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Provincial Legislature.

HOUSE OF ASSEMBLY.

THURSDAY, FEB. 20.

Mr. WOODWARD presented a petition from the Rev. Mr. Gray and others, praying for the interference of the Legislature, with reference to intemperance; which he said he should follow up by a Resolution having for its object to prohibit the introduction of the article at a future period, unless that were decidedly opposed by public opinion; and altho' he had no expectation that such a resolution would pass, yet the very introduction of it must have a beneficial effect upon public sentiment. And when the first cost of ardent spirits is considered, and the injurious results that proceed from its use, the sum obtained in the way of duties, altho' a large amount, is a positive loss to the country. He should therefore move the following Resolution:

Whereas the consumption of alcoholic liquors is injurious to the Public interest, and often produces very great individual suffering and distress;—and whereas any measure that will tend to alleviate what is now admitted to be a great evil is very desirable.—Therefore resolved as the opinion of this House, that to prevent so great an evil, it is necessary to prohibit the importation of alcoholic liquors into the Province; that whenever any ardent spirits or alcoholic liquors may be found in the possession of any person or persons, the same may be destroyed.—And further resolved, that in the opinion of this House; this subject should be taken up at the next Session of the Legislature, and a Bill introduced to prohibit the importation, and domestic manufacture of all alcoholic liquors; provided in the mean time, there shall not be such an expression of public opinion, as to make it appear that such a measure would not be sustained by it.

Mr. WILSON was of opinion that was going a little too far. Every person was satisfied of the lamentable consequences attending intemperance, and which were caused by the use of ardent spirits; but he considered any attempt to prevent that use would be unavailing. He thought gentlemen should shew a little gratitude for the many jovial and happy hours which they had spent; and some of the most pleasant of his recollections were those which were connected with

"The feast of reason and the flow of soul."

It was the abuse of the article which was complained of, and which the Legislature should endeavor to prevent; and he would support any law that would be likely to have that effect. He had always been a supporter of temperance by his influence and his example; and he thought the advocates of the cause, should not only benefit mankind by the example of sober habits, but by their advice. The less they legislated upon the subject the better; and it should be left for the clergyman, the moralist and the schoolmaster to exercise their legitimate and proper influence throughout the country. He was satisfied more good would be done in that way than by legislative enactments, as it were in vain to attempt to coerce people; by which means a feeling was created against the temperance institutions. He was sure the course he had recommended would have a better effect upon mankind, than the harsher method of legislation.

Hon. Mr. JOHNSTON said all would agree that the use of ardent spirits is injurious, as are the effects of drunkenness. But the Resolution if it meant anything, did not go far enough; it did not prohibit distillation but only the introduction of the article.—It therefore did not strike at the root of the evil. If however

it were attempted to prohibit the importation of the article, a coast guard would be required, and an immense expence must be incurred in the attempt to enforce the law; and even were such precautions effectual, the object in view would not be attained, while the Legislature permitted the distillation of the article.

Mr. PARTELOW said the hon. member for Queen's had expressed his opinion so fully, that it was unnecessary for him to repeat his arguments. He should therefore move to strike out all the words of the original motion—except the words Resolved; and to insert the following:

That so long as the importation of spirituous liquors and their distillation are sanctioned and authorized by the Imperial Parliament, and other parts of the British dominions, and the world at large, it would be both inexpedient and unwise to adopt any prohibitory measures in this Province on the subject, particularly as such measures would tend to increase their illicit introduction to a most alarming degree; would have a most baneful influence in demoralizing the habits of the people, and would impose extraordinary burthens upon the Province by the enormous amount of money necessary to attempt the enforcement of any Law which might contain such prohibitions, without being attended with the consequences contemplated and intended by such enactment.

Hon. Mr. CRANE rose to express his approbation of the original motion; which he was disposed to support, because he deemed the statements in the petition to be correct. He agreed with the object and views of the hon. mover, and with him had no disposition to hasten the action of the Legislature upon the subject. If gentlemen would examine, they would perceive that beneficial effects had already resulted from discussion, and he knew many persons whose opinions had been changed in that way. He was therefore in favour of discussion; being satisfied that much good grew out of it. He regretted to hear his hon. colleague state, that his most comfortable reflections were those, which were occasioned by what took place while in a state of excitement; he was sure that was not the case, and that his mind was often cheered by the recollection of benevolent actions that he had performed. He said he agreed with the hon. member for Queen's as to the principle which he had advanced, but not as to the extent of the amount that would be required to carry the law into effect, were the importation of the article positively prohibited; he thought the neighbouring colonies would bear a proportion of the expence, as smuggling must produce every where a demoralizing effect. By discussion and the dissemination of information, he thought those colonies would be induced to prohibit the introduction of alcoholic liquors. He regretted to find that the amount of duties during the present year exceeded those of a former period; but that might have been caused in a great measure by the supply formerly on hand. The hon. gentleman said he did not despair of seeing the object of the friends of temperance accomplished in the way proposed, and that it would produce a change in public sentiment; and with that view of the subject, he would support the original Resolution.

Mr. BARBARIE always thought if the temperance people could have rope enough, they would hang themselves. Last year he had called those societies a "humbug;" and it had spread all over the land; but he was now borne out in his position, that it were absurd to legislate upon the subject. If any good were to be effected, it must be accomplished by precept and example. He had said he would go for any measure, that would strike at the root of the evil. He did not know if the resolution went to apply to all intoxicating liquors; but he would vote for such an enactment; and while a poor man was denied the drinking of ardent spirits, he would not allow the rich one to revel in wine. He had seen worse results produced by the drinking of wine, than from the use of the ardent. He would therefore vote in favour of the original Resolution, altho' he was satisfied the carrying its object into effect would be attended with difficulty.

Mr. GILBERT regretted that when the bad consequences which result from the use of ardent spirits are so generally admitted, the Legislature when it met should be disposed to accomplish so little; and when the results of intemperance are so deplorable, why should gentlemen attempt to cast ridicule on the well meant endeavours of those who are endeavoring to restrain it.

Mr. END hoped the Resolution would be withdrawn; and merely laid on the table.

Mr. HILL said it was not meant to follow the Resolution up with any enactment; it was meant as a mere feeler as respects public opinion; and to show that if the public are ready for the measure the Assembly are willing to proceed with it.

Both Resolutions were then read and laid upon the table.

FRIDAY FEB. 21.

The House went into Committee in consideration of the Bill, further in amendment of the Law, and the better advancement of justice.

Mr. STREET said the Bill then under consideration was one of great importance to the country, and embraced a fourfold object; but all tending to accomplish the object for which the select committee, by whom this Bill was brought in, was appointed; namely, the remodelling the fee table in the Supreme Court, and putting the same upon a more fair and equitable footing.—The first object contemplated in this Bill, is that of investing by legislative enactment, the judges of the Supreme Court with power by rule or rules of court, to make new regulations as to the pleading in all actions, not summary, brought in the supreme court, and by pleading to bring the real question at issue between the parties, more immediately under the consideration of the Court and Jury, than it can be, or at all events very generally is placed, by the present mode of pleading. By way of illustration, he said, he would give an example.—At present a Defendant sued upon a note of hand, may under the plea of the general issue, give almost any matter in evidence, except a set off, in bar or discharge of the

action, such as payment, want of consideration, and a variety of other grounds; the consequence is, the Plaintiff very frequently comes into court without knowing the real ground of defence intended to be set up, till it is opened at the trial, and is thereby frequently taken by surprise; and in addition to which he has to go thro' all the form and ceremony of proving the note, and perhaps of sending to a distant part of the country, at a great expence, to procure a witness or witnesses to prove a fact that very frequently is not at all in dispute between the parties. The consequence is, that the purposes of justice are frequently defeated. Whereas the mode of pleading contemplated by this Bill, will prevent that evil, by compelling the defendant to state in his plea, the ground of defence; and although he may still plead as many pleas as he likes, yet he will do so at his peril, inasmuch as he will only be entitled to the costs of the issue or issues found for him, and be liable to pay that of those found against him; although the issue or issues found for him, may defeat the Plaintiff's whole cause of action.

This illustration must at once shew how careful it will be necessary for the defendant to be in pleading to the cause of action, and will have the effect of preventing the record as at present, from being incumbered with a great many witnesses and pleadings. This part of the Bill is taken from the imperial Act of 3d and 4th Will. IV. Cap. 42.—And it is presumed the judges of the supreme court will, in the exercise of the power intended to be given them by this Bill, introduce the same forms and rules in respect to the pleadings in civil suits, that have under the Imperial Act already mentioned, been introduced and adopted by the Court of Queen's Bench in England, as far as they can be applied with advantage to this country. The second object of this Bill he said, went further however than the English Act, inasmuch as it also authorises the judges of the Supreme Court to revise and remodel the present fee table in that Court, than which nothing is more necessary, for the respectability of the profession and the protection of suitors; and he knew of no way in which that object could be so well effected, as by leaving it to the judges of the Court, in whose honor and integrity he believed the House and country have the fullest confidence. The third object of the Bill is that of commutating the judges' fees, both chamber and court fees, the sum he contemplated proposing as a commutation, is £150 per annum each—the fees for the last two years having averaged about £200 each, and will continue to increase as the population and business of the country increases. The Bill however requires in lieu of the judges fees heretofore paid, that there shall be paid into the hands of the clerk of the Supreme Court, an entry fee on each case, say 5s. for record cause and 2s. 6d. for summons causes, which is to be by such clerk paid into the Provincial Treasury, as part of the revenues of the Province. This would in a very short time more than meet the amount of the Judges' commutation. The fourth object of the Bill is that of respectively commutating the clerk's fees, that is after the removal of the present incumbent of that office, by death, resignation or otherwise; by putting that officer upon an annual salary; and on that event taking place, the Bill provides for the fees that may be payable under the present or any subsequent law or ordinance to that officer, being also paid into the Provincial treasury as part of the revenues of the province; by which means the expence of this commutation of his salary will be more than met. He adopted this mode, because he did not think it would be right to reduce the present incumbent's income, to what the House might think enough for his successor. That course would not accord with that equitable principle or rule, that had always been recognised by this House and by Her Majesty's Colonial Ministers, in their despatches to the Governor of this Province. He concluded by saying that these were the general provisions of the Bill—he had given some attention to the subject, and he now submitted it to the House, from a firm conviction in his own mind, that if the provisions of the Bill were adopted and passed into a law, they would be found to answer well, and prove highly beneficial to the country and the profession, inasmuch as the fair practitioner would thereby be protected, and low practice prevented.

House resumed.

His Excellency Mr. Johnston, by command of His Excellency, delivered the following Message:—

"The Lieutenant Governor lays before the House of Assembly an Extract from the Minutes of the College Council, on the subject of the Charter of that Institution, and submits the same to the consideration of the House."

"J. H."

The document communicated in the foregoing Message, being read at the Clerk's Table, is as follows:—

IN COLLEGE COUNCIL, 18th Feb. 1840.

The Council having resumed the consideration of such modifications of the charter as might be deemed expedient, and the Report of the Committee thereon, are of opinion, that the objects for which the College was established might be secured, and objections to its constitution in a great measure obviated, should Her Majesty be pleased to ordain and grant as follows, *videlicet*:—

First.—That the Governor, Lieutenant Governor or person administering the Government of the Province for the time being, shall be the Visitor.

Secondly.—That the Chief Justice of the Province for the time being, be the Chancellor.

Thirdly.—That the President of the College be appointed by Her Majesty, Her Heirs and Successors, or by the Visitor on Her Majesty's behalf, and that the present provision in the Charter.—"That the Arch Deacon of the Province for the time being, shall, by virtue of such office, be at all times the President of the College," be rescinded.

Fourthly.—That the Professors be appointed by Her Majesty, or the Visitor on Her Majesty's behalf, always requiring the Professor of Divinity to be a Clergyman of the United Church of England and Ireland.

Fifthly.—That the Council consist of a Chancellor, the Bishop of the Diocese in which Fredericton may be situated, or (in the absence of the Bishop) the Arch-Deacon the President of the College, the Master of the Rolls, the Speaker of the House of Assembly, the Secretary of the Province, the Attorney General, and six other members, (of whom two shall be Professors in the College,) nominated or to be nominated by the Visitor, with the power of suspension in the Visitor now vested in the Chancellor, provided however, that the seat of

any of the present Members of the Council shall not be affected hereby, and that no less than seven Members shall form a quorum for the despatch of business.

Sixthly.—That it shall not be necessary that the Members of the Council be graduates, nor shall any religious test or qualification be appointed for or required of them.

Seventhly.—That the Council have power to make, revoke, renew, augment or alter Statutes Rules and Ordinances, on the motion of any Member, without the previous sanction of the Chancellor, subject, however, to the approbation of the Visitor, as now provided by the Charter.

Eighthly.—That the Registrar shall in each and every year prepare a full and detailed account, duly attested, of the income and expediture of the College for the previous year, together with a statement of the number and names of all the officers and members, to be laid before the several Branches of the Provincial Legislature, within fourteen days after the meeting of the General Assembly.

The Council are further of opinion, that should the foregoing modifications of the Charter take place, it shall be expressly provided, that Divine Service in the College shall be performed according to the order, rites and ceremonies of the United Church of England and Ireland.

SATURDAY, FEB. 22.

College Debate.

It being the order of the day, for going into consideration of the Bill for the amendment of the Charter of King's College,—the House resolved itself into a Committee of the whole for that purpose, when

Mr. L. A. WILLMOT rose and observed, that the first question to be determined was, whether the Committee would proceed farther in the consideration of the Bill, or defer it altogether, in consequence of a message from His Excellency of the preceding evening, containing certain modifications of the charter proposed by the College Council themselves. He should therefore proceed to call the attention of the Committee to the several propositions of the Council, and compare them with the provisions of the Bill; and it would then rest with the Committee to decide, whether the Bill should be postponed without day or not. The Bill appoints the Chief Justice Visitor in the place of the Bishop, and his Excellency would therefore remain as before Chancellor of the College. The proposition of the College Council was however more correct, and reversed this order making His Excellency Visitor and His Honor the Chief Justice Chancellor; thus giving the highest officer the highest office. The Bill declared that the President need not be the incumbent of any ecclesiastical office—while the Council proposed, that that part of the Charter requiring that the Archdeacon should be President, should be rescinded. This he thought was quite satisfactory, and was substantially the same as the Bill.

It was also proposed that the Theological chair should remain as at present, which was in perfect accordance with the views of the select Committee, as well as consistent with the Bill; and he was quite certain, that a large majority of the House were opposed both to the abolition of that Professorship, and to the establishment of an increased number, in order to let in other denominations; which latter course in the language of the Select Committee "would be better calculated to make polemics than divines, and would in no wise advance the interests of true religion." The next proposition of the Council was an important one, and varied in some respects from the like provision in the Bill, as to the composition of the Council—namely, that the Bishop, or in his absence the Archdeacon was to be ex officio a member of that board—the Provincial Secretary in place of one of the Puisne Judges—and seven were proposed as a quorum instead of five. The Bill contemplates the abolition of the existing test of subscription to the thirty nine articles of the Church of England, as a prerequisite to admission into the Council; and proposed a more general test. The Council propose the removal of the present religious test, but suggest no other. This on the whole might answer very well. The next proposition, reserves the right of disapproving of the Statute rules and ordinances of the Council by the Visitor. At first sight he thought this an arbitrary and extensive power vested in that officer; but upon reflection he thought that as His Excellency had a right of separate consideration on all acts of legislation, by analogy he should be invested with a similar right in this instance. He thought that no improper use would be made of the power;—in fact this was a minor consideration, as every thing must depend on the Council, for unless they managed the affairs of the College with prudence, and in the exercise of a sound judgement and discretion, the institution could not obtain public confidence, nor would it prosper. For his own part, to shew that he was not disposed to make captious objections, he was willing to close with the propositions of the Council; to try the experiment, and see what effect the proposed alterations would have, upon the future proceedings of the College. Every person having the welfare of that institution at heart, must lament that so little good had been yet accomplished, with the expediture of so much money. He regretted however that the proposals now made, did not go farther, and suggest the abolishing of all fees; he did not see why they should not be abolished, and that the advantages of the institution ought not to be thus broadly thrown open to the middling classes of society. It was not intended that this should reduce the salary or emoluments of the professors, as it was proposed to commute the fees, and pay those gentlemen from the funds of the college. He considered the suggestions that had been made as reasonable and fair; altho' he was sorry they did not embrace all the amendments proposed in the Bill, and thus throw the doors of the college open to all who were disposed to partake of its advantages.

The learned gentleman then said he would call the attention of the Committee, to the remarks which preceded the proposals now made; where the college council state that the inducement to make them, is that "the object of establishing the institution may be secured;" and it must be gratifying to those who had taken an active part in bringing about the present state of things, that it was admitted by a body so well qualified to judge, that the objects of the founders of the college had not been secured;—it was gratifying to find them concurring with the Select Committee, that certain amendments in the College Charter were necessary, and agreeing to a plan that was substantially the same, as that which was contemplated by the Bill. Persons might say that the majority of the Assembly were actuated by hostility towards the institution, and a desire to produce its downfall; but every man

had a right to express his opinion upon a subject of so much importance to the Province; and the correctness of such opinion be ascertained by time. Knowing what public opinion requires, the majority had only acted in accordance with it; and when they consider the large amount of funds which the college possesses, its extensive tracts of lands, and that £2,200 are taken yearly from the general purposes of the country,—from its roads, its bridges, its schools and from public improvement,—it was the duty of every member of the legislature to make it as generally advantageous as possible; and to enable the most remote part of the country to reap every possible advantage from that institution. He wished to see a candid and liberal line of policy adopted in conducting its affairs,—he wished to see it enjoying popular favour,—he wished to see it become a flourishing and useful establishment. But to effect that it must be regulated by reasonable rules; and he did not see why the expansion of the human mind were to be checked or regulated by religious constraint; or that one sect should be considered as inferior in point of intellect to another.—He would therefore throw the college open to all denominations alike. Was it not extraordinary, that the members of that House could legislate upon the most weighty questions, without signing any religious tests; but if transferred to a body of inferior degree and less moment, they were not qualified for admission or for acting, until they subscribed to certain articles of religion. The same remarks would apply to those who composed the other branch of the Legislature, and who were not required to subscribe any religious tests before admission; and thus there were two bodies exercising a great and direct influence upon the future interests and welfare of the Province, without being called upon to subscribe any religious test. Then why should it be required, with reference to the performance of duties, that have in the main nothing to do with religious peculiarities. He was glad therefore, to find the College Council concurring with the Select Committee, in the opinion that these tests should be abolished.

The learned gentleman said he should not go more particularly into the Bill before the Committee at present, but he could not refrain from throwing out a wish, that the fees might yet be abolished. As he had before said, he was disposed to try the plan which had been proposed; he regretted that it was deemed necessary to make the Bishop a member of the College Council, but a trial could be made; and the House was not without a remedy, if the plan was found not to succeed. He was willing therefore to substitute the suggestions that had been offered for the Bill before the Committee, and he sincerely hoped that one universal effort would be made, to make the institution as useful and advantageous as possible to the country.

Mr. BROWN said, as no member seemed disposed to rise, he would as one of the Select Committee to whom the subject had been referred, make a few observations. The learned gentlemen for Gloucester would now see that those improvements against which he had formerly so strenuously contended, were now deemed necessary by the authorities of the College; and it must be gratifying to the friends of those measures which had been recommended by the House, that it is admitted their intentions were not to injure that institution, but to promote its usefulness. He would freely admit that he had formerly endeavoured to withdraw those funds which had been annually appropriated, because he considered the institution not in a situation to deserve it.—But he had since changed his views, and would now do all in his power to encourage that establishment. He was also under a mistake with reference to the advantages of collegiate education, having known men who had figured in science from small beginnings, and who had not graduated within a college walls. With reference to the college itself, he was desirous of seeing all restrictions removed, and that persons of all denominations should partake equally of its advantages; and he could not agree with the learned member for York, that they ought to adopt the suggestions that had been made, and abandon the Bill. He thought they should proceed with the consideration of it, and adopt these suggestions as far as were practicable; but where they involved any serious principle they should be abandoned. It was proposed that the Bishop should be a member of the College Council; he saw no evil resulting from it, but thought his introduction would promote its usefulness. He should therefore be in favour of taking up the Bill, and would adopt the proposed modification so far as was proper; but he would not wish it to pass without some provision as respects the table of fees.

Mr. END said he would not have risen at all, had he not been alluded to by the hon. member for Charlotte. He did not intend to make a speech, and only rose to say that any support which he ever gave to the College, was perfectly spontaneous—that it was not given in concert with the College or by desire or indeed with the knowledge, so far as he knew, of any body connected with it. He wished to make this explanation lest the ultra character of his support might excite any feeling in the mind of any hon. member inimical to the interests of the institution. He was happy to find, that new there was some prospect of an accommodation, which he hoped would remove the college from the line of fire. The hon. member for Charlotte, one of the Committee who had signed the celebrated Report of last year on College affairs, had declared that his views are altered respecting Colleges—that he now believes that wisdom, learning and sense may proceed from a College, and generally, in the House, there appeared to be an expression rather favorable to the College, produced he (Mr. E.) conjectured, by the concessions now proposed by the College Council. He almost dared to hope, under this state of things, that this concession might have a result different from all the other concessions, that were made here or elsewhere—each one was only a rung in the ladder. For himself he remained unchanged, and was not convinced of the necessity of the concession, or indeed of its utility. Had he been a member of the College Council, he would not have consented to it. He would have been content to do what had been occasionally done before—he would have retreated to the last bastion, and been blown up with it.

Mr. WOODWARD as one of the Select Committee, felt himself called upon to join in expressing the pleasure he felt at the College Council having met the views of the House of Assembly to a great extent, and to shew his willingness to concede and that he had no other object in view, than to promote the usefulness of the institution, he would meet them half way, and agree to try the plan which had been