The Colonist.

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MURDER MOST FOUL.

The assassination of King Carlos of Portugal and the Crown Prince will send a thrill of horror all round the world. It was very evident that conditions in the Portuguese kingdom were much disturbed, but probably no one anticipated such a tragedy.

King Carlos was a man of many good qualities. Perhaps he was not an ideal sovereign, but on the whole he discharged his duties fairly well. He appears to have been well liked by those who were in a position to enjoy his personal friendship. He frequently visited England and appears to have possessed the esteem of our own royal house. The Crown Prince has been credited with decided leanings in the direction of democracy. The relations between Portugal and the United Kingdom have been so close that it has been said that the former was substantially under the control of the latter. For this reason the tragic event will produce a more profound impression in Great Britain than anywhere else, except in the land where it occurred. What the political result of this awful crime will be it is at the present writing impossible even to surmise.

THE ACQUITTAL OF THAW.

A jury has found that Thaw was not guilty of murder, on the ground that he was insane at the time he shot Stanford White. In one sense of the word, he probably was insane. Any man who works himself up into frenzied hatred of another is temporarily insane, but this does not make him guiltless of crime if in that frenzy he kills another. At least it did not before yesterday. If a man nerves himself by drink to a crime which he would not dare commit when sober he is just as responsible before the law and ought to be held so by a jury as if he did the deed in sober blood. We comment upon this matter not because anything that can be said will have any effect upon Thaw in his case, but because it seems to be a public duty not to let such an event pass without drawing attention to the enormity of the doctrine upon which this wretched creature has been allowed to escape punishment. It is clear enough from the evidence that Thaw did not act on sudden impulse, but that he had been contemplating murder for a long time, and his courage only came to the point on the fatal night. The whole case seems to have proceeded from a wrong foundation, by which we mean that it is a wrong principle to admit that a man, by brooding over real or fancied wrongs, may render innocent a subsequent act which is intrinsically criminal. Let it be granted that White was a very bad man; this did not give any other man the right to kill him. But it is said that Thaw had this right, for that is what the verdict as rendered amounts to, because he had persuaded himself that he had it, and this being an insane conclusion, he must not be punished for having killed him. There is no question of what is called the "unwritten law" involved in the matter at all. There are certain offenses which, if a man is slain for, any jury in the land would declare to be ample justification for the act, but this was not Thaw's case, nor anything like this case. His case was simply that of a pampered youth who gave vent to his evil propensities. Possibly it was not a case for the carrying out of a death sentence, but it was one in which justice should have decreed that his life was forfeited under the laws, although executive clemency might have been interposed to relieve him from the extreme penalty. But the jury has said he was not guilty, and United States jurisprudence is besmirched in the eyes of the world.

THE SPEAKER'S RULING.

With the general conclusion reached by Mr. Speaker in regard to Mr. Hawthornthwaite's resolution we are in accord. We observe that Mr. Speaker is careful to point out that a resolution of censure upon a lieutenant-governor may be passed under certain circumstances, which must in the very nature of parliamentary government be the case. His ruling, therefore, is not that the House is powerless to express its opinions as to any act done by a lieutenant-governor, but only that Mr. Hawthornthwaite's resolution is intrinsically objectionable. With this we fully agree. Such criticism as we have to make will be directed to the closing paragraph of his decision, which reads as follows:

I will not deal with the second course open to him, as nothing arises on that. The procedure with reference to the first course open to him has been decided by the house. He was therefore constitutionally entitled to reserve the bill for the signification of the King's pleasure. As it appears, he took that course, and whether advised so to do under instructions from His Excellency or acting on his own discretion, if the occasion was one of urgency, he was acting, in my opinion, within his rights and according to the constitution, and if so as the representative of His Majesty in this province it must be assumed that he acted in the public and not in his private interests, and it would therefore be highly improper to impute motives.

In this Mr. Speaker has undertaken to state what is the constitutional law binding the legislature of British Columbia, and quite irrespective of any consideration as to the soundness of his conclusion, and with every respect that is due to a gentleman of his experience and ability, we venture to suggest that it is no part of Mr. Speaker's duty to limit the constitutional rights of the legislature, but on the contrary, to assert them in their widest sense. After some observations by Mr. Hawthornthwaite, Mr. Speaker said: "Of course, strictly speaking, once my decision is given, it is final." While we do not dissent from this proposition in the sense in which it was doubtless intended, namely that the Speaker's decision is final on questions of order, unless the House, which is necessarily absolute master of its own proceedings, shall otherwise order, we would not like to be understood as assenting to the proposition that his determination of a constitutional question has any binding force whatever. The soundness of his conclusion as to the meaning of Section 55 of the B.N.A. Act is neither here nor there, as the matter presents itself to us. It cannot be that Mr. Speaker is to be the final judge as to whether circumstances have arisen which justify a lieutenant-governor in withholding assent from a bill without the advice of his ministers or instructions from the Dominion government. To hold that he is would be to constitute him an appellate court from the decision of the lieutenant-governor. We assent to the proposition that a lieutenant-governor acting within his statutory power must be assumed to be acting in the public interest until the contrary is shown, and hence that a resolution reciting that he was actuated by private motives is improper on its face and ought to be ruled out. Our objection is not to what Mr. Speaker decided, but to inferences which might be drawn from his decision, although we concede that they do not necessarily follow from it.

Our reference to this matter is influenced by a sense of responsibility to the public. We think it would be a great error if the people were led to believe that a lieutenant-governor may construe his own powers as he thinks best, and that a discussion of the correctness of his construction may be prevented by the fact that Mr. Speaker agrees with him.

As this subject seems now to have been disposed of as far as the legislature is concerned, it is proper, in our humble judgment, that there should be some expression of public opinion as to the course which His Honor, the Lieutenant-Governor, has taken. In order that this may be done absolutely without prejudice and with perfect fairness to all concerned, so far as the Colonist is concerned, we shall first briefly recapitulate the facts. The Bowser Bill was a private act, which passed the legislature unanimously; the Lieutenant-Governor reserved assent without the advice of his ministers and without direct instructions from Ottawa, and because he in his own judgment deemed it advisable in the public interest that the Bill should not become law until the Governor-General had had an opportunity to consider it. Upon these facts there is no doubt whatever.

In an Order in Council of November 29th, 1882, the powers of lieutenant-governors is very clearly defined. It reads as follows:

The committee in council deem it their duty to call the attention of Your Excellency to the fact that in several provinces bills passed by the legislature have been reserved for the Governor-General's assent by their Lieutenant-Governors on the advice of their ministers.

This practice is at variance with those principles of constitutional government which obtain in England, and should be carried out in Canada and its provinces.

As the relation between the Governor-General and his responsible advisers, as well as his position as an imperial officer, are similar to the relations of a Lieutenant-Governor with his ministers and his position as a Dominion officer, it is only necessary to define the duties and responsibilities of the former in order to ascertain those of a Lieutenant-Governor. Now it is clear that since the concession of responsible government to the colonies, the advisers of the Governor-General hold the same position with regard to him, as the imperial ministry does with respect to Her Majesty. They have the same powers and duties and responsibilities. They ought not to have, and of right have not, any greater authority with respect to the legislation of the Canadian Parliament, than the Queen's ministers have over the legislative action of the Imperial legislature.

Now in England, the ministry of the day must of necessity have the confidence of the majority of the popular branch of the legislature, and therefore they generally control, or rather direct, current legislation.

Should however any bill be passed notwithstanding their opposition or adverse opinion, they cannot advise its rejection by the sovereign.

The power of veto by the Crown is now admitted to be obsolete and practically non-existent. The expression "Le Roi ou la Reine s'avisera," has not been heard in the British Parliament since 1707, in the reign of Queen Anne, and will in all probability never be heard again. The ministers in such a case, if they decline to accept the responsibility of submitting the bill for the royal assent, must resign and leave to others the duty of doing so.

If, notwithstanding their adverse opinion, they do not think the measure such as to call for their resignation, they must submit to the will of parliament and advise the sovereign to give the royal assent to it.

Under the same circumstances Your Excellency's advisers must pursue the same course.

The right of reserving bills for the royal assent, conferred by the British North America Act was not given for the purpose of increasing the power of the Canadian ministers, or enabling them to evade the constitutional duty above referred to.

This power was given to the Governor-General as an imperial officer and for the protection of imperial interests. It arises from our position as a dependency of the empire, and to prevent legislation which in the opinion of the Imperial government is opposed to the welfare of the empire or its policy.

For the exercise of this power the Governor-General, with or without instructions from her Majesty's government, is responsible only to the British government and parliament, and should the Canadian government or parliament deem at any time that the power has been exercised oppressively, improperly, or without due regard to the interest of the Dominion, their only course is to appeal to the Crown and eventually to the British parliament for redress.

As has already been stated, the same principles and reasons apply, mutatis mutandis, to the provincial governments and legislatures.

The Lieutenant-Governor is not warranted in reserving any measure for the assent of the Governor-General on the advice of his ministers. He should do so in his capacity of a Dominion officer only, and on instructions from the Governor-General. It is only a case of extreme necessity that a Lieutenant-Governor should without such instructions exercise his discretion as a Dominion officer in reserving a bill. In fact, with facility of communication between the Dominion and Provincial governments such a necessity can seldom if ever arise.

If this minute be concurred in by your Excellency, the committee recommend that it be transmitted to the Lieutenant-Governors of the several provinces of the Dominion for their instructions and guidance.

JOHN J. McGEE,
Clerk of the Privy Council.

Two points are very clearly brought out in this order, and must be taken as settling the constitutional practice. These are:

1st. That a provincial ministry may not constitutionally lead a lieutenant-governor to disregard the opinion of the legislature as expressed by the passage of a Bill by advising him to reserve it until the signification of the pleasure of the governor-general is known; and

2nd. That a lieutenant-governor, as a Dominion officer, ought not except in a case of extreme necessity to withhold assent to a Bill without instructions from the governor-general.

There remains, therefore, only one open question, which may be thus stated:

Did an "extreme necessity" exist in the case of the Bowser Bill?

Between the time the Bill was introduced and the time that His Honor signified his intention of reserving assent, several weeks elapsed, far more than ample time for His Honor to communicate with the Governor-General and receive instructions, if the latter official desired to give him any. The case of "extreme necessity" did not therefore exist, and His Honor's action was not warranted by the interpretation placed upon the British North America Act by the government of Canada and set forth in the Order in Council, or more correctly speaking the report of the Committee of the Privy Council approved by the Governor-General in Council, and above set out.

The constitutional aspect of the case is not affected by the existence of the contract between the Canadian Nippon Company and the Wellington Collieries Company; but the existence of such a contract shows that His Honor ought to have been exceedingly careful to ask for specific instructions, and for reasons which lie upon the face of the case. At this stage we leave the whole question for the present. We have endeavored to deal with it in a spirit of entire fairness, to make no imputation of motives, to make no suggestion of want of faith, but to confine ourselves to a statement of the facts and the law which cannot be successfully contradicted.

THE CONSTITUTIONAL ISSUE.

We have no intention of repeating anything said yesterday in the Colonist regarding the constitutionality of the reservation of the Bowser Bill. What we then said was in discharge of a promise made to our readers at the very outset of the discussion to the effect that, when all the facts were made public, we should express an opinion. Contemporaries endeavored to force such an expression of opinion, at an earlier stage of the discussion, but at a time when the Liberal press was demanding investigation and making all kinds of threats, the Colonist refused to move from its attitude of suspended judgment. When the facts were all before us we stated our views plainly and unequivocally, without importing into the discussion any personalities whatever, or saying a word more than the facts of the case made necessary. At the same time there were some references made by the Times last evening which we think call for some comment.

Beginning with the assertion that this paper thirsts for the Lieutenant-Governor's blood, for which statement there is no warrant whatever in anything that the Colonist said, for we hope always to be able to express dissent from the view any gentleman in a public position may take of his powers, without questioning his motives or thirsting for his blood, official or otherwise, it tells its readers that the Colonist admits that His Honor acted without authority from Ottawa, which, indeed we never denied, for it was one of the points upon which we declined to express any opinion whatever until all the facts were brought out. It further says that it was the duty of the provincial government to take the question before the "higher authorities," because it says the Ottawa authorities cannot be supposed to know the facts. But they do know the facts. Every incident in the transaction from beginning to end is before them officially. The Lieutenant-Governor's letter, though brief, is explicit. The Ottawa authorities know the meaning of the Order in Council, which declares that a provincial ministry may not advise a lieutenant-governor to withhold assent. They say that they did not advise him to do so. They therefore know as well as anyone else that His Honor acted on his own construction of his powers. What more could they know if Mr. McBride took the matter up fifty times? Our contemporary says that Mr. McBride, by taking a point of order against Mr. Hawthornthwaite's resolution exhibited insincerity; but Mr. McBride, as leader of the house, is bound to see that no resolution shall be moved which is as contrary to the spirit of its rules as that moved by Mr. Hawthornthwaite was.

Our contemporary has got itself badly mixed up over a reference to what was said by the Colonist several months ago. We then said that the position of the legislature towards a lieutenant-governor differed from that of the British Parliament towards the Crown, because while the latter can depose the sovereign, the local legislature cannot dismiss a lieutenant-governor. The Times says that we claimed that the idea of Parliament dismissing a sovereign is an absurdity. If our contemporary will search its files, it will see that it has attributed its own observation to us.

Again our contemporary is in error in saying that the Lieutenant-Governor's advisers have taken refuge behind their oath of office as to whether or not they advised assent. The Provincial Premier has expressly stated that he did not advise the Lieutenant-Governor, who was acting as a Dominion officer, and the Order in Council to which our contemporary refers expressly says that a provincial ministry may not advise a lieutenant-governor to withhold assent. We go a step further and say that a provincial ministry may not advise a lieutenant-governor to disregard what he regards as his instructions. He must interpret these as best he can with such assistance as he may receive from those giving him the instructions. Our contemporary also says that the power of reservation is given to the lieutenant-governor to protect Imperial interests. On the contrary they are for the protection of federal interests.

Our contemporary cites references from the Montreal Gazette and the Montreal Witness, neither of which are of any value because both are based upon an inaccurate knowledge of the facts and the law. The Gazette thinks that the reservation may have been to prevent an erroneous enactment from coming into effect, which was not the case. The Witness takes the position that the Dominion government has no control over a lieutenant-governor, which is directly contrary to the construction of the B. N. A. Act, given in the Order in Council, which we quoted yesterday.

Victoria clearing-house returns for week shows a surprising increase. Once more our city leads all others in Canada in the percentage of gain.

And now we are promised "grave developments in the Balkan situation." The year 1908, for as much as we have seen of it, presents a most ominous frown.

The defeat of Dr. Jamieson in South Africa places the Dutch element in the saddle in Cape Colony, as well as in the Transvaal and the Orange River Colony. Natal still has an English ministry.

Lord Curzon as an Irish peer will be able to give the Empire the benefit of his great ability and wide experience. He is a man of a type that cannot be too well represented in parliament, and his presence in the House of Lords will greatly strengthen that body.

With all due deference to the great London journals, it must be said that on occasion they display a woeful ignorance of questions affecting Colonial interests. At the present moment many of them are in a hopeless muddle as to the actual attitude of Canada in regard to Anglo-Japanese relations.

It is understood at Ladysmith that the E. & N. Railway company is about to inaugurate its land-clearing policy by preparing an area of 170 acres near that town for immediate occupation by settlers. This is very satisfactory information.

The Imperial government has succeeded, only after a tremendous effort, in inducing the Transvaal to relinquish its drastic policy towards the Asiatics resident in the colony. This gives an assurance of a very necessary breathing spell in dealing with an exceedingly delicate problem, but we feel certain that nowhere is it better realized than in London that "we have scotch'd the snake, not killed it."

The announcement that the Chicago, Milwaukee & St. Paul railway will be running transcontinental trains into Seattle in April of next year and operate a steamship line of its own to the Orient, is of special interest. The magnet of trans-Pacific trade still holds the undivided attention of the transportation magnates of the continent despite a situation which presents a number of unfavorable aspects.

We have to congratulate Mr. E. Jacobs, editor of the British Columbia Mining Record, on his most excellent and comprehensive summary of the situation affecting the mining industry in the interior, embodied in the interview with him which we published yesterday. That he is able to report marked progress all along the line and is most optimistic for the future is especially gratifying in that it is the conclusion of one well qualified to form a sound opinion.

On occasion we are seized with an idea that perhaps latter day humanitarian impulses have led the public too far in the direction in making life in prisons comfortable for the inmates. We read in a Vancouver dispatch that on a magistrate sentencing a man to six months in jail, the man replied "all right," and walked out of the dock with a broad smile on his face. There is ground for suspicion that that man is not going to regard his confinement as "punishment," but rather as a not unpleasant hiatus in a career of crime. Nor it is clear that the example of this man will exercise a deterrent influence on others. We don't know what to suggest, but we think a sentence to a term of imprisonment ought to suggest something to the prisoner at which he would not feel inclined to laugh.

Australia and the Japanese.

The Australian newspapers, representing, doubtless, an undivided public opinion, are using very plain language in dealing with the Japanese question. The Sydney Morning Herald agrees that Asiatic excision is a very grave Imperial problem, and appreciates the difficulties and embarrassments which it causes to the Imperial government. But it adds that "it might as well be plainly and definitely understood in England, once for all, that, at whatever cost, the commonwealth will determinedly adhere to the white ideal. If the mother country's protection were withdrawn, Australia might or might not be able to assert herself, but we should make the attempt; there is no possibility of compromise. Asiatic exclusion is a life-and-death matter for a small white community within jumping-off distance of the teeming Orient. In declaring for a white Australia, we have at stake Western civilization, our breed and our institutions. A white Australia keeps one of the finest stretches of the world's surface for the British race, which is the greatest service to the British connection of which we can conceive ourselves capable." The Daily Telegraph of Sydney declares that it is the duty of Australians to secure the exclusion of Asiatics by means devised so as not to hurt racial feelings.—Winnipeg Free Press.

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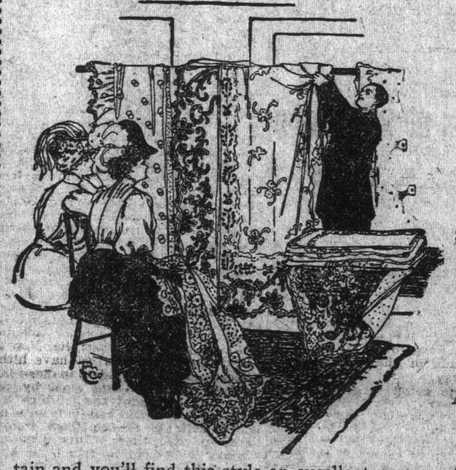

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