

Mr. Whitney, "I say there is no precedent in the Ottawa case, although the circumstances are the same and the legislation is the same. But there could not be a precedent for this reason: Two things which result differently cannot be said to be so allied that one is a precedent for the other, and the result of the carrying out to the legal end or result of these two pieces of legislation would be entirely different. In the first place—but before I come to that let me say here we have a special session called for the purpose of not throwing away a party opportunity; called for the purpose of getting the Government out of the difficulty into which they say themselves they found themselves placed. Now the legislation of '87 was brought in and enacted in an ordinary session, the House was called in the usual way. The bill was introduced by Mr. Edgar," and Mr. Whitney read from The Hansard that gentleman's outline of its objects, the first being to ensure greater secrecy of the ballot. He said nothing about the constable vote, which was dealt with in an amendment by Sir John Macdonald. There was no objection to the second reading, and very little discussion. "And why?" Mr. Whitney asked. "It did not make a bit of difference about the retroactive provision in the law. It could not have the slightest effect on the situation, because under the Dominion law—anybody who studies it will see—it would be impossible to give any person the seat because the constables or any other persons might have illegally voted. Now that is the reason why the retroactive principle was of practically no avail, why it amounted to nothing at all. As long as the secret ballot existed under the Dominion law, as long as the provisions of that act remain which prevent any attempt to find out how a man voted, they could not possibly get the seat on a scrutiny on account of those votes if they were bad. Now, then, an entirely different state of affairs existed under the Ontario law and exists yet, and it will exist if this iniquitous bill passes the House. As Mr. Edgar properly said, 'Of what use is a ballot unless it is secret?' And that is the position taken by us on this side of the House."

Not an Analogous Case.

Under the provisions of this retroactive law which will govern, continued Mr. Whitney, the person who may be adjudged to be legally elected will be prevented from getting his seat in this House. In other words, the people of those constituencies who have elected them will be deprived of the privilege, which they have by law and right, of having the member of their choice represent them in this House. He contended that in the Sir John Macdonald case the petitioner did not ask for the seat, knowing that he could not get it. His hon. friend the Attorney-General asserted that what was right at Ottawa is right at Toronto, which was a very good rule, but the same conditions must exist in order to justify the assertion, and they did not exist in this instance. He desired to go further, however, and ask why, if it was right at Ottawa to pass a declaratory act, the Government at Toronto did not stand up, pass a similar act

here and abide by the consequences like men? If it was right at Ottawa why did the Government abandon the principle here? He had noticed the remarks of the Attorney-General that the Liberals of the Dominion, when the seat of the Premier was in danger, rose to the occasion and put patriotism before party and supported the bill which is now quoted as a precedent. Why, then, did they not make this legislation retroactive? The present bill is retroactive to a certain extent, but not to the extent to which The Globe declared. They found that the public indignation is too great for them to carry through their original intention as expressed in The Globe, and thought they would be able to take away one-half the right of the people instead of the whole right, which they intended. The hon. gentleman then quoted from Cooley's American Law to show that legislative action could not be made to retroact upon past occurrences and the reversal of decisions of the courts, for in doing so the Parliament would not only be exercising judicial power, but it would be exercising it in the most objectionable and offensive form. No person, he contended, was better qualified to explain and insist upon the principle than his hon. friend from Huron (Mr. Garrow), who is endeavoring to take away from the courts of the land the power which is vested in them and place it in the hands of what he calls the high court of Parliament, in which the hon. gentleman sat as a judge. He had not wished to refer to the peculiar circumstances under which the hon. gentleman sat there, but as he had referred to it himself in order that his position could be clearly understood he would have to do so. His hon. friend proposed to sit in the highest court of the Province as a judge on his own case—(Opposition cheers)—and if he was willing to take that responsibility he did not propose to take up the time of the House discussing the matter. The result which hon. gentlemen proposed to attain by the bill was to substitute the will of the Legislature for the will of the electors.

Mr. Whitney proceeded, and asked where retroactive legislation had ever been passed without a saving clause preventing its being applied to pending legislation. (Opposition applause.) He said again that if constables had not the right to vote the Government was to blame. In reply to Mr. Hardy's request to give some reason why constables should not be allowed to vote, he said he had never said that they should not have a vote, but he insisted that the votes of nobody whom the law on the 1st of March disqualified should be counted in order to keep the Liberal Government in office, and he prophesied that the Liberalism of the future would look back upon the present bill as a public disgrace. He taunted Mr. Hardy with lack of courage to bring in a bill along the lines suggested by The Globe when the House was first called, and intimated that Thomas Carlyle, if he were alive, would have admired him as a man of courage had he done so.

Hon. gentlemen said that the constables had voted for thirty, forty or fifty years, and he admitted that the constable vote had not been attacked in this Province, except by The Toronto Globe in editorials on February 21, 22