

Wednesday, Mar. 12th

Might Be Attacked.

"It has come to my attention recently," he said, "that this bill may be attacked in the courts, and the courts may declare that the Legislature has not the power to pass such an act, and, I suppose, in that case the bill may go as far as the Privy Council, and those who are in favor of the chance to repeal the O.T.A. might be faced with the prospect of not being allowed to have a referendum for probably two years."

Moves Subamendment.

Mr. Carmichael then moved an amendment to the amendment seconded by J. W. Freeborn, Middlesex, as follows:

That this House do not proceed further with this bill (a) until the Prime Minister has given to the House his assurance that, in the opinion of the Government, there has been manifested a desire for a change in the law sufficient to warrant the Government in believing that there is a real public demand for such a change.

(b) Nor until the Government has submitted to the courts under the Constitutional Questions Act the question whether this bill is within the constitutional authority of this Assembly to enact, and received the answer of the courts to such a question.

Allowing People to Rule.

He had confidence enough in the people of Ontario to allow them to decide whether they would continue the Ontario Temperance Act or substitute something else for it, said A. C. Lewis (Conservative, Northeast Toronto). "We propose to follow the best traditions of British Parliamentary practice, of British democracy, in allowing the will of the people to rule in this matter."

Mr. Lewis claimed that on the Government side of the House there were more supporters of the O. T. A. than in the whole House membership of the combined Oppositions. For himself, speaking as representing a dry riding, they were prepared to support the Government, in submitting to the people, when there was a demand for a vote, an opportunity of again affirming their attitude on the question of prohibition. He thought it absurd to

compare such a law, governing a social question on which there was a decided difference of opinion, with bank robbery, burglary, or murder. Even if there was no demand at all there should be a revote after a reasonable period.

Betrayal, Says Mr. Raney.

In rising to speak to Mr. Carmichael's amendment to the amendment, Mr. Raney said he would be willing to make way for any member who would explain to the House the sufficiency of the demand for this bill. If the Ontario Temperance Act was not germane to this debate, then there was no subject before the House.

The bill before the House was a betrayal of the people of Ontario of the promise the now Prime Minister made to the people of Ontario before the elections, proceeded Mr. Raney.

"In what respect?" asked Mr. Ferguson.

"I am going to point that out at once," retorted the East Wellington member. He then read a quotation from the speech delivered during the election by Mr. Ferguson at Spencerville, which concluded as follows: "If at any time there should be a sufficiently manifested desire for a change in the law to warrant the Government in believing that there is a real public demand for such a change, it will be the duty of the Government to ask the people, by their votes, to pronounce upon the subject."

"Where is the sufficiently manifested desire?" asked Mr. Raney.

"All over the country," called out several members.

Not Side-Stepping, Says Ferguson.

Mr. Raney declared that he had asked the Prime Minister last Thursday if in his view there was such a sufficiently manifested desire now, and "he side-stepped the question," declared Mr. Raney.

Mr. Ferguson came to his feet and retorted that the Prime Minister had no desire to side-step any question. He went on to say that this legislation was based on a pledge he gave the people, when Mr. Raney, amid some disorder, claimed his right to the floor. The Prime Minister could not make a speech, he said. "We've had too many speeches interjected into other members' speeches." Again he put the question to the Prime Minister as to whether there was today a real public demand for a vote.

The Premier countered by asking Mr. Raney if, supposing public opinion did manifest itself next fall, "could you take the vote without this machinery?"

Desire for a Vote.

"It is quite obvious that you couldn't," replied Mr. Raney. "That does not touch my question at all." If, he continued, there was, in the mind of the Government, a sufficiently manifested desire for a vote, then the Government was justified. "If there is not, there is no place in this House for this legislation."

The request to the people to pass on the subject comes after the Government is assured that there is a manifest desire, continued Mr. Raney, and not before it. "If honorable members opposite—if their minds would work so that they had satisfied themselves the pledge was being carried out by the submission of this bill without the Prime Minister coming to the Legislature and saying such a demand is manifest, then that was their affair."

It was not for nothing that former Attorney-Generals sought for legislative authority to frame questions on liquor referenda and plebiscites, continued Mr. Raney. If the bill went through and a series of questions were placed before the electorate, each elector could vote on one or two or three questions, as the case might be. Formerly, in 1919, he had to vote on them all. Then, who was going to settle the question of the voters' lists?

Is Proposed Law Ultra Vires?

Mr. Raney then cited the instance of the Initiative and Referendum Bill in Manitoba in 1919. The Privy Council, he said, held that the attempt by the Legislature to legislate without the approval of the people without the intervention and consent and approval of the Lieutenant-Governor-in-Council was ultra vires of the Manitoba Legislature. "I think there is grave doubt of the power of this Legislature to enact this law," he said.

Premier Ferguson asked if he thought it would not be better for him to wait the passage of this legislation, and in his capacity of protector of the people to attack it and set it aside. Mr. Raney answered warmly in the negative. He said he was not representing any private body of citizens, but was in the House as a representative. "My duty is to bring to the attention of the House anything that appears to me to be an obstacle to the enactment of legislation by the House."

Continuing, Mr. Raney cited a possible objection to the questions when framed, maybe by some supporter of the Government, or by the liquor interests, or by friends of the Ontario Temperance Act, and the matter then would be brought into the courts. It might take three years to reach a final decision, and in the meantime the whole question would be hung up. The proper time to ascertain the legality of the measure was now.

"This Bill Is a Mere Shell."

After referring again to the Manitoba case, upset because it was a law that was not obliged to receive the assent of the Lieutenant-Governor-in-Council, Mr. Raney continued respecting the bill now before the Ontario House: "This bill is a mere shell. The Government is to supply the kernel. It's a frame. The picture is not there. It has to be painted by the Government and inserted in the frame. There is no substance to the bill."

The Legislature, he said, had no power to delegate its legislative authority to any body, whether that body was a committee or court or happened to be twelve gentlemen forming the Government. "The Government of this Province is a mere committee of the Legislature. This Legislature is being asked to refer this bill to a committee to legislate for the Province of Ontario."

Mr. Nickle—No.

"The bill is a pure shell," continued Mr. Raney. "You authorize a committee to which this is referred to fill it in, to give it life, substance—something to go on. You are authorizing them to legislate for you." He then read a court decision bearing on the Manitoba case, in which the Judges held that the Legislature could not confer that power (of legislating) on a body other than itself.

Overriding Lieutenant-Governor.

When the Lieutenant-Governor assented to a bill he sent an authenticated copy to the Governor-General-in-Council at Ottawa. This vote, and the questions it involved, would be determined by an Order-in-Council. There was no provision that an Order-in-Council be sent to Ottawa. "You are overriding by this legislation the authority of the Lieutenant-Governor, the procedure the British North America Act declares shall be followed in every bill that is to be enacted." The effect of the bill, he said, was to authorize the Government to legislate.

"If this bill goes to the Governor-General and obtains his consent, does not the Crown give consent?" asked Attorney-General Nickle.

"This is not complete," replied Mr. Raney. "Something, the vital part, goes to another authority. The substance is left to the Government and never goes on to the Government at Ottawa." The Government prepared the questions, and then the Order-in-Council would be passed which would embody these questions. That was the real legislation.

Legislation Next Year.

The Prime Minister said that the questions would test public opinion, and, having got that test, the legislation made necessary would come down next year.

Attorney-General Nickle said that in the event of the people expressing their opinion, the expression of that opinion in no way bound the Lieutenant-Governor until such time as the Legislature considered a measure, if one was introduced, and then the Lieutenant-Governor would have the opportunity to give or withhold his assent.

Mr. Raney concluded by saying that the Legislature was creating and endowing with its own capacity a new legislative power which owed its own existence to the Legislature. The Government, he said, ought to submit the question to the courts.

Heenan Favors Early Vote.

Peter Heenan (Lab r, Kenora), in a brief speech, said that in his judgment the people should have another opportunity of voting on this question at an early date. But when they looked into the bill itself they found it contained two principles. One was the principle of supplying the Government with machinery to act. The other was whether or not they should supply the Government with machinery to act as often, or at any time, or at as many times, or in any way it wished to act, and whether or not they should give the Government power to submit the question in any form it thinks fit.

Mr. Heenan declared, "amid Conservative applause, that he was going to support the measure on the first principle of supplying machinery with which to take the vote. When the bill came to committee, he added, "I am hopeful that the Government will permit amendments to the bill to provide for definite questions to be submitted to the people on a definite date."