY'S OINTMENT.

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Legislative Proceedings. HOUSE OF ASSEMBLY.

CONDENSED REPORT. WEDNESDAY March 10, 1852.

(Remainder of Debate concluded.)

MESSAGE OF HIS EXCELLENCY THE LIEUT. GOVERNOR CONCERNING MR. MOONEY'S BILL, TO COMPEL PROPRIETORS TO RECORD THEIR TITLES.

Hon. Mr. POPE, in reply to Mr. Palmer, said he had accounted for that had fallen from the honorable and learned member, relative to the Message, as of no more consequence or value than an idle flourish of trumpets. The honorable and learned member, he said, admitted that His Excellency's opinion was perfectly just, that the Message, in itself, was all right, and that the Bill ought not to pass; and yet, he was opposed to the House's acting in pursuance of the view which he himself pronounced to be correct. He was, in fact, evidently to implicate the Government, if possible, in some impropriety of conduct, or dereliction of duty; but his attempt would prove of no avail, as the Government, in fact, had already decided upon the course which it was to pursue, and he had already decided upon the course which it was to pursue.

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would be very improper for the Assembly to send up a Bill to the Legislative Council, knowing that they could not legally pass it; and as to any responsibility which the honorable member (Mr. Thornton) might think would attach to them about the petition, he measures to question, they would, if it were sent up to them, at once get rid of that, by referring to the Royal Instructions, which prohibit their passing it, without Her Majesty's permission first obtained.

Hon. Mr. POPE. Yes, and record their names upon their Journal accordingly, as we ought to have done. Mr. MONTGOMERY said, a motion to discharge an Order for carrying up a Bill to the Council, two days after the Order had been made, was certainly a very singular, if not altogether unprecedented and very improper one. His Excellency believed the Bill to be before the Council, and he (Mr. Montgomerie) thought the only proper way to deal with it was to allow it to go up, in pursuance of the Order, that the Council might take some action upon it. There would then, he thought, be nothing to prevent the Assembly from following up what they had already done by an Address to Her Majesty; and there would be time enough to do so.

Hon. Mr. WHELAN. Some honorable members appear to entertain a rather extravagant regard for precedents; and, in their opinion, no course can be right, unless it can be shown to be in accordance with precedent. But, for my part, I am of opinion, that too much weight is frequently attached to the existence, or to absence of the case may be, of a precedent for a contemplated course of action; and all considerations concerning precedents, might often, I think, be very well dispensed with. If a course proposed, or precedent should have force to sustain it. For the House to send up the Bill in question to the Council, knowing that it could not pass it, would be to practice sheer humbug and deception upon the people. I would not have been prepared to do so, on account of the Royal Instructions; for, I confess, I was not aware, that the introduction of the Bill had been contrary to them; but I do not think there is any thing culpable in such a course; for it cannot be supposed, that we are at all times bound to know what are the measures which the Royal Allowance has been refused. It, however, now appears, that the Bill in question was introduced by His Majesty, King William the 4th; and that, therefore, in accordance with the Royal Instructions, it ought not to have been re-introduced into the Legislature for enactment, without express leave for that purpose, first obtained from the Sovereign. Its introduction into, and passage through, the House, was therefore, strictly wrong; and as what was wrong yesterday, cannot, by any possibility, be right to-day, it ought to be quite evident to the House, that having fallen into error, the best thing they can do, is honestly to confess it; and at once to stay all further proceedings in a given direction, with respect to the business, as it fortunately happens to be in their power to do so.

Hon. Mr. MACAULAY. If we do not know what to do without His Excellency's recommendation, we are wiser than he. The Government members of the House have given it as their opinion, that the necessity and justice of the measure cannot be disputed; and it is an opinion that is justified by the friends of the measure, and that is a right one. It is, therefore, to be regretted, that the Government members of the House, in their conduct, have not been more consistent. The Government members of the House have given it as their opinion, that the necessity and justice of the measure cannot be disputed; and it is an opinion that is justified by the friends of the measure, and that is a right one. It is, therefore, to be regretted, that the Government members of the House, in their conduct, have not been more consistent.

Hon. Mr. THORNTON opposed the motion for the discharge of the Order to carry up the Bill to the Council; and he looked upon His Excellency's Message, in a light, very different from that in which it was viewed by the Government members; and put it as a question, whether it was not very different from that given to it by them. Having passed the Bill, and ordered it to be taken up to the Council, honorable members, were, he said, bound to support it; and, although it was in the hands of the honorable member of the House, they ought to act with respect to it, as if it were actually in the hands of the Council. It ought to be sent up without delay, and the Assembly ought not to take any further action upon it, until it has been dealt with by the Council; and, if rejected by the Council, it would then be the duty of the Assembly to support the Bill by an Address to Her Majesty.

Hon. Mr. POPE. The course now proposed is, I admit, rather a novel one; but there can be no impropriety in our pursuing it, so long as the Bill is in the hands of the House, and is under our control; and if we find, what it so, that we have fallen into any mistake or error, with respect to it, it is not only perfectly competent to us to endeavour to rectify it, but it is our duty to do so. Let us then act, not like wise men, but like fools, having discovered an oversight, let us acknowledge it, and as in our power, amend our mistake. Permitted that the only course is to do so, I beg leave to refer to it, and the honorable member of the Council be discharged; and that the Bill be referred back to the Committee of the whole House, for the view of adopting an Address to Her Majesty the Queen, praying the Royal leave to be given to the enactment of such a law.

Hon. Mr. COLES. That is exactly the sum and substance of my motion. Hon. Mr. HAVILAND. After a Bill has been regularly passed by the House, and ordered to be carried up to the Council, they have no constitutional power to retain it; it has then virtually passed the House. To agree to the motion of the honorable member, would be to establish a precedent which might prove very detrimental to popular rights and privileges. Suppose, for instance, that just immediately before the carrying through this House, with the general concurrence and approbation of the members; and that, the business of the Session being supposed to be over, a number of the country members, who had supported the measure, had returned to their homes; and that such of the members as had been opposed to it, finding they thus constituted the majority of the House, should make a motion for withdrawing the Bill from the Council, or for its amendment; and a Bill which had been passed with the full concurrence of the majority of the whole House, and which might be of great importance to the general interests, would actually be abandoned, for the time, and perhaps, altogether lost, to the detriment of the public interests. This, I think, quite sufficient to show how dangerous a precedent the honorable member's motion would be to the House, if it were adopted. But why is the House thus called upon to act unconstitutionally and endanger popular rights and privileges? Why, for no better a reason than this:—if ignorant, oblivious of their duty, and to save their credit, the House must consent to stultify themselves, and betray their constituents. That the Bill in question was irregularly introduced, and has been carried through the House in contempt of the Royal Instructions, cannot be denied; but for such irregularity and contempt, no one has been to blame except the members of the Government, who had supported the measure, with respect to any measure in progress through Parliament.

Hon. Mr. POPE. The Bill to which the Message has reference is not in progress through this House. Hon. Mr. HAVILAND. So much the worse. That only makes the interference so much the more unjustifiable. The honorable and learned member then concluded by reading, in support of his opinions, the following extract from a Treatise upon the Law, Privileges, Proceedings, and Usage of Parliament, by Thomas Erskine May, Esq., a favorite work, he observed, with the Hon. the Treasurer. "On the 13th November, 1640, it was moved, that some course might be taken for preventing the inconvenience of His Majesty's sending up bills to the Council, which is in violation of the House, before it is determined. In the remembrance of the Lords and Commons to Charles the First, 16th December, 1641, it was declared, 'That it is their ancient and undoubted privilege, that your Majesty ought not to take any notice of any matter in agitation

or debate in either of the Houses of Parliament, but by their information or agreement; and that Your Majesty ought not to propose any condition, provision, or limitation, to any Bill or Act in debate or preparation in either House of Parliament, or to manifest or declare your consent or dissent, approbation or dislike, of the same, before it be presented to Your Majesty in due course of Parliament.'"

Thus, concluded the honorable and learned member, it clearly appears, that the only time at which the Governor can constitutionally express his sentiments, to either both Houses of the Legislature, concerning any measure, has been before them, and which is not finally disposed of, if it is presented to him, by the Colonial Secretary, for his assent or dissent.

Hon. Mr. HAVILAND. Such opinions, although urged upon the notice of the House by me, are not crude notions of my own. They are opinions which pass current with all who are intimately acquainted with the laws and usages of the British Parliament. They are, in fact, the express and confirmed declarations of the British Parliament itself. The Hon. the COLONIAL SECRETARY then concluded his observations by saying, that the only way to secure the speedy passage of the Bill into law, was to discharge the Order for carrying it up to the Council; and to refer it back to the Committee of the whole House. With the view of adopting an Address to Her Majesty, praying the Royal leave to be given to the enactment of such a law, was carried in the affirmative.

Hon. the SPEAKER then put the question on the motion of the Hon. the Treasurer; and the House divided: Yeas—Honourables Messrs. J. Pope, J. Jardine, G. Coles, E. Whelan, and W. Warburton; Messrs. Boston, Laird, Davies, Fraser, Fyfe, Macaulay, Montgomerie, and Clark. Nays—Messrs. Palmer, Montgomerie, Haviland, Thornton, Yeo, MacAulay, Whitman, and Jones.

Resolved, That the House will to-morrow, resolve itself into a Committee of the whole House, to take the subject matter of the foregoing Resolution into consideration.

WEDNESDAY, March 24. Resolved, That the House do now resolve itself into a Committee of the whole House, to take into further consideration the Bill referred back to the Committee of the whole House, to require Landlords, or Claimants of Rents, to put the Titles by which they claim, upon record, in the proper Offices of record in this Island, with the view of adopting an Address to Her Majesty the Queen, praying the Royal leave to be given to the enactment of such a law.

Hon. Mr. JARDINE took the Chair of the Committee; and after some time spent therein, he rose, and the Speaker resumed the Chair. Hon. Mr. JARDINE reported that the Committee had agreed to a Bill to compel the registration of the Original Grants or Patents of Lots or Townships of Land in this Island; which Bill being again read at the Clerk's Table was agreed to by the House. Hon. Mr. JARDINE also reported, that the Committee had agreed to an Address to the Queen, which Address being again read at the Clerk's Table, was agreed to by the House, and is as follows:—

A D D R E S S. "To the Queen's Most Excellent Majesty: MAY WE PLEASE YOUR MAJESTY: We the Representatives of Your Majesty's faithful and loyal people of Prince Edward Island, in the Legislature of the said Island, most respectfully submit the inconvenience and insecurity arising from the want of a law to oblige the Original Grantees, or Patents, of Lots or Townships of Land in this Island, to put their Grants, or Patents, on record, in the proper Office in this Island.

The frequency with which Lands in new countries change hands, and in particular in this part of your Majesty's dominions, together with the conflicting claims, sometimes of parties to the same Land under an Act such as is referred to, is indisputable. The Assembly, in order to remedy the want complained of, have agreed to a Bill for that purpose, which is herewith transmitted. An Act, bearing a title somewhat similar to the present, although varying in its principles, was passed in the year 1823—the second year of His Majesty King William the Fourth—but dissolved by the Crown. Since then, the Government of this Island applied to that of Nova Scotia, for Copies of the several Original Acts of Parliament, which have been recorded in the Public Offices, previous to the Colony becoming a separate Government; and incurring considerable expense and some trouble, they obtained Copies of these Grants on record, and which were copied into the Public Records of this Colony; by the addition of which to those previously recorded, the great majority of the Original Patents from the Crown, are now recorded in this Colony. But a few Proprietors, namely, those of Townships Nos. Eight (8), Twelve (12), Twenty (20), Twenty-five (25), Forty-four (44) and Forty-six (46), still continue to withhold the recording of their Patents in the Public Records of this Colony; and it is deemed necessary to the security of property, and the contentment of the People residing thereon.

May it therefore, humbly submit, that those Proprietors, above enumerated, ought to have their Original Grants from the Crown, recorded, they further most humbly submit, that a request so reasonable, which does not infringe upon private rights, and is considered requisite in matters of reference, when disputes arise between parties, ought no longer to be withheld from this Island.

Resolved, That the said Bill and Address be engrossed. Resolved, That a Committee be appointed to prepare an Address to Her Majesty the Queen, praying that Her Majesty's Principal Secretary of State for the Colonies, the said Bill and Address, for the purpose of being laid at the feet of the Throne.

Ordered, That Mr. Montgomerie, Mr. Davies and the Hon. Mr. Jardine, do compose the said Committee.

Miscellaneous. (From the London Times, December 12.) UNIVERSAL SUFFRAGE HOSTILE TO FREEDOM.

From the assent given to Louis Napoleon's usurpation by millions of votes, we draw a most important lesson. It demonstrates beyond all argument, that universal suffrage, which secures nothing, does not even secure the maintenance of freedom. The passions of social democracy are certainly not extinct in France, for they constitute the principal elements of her present national character; but these democratic passions are not necessarily or constantly allied to the love of free institutions. In truth, where the principle of popular omnipotence is absolutely and unconditionally recognized, that power may be employed, as in the present instance, to subvert its own functions, and to first its own chain. The masses of the population may be so distracted by fear, or duped by falsehood, or led astray by enthusiasm working upon ignorance, that, losing all direction and correct judgment, they embrace the very thing which in clearer moments they most abhorred. In other words, the chief security of free government lies not in the numerical force of the multitude, but in the strong moral and independent action of the middle and upper classes. If any avow, even, as is now the case in France, that whatever attachment to constitutional

government lingers among the higher classes is absolutely crushed by the voice of a popular majority. Nor is this fact, though it seems paradoxical and strange to the shallow politicians who identify freedom with democratic institutions, at all inconsistent with history or with reason. It is the old spirit of the hazzardous Naples demanding the restoration of that absolute power which the intelligence of the country had laboured to overthrow; it is the cry of "Viva il Re nullo," which more than once greeted a Ferdinand from the populace of Madrid, and which aroused the rural districts of Portugal in favour of Don Miguel. It is not, by the lowest classes, especially in countries where education is rare, that the great blessings of liberty are most fondly cherished, and the martyrdom of oppression most impetuously endured. On the contrary, popularity often accompanies successful power. Governments of the most despotic character may sometimes in one sense be termed popular, though they crush every thing between the army that surrounds the throne and the populace which supports it. This is the present condition of the Russian empire, this is a consideration against the condition of the Austrian empire in its provinces of Lombardy, Galicia, and Hungary, where the resistance to the Government comes chiefly from the aristocracy and the towns. This will probably be far from being the condition of France. It is by no means difficult for a Government, jealous of every species of liberty, to conciliate the classes which are numerically the strongest. Liberty of the press is an account to men who neither write nor read. Liberty of person is of little moment to citizens too obscure, to have the measure of their daily toil broken in upon by the suspicions of a powerful Government. Taxation may be so adjusted as to throw the heaviest pressure on the educated, the independent, and the rich. Military conscription and forced labour are, in fact, the only burdens which fall with extreme severity on the poor rural population of military States under despotic rule.

Popular measures have not only a necessary connexion with political liberty or constitutional