

Tight Binding

House of Assembly.

FRIDAY, March 21. KING'S COLLEGE DESPATCHES.—(Continued.)

Mr. Williston said that being the youngest member of that House, for he believed that he had been a shorter time in it than any other member, having been there but two sessions, he approached this question with diffidence. But he felt that he owed to himself and to the people a duty with respect to it. Our Government was now admitted to be responsible to that House, and the plain question before them was whether the well-understood wishes of the people, in respect to the King's College Act, had been carried out by the Government. The question of King's College had been before the Legislature since 1852. He was not now going into the policy of the Act of last session. He was very glad when the hon. Provincial Secretary proposed to the Bill his amendment, which, it had been passed, he (Mr. W.) believed would have made King's College an institution which would have commended itself to the people throughout the Province. And he believed that if the Secretary in his Bill had left the locality of the College fixed in Fredericton, instead of leaving it blank, his Bill would have been carried, for he (Mr. W.) believed that the members for Sunbury were frightened that if the amendment was carried the College might be removed from Fredericton, and therefore were induced to vote against it, when if the locality had not been left blank they would have supported it. But when that amendment was rejected, and he found that there was not spirit enough in the House to reform and resuscitate the College, he came to the conclusion that he should vote to sweep it away entirely. The Bill passed this House by a vote of twenty-seven to twelve, and also passed the Legislative Council, and it then became the duty of the Government to see that the wishes of the Legislature were carried out. What steps had the Government taken to carry out this matter? The Attorney General and Provincial Secretary voted against the petition against the Act from the College Council; but what further steps did they take to inform the Queen of the wishes of the Legislature and of the country? In 1855 Mr. Johnson voted in the House against the Prohibitory Law; but when that law had once passed both branches of the Legislature he had sunk his feelings as a member of the House, and joined his colleagues in the Executive in recommending His Excellency to give his assent to the Act of the Legislature. If the faith of the Crown could be compromised by the passage of the College Bill the Attorney General must have been aware of it when the Bill was before the Legislature last year, and it was the duty of the Government on that occasion to have met the Bill on the floor of the House fairly, and opposed its passage on that ground. Failing in doing so, and dividing on a question of such importance, and involving such principles, and permitting the Bill to pass, they must be prepared to support the views of the majority, or give place to another administration. These were his views on the point of Executive responsibility. Had they opposed it on the floor of the House, on the ground that it conflicted with Imperial interests, he for one would have been ready to support them in opposing it. The correct rule was that the Governor could do wrong; and knowing this to be the rule, His Excellency in his reply to the memorandum of his Council asking for copies of the letters, invites them to make their opinions on the Act known to the Queen; and yet they allowed the Act, and the letters hostile to it, to go home without any representations concerning them. To must say that he thought there was the same backward influence at work against this Act that the men now in office had so much reprehended in former occasions, when they were in opposition.

Hon. Mr. Smith.—These influences did not affect the passing of the Act. Mr. Williston.—The principle was the same whether the influences had or had not any effect. There should have been from the Executive Council a clear and explicit representation to the Queen as to the allowance of the Bill. If the Council had made that representation, and had done proper exertions to carry out the well-understood wishes of the people with respect to the College, they could have come before the House with clean hands; but in the despatch of His Excellency they had not even given the numbers for and against the Bill. Hon. Mr. Smith.—The despatch is the Secretary's and not ours. Mr. Williston.—He held that any despatch from the Government was the action of the Executive Council. Hon. Mr. Smith.—You hold what is wrong then. Mr. Williston.—He repeated that he held the Council responsible for the acts of the Governor, and he held that a despatch from the Governor is a despatch of the Executive Government, and, therefore, holding these opinions, he should vote against the amendment, and for the original resolution. Progress was then reported.

SATURDAY, March 26. The House went again into committee

upon the King's College Despatches, Mr. McClellan in the chair.

Mr. Gillmore said that the speech of the hon. mover of the resolution was an attack upon the Government, but his resolution was an attack upon the Governor. The charge was that his Excellency had violated the constitution; but the hon. mover had failed to prove it; in fact had not attempted to prove it. The resolution conveyed the opinion that the Council were responsible for all the acts of the Governor in writing despatches; but that assumption was not proved. It was important in the discussion of this question to remember that this Province was a colony, and that the Governor was here in a two-fold capacity,—as head of the local Government, and as agent of the Crown; and it had not been proved that it was the duty of the Governor to exhibit to his Council the despatches written by him in the latter capacity. The Attorney General had told them that the Council had never seen the correspondence from the College Council and the Professors; but the Attorney General and the Provincial Secretary having been present at the meeting of the College Council, as ex officio members, learned the fact of the petition being prepared for transmission home through His Excellency. But if they had not been present at that meeting—if they had been prevented by absence from Fredericton—there was no way in the wide world in which they could have obtained the information. Would the hon. mover of the resolution then hold them responsible? He thought that the Government had acted wisely part; they asked His Excellency to let them see the papers; and when he replied that this was a new feature and could not be granted without a reference to the Colonial Secretary, they proceeded to follow up the matter until the point was conceded by the Colonial Secretary, and was now made a part of our constitution. He (Mr. G.) thought that we ought to stand to our bargains. Part of the endowment of the College was from the Civil List, and part from the General Revenues of the Province; he would not say that the difference between the two was sufficient to prevent our legislating upon the former; but there was a difference which had an influence upon the minds of Her Majesty's Ministers. The despatch itself (Mr. G.) did not like; although he could not put his finger upon any word or sentence which contained anything absolutely wrong, the general tone of it was adverse to the Act. The supporters of the resolution went on an assumption which was not proved. The proper way for the House to proceed was first to secure the privileges and then hold the Council responsible for their preservation. Mr. McPhelin said that he had never heard such a flow of patriotism and loyalty as that which they had just been listening to; it was perfectly overwhelming. He held that there was no reflection on the Governor in the resolution. The present Attorney General in the "Political Primer" took the ground in reference to our Governor that he stood in the same position as the Queen, who could do no wrong; and if this was so, how could the resolution reflect upon him? He had as high respect for the Governor as any man, and would be the very last to give utterance to any reflections upon him. The reflections of the resolution came directly upon the Government. ("Can't see it," from the Prov. Secretary.) If the majority of the Committee took his (Mr. P.'s) view of the resolution, the Government would both see and feel it, for they would soon be out of office. ("You can't put us out," from Hon. Mr. Smith.) He did not want to put them out; but he wanted to do his duty. The member from Gloucester (Mr. Ed.) had thought proper to abuse a sister Province, calling it "rebellious Canada"; but it was this "rebellious" Canada which had won for us our constitutional liberties; to the efforts of these very "rebels" we owed the introduction into New Brunswick of responsible Government, and the right to control our own local affairs. Why were the men who for their part in the rebellion were proscribed, driven into exile, denounced, and forced to fly for their lives, allowed to return to their country and their homes, and not only allowed to return, but in time elevated to posts of honor, emolument, and trust? Mr. Ed. I'll tell the hon. member why because the Crown exercised towards them the Royal prerogative of mercy. Mr. McPhelin.—Merry! Why was Papineau more fortunate to return and enjoy once more the arms of public life? ("He ought to have been hanged," from Mr. Ed.) Hanged! The hon. member from Gloucester was not worthy to be hanged! ("Great laughter.") While ready to give all respect to the Governor and the Imperial Government, he would not yield the liberties of the people. The Government were direct in duty, or they would have insisted on seeing the despatches. If they had asked for them, they would have received them. One of the principal reasons why the Bill did not receive the Royal assent was that the Government were divided upon it. He could support every part of the resolution, and should vote for it. Progress was then reported.

MONDAY, March 28. At 2 P. M. the House for the fourth time went into committee upon the King's

College despatches, Mr. McClellan in the chair.

Mr. Gray said that he had been waiting to hear the hon. member from Westmorland (Mr. Smith) speak upon this question; but that gentleman had sicken still, feeling no doubt, that as he held a position which he could not constitutionally defend, his best policy was silence. He was the more surprised at the hon. Member's quietness that he had seen a few days since a sketch of him in a newspaper, in which he was described as being in appearance and manner distinguished by aggressiveness. He had hoped that from the characteristics of the hon. member, as given in that sketch, they should have heard from him, and that he would have given life and spirit to this debate. Before going into this question he (Mr. Gray) had some preliminary remarks to make, as to the mode in which this question now came before the House. He would take hon. members back to the time at which the hon. member (Mr. Smith) first came into the House, in 1852, (laughter) from Mr. Smith. Well, when he first came into the House he looked around at the aspect of public affairs, and selected for the commencement of his political labors the greatest grievance which he could find—King's College. The year after he made his first onslaught upon the College he entered the Government of the country. The year following he laid no further measure concerning the College before the House. If he (Mr. Gray) remembered bright the hon. member at the session before that at which he joined the administration, seated on the floor of the House that he would never go into a Government, or remain a member of a Government, that would not take up the College as a Government question. ("I did not say so," from Mr. Smith.) The impression on his mind was that the hon. member did say so; but that did not matter. In 1856 another gentleman, the present Postmaster General, brought in the same Bill respecting the College, which had been in 1852 introduced by the hon. member for Westmorland, Mr. Smith's Bill was carried in the House, but lost in the Legislative Council. In 1858 the hon. member from Carleton brought in the Bill which now formed partially the subject of this discussion. He introduced it, after that gentleman also was taken into the Government; and this session he had taken no further step in the matter. Now the hon. member from Charlotte (Mr. McAdam) had taken up the Bill, and he supposed that next year it would be taken into the Government. Looking at these facts, he really thought it would be an unfortunate thing to do away with this grievance, as it appeared to be a most valuable aid to hon. members who were seeking advancement into the Government of the country. ("You had better try it," from Mr. Smith.) On one thing in this debate he must compliment the members of the Government—the valuable assistance which they had received from the hon. member from Gloucester (Mr. Ed.) whom he was sorry was not now in his place. It could not be supposed that they adopted the principles which that hon. member had enunciated. When he (Mr. Gray) heard our sister colonies, and particularly Canada, speak of in the terms which that gentleman applied to that Province, he could not help thinking of the session on which he heard a member of the present Government refer to it as giving to us the freedom and the constitutional privileges which we possess. He could not think that the Government would adopt either the language or the principles which the House had heard from the hon. member. He had said that he should like to see the Government General use the sword with which he was entrusted by his sovereign; he had also denounced responsible Government principles which were entirely inconsistent with those which the Government party professed. But he (Mr. Ed.) went further. He said that he would vote against the resolution because he could find in history no single instance of such a reflection upon a British Sovereign, or the Governor of a British Colony, and had referred to the time of Charles the First. Now he (Mr. Gray) differed entirely from the hon. member as to the construction of the resolution; but did it bear the meaning which the hon. member put upon it, had he entirely forgotten the session of 1837, in which the House of which he was one member, passed a resolution which was a direct vote of censure, in language strong and unmistakable, upon the then Governor Sir Archibald Campbell? When he talked yesterday so loudly of loyalty he (Mr. Gray) would be glad if he remembered that that same Governor was a man who had supported the glorious old flag of England in many a bloody struggle on the fields of Spain and on Burnside's burning sands. But he (Mr. Gray) took the position that the resolution was not a personal reflection upon the Governor. If he could so regard it, no man would give it a more determined opposition than would he. He defied any one to point out an example of a more constitutional Colonial Governor than ours; he believed that he would not do anything which would militate against constitutional principles, but would aid in carrying them out.

Mr. Ed. (who had entered the House after Mr. Gray had been speaking for some time) said that he was sorry that the hon.

member should suppose that he could have voted for the resolution reflecting on Sir Archibald Campbell. The occurrence was long before the introduction of responsible Government. The resolution was an abominable one, and the Journals would show that he had voted against it.

Mr. Gray.—The hon. member had said that there was no instance of a resolution never by a Governor, and he had produced this. As to its being before the introduction of responsible Government, that did not mend the matter. In truth it was the very fact of the existence of the Executive Council for the acts of the Governor which removed from this or any similar resolution the character of a reflection upon the Governor. Then a resolution of this kind was personal, but now the Governor's acts were recognized as the acts of the Executive. His individuality never came before them; his name should never be mentioned in debates in that House; and he was sorry that the hon. member (Mr. Ed.) could think of dragging in the name of the Governor. He made these remarks because there was no personal allusion in the resolution. The Government in seeking to distort the resolution into a reflection upon the Governor, were making a cowardly attempt to evade their own responsibility, and were acting in an unconstitutional manner, and contrary to the principles of Responsible Government. He (Mr. Gray) should hold the Government responsible for all acts emanating from the Governor. The way in which he looked at the matter was this: therefore or meaning of a resolution depended greatly upon arrangement of its parts. What was the fundamental principle of the resolution? He would call attention to its different clauses. If the hon. mover had allowed it to have been seen before moving it, perhaps it might have been worded differently. (Laughter.) He had not said that it would have been better worded, but it might have been so arranged as not to be open to the objection which had been urged against it. What was its fundamental principle? Its first recital was that the Governor in his despatch "urged objections to the College Act which are at variance with the clear and undoubted rights of the Legislature, and the best interests of the people of this Province." This was a recital of facts, not of opinions. The second recital, "that the despatch was calculated to create an unfavorable impression upon the minds of the British Ministry, and thereby to defeat the action of the Legislature," was simply the allegation of a consequence resulting from a fact already stated. In the third recital by the fundamental principles of this resolution. It read thus:—

"Whereas the responsibility of His Excellency's advisers for the opinions enunciated in despatches emanating from the Executive Government, relative to the local affairs of this Province, as they take duty to take the necessary steps to obtain Her Majesty's assent to the Act of the Legislature, has been fully admitted;—

He applied these principles in his own mind. If the Legislature were right in passing an Act, and the Governor differed from the Legislature, but could not find an Executive Council to take the responsibility of his course, he would have to stand by the Act of the Legislature, and be carried out. Another point for consideration was, What are Imperial and what are local interests. Here Mr. Gray again questioned Lord Durham. If the Legislature cannot carry out these principles, then responsible Government is a mockery and a delusion. Is now proceeding to question the Political Primer he did not desire to show that his hon. friends the members of the Government, had different opinions now from what they had in 1851; on the contrary he assumed that they held the same opinion now. The Attorney General in reply to the hon. mover of the resolution had said that even supposing the words quoted were uttered by him he would be bound by them forever. It was rather a singular position, to say the least of it; when a certain object was gained the Attorney General put the object was gained, and the Attorney General was in the Government, and his principles were made the ground of assent upon him, he put forward the proposition that he was not to be bound by them

for the decision of this question would no way affect the question respecting College itself.

He should now proceed to the question of the responsibility of the Executive Council, and refer to the short session of 1851. Let them compare our government with the Imperial government. The same maxim of the British Constitution was: "The Queen could do no wrong." In the Province we had the same responsibility of ministers to the Legislature, and by analogy the same maxim would apply to the Province; the Governor was the representative of the Queen, and the ministers were responsible for every local act. To have an example of this in 1856; the Governor desired a dissolution on the Law, but his advisers having refused responsibility of such an act, he was obliged to find a new ministry who would accept that responsibility. If the Queen should take some step without the advice of her ministers, or if they refused to accept the responsibility, and resign, and no other men could be found to take the responsibility, the act would be null and void. If her ministry remained in office, so that our Governor took any such inconsistent with the doctrines and maxims of the day, and his Council remained in office, they adopted that act. This was no new doctrine which he pronounced was the clear and undoubted principle of our constitution. With regard to Imperial interests the matter was entirely different; therefore, a despatch from the Governor embraced anything of which the Executive Council did not approve, and they remained in office, they adopted that despatch as its contents, and their responsibility was not a whit increased by their seeing or seeing that despatch; their responsibility would be quite as great as though they had written the despatch themselves. The authority on the general principle would quote Lord Durham's Report, p. 55 and 56.

"Since the revolution of 1838, the ability of the English constitution has been secured by that true principle of our Government, which has vested the direct of the national policy, and the distributing of patronage, in the hands of the Parliamentary majority. However partial a monarch might be to particular Ministers, or however he might have personally committed himself to their policy, he has invariably been constrained to abandon both, soon as the opinion of the people has been irrevocably pronounced against him, through the medium of the House of Commons. It is difficult to understand how any English statesman could have imagined that representative and irresponsible government could be successfully combined. It has never been very clearly explained—what are the Imperial interests, which require this complete abdication of representative government? But if there be such a necessity, it is clear that a representative government of a Colony must be a mockery and a source of confusion."

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