

The Weekly British Colonist
AND CHRONICLE.

Tuesday, September 4, 1866.

Another Constitutional Outrage.

For the past twelve months the popular cry in this Colony has been Retrenchment. When this session of the Legislature commenced, a majority of the members of the Lower House pledged themselves to effect the desired end, and did try, to the best of their small abilities, to carry out their professed views. It would be a useless task to more than refer the reader to the doings of the session now nearly brought to a close. All are too familiar with the circumstances which have attended the proceedings of the House, and the unfortunate issue to which they have been brought, by the reckless manner in which the members rushed at the Estimates prepared for them by the Executive. After a delay of seven months in the Lower House the Estimates have been sent to the Upper House, and as will be seen by reference to our report of the proceedings in that body on Monday, have been adopted as a whole, but not in detail—that is to say: the Legislative Council is willing to sanction the entire sum voted, but it is not willing that the Lower House shall have anything to say as to the manner in which it shall be applied! This extraordinary assumption of power by the Upper House will meet, we are sure, with the same condemnation as did the illegal position assumed by the Lower House in February last, when they endeavored to take the initiation of money votes out of the hands of the Executive, and retain it themselves—to introduce a system of jobbery and corruption that would enrich the dispensers of the patronage and their boon companions, while it impoverished the people. The Legislative Council, as a body, are interested in holding on to whatever power they imagine themselves possessed, with a tenacious and unyielding grasp; and the able but sophistical speech of the Colonial Secretary in support of his view of the case will awaken grave misgivings on the part of the public. In dealing with the Estimates, Mr Young rightly says that the action of the Lower House in attempting to usurp Executive functions, was unconstitutional. But the hon gentleman forgets that while he attacks the lower body for their illegal acts, he strikes an equally illegal blow at the very foundation of Constitutional Government—he attacks the very root of Representative Institutions; and that when he maintains that the “powers” of the “two bodies are co-ordinate,” he makes (to use a mild term,) a mistake that might be pardoned in a gentleman whose career had been marked with less of ability, less of liberality, and less of justice; but cannot be lightly regarded, when springing from so respectable a source as the Colonial Secretary, who, it will be remembered, has himself occupied a seat in the Assembly, and whose career therein was eminently distinguished for the deference which he paid to Constitutional right, and the power of the Assembly to vote not only a “lump sum” but the schedule of the Estimates. In his remarks, Mr Young lays down the maxim that the Constitution of the Mother Country is our guide. But while he supports that “guide” with his breath, he stretches forth his hand to violate it when he attempts to take from the people, or their representatives, the power to say how the public money shall be spent. Now, who ever heard of the House of Lords usurping the rights of the Commons, and amending the items of a money bill? Such a thing could never be effected in the Mother Country except at the risk of a long and bloody revolution, the result of which might imperil the very existence of the Monarchy, as it has in times past cost an English king his head. Mr Young was supported in his view by the Attorney General and the Chief Justice, the highest legal authorities in the Colony, and the motion was passed. The position taken by the Chief Justice was in consonance with that

assumed by the Colonial Secretary. The Chief Justice appears to imagine that because the corns of his officers have been tread upon by the Lower House, every item is bad. His Lordship maintains that the Governor alone has the power to interfere with his department. Now, if the Governor possesses such extraordinary power, why were the Judicial items submitted to the Lower House at all? The Chief Justice should remember that he himself presides over the Supreme Court by virtue of an Act passed by the very Assembly whose powers he now seeks to set at naught; that his salary is secured him by that very enactment, and that the local laws he dispenses so impartially are the joint production of the Council over which he presides and the Assembly, the powers of which he now derides, and to whom he tauntingly alludes “as a set of men.” If the Lower House be the miserable puppets thus described, we question very much the power of His Lordship to even administer an oath in his Court, much less to try a case. As we do not, however, agree with the Chief Justice's dictum, we cannot call into question his authority; but only wish to point out how, reasoning by analogy, that the very weapon his Lordship levels at the Assembly may be turned against himself to his own disadvantage. The position assumed by the Council is untenable, simply because it is unconstitutional. The Assembly, as the representatives of the taxpayers, have an undoubted right to deal with the Estimates as they deem proper—that is, to refuse or lower an item. Should they refuse to vote Supplies, another House may be called, and should the second House prove no improvement on the first, and a “deadlock” arise, there will still be the Colonial Office to appeal to. But no “set of men”—be they the highest or lowest in the Colony—can set aside precedent and constitutional rule in the manner the Upper House seeks to do. Admit that the majority of the Lower House have proved recreant to the trust reposed in them—admit that they have themselves exceeded the bounds of constitutional law—two wrongs do not make a right, and the action of the Council is none the less inexcusable, unjustifiable, and outrageous. The destruction of the little liberty we possess at the present moment would be the most melancholy thing that could happen, and our fiscal embarrassments must not be suffered to endanger the constitution. From one evil we must not fly to another, and every attempt to trench upon the rights of the people must be opposed—let it come from whatever source it may. The laws cannot be violated with impunity, either by the rulers or the ruled—and the moment a Government usurps a power superior to the laws, it sounds its own death-knell, just as the people, when they resort to illegalities and atrocities to sustain their cause, rivet their own manacles. The Assembly will not, dare not acquiesce in this attack upon their privileges and the rights of those whom they represent. Once admit the precedent and their power is gone forever. Heretofore it has been the Assembly that has been the aggressor; now that they have changed places with the Government, and are the assaulted party, they have the game in their own hands. As they play the cards depends the success or failure of representative institutions on the Island.

LOCAL INTELLIGENCE.

Amateur Theatrical Performance.

In these days of discouragement and gloomy forebodings, it is quite exhilarating to see people exchange lugubrious for cheerful countenances, and once more “smile as they were wont to smile.” The Amateurs of Victoria who, as a body, have now held together for nearly four years, have perhaps contributed more than any other association in Victoria, to the hearty enjoyment of the citizens. Their entertainments have always been deservedly popular, and from the experience of the past, they have attained a proficiency that entitles them to rank with any company of non-professionals that will be found in any small community elsewhere. Last night the announcement that an entertainment was to be given by the amateurs in aid of the funds of the Cricket Club, filled the Theatre to its utmost convenient capacity. In the private boxes were His Excellency the Governor and family; many of the officers of the Fleet; and the hon. Joseph Needham and family, under whose especial patronage the performance was given; there were also present, officers of the Government with their families, members of the two Houses of Legislature and many of the principal inhabitants of the City and neighborhood. After some well executed pieces of music by the Orchestra under the management of Messrs Maguire and Palmer, the curtain rose on Charles Selby's excellent comedietta in two acts, of the “Unfinished Gentleman,” in which the principal characters were represented by Messrs B. F. Griffin as Lord Totteny, Godfrey Brown as hon. Frisk Flammer, Mr Callingham as Bill Downey (the Unfinished Gentleman) Mr Clarke as Jem Miller and Mr Wigham as Charles Danvers. The female characters being taken by Mr Weynton and Miss Jenny Arnot. The piece was most successfully performed, the low comedy part of Bill Downey, having a masterly personator in Mr Callingham, whose drolleries and self possession excited intense

amusement. He was most efficiently supported by the rest of the amateurs, and also by Mr R. G. Marsh as the bailiff and Miss Arnot as Miss Bloomfield's maid. The entertainment concluded with the musical burlesque of Lord Lovel and Lady Nancy Bell, with local hits and adaptations. In this piece, Runtifoozle the rejected Duke, was assumed by Mr H. Rushton; Lord Lovel the accepted, by Mr G. Brown. The Baron (Nancy's Papa) by Mr Griffin; and the two villains of the deepest dye, by Messrs Callingham and Keast; Messrs Clarke, Wigham and others taking minor parts. The burlesque, in its dialogue, is not so sparkling and witty as some of Byron's, nevertheless contains “some good puns, and plays upon words. Some of the local adaptations were excellent, and loudly applauded. For instance, where Runtifoozle steals Nancy's ring, supposing her to be dead, and meets Lovel returning from the wars; the latter demands from him the stolen treasure.

Rum—I bought it honestly, you bet.
Lovel—Bought it from whom?
Rum—From Fritz de Lilloost! T'is mine and I'll defend my ring.
Lovel—More likely you'll want Ring defending you; also McOreight. T'were well at once you feed 'em.
Rum—Sir, I'll have Justice!
Lovel—Then I'm sure you'll Need 'em.
The songs however which are aptly introduced with appropriate parodies, materially helped the piece through. Mr Rushton looked and acted his part to perfection. Mr Brown and the Baron were also excellent; and indeed there was no fault to find with any of the company, who all performed their roles most successfully. Of our and everybody's favorite, Jenny Arnot, we need say no more than that she acted as charmingly, and looked if anything more captivating than ever. Judging from the crowded state of the House, above and below, we conclude that a handsome balance will remain for the fund.

The Missionary Meeting.

The meeting to which we briefly referred in yesterday's issue in connection with the Indian Missions of Metlakatla and the N. W. Coast, was held on Monday evening at the Collegiate School building; the Bishop of Columbia took the Chair at half-past seven. The meeting, which was influentially attended, included His Excellency the Governor and family, the hon. Chief Justice and family, the Clergymen of the Episcopal Church and their families, with others.

The exercises opened with the hymn, “From all that dwell below the skies; a prayer followed by the Ven. Archdeacon Gilson when His Lordship addressed those present in substance similar to discourses at various times given at the Cathedral and other Churches. Although there was not a very great deal to be shown from the labors of the Missions, yet Metlakatla was a flat contradiction to a conceived notion, that nothing could be done for the improvement of the Indian.

The Rev Mr Doonan, of the Metlakatla and Naas River Mission, also addressed the meeting, detailing his experience amongst the natives in an interesting and amusing manner, and as a subsequent speaker remarked—a very curious account. The Rev Mr Gribbell and family, leave this morning for the scene of Missionary work.

J. J. Cochrane, M. L. A., moved the first resolution briefly as follows, which was carried:

“That in the opinion of this meeting, the Indian population of these Colonies are capable of an intelligent application of Christian truth, and of successful culture in the arts of civilized life.”

The hon. Chief Justice Needham moved the second resolution, prefacing the same with additional observations:

“That the cordial sympathies and earnest prayers of the Church, be invoked on behalf of those now about to enter upon the trying and difficult work of the Indian Missionary field, that their labors may be abundantly blessed with the Spirit from on High, and with fruit which shall endure unto everlasting life.”

The Archdeacon seconded the resolution, which was carried unanimously, and in his observations warmly eulogised the Rev. gentleman about to enter upon the Missionary field, as one who had testified his fitness during the course of a few months residence in the Colony. The meeting terminated with the singing of the Doxology “Praise God from whom all blessings flow” and a Benediction from the Bishop.

Legislative Council.

Monday, Aug. 27, '66.

The Council met at 3 p. m.—Present—The Hon. the President, Colonial Secretary, Attorney General, and H. Rhodes.

CATTLE TRESPASS, &c.

The Attorney General gave notice of the introduction of a bill to regulate the law of trespass on land by cattle and other animals. Also, notice of a Bill to amend the Bills of Sales Act.

APPROPRIATION BILL.

Council in committee on the Appropriation Bill, (Estimates) Mr Rhodes in the chair.

The Colonial Secretary said that in former sessions the Bill had received but little discussion in this Council, that body thereby following the example of the House of Lords at home, and adhering as closely as possible to Parliamentary precedent. He regretted that the bill this year was sent up in a state which placed the Council in a position to be unable to pass it without discussion. It was not only a money bill, but it was many other things besides. Such being the case, it was desirable to examine and ascertain what were the powers proposed by the Legislature of this Colony. The Council had not to go to other colonies to examine their Constitutions, and obtain precedents from them. We need not cite the precedents afforded by the Constitution of the United States. What we had to consider was, what was our own Constitution, and what were our powers. We had

not a written Constitution, wherein the powers of one branch of the Legislature might be defined, and the action of another limited, as really was the case in some of the Colonies; but the Legislature in this Colony was created by the act of the Crown; and the powers possessed by each branch were co-ordinate.

Mr Young here quoted from the Governor's commission and instructions, to show from whence the Legislature took its existence, and within what limits its action was confined.

He then proceeded to say that in the Schedule to the Bill before the Council powers were assumed that not only did not exist, but in reality were unconstitutional. He called attention to the money being granted to the Crown, only conditionally, which was both novel, as well as unconstitutional in an Appropriation Act. He cited some instances: For instance the Clerk of the Assembly is voted a certain salary, and he is appointed to an office, or additional duties are imposed upon him. Now it was not very clear that what was intended, for as an Auditor was appointed by the Crown, it might be that the House of Assembly were anxious to avail themselves of the services of that functionary, to assist at their deliberations. The hon gentleman continued to point out instances where like objections appeared; indeed, he said there was scarcely a vote to which a condition or appointment was not attached; in which some infringement on Executive functions was not to be found. Again, it would be found that the House of Assembly had initiated grants of money; and had in some cases voted more money than was asked for. Now nothing could be more clear, than that in this Colony the Assembly had no power to initiate any money vote, or impose any burden on the people. We had to take our own Constitution—the Constitution of our Mother country, as our guide in all such matters; and he was fortunate in being able to place before the Council some information of a high order, that bore directly on this point. It was well known that the House of Commons did by Standing Order, refuse to entertain any propositions for the granting of money, except asked for by the Crown; but one of the most independent members in the House (Mr Ayrton,) had recently discovered that the present order was not sufficiently stringent in its provisions, and he therefore had brought in an amendment. With the permission of the House he would quote from Mr Ayrton's speech; and it was to be remarked that Mr Ayrton's resolution, and his exposition of constitutional practice, was not questioned by one single member; but was indeed confirmed by so high an authority as the Chancellor of the Exchequer (Mr Gladstone,) and the motion passed without division—the propriety of hedging round the money powers of the House, with still greater restrictions being unanimously concurred in:

“Mr Ayrton—In proposing to the House to take into consideration two of their standing orders, with the view of introducing certain amendments into them, said he always understood that one of the fundamental principles of the Constitution of the House of Commons, was, that it should never of itself take the initiative in granting or voting away public money, or in increasing the national burdens by levying any tax upon the people, but that they should leave the proposal of such measures to the Crown; and that it was the duty of the House of Commons, rather to sit in judgment upon the measures introduced by the Crown; and, if possible, to reduce and diminish the taxation of the people, than to attempt to increase the amount of their burdens. Were he to revert to the ancient practice of the House, it would be easy for him to show that the course of proceeding in centuries past was such as rendered it impossible for any private member to have departed from this constitutional principle; because, in those times, the House was required merely to take into consideration messages from the Crown, requesting aid for some public purpose, to grant that aid by their vote, and to appropriate the sum granted to the particular objects in view; so that no opportunity was given to any private member, to introduce any plan of his own, by which any addition might be made to any charges upon the people. One member had, by a Bill he had introduced to the House, gone so far in usurping the functions of the Crown, as to propose to regulate the retiring pensions which were to be paid to public servants. He could conceive no function more peculiarly that of the Crown, than determining the salaries of public servants; and afterwards asking Parliament for the wherewithal to meet the expenditure incurred. The principle he proposed to apply by his motion, was one of vital importance; to depart from it was unconstitutional. He had remarked a passage in one of the leading journals a few days ago, where reference was made to an incident bearing upon the subject before the House. Sir Robert Peel was asked his opinion upon the draught of a new Constitution for Greece. On examining it, he put his finger upon what appeared to him to be a blot in it. By its provisions, the House of Representatives would have been allowed to propose grants of public money; and he expressed the opinion, that a Constitution framed in imitation of England's, could not possibly be carried out, until the House of Representatives were prevented from taking the initiative in making grants of public money, or imposing taxes upon the people.

“The Chancellor of the Exchequer—I rise to tender my thanks to the hon. member for the Tower Hamlets for having taken upon himself the duty of recommending to the House the course he has. But I desire to say one word respecting the matter, because it may be imagined by some hon. gentleman that the House is asked to part with some portion of its valuable liberty. That is not the case. The House will continue to have full authority to pronounce an opinion upon every proposition made by the Executive Government whether negatively or positively; but it may be the business of the House to point out public charges which ought to be incurred; and this may be done by an address to the Crown on a Resolution of the House. The former appears to me the ancient and truly constitutional method of procedure when the House desires that some charge shall be incurred, because it does not finally bind the House to make the grant; and it throws upon the Crown the responsibility of either accepting or rejecting the

address of the House (Hear). This duty, then, will remain for the House to discharge after the motion of my hon. friend shall have been adopted. No doubt, it is a duty which the House exercises with very great reserve, and that wise reserve will, I am persuaded, continue, my hon. friend has, I believe, truly described the remark made by Sir Robert Peel with respect to a constitution for a foreign country; and I believe that in all cases of Colonial Legislation in this House during the last 30 years the principle we are discussing has been introduced. Before the Government of Canada was constituted as it is at present, the proposals on the part of private members for grants of public money formed one of the most glaring evils for which the House was asked to provide a remedy. That remedy has been successfully applied, and my hon. friend is assisting us to give consistency and efficacy to rules which are of undoubted authority and ought to be of universal application.

“Mr Walpole thought no one could doubt that the object of the hon. member for the Tower Hamlets was in entire conformity with the constitutional practice of the House. He entirely agreed with the motion of the right hon. member, and thought he deserved the thanks of the House.”

It will be seen, (continued the Colonial Secretary) that the House of Commons simply gives effect to the recommendations of the Crown, or rejects them, and does not encumber its votes with conditions, nor does it trespass upon Executive functions; it knows its own powers and privileges too well; and surely no one will assert that the powers of the House of Assembly in Vancouver Island are greater than those of the House of Commons at home. He (Mr Young) was really sorry that it should not fall to his lot upon this occasion simply to move the passing of this Bill, but after what he had stated, it would be seen that that course was impossible, and he sincerely regretted it. The Bill was, as he before asserted, not in harmony with its title; it was a mixture of all sorts of things, and they must amend it as they would any other Bill. He commented upon the manner in which the Bill had been detained in the other House until now, when the duration of the Assembly could be counted by hours; and he concluded by summarily moving the rejection of the Schedule of the Bill.

The Attorney General looked at the Bill as an affront, considering the political status of the Council. The like of such a Bill, probably, had never before been put before a Council or Executive. He was in duty bound to mention some matters, which were a direct invasion of the rights of the Executive, and the Executive from his instructions, was also in duty bound to reject such a Bill. The Governor dare not assent to it, and the Council dare not pass such a Bill. It dictates to the Executive the mode in which the public service is to be carried on, which is a direct invasion of the privileges of the Crown. He saw no other mode to deal with it except in refusing to pass the Schedule of the Bill.

On the general character of the Bill and its general details, the Chief Justice desired to offer no comment. He offered his remarks in regard to that portion of the Bill respecting the body over which he had the honor to preside. He felt it incumbent on him to direct the Council, and offer his advice not to pass it. He was waited upon by a deputation of the Lower House in regard to such offices, and the deputation was shown the details of the business passing through no less than seven different Courts; making it necessary that the Chief Justice and the officers of the Court to often sit up at night, and even on Sunday to carry on the business of the department; and he told the deputation that he would be abandoning his duty if he permitted any departure from the proper routine. He was surprised that the gentlemen would think of not adhering to the views then made known. The offices had nothing in common except, perhaps, the word “Registrar,” and the duties of the offices would conflict. He had pointed the fact out, and explained the matter to the deputation. The chief officer of the Court was compelled to know and understand the nature of every case before the Court almost as much as the Judge, which necessarily entailed his continued presence in Court. His Lordship took much pains to show that the duties of the two Registrars would conflict, and that the business of the Supreme Court would go to the wall. The House of Assembly, it seemed to him, had no more power to deal with the Supreme Court or its officers than any honorable gentleman present. That rested only with the Governor, and with the Judge to recommend to the Governor the number and the character of such officers as are necessary to carry on the business of the Court. For any set of men to go farther, was simply to usurp functions which did not belong to them. It was calculated to do mischief to the judicial department, and he would advise the House to reject anything which would interfere with it.

The Colonial Secretary observed that details were not interfered with by the Commons; in lump sums only, was it usual to determine; as, for instance, in the laying down of the daily wages of Policemen.

The motion to strike out the Schedule was passed unanimously.

Clause 1 was then amended in accordance with the previous motion.

The Preamble was passed as read; also the title of the Bill.

The Committee rose and reported the Bill complete, with amendments.

ROAD BILL.

Council in Committee on a Bill to amend the Road Act, Mr Rhodes Chairman of Committee. After some consideration the Bill was passed.

The Council adjourned till Tuesday.

FOR THE NORTH.—The steamer Otter, Capt. Swanson, will sail for ports on the East Coast of this Island and the Northwest Coast of British Columbia, Among the passengers will be the Rev. Mr Gribbell and Mrs Gribbell, of the Metlakatla Mission; and Mr Weynton of the H. B. Co., who will be placed in charge of the Fort Rupert Station of the Company.