

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

THURSDAY, 4 MAY 1871

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LEGISLATIVE ASSEMBLY.

Thursday, 4 May, 1871.

Constitution Act Amendment Bill.—Oyster Fisheries Bill.

CONSTITUTION ACT AMENDMENT BILL.

Mr. LILLEY moved the second reading of a Bill to amend the Constitution Act of 1867. The object of the Bill, he said, was to repeal the proviso of the tenth clause of the Constitution Act, which required that there should be majorities of two-thirds for the passing of certain measures through the House. As the Bill received the assent of the House last session, he did not expect that it would now be objected to; and therefore he did not consider it necessary to repeat the arguments he then advanced in favor of it. He had omitted one of the clauses that was objected to in the former Bill; and this measure would therefore only deal with the proviso so far as a two-thirds majority of the Legislative Assembly was concerned, and would not at all interfere with the other branch of the Legislature.

Mr. DE SARGE said he presumed the discussion on this Bill would be much the same as that on the Bill brought before the House last session; and that the division upon it would also be much the same. For his own part, he would vote in favor of the Bill, as he considered they should do all they could to provide that the representation of the people should be as free and untrammelled as possible. Now he thought there could not be any measure of reform of that kind passed while the proviso requiring a two-thirds majority remained. The present Government had a large majority, he was happy to say, and he hoped they would not oppose the Bill; inasmuch as, if it were passed, it would enable them to pass other measures of their own without a majority of two-thirds. While this proviso remained there was no use in attempting to divide any of the electoral districts. They could not do anything practical in the way of reform so long as this proviso continued in existence. In supporting this measure he would only be fulfilling a pledge he had given to his constituents. He considered it was necessary that such a measure should be passed, so as to pave the way for an Additional Representation Bill. In a small colony like this, they ought to be able to do everything in the matter of legislation in as simple a manner, as possible; and holding that opinion, he thought that the House ought to agree to this Bill for the repeal of the two-thirds clause.

Mr. FERRETT said that when the Constitution Act was passed this proviso was undoubtedly considered to be very necessary, in order to prevent hasty legislation in certain matters; and he must say that, for his part, he did not see any reason for its being repealed. When the House was asked to repeal so important a proviso, some strong arguments should be advanced in support of their

doing so; but that had not been done. He did not think that power should be given to a simple majority to change the nature of the constitution. Until he heard some better arguments in favor of the Bill than had yet been advanced he must oppose it. The honorable member for Clermont had given as a reason for supporting the Bill that the present Government was a strong one. Now, that was just why he thought they should not agree to it. For his own part, he was not so blind a follower of the Government as to support them merely because they were strong. It might happen that there would be another strong Government in power, who, if this Bill were passed, might, by a simple majority, make any change they liked in the constitution, and that to the injury of the colony. He should certainly oppose the Bill.

Mr. GROOM said there were always two sides to a question, and both sides should be heard before coming to a conclusion. The honorable member who last addressed the House had stated why he should oppose the motion. Now, there were some constituencies represented by honorable members on the Government side of the House, whose interests had to be considered as well as those represented by honorable members on the Opposition side of the House, in the matter of representation. He maintained that the House, as now constituted, did not represent the country, inasmuch as some of the large centres of population were not adequately represented in proportion to other constituencies; and, in order to prove that, it was only necessary to look at the anomalies in the matter of representation as disclosed by the census which was taken in 1868. East Moreton, for instance, with a large population, was represented by only two members; while West Moreton, with a smaller population, was represented by three members. Then again, Ipswich, with a decreasing population, was represented by three members; while Rockhampton, where the population was increasing, had only one member. Now, he maintained that it was absolutely necessary that a Bill of this kind should be passed, in order to prepare the way for the passing of a measure to provide for the proper representation of the people of the colony. Several Governments had attempted to have a Bill passed providing for additional representation, but in every case they had failed, in consequence of their being unable to obtain a majority of two-thirds to support it. He made bold to say, from his experience in the House on every occasion the question had been brought forward, that they would never get an Additional Members Bill passed until the two-thirds clause was done away with. It had been stated, that the passing of a measure of this kind might lead to objectionable changes in the representation of the colony, but he had more faith in the good sense of the electors than to think so. Now, as they had the question of man-

hood suffrage before them, he thought they should in the first place repeal the two-thirds clause, for he was satisfied that, until they did so, a measure providing for the proper representation of the colony could not be passed. There was a two-thirds clause in the Constitution Act of New South Wales at first, but it had been repealed; and he had heard it said that a leading member of the New South Wales Parliament had stated that the member who moved for the repeal of the clause regretted that he had done so. Now a gentleman in this colony wrote to the honorable member who moved for the repeal of the clause, asking him if the statement was correct. In his reply, the honorable member stated that it was not correct; and that he believed several important measures which had been passed, would not have been passed if the two-thirds clause had not been repealed. The honorable member who last addressed the House was one of the representatives of a constituency which had no cause to complain of not being fully represented; but he (Mr. Groom) had every cause to complain on behalf of the constituency by which he was returned, that it was not adequately represented; and he did not think it would be adequately represented while this two-thirds clause remained in force. In the district he represented there were upwards of 1,400 persons, and they had only one member; whereas Ipswich, which, notwithstanding all the efforts that were made to increase the number on the roll, was only able to muster about 1,000, was represented by three members. If the Government was sincere in their desire to have a re-distribution Bill passed, they ought to agree to the repeal of this clause. The honorable gentleman now at the head of the Government, told the honorable member for Fortitude Valley, when he, as Premier, introduced a re-distribution Bill, that he should first get this two-thirds clause repealed. Well, he hoped the honorable gentleman would now act upon the advice he then gave, and assist in getting the clause repealed. A measure such as the one now before the House, was one which he had expected to see mentioned in the Vice-regal Speech on the opening of Parliament. He would vote in support of the measure, as he considered it to be a good and a wise one, and one which was demanded by the country. As he had before stated, he had sufficient confidence in the people of the colony to feel assured that they would always return good men to represent them; and he maintained that a simple majority of members would never come to a decision which they considered would be likely to have an injurious effect on the colony.

Mr. KING said, that last session, when a similar measure to this was before the House, he did not state his reasons for the vote he was to give. He would now shortly state why he would support the Bill. The objections which had been made to it, were chiefly, that if the two-thirds clause was repealed, the

Legislative Assembly would be so constituted as to be too liable to give way to what was the popular will. It had also been said that the clause was of a conservative nature. Now, in the most conservative constitution that existed, there was no such provision as that which it was proposed by this Bill to repeal. It did not exist in the British Constitution, which had existed for centuries; and it had been said by a high authority that the great bulwark of the British Constitution consisted in the fact that a simple majority, either in the House of Lords or in the House of Commons, was all that was required in the case of any change, however important. Now, when they found that the Constitution of England, which had been improved from time to time, was liable to be changed by a simple majority, why should a two-thirds majority be required to change the constitution of this colony, which had been in existence for only ten years? The clause might have been prepared by some clerk in Sydney, not by some eminent lawyer; and so he did not see that it should be held so sacred that they ought not to repeal it. The clause had been referred to as being of a very conservative nature. Now, he did not believe conservatives would support such a clause; as proper conservatism consisted in securing due representation to all portions of the country, and it was because of this clause in the Constitution Act that such anomalies existed in the representation of the people in this colony. Some of the most populous and important districts in the colony were not so fully represented as others that were not so populous or so important. If this Bill were passed, it would open the way to the passing of a Bill which would secure a better representation of the country than now existed. There were members in the House at the present time who personally knew little, if anything, of the district they represented, or of the requirements of their constituencies. The legislative business of the country was chiefly carried on by a few persons who resided in the southern portion of the colony. When the question of repealing the two-thirds clause was before the House last session, the honorable gentleman now at the head of the Government stated, that if certain measures could be carried by a simple majority, this proviso was merely a delusion and a snare, and the sooner it was done away with the better. He expected, therefore, that the honorable gentleman would have got up in his place at the earliest possible opportunity in the course of the present debate, and stated that he would support the measure, but he had not done so. He hoped the House would pass the Bill. If they did so, they would deprive the Government of any excuse for not introducing an Additional Members Bill next session.

The SECRETARY FOR PUBLIC WORKS said that one of the strongest pledges he had to give to his constituents when he was last

before them, was that he should do all in his power to preserve this proviso intact, as it was a safeguard against hasty or unfair legislation. That being the case, he maintained that the honorable member for Wide Bay, who was returned by the same constituency, did not, in supporting this Bill, represent them. The constituency by whom that gentleman was returned had been betrayed by him upon this important question. He believed that, if the electors of the Wide Bay district were canvassed, it would be found that two-thirds of them would protest against the conduct of the honorable member in the House. He knew the electors well, and he knew that they objected to the course which had been taken by the honorable member in respect to this question. It was by his (Mr. Walsh's) friends that the honorable member was returned to the House, and that especially on the ground that he should oppose any measure for the repeal of the two-thirds clause. The constituents of the Wide Bay district wrung from the honorable member as strongly as the electors of Maryborough did from himself, that he should do all in his power to preserve this valuable clause in the Constitution Act intact. He was himself one of the constituents of the honorable member, and he had taken a good deal to do in securing his return. He now felt that, by doing so, he had done an injury to his constituency, as the honorable member had become such an apostate to the principles upon which he came forward. The honorable member said there was no two-thirds majority required by the Constitution of England. Now, where, he would ask, was the analogy between England and this colony? Why, in England they had the glorious House of Lords, which operated as a check upon hasty legislation by the House of Commons; and that was the purpose of the two-thirds clause being inserted in the Constitution Act of this colony. The honorable member had said that there was only a small section of the community really represented, and that the business of legislation was mostly carried on by members who resided in the southern portion of the colony, several of whom were not acquainted with the wants of the district for which they had been returned. That, he maintained, was one of the strongest reasons why the clause should be retained; because its effect was to prevent those members to whom he alluded from acting in a way that would be injurious to the outlying districts of the colony. Knowing that a measure of the kind now before the House was to be brought forward, he looked over the Constitution of the United States, and read the works of several eminent American statesmen on the subject, during the recess; and he found that President Madison, one of the most democratic presidents that America ever had, when, he might almost say, he was on his death bed, prayed his political friends to preserve intact the

three-fifths clause in the Constitution, on the ground that it was one of the greatest safeguards the country possessed against hasty legislation. He thought they ought not to ignore the opinion of such a high authority upon this question. The honorable member who introduced the Bill did not quote any authorities in favor of it. He had not attempted to shew that what was applicable to the United States was not equally applicable here. The honorable member for Fortitude Valley introduced this Bill which proposed to make fundamental changes in the constitution of the colony; but he had not advanced any reasons why the House should agree to it. The two-thirds clause provided the only means by which the weak could exercise a power as against the strong. If the clause had been repealed at the time the honorable member was at the head of the Government, there would have been no legislation but for Brisbane, and its locality. The two-thirds clause was absolutely necessary in order to prevent mushroom politicians of the day from hastily passing measures that might be injurious to the general interests of the colony; and he would therefore oppose the Bill for its repeal. He only desired further to state, that he greatly regretted to find that the electors of the Wide Bay district were so badly represented as they were at present.

Mr. ATKIN said the honorable the Secretary for Public Works, when referring to President Madison's desire that the three-fifths clause in the American Constitution should be retained, ought to have gone further than he did and have stated that the clause had no relation to the matter of representation, but was intended to prevent a monarchical form of government being substituted for the existing form of government. There was, therefore, no analogy between that clause and the two-thirds clause in the Constitution Act of this colony. The speech of the honorable member for West Moreton, Mr. Ferrett, clearly shewed that a great difference of opinion existed in that electorate upon this question, judging by the speech delivered on a former occasion, when a Bill of a similar nature was before the House, by another honorable member for West Moreton, Mr. Forbes. In 1869 that honorable member argued strongly in favor of the two-thirds clause being repealed, and maintained that, until it was repealed, they could not expect to get any measure passed providing for additional representation, or parliamentary reform. He would remind the honorable member of what he then stated, in order that he might not fall into the same error as he did last session, in voting against the Bill. The honorable member, in 1869, as reported in "Hansard," when speaking on the Additional Representation Bill said—

"That any honorable member who did not wish to repeal the two-thirds clause, had not at heart the

cause of parliamentary reform. When they looked at their Constitution Act, and saw how the business of the country was impeded by the two-thirds clause, they would have no parliamentary reform until that was remedied. It put the Government in a false position."

Farther on he said :—

"He had watched with much care and anxiety many attempts which had been made to bring about parliamentary reform, but each one of them had failed from the same reason that he thought the present Bill would fail from; as in an Assembly constituted as that House was it was difficult to get a majority of two-thirds."

He also went on to say :—

"There was an Additional Members Bill brought forward by Mr. Herbert, in 1863, which lapsed from want of two-thirds of the members being present. Then, again, the Constitution Act Amendment Bill, brought forward by the present Minister for Works; the Electoral Bill; the Bill for Shortening the Duration of Parliament, which was brought forward by the then honorable member for South Brisbane, Mr. Blakeney; the Elections Bill; and the Redistribution Bill of last year; all of which lapsed from the same cause. He had had the opportunity of reading some of the debates upon those occasions, and the objections for not repealing the two-thirds clause. But he would ask why they were so afraid of the Government, who lived at the will of the people's representatives? Were they so afraid that a majority would do wrong that they should require to keep such a check on the Government of the country? Where could they find any country where there was such a check upon the constitution?"

In the same speech, on that occasion, the honorable gentleman said :—

"In all the Australian colonies it had been found necessary to get rid of that portion of the Constitution Act. They had been told that it was based upon the British Constitution Act; but he denied it was based upon it, even from the earliest time—even at the time of the celebrated *Magna Charta*. He found that, in the sixty-seventh section of that, it was stated, that in the agreement between the Barons and King John, the act of the majority should be the act of the whole."

Then a little further on he said :—

"No person who had reflected carefully on the subject could refrain from attributing to it the want of political power among the people of the colony, and that had been the cause of all the evils from which it was now suffering. In New South Wales no evils had arisen from repealing the two-thirds clause, and in assimilating their constitution to that of England. In Victoria, again, where the people had more rights than in any other, they had not experienced any evil effects. Would any honorable member tell him that if they had been checked, as the people had been in this colony, that they would have been as they were."

On being reminded by the Speaker that, in referring to the two-thirds clause, he was speaking on a question that was not before the House, the honorable member said :—

"He had only referred to it as shewing the impossibility of getting anything like parliamentary reform under the present constitution."

As the honorable member so warmly advocated the repeal of the two-thirds clause on that occasion, it was to be hoped he would not forget on which side of the House he should record his vote on the present occasion.

Mr. FORBES said he had not forgot the views he expressed upon that occasion, but since he delivered the speech from which the honorable member had quoted, he had found that the opinions of his constituents had greatly altered on the subject, and though, so far as he was individually concerned, he still entertained the same opinions, he thought it was his duty to give way to the views of the majority of the constituency of which he had the honor to be one of the representatives. That was the reason why he voted against the Bill for the repeal of the two-thirds clause last session. Besides, he maintained he had as good a right to change his opinion on this subject as some honorable members opposite, who had changed their opinions upon this and other important subjects. When he brought the question before the House in 1869, it was strongly opposed by some honorable members who were the warmest supporters of the present Bill, and the honorable member for Fortitude Valley was one of those who then opposed it. That honorable member, on that occasion, said in effect, that the time was inopportune for the passing of such a measure, and that he would rather see the House become an oligarchy than see the two-thirds clause repealed.

Mr. LILLEY: No, no.

Mr. FORBES: Well, the honorable member, who was then Attorney-General, was reported in "Hansard" to have said :—

"Not many days ago, he had given his opinion that the time had not yet come for the repeal of these clauses, and he thought he had said enough to shew that he would not support the Bill. Certainly it would be almost impossible to make any change in the distribution of the representatives, until the two-thirds clause of the Constitution Act had been repealed. Except by joint consent, or by what was known as "log-rolling," they could get nothing like a modification of the representation. It became a question whether the House was not growing into an oligarchy. And an oligarchy it would become, if they did not change and redistribute the electorates; for, by-and-bye, the vast mass of the colony would not be represented in the House. If they had obstinate legislators, they would always have the barrier of the two-thirds clause. This was called a safeguard, and so on; and it was also said to occasion that deliberation of which the honorable member for East Moreton was so fond. 'This occasions deliberation,' was an argument that might be used with regard to every measure of importance."

In the same speech the honorable gentleman said :—

"He did remember when this two-thirds clause was a safeguard in the Queensland Parliament. At that time he had great fear, indeed, for the result of the division, and he was satisfied that, if two-thirds majority could have been had at that time, the result would have been disastrous in the

extreme. He felt, then, that it had been a safeguard, and had been cautious ever since against rushing too hastily to repeal this proviso. But, when the time was ripe, the two-thirds clause must go, otherwise there could be no alteration for the better in the representation. However, he had no intention to vote for the Bill on the present occasion."

Then again in the course of the same discussion the honorable member said:—

"He had frequently expressed, in private and public, a similar hesitation to that he had given utterance to, that night, with respect to the repeal of the two-thirds majority clause. He believed the colony had escaped danger by the existence of that proviso."

Whilst the honorable member sat on the Treasury benches, the time had not arrived—it was not convenient; but as soon as he got on the Opposition side of the House, and became the leader of the liberal party, then was the time for the Bill! And, he (Mr. Forbes) could almost point to an honorable member who sat on the Treasury benches, as a further illustration—but whether he had changed his opinion, in crossing over, he did not yet know. At any rate, the result of the vote on the present question would tell whether he had or not. The opinion of the House would be tested now, as it was tested on the former occasion to which he referred, when he did admit that, speaking upon general principles, he was still, as far as his own opinions and sentiments went, in favor of the repeal of the two-thirds clause. But, when he found that his opinion was adverse to that of the majority of the largest constituency in the colony, he thought he was bound to suppress his own opinion on the question; and, in doing that, he was only following an example which had been set him by the honorable member for Fortitude Valley, and other honorable members on the Opposition side of the House. He did not quarrel with their example. Supposing that he should, upon this occasion, vote against the Bill—and he had not declared whether he should vote for or against it—he admitted to the House that in the sentiment he expressed on that occasion, and as far as the principle of the Bill went, he was in favor of it. When he could not find out what were the true principles that guided the House in dealing with the matter, he felt himself at liberty to do as others had done before him. That was policy. That was the policy which had been carried out by honorable members who had held the highest positions in this colony. If honorable members wanted to reform the House, or bring about a reformation, they should first reform themselves, and advocate some fixed principles to be laid down. He merely stated this in reply to the honorable member who had read his speech to the House this evening, and he would leave the matter for further discussion.

Dr. O'DOHERTY said he could not avoid rising to express the great astonishment he felt at hearing the honorable member for

West Moreton, Mr. Forbes, stating to the House in one breath, that he had altered his opinion upon this vital question, as a matter of policy, and in the same breath—

Mr. FORBES: In explanation, he begged to state that he had said nothing of the sort.

An HON. MEMBER on the Opposition side: He altered his vote.

Dr. O'DOHERTY: He distinctly heard the honorable member say that he altered his "vote" on this occasion as a matter of policy.

Mr. FORBES: He had said that he would not state how he should vote.

Dr. O'DOHERTY: That might be quite true; but he insisted that what he said was correct, with regard to the honorable member's statement—that he, Mr. Forbes, would alter his vote on this question as a matter of policy; and he said again, that, in the same breath, the honorable member had ventured to lecture honorable members like himself (Dr. O'Doherty) by stating that the first step they must take in reforming Parliament was to reform themselves. Now, if that was the way they were to effect reform, he was afraid it would be a very long time indeed before they succeeded in reforming Parliament. To those who had not watched the course of the honorable member for Maryborough in the House for some years past, that apparently virtuous burst of indignation of his against the honorable member for Wide Bay would really seem to have been in earnest; but, although he (Dr. O'Doherty) was not a very old member of the House, it did not in the slightest degree deceive him, and he was quite sure it did not in the slightest degree deceive his honorable friend the member for Wide Bay. He was old enough in the House to remember having seen the honorable member for Maryborough standing forth as dictator of the House, having the ear of the honorable the then Speaker, who was his colleague, as representing Wide Bay—aided by him—

The COLONIAL SECRETARY: Committed by him!

Dr. O'DOHERTY: Oh! that was at the last moment;—only at the last moment! He was sure that all the old members of the House would thoroughly agree with him that the honorable member for Maryborough had reason to feel himself grievously disappointed at the course which the present honorable member for Wide Bay took in the House. The latter had proved himself an independent member; he had proved that all the influence, the little manœuvres, volunteered by the honorable member for Maryborough, when he came forward, according to his own admission, this evening, to assist in getting Mr. King elected for Wide Bay, had been thrown away, and that the honorable member for Wide Bay was "wide-awake" to them. The latter had a higher sense of his duty as a representative than to come to the House as the delegate of the honorable member for Maryborough; and he would meet with the

heartily approval of every member of the House for the stand he had taken against the persecution that he had been subjected to by the Minister for Works, who wanted to have charge of the interests of Wide Bay as well as of his own constituency of Maryborough. As he (Dr. O'Doherty) had said, when this question was under discussion on a former occasion, he went in heartily for the repeal of the two-thirds clause; and he repeated what had been said by his honorable friend, the member for East Moreton, that independent members of the House like himself could not have a more eloquent oration delivered to them in favor of that repeal than that which had been read from "Hansard" as having come from the honorable member for West Moreton, Mr. Forbes.

AN HON. MEMBER on the Treasury Bench: That is why he was made Chairman of Committees.

DR. O'DOHERTY: On those grounds he upheld the second reading;—probably it would have been more in form to have said that he should support it.

THE COLONIAL SECRETARY said he remembered to have heard a story, some time ago, about a reverend gentleman, a friar, who had to preach a sermon on a saint's day, when the service was rather longer than had been anticipated. When the sermon was about to begin, it was known that dinner was ready, and he got a hint from his brother friars to "cut it short," which hint he took, and said, "This day twelve months, my brethren, I discoursed to you about St. Antonia; I have heard nothing about him since, that I think worth mentioning to you; I am sure you remember what I then said about the good man, and that you will not forget it; and, therefore, I will not tire you by delivering it again." He (the Colonial Secretary) had heard everything advanced in this debate said last session; and he merely got up lest it should be supposed that he was afraid of anything he ever said in the House on the subject of the two-thirds clause. Two honorable members had alluded to two things he had said upon the subject formerly. One was, that he had twitted the honorable member for Fortitude Valley by saying that if he meant to carry out his reform he should have come into the House with a Bill to repeal the two-thirds clause. He said so still. He still held the opinion he had before expressed on the subject of the two-thirds clause. But he never said that it was his duty to come forward with a Bill to do away with that clause. Holding the opinion he did hold, that was a very different matter from what he thought the honorable member for Fortitude Valley ought to have done. He said before, and he said again, that if a simple majority of the House could do away with the two-thirds clause, let it be repealed, for it was no safeguard. But it did not follow that he was to be one of that majority. He never insinuated that. He would not be one. He thought

the two-thirds clause a safeguard in our constitution, and a very desirable one; and he differed from honorable members who held that a bare majority of the House could do away with it. The honorable the Speaker had ruled that a bare majority could do away with the two-thirds clause; but he differed from the Speaker, also. Although he was bound to follow the ruling of the Speaker, yet he differed with him in opinion, and did not think that a simple majority could repeal the two-thirds clause. He should vote against the repeal of the two-thirds clause most decidedly, holding the opinion he always held—and he maintained that he was consistent, always—that it was a safeguard, and prevented a great deal of hasty legislation, and prevented a Government who commanded a large majority from altering the constituencies and having a redistribution of seats every session.

THE HON. R. PRING excused himself for his absence during the debate; but really, he said, he had been engaged in very urgent business that probably would be beneficial to the House, he having an important report to prepare, which would be brought before them at the earliest convenience. He believed the present question had been discussed before. The Bill now under consideration was a very short one, and the real gist of the question involved appeared to be, whether the two-thirds clause, as it was termed, could be repealed, so far as regarded the Legislative Assembly, by a simple majority. Of course, he concurred in the opinion, as expressed by the honorable the Colonial Secretary, that no amount of argument ever could convince a man against his will. But it did not follow necessarily, that because a man had an opinion of his own, it was the right one. When an Act of Parliament was to be construed, he had yet to learn that a layman's opinion went for much.

THE COLONIAL SECRETARY: Or a lawyer's.

THE HON. R. PRING: Why, then, had we judges to decide questions of law? The Colonial Secretary, with all his ability, could not well do without them. It would be a sorry day for Her Majesty's dominions, if there were no persons to interpret the law of the land, such as the judges and the class of men from whom they were selected. The judges were supposed to be the exponents of the law; they were supposed to be impartial, without prejudice, and able to deliver their judgments to the satisfaction of the country. He had the greatest respect for the judgments of the courts; and to such an extent were the judgments of the courts respected, that even when they were supposed to be erroneous they were allowed to go without question. Now, his (Mr. Pring's) opinion might be worth no more than that of the Colonial Secretary or any other gentleman in the House. There was a very high authority, that the House could, by a simple majority, repeal the two-thirds clause. He believed he

was correct in saying, that Lord John Russell, in a despatch, intimated as much—

The SECRETARY FOR PUBLIC LANDS: He was not a lawyer.

The Hon. R. PRING: His Lordship did not communicate that despatch without the opinion of the Crown Law Officers of England. He would act as a statesman, though he was not a lawyer, and his act would be based upon the highest authority. That despatch, as coming from him, and considering the mode in which such documents were issued, must be accepted as a high authority; and he (Mr. Pring) was willing to accept it as such, without reference to his own opinion, although his opinion was that the two-thirds clause could be repealed without a two-thirds majority. As to the advisability of repealing that part of the constitution, that was a different question altogether. In that respect, the opinion of the Colonial Secretary was entitled to be considered by the House, as was the opinion of every honorable member. It had been urged by the Colonial Secretary, and it had been urged in the House on previous occasions, that the two-thirds clause was a safeguard. He (Mr. Pring) could not see that it was any safeguard at all. He did not see why a two-thirds majority should be required to repeal the constitution, if the constitution was defective. A simple majority of the House ought to be able to repeal the clauses which were ineffective or inefficient; for the simple reason that, whilst a two-thirds majority of the Assembly was required, in all probability, under any circumstances, that provision would prevent the repeal of any clause of the constitution, however valuable the repeal might be. He did not know that the opinion of two-thirds of the House was better than that of a simple majority. There was, at all events, a precedent in New South Wales—if they could accept a precedent of the neighboring colony. It had often been urged that Queensland was not bound by any precedent in the neighboring colonies; nor was she to be. He should be sorry that her Legislative Assembly were not quite as capable of dealing with questions coming before them as any other Legislative Assembly or Parliament. So far as his judgment and experience enabled him to give an opinion, they were capable; but, at the same time, it might be said that a neighboring colony had repealed the two-thirds clause; and, although it was done without a division in the Legislative Assembly, and might be said to have been accepted by the whole House, yet it was perfectly clear that no adverse result was anticipated by that repeal. Therefore, he might take it that the question having been considered by the Legislative Assembly of the neighboring colony, and their opinion coinciding with his own, his opinion and judgment in that respect were certainly fortified by such a procedure in New South Wales. At the same time, he expressed the opinion, which he had before

given, that the House could repeal the two-thirds clause of the Constitution Act by a simple majority.

The question was put and affirmed, on a division, as follows:—

Ayes, 15.	Noes, 14.
Dr. O'Doherty	Mr. Walsh
Mr. Bell	" Bramston
" Atkin	" Moreton
" Morgan	" Johnston
" Stephens	" Cribb
" Handy	" Wienholt
" Pring	" Forbes
" De Satgé	" Scott
" King	" Palmer
" Lilley	" Thorn
" McIlwraith	" Ferrett
" Groom	" Royds
" Edmondstone	" Thompson
" Miles	" Ransay.
" Jordan.	

The MINISTER FOR PUBLIC WORKS said he should like the Speaker's ruling, whether the second reading of this Bill could be passed without the concurrence of two-thirds of the members of the House.

The SPEAKER: On the last occasion when this Bill was before the House, on the second reading, I did rule that it requires nothing more than a simple majority. And, I may state to the House that although I had no doubt about it on that occasion, yet I have since taken the opportunity to go a little more into the consideration of the subject than I had gone then, and I have found that the concurrence of a majority of two-thirds of the House is not necessary upon the second and third readings of such a Bill as this now before the House, and that a simple majority is sufficient to repeal the two-third clause. I do not believe that any lawyer who gave attention to the question could give any other opinion. Whether it is politic to repeal the two-thirds clause or not, is another question. I have nothing to do with that. A simple majority repeals the clause. Not only that; it is distinctly laid down in a despatch from the Secretary of State for the Colonies, upon the very highest authority, that such is the case. I have no doubt that the Bill is carried.

OYSTER FISHERIES BILL.

Dr. O'DOHERTY said it would be in the recollection of honorable members that, last session, he presented a petition from parties engaged in the oyster fisheries of this colony praying the House to legislate for their benefit. The petition arose because of action which had been taken by the Government in stopping the export of oysters from the port of Brisbane; and the reason, he believed, why the Government interfered in that way was because they feared that our oyster fisheries would be ruined. If they had not done so, the oyster-beds of Moreton Bay would have been destroyed by the indiscriminate fishing that was carried on. When he presented the petition there was a feeling expressed by the House in favor of such legislation being carried out; and he pledged himself, on that

occasion, to endeavor, in the recess, to frame a Bill to meet the requirements of all parties. During the recess, he devoted himself to the preparation of the measure; and in the course of the inquiries he had made, he learned that the Government also had taken steps in the same direction, and that, in fact, instructions had been given to the Port Master, Captain Heath, to frame a Bill for the purpose he had in view. When he saw the Bill, it seemed to him (Dr. O'Doherty) to be such a one as would almost exactly meet the requirements of the parties who had petitioned the House. When he found that the Government had taken those steps, he waited upon the Colonial Secretary and the Colonial Treasurer, and ascertained from them that they had no particular desire to take out of his hands the pushing forward of this matter in the House; and he had to express his acknowledgments of the courtesy shewn to him by the Government in that respect. Although the Bill was included in the list of Bills which the Ministry had announced that they would bring forward this session, as Government measures, they had willingly conceded to him the privilege of carrying out the pledge he had made. To many honorable members, the idea of legislating for that little mollusc, the oyster, was a source of great pleasantry; but he thought if they would recollect that small and apparently unimportant though it was, yet that it was one of their oldest and most valued friends—if they would recollect how intimately it was connected with those joyous periods of their youth when “the feast of reason and the flow of soul” were so kindly if not rapturously associated with feasts of oysters and the flow of brown stout—they would be inclined to regard more generously than they did the efforts that he proposed to make to protect that delicate and delicious mollusc. But, on higher grounds than that he would take his stand. He thought the House would agree with him that an effort was required on the part of the Legislature in the direction he was taking, because, there were probably few honorable members who had not some experience of what he had so much of, the value of the oyster in the sick room. On that, probably very much higher ground than the first he took up, he thought they might all fairly see it was highly desirable that our oyster-beds should not be destroyed. There was not any edible in the whole range of fish, flesh, and fowl, which was of more value in the sick-room than the oyster. When all other descriptions of nutriment would disagree with the patient's stomach, medical men invariably fell back upon the oyster. And, they never failed to find in the oyster a grateful and an agreeable remedy for the wasting of the sick and the weakness of the convalescent, and perhaps the capriciousness of both. It was a remarkable thing that for centuries past, the same opinion had existed with regard to those qualities of the oyster. He held in his hand “Pliny's Natural

History,” and that distinguished author wrote thus of the properties of the oyster:—

“We will take the present opportunity of stating all the medicinal properties that are attributed to oysters. They are singularly refreshing to the stomach, and tend to restore the appetite. Luxury, too, has imparted to them an additional coolness by burying them in snow;”—why, that was a luxury enjoyed by the ancients that he (Dr. O'Doherty) had not enjoyed to this time—

“thus making a medley of the produce of the tops of mountains and the bottom of the sea. Oysters are slightly laxative to the bowels; and boiled in honied wine, they relieve tenesmus, in cases where it is unattended with ulceration. They act detergently also upon ulcerations of the bladder. Boiled in their shells, unopened just as they come to hand, oysters are marvellously efficacious for rheumatic defluxions. Calcined oyster shells, mixed with honey, allay affections of the uvula and of the tonsillary glands: they are similarly used for imposthumes of the parotid glands, inflamed tumours, and indurations of the mamillæ. Applied with water, these ashes are good for ulcerations of the head, and impart a plumpness to the skin in females. They are sprinkled, too, upon burns, and are highly esteemed as a dentifrice. Applied with vinegar, they are good for the removal of prurigo and of pitted eruptions. Beaten up in a raw state, they are curative of scrofula and of chilblains upon the feet.”

He thought he had stated sufficient to interest honorable members in preserving the oyster, on the ground of luxury and probably of necessity; but the fact was, as they must all admit, that the oyster had become an absolute necessity in the domestic economy of every house through all parts of the world—and Australia was not an exception to the rule. We could not do without our oysters! So much was this the case in Australia, that Queensland was absolutely become, at the present hour, almost the only source from which this dainty bivalve could be procured. For years past, New South Wales had been the great source of supply, and it was remarkable to learn the vast extent, for such small communities as these, to which the industry of the oyster fishery and export for consumption had been carried. He held in his hand, a report from a select committee of the Legislative Assembly, that sat to inquire into this question a couple of years since, in New South Wales. In the evidence of Mr. R. Emerson, who seemed to be an excellent authority on the subject, he estimated the annual supply of oysters to Sydney, at 31,200 bags, equal to 109,200 bushels, which supply, he stated, could, at that time, be doubled readily. The oyster fisheries found direct employment for at least 250 persons, seven small vessels, besides the steam-boats, which brought many into the market. The yearly export of oysters from Sydney, principally to Victoria, Mr. Emerson estimated at 63,000 bushels, of the value of £13,500; and the home consumption at 46,000 bushels, valued at £16,500. From

this it would be seen, that, from a financial and industrial point of view, the oyster fishery was really by no means the unimportant subject that many persons might be disposed to think it, especially when they found that the sources of the supply of oysters in New South Wales had almost entirely and absolutely ceased to produce; so much so, that the Legislature of that colony had been obliged to interfere, and shut up all the fisheries with the view to try to save the last of their oyster-beds. One consequence was, that the fishermen came up from New South Wales to our port, and sought to obtain from Moreton Bay the supply which they could not obtain in their own waters; and it was found here, very shortly after they commenced operations, that the export increased very rapidly indeed; and, as he had already stated, the Government interfered, believing that if they did not interfere to regulate the fishery and export of oysters, the same result would ensue here that had come to pass in New South Wales, and our oyster-beds would be entirely ruined. There was no legislative enactment which would enable the Government to meet the difficulty at once; and, in applying the provisions of the Oyster Fisheries Act now in existence to the case, they were obliged virtually to stop the export of oysters altogether. There had been no business for export carried on since the interference of the Government, and a large number of industrious men were by that thrown entirely out of employment. The petition which he had presented was from these men, who wished to find the means of carrying on their industry, and his efforts since had been directed to providing them with the means under the law. It was a remarkable fact that few were acquainted with, that Moreton Bay was, without question, the most magnificent oyster-bed in the colonies. From the peculiar circumstances of its formation, it necessarily must be so; and the House would readily understand this if honorable members would pay a little attention to what he was about to read. It was information supplied by the same Mr. Emerson, whom he had before quoted, and who was acknowledged to be about the best authority in New South Wales on the subject. He described the places in which the oyster would be found best developed. His words were these:—

“The beds or grounds are all situated in salt-water creeks, extending inland, and communicating with rivers, or in estuaries where there is a strong tide-way. They are mostly attached to each other in bunches, the roots of which are fixed firmly in the bed, some adhering to rocks, boulders, mangrove stumps, snags, and whelks, but are never found unattached. The oysters of this class will require a different system of protection to the former. The spawning season differs in each river—in some, each bed has a different time. In many places, the bank and deep-water oysters differ as much as six months in their time

of spawning. Some oysters have been known to spawn only once in three years, while others, again, will spawn two or three times in a year; but in all cases they are very much influenced by the weather; for when any are ready to spawn, a cold, rainy, south-east wind setting in will throw them back for a month. The greater portion of the oyster spawn or spat that escapes destruction, will be found attached to the large oysters, and, when about two months old, has the appearance of a fish scale, and has but one perfect shell, the other being only partially developed, and cannot be removed from its place of attachment without destroying it. For these reasons, I consider that a general close season, as proposed, of three or four months in the year, would be all but useless, as no particular three or four months in the year will cover the spawning season of half the oysters, and it would be very little protection to those it did cover, as, directly after the close season the oysters may be taken; and from it being impossible to separate the young oysters, their destruction will be inevitable when the old ones are removed.”

Now, any one who would cast his eye over the chart of Moreton Bay would see that the two conditions laid down by Mr. Emerson as most essential for the development of the oyster, were present in a remarkable degree in the Bay. The tide was constantly passing up through the Bay from the southern channel, between Stradbroke Island and the coast; there was a number of rivers and creeks, all emptying into the Bay, and at the mouth of every one oyster beds were scattered; and this applied as far as the extreme north of the Bay. Captain Heath, who had very kindly given him (Dr. O'Doherty) the map to exhibit to honorable members, had very nicely marked off no less than twenty-six divisions of the Bay, in each of which he considered that large oyster beds might be found and developed. This brought him to the Bill, which he had had the honor to lay before the House. This Bill differed from any other that had been hitherto presented to the House, in this respect: it applied almost the principles of our land system to the Bay. The bed was marked off by the Port Master, as he had already said, into six and twenty divisions; and the Bill provided that these divisions should be leased to the highest bidder; that a day should be named, of which due notice should be given in the press or otherwise, on which those various divisions should be respectively offered at auction. The lease would contain conditions, as laid down in the Bill, that the holder should form and improve the oyster fisheries; that he should pay a certain amount to the Government in advance; and that if he wilfully destroyed or injured the oyster ground he should forfeit his lease. Subject to those conditions, the Bill proposed further that the lessee should hold the lease of his section—which, as far as he (Dr. O'Doherty) could understand, was about six miles in width—for five years; and during that period, he was to have the sole use of

the oyster fishery within his section. This portion applied to deep water and referred to the oysters which were found below low-water mark, and which were the largest oysters, and called "dredge oysters." In fact, so very large a supply would be found in the Bay, that if the Bill were properly carried out, each of those sections would become a very valuable property. He was informed that already a number of persons was waiting its passing, or for some such Bill to become law, to become lessees of the oyster beds in Moreton Bay; and that those persons were quite prepared to carry out the conditions imposed. Of course, in forming or improving the oyster beds, and making them valuable for themselves, the lessees would be making a valuable property for the country, as well. A clause followed having reference to the terms of the lease, which was important for the House to bear in mind:—

"4. It shall nevertheless be lawful for the Governor in Council during the third of the said five years of any such lease to divide the land comprised in such lease into two equal parts and to put the lease of one-half up to auction in manner hereinbefore provided and the lease of such half shall be granted for five years dating from the first day of January after the auction and shall be held upon the same terms as the original lease except that it shall not be competent to the Governor in Council to divide the land therein comprised."

It must be borne in mind that each of the original divisions comprised a space of about six miles—a very large portion of the Bay, indeed. The first lessee would, of course, have the option of bidding for the half resumed at the end of the third of the five years, if he should think it worth his while. But the object of the clause was to secure that the original lessee should take the precaution to improve the property while in his possession. It was considered that the extent was so great—six miles—that, in that time, half of it would be a valuable property; and that, if the lessee would carry out the conditions of the lease, it would be no matter to him if he chose to give up half of his section at the end of three years. There was another object in view, in subdividing the leases in the way proposed; it was, that the leases should not terminate together. They would terminate at different times, and men would have a chance of stepping in, year by year, and getting a lease; while the demand and the supply of the properties in the oyster fisheries would be kept alive. The great object was to interest the parties engaged in the oyster fisheries, to improve and preserve them. Of course, if they did not do so, if the fishermen came here purely for the purpose of carrying away the oysters, as they would do without an enactment, the oyster-beds would soon be of no value to the colony. He believed that, under the Bill, the oyster-beds would be secured from that treatment. So far, he had spoken of the

dredge oyster. The next division of the Bill had reference to a different class of oyster, that which was found between high and low water, and which was named, in fishers' language, the "bank oyster." It was proposed that a different arrangement should exist with regard to it. Under the eighth clause, the Marine Board would grant three forms of licenses in connection with the procuring of the latter description of oyster:—

"8. The Marine Board of Queensland are hereby empowered to grant the following licenses on payment of the fees fixed by this Act viz.—

- (1.) A license authorising the person named therein to collect obtain and carry away bank oysters for sale.
- (2.) A license permitting the owner or charterer of any boat or vessel approved by the board to employ such boat or vessel in collecting obtaining and carrying away bank oysters for sale.
- (3.) A license permitting the person named thereon to occupy land between high and low water mark for the purpose of making beds or layings of dredge or bank oysters."

The bank oyster was found in the same quantity as the dredge oyster, and in sufficient quantity to lead to the hope that a very large number of licenses indeed would be applied for under the Bill. Subsequent clauses restricted licensed persons to certain terms of which he thought the House would approve. It would be remarked that in the Bill no provision was made for what was called the "close season." In this respect it might be said to differ from most oyster enactments. He believed there was really no occasion for the introduction of any clause of that nature. It so happened that the usual close season of New South Wales and Victoria, as laid down by law, was from October to April; which embraced the very months during which it would be absolutely impossible to export oysters from Queensland, on account of the heat of our climate, for the oysters would not bear to be exported with any hope of being valuable to those who wanted them. That was a strong reason why it was unnecessary to introduce a clause specifying a close season. From all the inquiries that had been made by Captain Heath, and others interested, it appeared that the spawning season in the Bay varied in different places at different times, and that it was impossible to fix it within two or three months of the spawning season, during which time it would, of course, be well to prohibit the oyster fishery. The one fact that during the summer months it was found impossible to export oysters from this port constituted the best possible close season they could hope for. He did not know that there was any other clause to which he need direct the attention of the House, on the second reading of the Bill. He must, however, say a few words, to urge upon the House the necessity of attempting, by some

Act of this sort, to protect the oyster beds of the colony. It had been found, from the evidence taken by a commission that had sat on this subject in New South Wales some years ago, and from other sources, that the oyster-beds of that colony, for want of an Act of this kind, had been at all events temporarily ruined. As he had already stated, after that commission had investigated the matter, and brought up their report, the Legislature brought in a Bill under which the oyster-beds were shut up for a year or two, and it was hoped that after that time they would be flourishing again. He mentioned these facts to shew the importance of taking action at once. If the Bill met with the approval of the House, and it was a fact, as he was informed, that there was a large number of persons from the other colonies anxious to invest money in leasing these beds, it was of some consequence that the Bill should be passed through the House as soon as possible; because the oyster-beds in New South Wales would very soon be re-opened, and it might be difficult to find men experienced in this industry to embark in it. He need scarcely remind honorable members that in the old world of late years the culture of oysters had become quite a science. It was, comparatively, only a few years ago that in France—a great oyster-eating country—the supply had nearly ceased, and it was only by the scientific researches of several enterprising gentlemen, who devoted a good deal of time and attention to the subject, that the importance of the interest had been fully recognised. He found it stated in Bertram's "Harvest of the Sea," which honorable members would find a very interesting work, that some time ago—before the war—the daily consumption of oysters in Paris was one million. The oysters were principally obtained from the Ile de Re, on the shore of the lower Charente, in the Bay of Biscay, and afterwards transferred to various fish-parks along the French coast. In the Ile de Re it appeared that there were upwards of one thousand parks, where, to quote from the work he had just mentioned—

"The people might be seen as busy in their fish-parks as the market-gardeners of Kent in their strawberry beds."

That shewed the great advantage of legislation on the subject, and it was very necessary in this colony; for, as he had before said, he believed that the various ports of this colony, from the Southern entrance to the Northern extremity, were the most admirably adapted places for oyster fisheries along the Australian coast. He would now move that the Bill be read a second time.

MR. DE SATGE said he was one of those who was expected to travel from the interior of the country, some six hundred miles, in order to assist in practical legislation; but when he met his constituents on his return, and told them that just after repealing the two-thirds clause, the House had been asked to

spend a whole evening in discussing oyster fisheries, he should be laughed at and hooted. When a Bill of that kind was brought forward, it looked as if they had come to the end of their legislation. It was monstrous to take up the time of the House in that way, when the colony was in such a depressed state, and there were so many matters of greater importance which demanded attention. Would not a committee consisting of Captain Heath and the mover, and two or three gourmands who were interested in the question, have been the proper persons to discuss this measure? He failed to perceive how those honorable members whose minds were above oysters, except perhaps for supper, could discuss such a measure at this stage of the session. He had understood that all the work of the session would be got through in three months, but nearly one month was already gone, and it was surprising to him that intelligent men could waste their time upon such petty questions, when there were a hundred important matters ready to be brought before the House. The Bill might very well be brought forward on some future occasion; but he considered it undignified to be legislating for luxuries, when every district in the colony was so much in want of legislation. The Ministers would spend their time, he thought, to much better purpose in travelling about and inquiring into the wants of the country districts and inspecting the roads. Had not Brisbane got enough indulgence without asking the House to waste its time in protecting its oysters? He had come down from a very long distance on horseback, and without anything like a remuneration for his travelling expenses, and he had certainly not come down to legislate upon oysters. He spoke strongly on the subject, because he felt strongly. He could not afford to waste his time in Brisbane; he wished to do his duty to his constituents, and to assist in carrying measures of far greater importance. The Bill might come on very well some other time, but in the meantime he would move that it be read a second time this day six months.

THE COLONIAL TREASURER did not quite agree with the remarks of the honorable member who had spoken last. For his own part, he thought it was rather a pleasant sight to see so fierce a party politician as the honorable member for North Brisbane, Dr. O'Doherty, engaged in so light, and, at the same time, so useful a piece of legislation. He thought the honorable member for Clermont, upon further consideration, would find that a very different application might be put upon this question. It had been held in almost every part of the world as a very important question; and when it was remembered that in Moreton Bay almost all the oyster beds had been cleared off for lime, he thought it would be considered high time that some useful legislation on the subject should take place. The oysters were already getting scarce, and for the last two years it had been

necessary to go as far as the southern entrance of the Bay to obtain the supply for Brisbane. They had since become an article of export, and that export might become a very large one by the aid of a little careful legislation, putting aside the desirability of protecting the oyster beds for personal use and enjoyment. He had much pleasure in supporting the motion.

The COLONIAL SECRETARY said he was sorry the honorable member for Clermont had taken such a step. He could tell that honorable member that the committee he recommended to consist of Captain Heath and one or two gourmands had already sat upon this Bill, and that they prepared it; and that the honorable member had nothing to do but to swallow it whole. A good deal of time had been employed in obtaining the information upon which it was founded, and it had been carefully framed. The valuable time of the honorable member who had travelled such a number of miles would not, therefore, be wasted. It would be passed through the House in about twenty minutes, and he believed it would not require any alteration. It applied not to Brisbane alone, but to every port in Queensland, and it would be found a much more general and useful measure than at first it appeared to be. The information which had been received on this subject shewed that a large amount of capital was engaged in the trade; and he could inform the House that, when the Government issued regulations to prevent temporarily the exportation of oysters, over one hundred men were thrown out of employment. For that reason alone, if for no other, he thought the House might legislate upon the question.

Mr. JORDAN said he did not consider the Bill before the House by any means an unimportant one. The honorable member at the head of the Government had shewn it to be of great importance; and, although there were a great many other important Bills before the House, he did not grudge an hour's attention to this Bill. He thought the Government deserved credit for the steps they had taken to preserve this mine of wealth; it was difficult to say how serious the question might become by and bye.

Mr. ATKIN said this Bill would considerably affect the interests of his constituents. It had been his intention to move that this Bill be referred to a select committee; but, as he found it had been so carefully considered, he would not throw any impediment in its way, more especially as the honorable member for Clermont was wrathful because a much more important Bill for the destruction of the native dog might be delayed. And when he saw the honorable member for North Brisbane so completely in the confidence of the Government as to be selected to bring in this measure of reform, he thought it would be unkind on the part of any member on his side of the House to put any obstacle in his way.

Mr. DE SARGE said he had no objection to withdraw his amendment to the Bill, as the worst part of it, the speech of the honorable mover, was over, and the Colonial Secretary had told the House it would only take twenty minutes more.

Mr. MILES said that, when the amendment was moved, he had supposed the Bill involved a charge upon the public revenue, which was not the case, and it was probably the first Bill introduced by the honorable member for North Brisbane, which did not. There was another Act to follow it, of which the same thing could not be said.

The question was put and passed, and the Bill was read a second time.