

The Weekly Colonist.

Tuesday, September 20, 1864.

LEGISLATIVE COUNCIL.

Wednesday, Sept. 14, 1864.

Connell met at 3 p. m. Present—The Hon. President, the Hon. Colonial Secretary, the Hon. Attorney General, Hon. Treasurer, and Hon. R. Finlayson and Henry Rhodes.

ADDRESS TO THE GOVERNOR.
The Hon. Treasurer on behalf of the Committee appointed submitted the draft of an address in reply to the Governor's speech at the opening of the Legislature.

The Hon. President moved its adoption, which was seconded by the Hon. Attorney General and carried Friday next at 1 p. m., being the hour fixed for the Hon. Council to meet and present the address.

NOTICE OF MOTION.
The Hon. Attorney General gave notice that at the next meeting he should move that a Committee be appointed on Standing Orders.

House adjourned to Friday next, at 1 p. m.

HOUSE OF ASSEMBLY.

Tuesday, Sept. 13th.

House met at 3:15 p. m. Members present—Messrs. DeCosmos, Franklin, Powell, Trimble, Carwell and Dennes.

REPLY TO THE ADDRESS.
Mr. DeCosmos, as chairman of the committee, presented the following draft of a reply to the Governor's speech:

To His Excellency A. E. Kennedy, C. B., Governor and Commander in Chief in and over the Colony of Vancouver Island and its Dependencies, &c., &c.

MAY IT PLEASE YOUR EXCELLENCY:

We, Her Majesty's faithful and loyal subjects, the Members of the Legislative Assembly, are much gratified in having been called together to consider those subjects of importance upon which you have addressed us.

We shall seek at the earliest opportunity to place you in possession of our views as to the desirability at the present time of uniting the two English colonies west of the Rocky Mountains under one Governor.

The subject of Public Schools, the relations between white men and Indian tribes, the incorporation of the City of Victoria, and the postal communication of this colony shall receive from us our earnest attention and consideration, as also the subject of the finances of the colony, which for the more regular administration thereof we are glad to learn will be submitted to us prior to the period from which they are to take effect.

We thank Your Excellency for the manner in which you have expressed your earnest desire to co-operate with the Legislature in all measures calculated to promote the public good and the prosperity of the people, and we sincerely trust that by the wisdom of our deliberations we may be enabled to aid you in realizing that public good we must all seek for.

Barrenness of Bill.

Mr. DeCosmos moved the 2nd reading of this bill. The hon. speaker said that though some means had not been made law. If met, he believed, the wishes of the public, and he had much pleasure in moving its second reading.

Mr. DeCosmos seconded, and the bill passed, and was ordered to be printed.

THE APPOINTMENT OF BARISTERS.
Previous to the House going into committee on this question, the Speaker said he did not know that it was quite in order to authorize the Speaker to appoint a salaried official, when no money had been voted for the purpose. Still, the House might pass a resolution to send it to the Governor.

Mr. DeCosmos differed from the hon. Speaker on this point, holding that the House had a full right to originate money bills; he would not, however, go into this point at present.

Mr. Franklin objected to the motion of his hon. colleague, as not being in order; he would propose to amend the motion in this way: That the House go into committee of the whole to consider the propriety of the appointment of a barrister from time to time to act as draftsman of bills.

Mr. DeCosmos said he had no objection to withdraw his motion in favor of the amendment.

Mr. Franklin's amendment was passed, and the House went into committee, Mr. Franklin in the chair.

Mr. DeCosmos said the necessity of having a law clerk to assist in shaping measures brought up before the House was so evident that it was hardly necessary for him to make any remark. It might be said that the Attorney General was the proper person to do this, but although this might be proper with Government bills, those introduced by private members might be obnoxious to the Executive, and it was hardly to be expected that the Attorney General would be the proper person to act in this case. It was the custom in other colonies to elect a law clerk, to whom members went with the heads of their bills and had them drawn out in legal form.

Mr. Franklin admitted the advantage of having bills brought properly before the House, but thought that there were already a sufficient number of officials, and it would be better to apply to the Attorney General for such assistance before appointing a law clerk.

Mr. DeCosmos said he had applied to the Attorney General, who had stated that he was not disposed to draw up any bills unless they were brought in by the Executive. He (Mr. DeCosmos) did not propose at present to appoint a permanent official, but only from time to time, and he would propose that members should not run to the law clerk with everything, but only such bills as were ordered by the House.

Dr. Helmecken admitted the necessity of something of the kind proposed; he took it however that the bills this official would have to draw out, would be not the bills of individual members but only those ordered by the House. He (Dr. H.) would be most happy to vote for the measure, but he objected to this motion because Mr. Speaker was not empowered to pay the money, nor could he do so without the consent of the Executive. He was

not at all certain that if Mr. Speaker were to give an order on the Treasury for the expense of drawing up a bill that it would be honored. Another point was that the law clerk would be drawing up bills that were already in course of preparation by the Executive. He thought that the House should first see whether there were any intention of the Executive adopting any means of laying measures before the House. He himself thought the proper way was that the House should draw up their own bills. He would therefore move the following amendment:

That an address be presented to His Excellency praying that a sum of money be voted to pay the expenses of a barrister to draw up bills, there being no authorized official for that purpose.

Mr. DeCosmos had no objection to the hon. Speaker's amendment except that it had raised the question of the House being unable to originate money bills, to which he (Mr. DeC.) totally objected. Besides, even if the House had a Ministerial Council, he would still demand this measure, as he held that no member should be obliged to go with his bill to the Executive to be drawn up.

Mr. Franklin had supported this motion because he wished it to be ventilated in committee. He quoted "May" to show that at home public bills were almost invariably prepared by the Government, and he did not think it wise to depart from the established mode. He thought the Attorney General should superintend the preparation of all public bills, and he believed that perhaps all the public measures needed were now in preparation.

Dr. Helmecken said the Executive evidently did not intend to bring in an Education bill; now he would ask the hon. Chairman who there was in the House prepared to draw up the bill? It was the same with the Incorporation bill.

Mr. DeCosmos said the Attorney General had totally refused to have anything to do with the Incorporation bill, regarding it as a private bill.

Mr. Franklin still thought that the Attorney General should be applied to for help in drawing up all bills, before the appointment of any other official for such a purpose.

Mr. DeCosmos said he had already defined his views on this point; he would reiterate that even if the Attorney General were prepared to draw up all the bills, he (Mr. DeC.) would not be disposed to allow him to do so. He did not wish, nor did other hon. members, to go to the Executive shop to have their bills prepared. (Hear, hear.) He did not wish to see this House a mere tail to the Executive; the sun rose and set in other places than in the Executive Council, nor did all the light emanate from that august body. Hon. members in this House were quite competent to originate measures and should not be obliged to spend their time and means in working out the mere details, which could be better done by having a properly qualified official to draw up the bills.

The resolution of Mr. DeCosmos—that the Speaker be authorized to appoint a barrister from time to time to assist in drawing up bills—was then carried, and the hon. Chairman was requested to place a sufficient sum of money in the estimates for the purpose—was passed nem. con., and the committee rose and reported the passage of the resolution.

THE CITY MEMBERS' ELECTION.
Mr. Franklin asked if one of the parties returned for the vacancy in the city had resigned?

The Speaker read a letter from Mr. Cruickshank, resigning his seat as one of the parties returned at last election.

The Speaker said his own opinion was that the gentleman could not retire; the matter would, however, be referred to the election committee.

The House adjourned till to-morrow (Wednesday) at 3 p. m.

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WEDNESDAY, Sept. 14.

House met at 3:15 p. m. Members present—Messrs. DeCosmos, Powell, Franklin, Duncan, Dennes, Carwell.

MR. CRUICKSHANK'S RESIGNATION.
The Speaker stated that he was still of the opinion that Mr. Cruickshank could not resign. This was a case of disputed election, with which the House had nothing to do; it must come before the Election Committee in the regular way.

APPOINTMENT OF LAW CLERK.
The resolution of the Committee of the Whole authorizing the Speaker to appoint a law clerk and asking the Executive to appropriate a sum of money therefor was carried.

BANKRUPTCY COURT.
Mr. Duncan gave notice that he would this day week move for certain returns connected with the Bankruptcy Court; also for certain returns connected with the Probate Court.

SMALL DEBTS BILL.
Mr. Dennes introduced his bill for the appointment of a barrister to sit weekly in a Small Debts Court. The hon. gentleman showed the enormous number of small debt suits now thrown on the shoulders of the Chief Justice. The number of summary suits during the seven months ending July 31st, was 773, divided thus: In January, 68; February, 104; March, 130; April, 61; May, 100; June, 155; and July, 153. All this labor consumed the time of the Supreme Court and retarded the business to a very great extent. A Small Debts Court such as he proposed would pay its own expenses and would greatly facilitate and simplify litigation. The hon. gentleman urged the necessity of such provision being made for the relief of the Chief Justice as was given in the bill he now wished to lay before the House.

The Speaker said as the bill involved money matters the hon. mover must first get the consent of the Executive.

THE REPLY TO THE ADDRESS.
The House went into Committee on the reply to the Governor's speech, Dr. Powell in the chair.

Mr. DeCosmos said although he had as chairman of the Committee brought in a report with draft of a reply, he dissented from some of the points brought up in that draft. The reply stated that the House was pleased at being called together on this occasion. Now, he himself was not pleased at the House being called together at this time, as Parliament had been prorogued till October and hon. members had been called together at much personal inconvenience. There were

other points in the reply to which he objected; he would therefore propose the following amendments:

To His Excellency Arthur Edward Kennedy, Governor of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over the Colony of Vancouver Island and its Dependencies, and Vice-Admiral of the same, &c., &c.

MAY IT PLEASE YOUR EXCELLENCY:
We, Her Majesty's faithful and loyal subjects, the members of the Assembly of Vancouver Island, in this present session convened, have much gratification in assuring Your Excellency that we shall take as early opportunity of placing in your possession our views respecting a Union of Vancouver Island and British Columbia under one Governor.

We would likewise assure your Excellency that, being fully impressed with the importance of making additional provision for the encouragement, management and support of Common Schools throughout the colony, we will devote to the subject our early and earnest attention.

We would acquaint your Excellency that as soon as we are put in possession of information necessary to the full consideration of Indian affairs, we shall be prepared to assist in taking timely precautions against suitable laws to remove any existing complications and to avoid future difficulties between the Indian tribes and the white inhabitants of the colony.

We have great pleasure in concurring with your Excellency as to the pressing necessity for additional Legislative provision being made for the order and good government of the City of Victoria; and we would also assure your Excellency that we earnestly desire to aid in the passage of such an Act as will speedily and satisfactorily adjust the difficulties which the City Government is at present involved.

We will cheerfully give our attention to the consideration of any measures that your Excellency may submit respecting Postal communication either within or without the colony.

We fully appreciate the importance of having the estimates voted prior to the disbursement of the public funds, and we are anxious to estimate for the ensuing fiscal year are submitted, they shall receive our careful consideration.

In conclusion, we have great pleasure in expressing our sincere desire to reiterate your Excellency's wish to cordially co-operate with the Legislature in all measures calculated to promote the public good and secure the lasting prosperity of the people.

Mr. Franklin was very much surprised at the remarks made by the hon. gentleman opposite. He had not expected that such a reply in regard to His Excellency's address would have been anticipated by any hon. member. The remarks made by the hon. gentleman really differed only from the draft reply as did twiddle-dum from twiddle-dee.

The only point in his remarks was that he was dissatisfied at the House being called together so soon. The House could not ignore the fact that they had met two or three weeks ago, and the important questions then brought up and so modestly alluded to by His Excellency.

The first paragraph of the present speech "I have called your attention to those important subjects recently brought before your notice," showed that His Excellency had referred to his former address. He (Mr. F.) had thought the hon. gentleman would have brought up some of the great questions at issue instead of merely quibbling about twiddle-dum and twiddle-dee. The hon. gentleman was quite correct in his remarks, and the union question were those which demanded the attention of the House. The hon. gentleman went into the latter question, expressing himself strongly opposed to a union of the colonies, although willing to cultivate the warmest relations with the sister colony. The School question was one which should receive the immediate attention of the House, as also the Indian question. As to the City Incorporation he hoped the House would be able to introduce a simple bill which would be free from all objections and tend to the satisfactory and economical good of the city.

The Postal question was one which affected the sister colony also, and required careful consideration. The hon. gentleman huddled His Excellency's remarks and considered that he showed every body and the interest he expressed in everything connected with the colony.

Mr. Carwell said the difference between the draft and the amendment was simply that between twiddle-dum and twiddle-dee, as the hon. gentleman who had just sat down had said. He would vote for the draft of the committee.

Mr. DeCosmos said his duty was to pursue the course marked out by precedent; that was, to discuss and reply to the speech paragraph by paragraph. The question raised by the hon. gentleman opposite (Mr. Franklin) as to the former exposition of His Excellency's views he ignored altogether; the House had no knowledge of any such statements.

Mr. Duncan said he could not see much difference between the draft and the amendment. He thought the Chairman of the Committee on the reply should have made his objections and suggestions while in committee.

Mr. DeCosmos explained that as Chairman he was precluded from saying anything.

Mr. Duncan disapproved of the time of the House being taken up in discussing the reply to the address; he would support the draft of the committee.

The amendments were then put.

Ayes—DeCosmos, Helmecken, Dennes, Noes—Franklin, Duncan, Carwell.

The Chairman (Dr. Powell) said he saw very little difference between the draft report and the amendment, and he would therefore give his vote for that which seemed to him to read the best; he would accordingly give his casting vote for the amendment.

The amendment was then taken up and discussed clause by clause.

On the first clause Mr. Franklin said his hon. colleague had talked about parliamentary practice, but he must say that the hon. gentleman in opposing, without notice to the committee of which he was Chairman, the report brought in by that committee, was guilty of most unparliamentary and discourteous conduct; (Hear, hear, and laughter.) He would move in amendment to the first clause, that the House express their gratification at the address of His Excellency.

Mr. DeCosmos said the hon. gentleman had worked himself into a passion about his (Mr. DeCosmos's) conduct, and had accused him of acting discourteously; he (Mr. DeCosmos) had no intention whatever of making any such accusation; there were some persons whose actions were of too little consequence either one way or the other to notice. He would oppose the amendment to the first clause.

The amendment was passed, Mr. Franklin dissenting.

On the Incorporation clause Dr. Helmecken rose and asked humorously. No one here opposed to an Incorporation bill? No one? Well, I'll not do it alone at any rate! (Laughter.)

The amendment was carried, Dr. Helmecken dissenting.

The remaining amendments were carried nem. con., and the committee rose and reported their passage; the House then adjourned till to-day (Thursday) unless the mail steamer arrives.

SUPREME COURT.
[BEFORE CHIEF JUSTICE CARMICHAEL.]
Wednesday, Sept. 14.

City Corporation vs. Latham.
His Honor the Chief Justice delivered the following decision yesterday in the View street drain case:

In this case the judgment of the Court must be for the defendant. It is an action by the Mayor and Council of Victoria against the defendant, James Latham, which they seek to recover the sum of \$32 23 under various Counts, "as the amount of a certain assessment made on the defendant by the plaintiffs, in pursuance of the by-laws of the Incorporation Act of the City of Victoria, 1862."

2nd. For work and labor done by the plaintiffs for the defendant at his request.

3rd. For money agreed to be paid by the defendant to the plaintiffs, and

4thly. For money found to be due from the defendant to the plaintiffs on an account stated between them.

In support of this claim, the plaintiffs have shown in evidence that the defendant signed a requisition with other property-holders in View street, bearing date the 27th Sept. 1863, in which they bring to the notice of the plaintiffs "the present unhealthy state of the district, on account of the rapid accumulation of every description of rubbish and filth, the banking of the water through the want of proper drainage, which if not attended to before the winter, may lead not only to great inconvenience, but positive sickness amongst us, the inhabitants of this district. We, therefore, petition you to have this district properly drained as soon as possible, and as we are willing to pay the necessary expenses, would wish to suggest the best and most practicable manner by which it could be effected. We think it requisite to carry a drain from Cook street down the centre of View street, as far as Blanchard street, from thence to the culvert on Yates street, otherwise from Cook street down the centre of View street, as far as Quadra street, then to take the natural course by Mrs. Robinson's through the private property as heretofore. A culvert will be necessary, composed of 1 1/2 in. plank, of the following dimensions, 16 ft. 6 in. at top and 2 ft. 6 in. at bottom. Should you think proper to adopt any other plan it will be equally acceptable to us." That this requisition was taken into consideration by the plaintiffs, and on the report of their surveyor the work as it now appears was contracted for and executed. The defence is, irrespective of legal grounds, that notwithstanding the execution of this work the district was worse drained than it ever was; that the work was badly executed, that the defendant and tenants in consequence got sick and sore and that they had to leave their house afterwards remained unattended. That the drain in some places is 2 feet above the level of the street and the earth piled up in such a way that he could not get a wagon with lumber to his house. This is corroborated by the other neighbors. Under the count for work and labor they claim an action for the plaintiffs as their authority to regulate the Corporation able to maintain such an action, and as to the counts for money paid and as account stated, no evidence has been given that will support them. The defence of the count on the assessment is legal, viz., that the plaintiffs cannot maintain an action for it. That if it was levied under a by-law they must proceed for the breach of the by-law and not by action. The clause in the 20th section of the Incorporation Act which reads: "If the holders of 2-10ths in value of the lots on any other street of the City of Victoria shall sign a requisition calling upon the Council to grade, macadamize, pave, drain, or otherwise improve the said streets. The Council shall be empowered to make a rate upon the lots abutting on such street in order to carry out such improvements, and may apply the rate when collected according to the prayer of such requisition. The Council approving such requisition in such manner as they may appoint by by-laws" has been acted by both parties in support of their case. By the plaintiffs as their authority to make the rate, and by the defendant to show that they have not acted in pursuance of their authority, and their claim therefore cannot be sustained. It is clear that such a plea as this is a good defence to an action for the plaintiffs as their authority to regulate the practice of dealing with such application. In fact the same section expressly gives the power as we find in the 2nd subdivision, authority given to pass a By-law, "To regulate and provide for the drainage and sewerage of the said city."

The amendments were then put.

Ayes—DeCosmos, Helmecken, Dennes, Noes—Franklin, Duncan, Carwell.

The Chairman (Dr. Powell) said he saw very little difference between the draft report and the amendment, and he would therefore give his vote for that which seemed to him to read the best; he would accordingly give his casting vote for the amendment.

The amendment was then taken up and discussed clause by clause.

On the first clause Mr. Franklin said his hon. colleague had talked about parliamentary practice, but he must say that the hon. gentleman in opposing, without notice to the committee of which he was Chairman, the report brought in by that committee, was guilty of most unparliamentary and discourteous conduct; (Hear, hear, and laughter.) He would move in amendment to the first clause, that the House express their gratification at the address of His Excellency.

Mr. DeCosmos said the hon. gentleman had worked himself into a passion about his (Mr. DeCosmos's) conduct, and had accused him of acting discourteously; he (Mr. DeCosmos) had no intention whatever of making any such accusation; there were some persons whose actions were of too little consequence either one way or the other to notice. He would oppose the amendment to the first clause.

The amendment was passed, Mr. Helmecken dissenting.

On the Incorporation clause Dr. Helmecken rose and asked humorously. No one here opposed to an Incorporation bill? No one? Well, I'll not do it alone at any rate! (Laughter.)

The amendment was carried, Dr. Helmecken dissenting.

The remaining amendments were carried nem. con., and the committee rose and reported their passage; the House then adjourned till to-day (Thursday) unless the mail steamer arrives.

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