

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 14 JUNE 1871

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LEGISLATIVE COUNCIL.

Wednesday, 14 June, 1871.

Constitution Act of 1867 Amendment Bill.—Wages Act of 1870 Repeal Bill.

CONSTITUTION ACT OF 1867 AMENDMENT BILL.

The Hon. H. B. FITZ moved that the Bill to amend the Constitution Act of 1867 be now read a second time. In doing so, he said that, as honorable members were aware, a similar Bill to this was introduced into this branch of the Legislature last session, and was then rejected without a division. He was one of those who then voted against it; and he would now state his reasons for doing so. In the first place, he might state that he voted against it because it was introduced on the last day of the session, along with a number of other Bills, and when the Standing Orders, on the motion of the honorable gentleman representing the Government, had been suspended, in order that the business of the session might be got through as speedily as possible. Well, he objected to a measure of so much importance being hurried through the House, as it would have been, had the motion for the second reading been then agreed to. Another reason he had for objecting to the Bill at that time was that it proposed to repeal not only the tenth clause, which affected the constitution of the Legislative Assembly only, but also the ninth clause, which affected the constitution of the Legislative Council. On that occasion he said that, whatever the other branch of the Legislature might desire to do, as regarded its own constitution, honorable members of the Legislative Assembly ought to have shewn that amount of courtesy which was due to this House, of allowing measures which proposed to deal with the constitution of the Legislative Council to originate here. He had always opposed any alteration in the constitution of the Legislative Council, and he would continue to do so, because he considered, and had always considered, that a nominee Upper House, where the number of members was unlimited, was less conservative than an elective Upper House. He did not think there was the slightest likelihood of the two Houses coming to a dead-lock, so long as the Upper Chamber consisted of nominee members, because, under such circumstances, the Government would always have the power to increase the number of members so as to enable them to have their measures carried through. But they would have no such power if honorable members of this Chamber had to be elected for certain districts or provinces. Hitherto, they had all been under the impression that no alteration could be made in the Constitution Act without a majority of two-thirds in both Houses. But it seemed that they had been wrong in that impression, and that a simple majority of this House, so far as regarded

any proposition for the alteration of the constitution of the Legislative Assembly, was all that was necessary; but any alteration in the constitution of this House required a majority of two-thirds of both Houses; and without such a provision, there would be no safeguard whatever, almost, against an alteration in the constitution of this branch of the Legislature. When they came to look at the state of representation in the other House, they found abundant proof of the necessity for this measure being passed into law. They found, for instance, that in the other House there was one member representing five times the population that was represented in another district by six members. Take the case of Wide Bay. That district was represented by only one member, though it contained a population as large as that of Ipswich and West Moreton together, which was represented by six members. Such a state of things, he thought, proved the need there was for the passing of this Bill, so as to admit of the introduction of measures for the re-distribution of electorates, and of an increase of members of the Legislative Assembly. Now, such desirable objects could not be accomplished unless the proviso to the tenth clause of the Constitution Act of 1867 was repealed, in the first place; and that being the case, he hoped the House would not object to the second reading of this Bill. He had no hesitation whatever in stating, that it was mainly owing to the fewness of the members in the Legislative Assembly that the present dead-lock had occurred; and further, he had no hesitation in saying that the Government on this occasion, with the support they had received, had not only interfered with one of the principal prerogatives of the Crown, but that they had, also, interfered with the rights and privileges of this branch of the Legislature, and the rights and privileges of the people. Now, he considered that it should have been the duty of the Government to have acted, with respect to this question, in a way very differently from the course they had pursued. When it was found that the public mind was in a state of ferment, generally, on the subject of railway extension, and that a large majority of the people of the colony desired that the railways, at present in existence, should be extended, the Government, he thought, ought to have yielded to the Opposition; but they had not done so. Now, as the difficulty, which had arisen in the other branch of the Legislature, could not, in his opinion, be remedied, except by the passing of this Bill, he did not see why the House should object to such an amendment of the Constitution Act as the Bill proposed. He thought that the House should shew to the country that they would not endorse the arbitrary powers which had been assumed by the present Government in this matter. He maintained that there was no precedent for such a course as the Government had pursued on this occasion, notwithstanding the high

authority of the honorable member, Mr. Elliott, to the contrary. When that honorable gentleman stated that there was a precedent in the proceedings of the House of Commons for such a course, he (Mr. Fitz) was not at the moment in possession of sufficient information to enable him to combat the statement, or to dispute it in any way whatever. However, after the House rose on that occasion, he went home and read up on the subject, and he could not find that there was any precedent for such a course, unless they went back to the year 1600. But great advances had been made since then in the way of carrying on Constitutional Government; and he thought they ought to allow honorable members of the Legislative Assembly to deal as they thought proper with the portion of the Constitution Act which referred to that branch of the Legislature. He had been twitted for having taken charge of this Bill, after the opposition he gave to a somewhat similar measure last session; but he thought he had stated sufficient to shew that he was not acting inconsistently; and he might tell honorable gentlemen that if the Bill now before the House had proposed the repeal of the ninth clause of the Constitution Act—the clause relating to the constitution of the Legislative Council—he would not only not have taken charge of it, but, on the contrary, he would have opposed it as strenuously as he opposed the previous Bill. He was glad to know that the Legislative Council, which, for the last ten years, had been looked upon as the branch of the Legislature that was obstructive to the passing of liberal measures, had come to be very differently regarded by the public. Although the other House had by resolution adjourned till the 7th of November, because of the state of parties there, he thought that honorable members of this Chamber ought not to follow that example, but should continue to go on with the business of the country. As regarded the business of the country, he thought they ought not to recognise anything that would put a stop to its being proceeded with except by prorogation. As honorable members were fully aware of the object of the Bill, he did not consider it necessary to occupy the time of the House any longer. He would, therefore, conclude by moving that the Bill be now read a second time.

The Hon. J. F. McDougall said that notwithstanding what had been stated by the honorable member opposite, he must confess that he was very much surprised to find that a gentleman who had expressed himself so strongly as he did last session, against a Bill very similar to this one, should now come forward and ask the House to pass this Bill, seeing that it was only slightly altered from the Bill of last session. Before going further, he would take the liberty of reading from "Hansard" what was said by the honorable gentleman on the subject, only three or four months ago, with respect to the Bill similar to

this one, which was then brought forward for the amendment of the Constitution Act.

The Hon. H. B. FITZ: Read it all if you propose to read any of it.

The Hon. J. F. McDUGALL: Yes, he would do so, as the honorable gentleman requested him, read the whole of his speech. The honorable gentleman, when the Bill for the amendment of the Constitution Act was before the House for a second reading last session, said:—

“He was very glad to observe that the honorable member who moved the second reading of this Bill had reserved to himself the right of amending it in committee. When it was introduced in the other branch of the Legislature, he had remarked that he did not think a member of the Upper House would be found who had so little regard for his own dignity, or that of the House of which he was a member, or the constitution of the colony, as to introduce it in the Legislative Council. The idea of introducing a Bill which would destroy the constitution of the Council, and make it elective—for that would be the result, if the Bill were carried in its present shape—was absurd, and he was surprised that any private member should have introduced it, and that the House should be expected to pass such an important measure in one day. He was, therefore, exceedingly glad to hear the honorable member say that he intended to propose the retention of the ninth section of the Act. If it had been found by the community at large that the two-thirds clause was objectionable, the Government should have introduced the Bill for its repeal, and made it a measure upon which they would stand or fall. He looked upon it as a piece of presumption to introduce it into the Legislative Council by a private member. He might say that he had seen this very Constitution Act in the hands of Mr. Wentworth, on the Hunter, when he had sent it home, and that gentleman’s remark was, that when new colonies were formed in this country, there would be so much democracy that it would be necessary to guard with the greatest care against any alteration of the Constitution Act. That was the opinion of a very eminent statesman, and he repeated it was a piece of presumption to ask the House to make such an important alteration on the last day of the session. A question of this magnitude should be canvassed throughout the colony before it was finally dealt with. Honorable members had no doubt made up their minds on the subject; he hoped they would shew their opinion of the motion, by leaving the honorable member and his Bill alone in the division.”

Now, that was the whole of the speech of the honorable gentleman on that occasion; and, taking it in connection with his speech on this occasion, in respect to a similar Bill, he must say that he never saw a greater amount of inconsistency exhibited by anyone. Last session, the honorable gentleman denounced the Bill in the strongest terms, as one that was likely, if passed into law, to lead to the ruin of the colony; and, now, he came forward and asked the House to agree to the second reading of this Bill, which was almost the same—being only slightly amended, in

so far as it did not propose the repeal of the ninth clause, which had reference to the constitution of the Legislative Council. Now, he considered that such an omission was an additional reason why the House should not agree to the second reading of this Bill. He did not think that the honorable gentleman opposite had given any sufficient reason to shew why the House should deal with this Bill in any other way than the Bill of last session was dealt with. He had previously expressed his opinions respecting such a measure, and it was, he considered, unnecessary that he should take up the time of the House by repeating them. As he had seen no reason why he should change his opinions on the subject, he would vote against the second reading of the Bill.

The Hon. W. THORNTON said he very much regretted that this Bill had been introduced by a speech that seemed to him to be somewhat influenced by party feeling. He would have preferred that such had not been the case, so that the Bill might have been discussed on its merits. The honorable gentleman who had brought it forward had, he thought, in his speech been pandering for popular applause; but he would do him the justice to say, that it was the first time he had ever known him to do so. He would, however, support the Bill, because he thought it was a very necessary measure. He did not think that a measure of this kind could have been introduced at a more fit or opportune time than the present. Honorable gentlemen could now see the position in which legislation was placed, by parties in the Legislative Assembly being so equally divided; and he did not see that the recurrence of a similar difficulty could be avoided, except by a large addition of members in the other branch of the Legislature. Now, honorable gentlemen must see that such a remedy could not be provided, unless they first paved the way for an Additional Members Bill, by the repeal of the proviso to the tenth clause of the Constitution Act. In fact, no measure for electoral reform could be passed until the Constitution Act was amended in the way proposed by this Bill. If this Bill should not be passed, they would be liable, year after year, and session after session, to be placed in a difficulty similar to that in which they were placed at the present time. He believed that if the Bill of last session had been passed, and a Reform Bill had afterwards been brought in and passed, the present dead-lock would not have occurred. Parties in the Assembly would not, in all probability, have been so equally balanced as they were now, if there had been a larger number of members in that House. If there should be a dissolution now, before an equitable measure of electoral reform was passed, there would be no improvement, for the chances were that the same members would be returned for the same constituencies, and therefore parties in the Assembly would be as equally balanced

when the House again met as they were at the present time. Honorable gentlemen were aware that the circumstances of the colony had greatly changed since the last Electoral Act was passed. Some districts which, at that time, were only known as portions of cattle runs, had since then become largely peopled. The Logan district, for instance, was at that time known only as a portion of a run, but now it was largely peopled by industrious and well-to-do settlers; and yet it formed only a portion of the electorate of East Moreton, which, notwithstanding its extent and population, returned only two members. The district of the Kennedy, he also considered, had not that proportion of representation to which it was entitled. He believed that that district, from its richness, was likely to become, in a few years, one of the most populous and important districts in the colony. Then, the large district around the Gulf of Carpentaria was wholly unrepresented. Honorable gentlemen were aware that there was a similar clause to this in the Constitution Act of New South Wales; and that it was repealed during the time that Sir H. W. Parker was Premier of New South Wales. No evil effects had resulted, in the case of New South Wales, from the repeal of the clause, and he did not see that there was any reason to apprehend that any evil effects would be likely to result, here, from the repeal of the proviso to the tenth clause of the Constitution Act. When a similar Bill was before the House, last session, it was objected to by several honorable members because it proposed, also, to repeal the ninth clause of the Constitution Act—the clause which referred to the constitution of the Legislative Council. On that occasion, however, he voted for the second reading of the Bill, in the hope that it might be amended in committee. The former Bill, in proposing the repeal of the ninth clause of the Constitution Act, was considered to be, on the part of the Legislative Assembly, an innovation on the rights and privileges of the Legislative Council, inasmuch as it was considered that honorable members of this House alone had a right to deal with the constitution of this House in the first instance. Now the objectionable clause in the former Bill for the repeal of the ninth clause of the Constitution Act was not in this Bill, and, therefore, he did not see why there should be any objection to the Bill being read a second time. As the Bill now came before them it referred only to the Legislative Assembly, and if a majority of honorable members of that House considered it necessary that the Constitution Act should be amended, so far as it related to that branch of the Legislature, he did not think that this House should object to the second reading of the Bill. The two-thirds clause seemed to be regarded as the great bulwark of the constitution; but if the proviso could be repealed by a simple majority, it appeared to him that the proviso was only a delusion and

a snare after all, and, therefore, the sooner it was repealed the better. The Government had signified their intention of bringing in a Bill for the taking of a census, which shewed that they proposed to rest any measure of electoral reform on the basis of population. Now, no measure of electoral reform, on the basis of population, could be passed unless this Bill was passed in the first instance. Believing, as he did, from the position of parties in the other House, in the necessity for a measure of this kind, he would support the second reading of the Bill.

The Hon. H. G. SIMPSON said that the Bill now before the House dealt only with the tenth clause of the Constitution Act; and, therefore, so far as this House was concerned, it was quite a different Bill from the one that was before the House last session. When the last Bill was before the House he was one of those who objected to it, on the ground that it interfered with the rights and privileges of this branch of the Legislature. But there was no such ground of objection in this Bill. He must say he believed that if honorable members of the Legislative Assembly would only work together for the good of the country, instead of for small party purposes, there would be no necessity whatever for a measure of this kind; as there would be no difficulty whatever, if that were the case, in getting a majority of two-thirds of the members of that House to agree to a measure of electoral reform that would be suited to the present requirements of the colony. However, he must say that the more he thought over the present difficulty which had occurred in the other House, the more he was confirmed in his opinion of the necessity for a measure of this kind. They had not yet arrived at that millennial period when they could expect such an agreement of parties as he had referred to. If he had never considered the matter at all, or if he had never thought it necessary to change his opinion on the subject to which the Bill referred, the extraordinary action that had been taken by the Government in another place would have been sufficient to convince him of the necessity that existed for a Bill of this sort. He had been told that there were precedents for such a course as had been taken by the Government on this occasion; but though he had looked over a number of authorities, he had been unable to find any precedent that referred to anything like a parallel case. He found that in the history of the House of Commons there had been cases of long adjournment, but never until after supplies had been granted. He had heard mentioned, as a precedent, a long adjournment of the House of Commons in 1762. Now, he held that the precedent so referred to did not apply in the present case. Besides, he understood that references to constitutional precedents did not go farther back than 1783—during the time of the elder Pitt, who was afterwards Lord Chatham. In all the cases he had looked up,

as to long or unusual adjournments, the Government had always, in the first instance, obtained their supplies. It seemed to him that the difficulty which had taken place was owing to the smallness of the number of members in the Legislative Assembly. He believed that if there had been a larger number of members in the Legislative Assembly, such a difficulty as had taken place would not have arisen; and he maintained that if there had been a larger number of members in the other branch of the Legislature, a stop to the progress of public business would not have occurred. At any rate, such was his opinion. Furthermore, he believed that if there had been a larger number of members in the Assembly, the course of tactics which had been pursued there would not have met with even a temporary success. There was another matter which he would wish briefly to allude to. There were at the present time six members in the Ministry. On a previous occasion, when the honorable member now at the head of the Government was a leading member of the Opposition, there was a fifth Minister appointed. The honorable the present Premier, and other honorable members who sat on the same side of the House with him then, objected to the appointment of a fifth Minister, on the ground that five Ministers were too many; and when the honorable gentleman came first into power he reduced the number to four by combining two offices. But now they found the same honorable gentleman, at the present time, with a Government consisting of six Ministers. The only effect which this measure, if passed into law, would have, so far as this House was concerned, was, that in the event of a Bill for the re-distribution of seats, or of an Additional Members Bill, being introduced, it would devolve upon honorable members of the Legislative Council to see that such measures were properly drafted, and that they were not carried through the other House by a close majority of only one or two. If an Additional Members Bill were sent up from the other House, having been carried by a majority of two-thirds, the duty of this House in respect to it would be very small indeed. Their duty in such a case would, he might say, be merely nominal. If this Bill were passed, as he hoped it would be, the other measures which might follow upon it would have to be looked very narrowly into. He had always been of opinion that so long as members of this House were nominated by the Ministry of the day, they would continue to represent the various phases of opinion that had been dominant in the country from time to time, and that, therefore, they were really the permanent representatives of the country. He was informed, only the other day, that such was also the view taken of the position of a nominee Upper House by so eminent a legal authority as Sir James Martin of New South Wales. He was not aware of that

till the other day, nor was he now prepared to speak positively of it. All he could say was, that he had been told that such was the case.

The Hon. G. ELLIOTT said he was very much surprised to hear the honorable gentleman opposite introduce this Bill, and support it with so much energy as he had done, when he remembered how strongly the honorable gentleman opposed a Bill of the same kind last session. However, his doing so only added another illustration of the truth of the old adage that "wonders would never cease." He (Mr. Elliott) was one of those who voted against the Bill that was brought in last session, and he would vote also against the present Bill. Since last session he had not seen any reason, or heard any argument, to induce him to change his opinion on the subject to which this Bill, as well as the Bill of last session, referred. On the contrary, he was confirmed in the course he then took; and that to a great extent by the division in the other House this session on the second reading of this Bill. The majority in favor of the second reading of this Bill was less than the majority for the Bill of last session. The majority for the passing of this Bill through the Legislative Assembly was only a majority of one. It had been said that this Bill was not the same as the Bill of last session; but it only differed to this extent, that the Legislative Council was not brought under its operation. Now, he looked upon that as a matter of small importance as compared with the repeal of the two-thirds clause. Honorable gentlemen were here to legislate, not for this House or the other House, but to pass laws for the good of the country. He was sure that if this Bill should be passed, most disastrous consequences would follow to the colony; and, therefore, he hoped that honorable gentlemen would give their most careful consideration to the Bill before coming to the conclusion to vote in favor of the motion that it be read a second time. He would urge upon honorable members not to allow themselves to be led away by the clap-trap and bosh which had been shouted forth within the last few days, by those persons, some of whom did not care a straw for the colony, or for the construction of railways, but only for the advancement of their own ends. As he had already said, he would certainly oppose the second reading of the Bill.

The Hon. ST. G. R. GORE said that it appeared to him that, looking at the state of parties, it would be impossible for a Bill of this kind, or for any measure of electoral reform, to be passed through the other House by a majority of two-thirds. Now, a clause similar to the one which this Bill proposed to repeal, had been struck out of the Constitution Act of the neighboring colonies, and no evil had resulted in consequence, and for his own part he did not think that any evil consequences would result here from its repeal. As he had previously stated his reasons

for supporting a measure of this kind, he did not consider it necessary to occupy the time of the House by repeating them. He had, therefore, only further to say that he would support the second reading of the Bill.

The Hon. J. C. HEUSSLER said that though he opposed the Bill which was brought forward last session, he would support the second reading of the Bill now before the House. His principal reason for opposing the Bill of last session was that he did not think that the other branch of the Legislature should be allowed to interfere with the constitution, or the rights and privileges of the Legislative Council. Now the Bill of last session did so, by proposing to repeal the tenth clause of the Constitution Act. The other House had a right to deal with the subject, and the Council should, as much as possible, assist them. The argument, as to whether the present measure was expedient or not, had been so ably dealt with already, that he should not add anything to what had been advanced in the affirmative. He regarded a nominee Upper House as more desirable than an elective body, which was the chief reason why he did not vote for the former Bill. The gentlemen appointed to the Legislative Council, from time to time, represented public opinion in a greater degree than if they were elected. If they were elected, they would be returned upon some property qualification. As now constituted, the Council represented property; and, as being nominated by the Ministries of the day, they represented public opinion in its several and various phases. He was glad that the Legislative Council of Queensland compared very favorably with similar bodies in the colonies of the Australian Continent, or, indeed, anywhere in the world. He did not wonder at his honorable friend, Mr. Elliott, being astonished at such a measure as the Bill now before the House being introduced, and voting against it, when the honorable gentleman quoted precedents of 1762, and argued upon them. Why, parliamentary government was a very poor thing, anywhere in the world, at that time, and the quoting of precedents of that time, was the poorest thing he ever heard in his life. He would not go further, because that was really not worth arguing against. With regard to the speech of his honorable friend, Mr. Fitz, it was really not the business of honorable members to inquire into motives. He did not know whether his honorable friend had pure motives or not: he did not wish to go into that, nor to inquire as to the motives or principles of persons in either branch of the Parliament, which had been talked about and taken credit for, so much lately, that it was not worth while to say more. He believed that if the Bill was, for the time, expedient, it ought to be passed. He did not see why they should hold out for the abstract principle of a peculiar majority. He was not a born Englishman, and he sometimes made blunders in his speaking; and, at

the present time, words would not come handy; but the House ought to confine themselves to the example of the English Parliament, which would, no doubt, be their best guide. The greatest statesmen of England had changed their minds sometimes.

The Hon. J. F. McDougall: Not in three months.

The Hon. J. C. HEUSSLER: To alter one's mind did not require a second. His honorable friend, Mr. Fitz, had altered his mind on the present question, for, as "Hansard" shewed, he had voted against the former Bill. That Bill affected the constitution of the Council; the present measure did nothing of the kind. With regard to the observations of Captain Simpson, he (Mr. Heussler) was really astonished that the honorable and gallant gentleman was so single-and-honest-minded that he thought honorable members in another place should work honestly together. In all instances in this world, there was no such thing. There was competition, and competition was not working together, but working against each other. There were several instances under observation, at the present time, of the grubbing-out of old-fashioned notions and ideas. In Paris was to be seen a most awkward exhibition of communism, where men, instead of working with each other, were working against each other; and, those who came to the top would be, for a time, the men who would take the lead. But when all came to understand and to apply the higher principles of co-operation, of socialism, and of communism, men would act together; and he hoped that time was not far off. One of the great men of England, Stuart Mill, foreshadowed the millennium as the kingdom of heaven to come. But he (Mr. Heussler) was afraid that it would be a long time coming. He saw so much that was not like working together, and so much like working for self—not alone openly working, but much under-hand working, bad working, dishonest working—that he really did not believe that the good time was at hand. Yet, he hoped that some future generation would be more happy than the present. He would support the Bill.

The Postmaster-General said he had so often spoken upon this question in the Council that he need not say very much now. Some honorable gentlemen had said that the Bill did not at all infringe upon the Council. If they would only for one moment reflect, they would see that, if the Bill was passed, before very long another would be introduced which would infringe.

The Hon. H. B. Fitz: They could throw it out.

The Postmaster-General: The Legislative Council was in the best state, and existed nominally for certain reasons—the principal of which was, as honorable gentlemen should remember, to preserve the constitution intact. He could not see that any infringement upon the constitution by the Bill would result in

anything but very great harm; and he felt convinced that every honorable gentleman who voted for the second reading of the Bill would one day regret having done so. He should, under any circumstances, vote against the Bill; and, as a member of the Government, he should certainly divide the House upon it; and if it so turned out that he would be in a minority, he would still be proud to divide against it. If, as honorable members had expressed themselves, the Council should be a nominee house, they had best not alter the constitution in any way. His honorable friend, Mr. Fitz, had alluded to the reasons which induced him and several other honorable members to support the second reading of the Bill; and one of their reasons was—which, if not expressed in words in the House, had been expressed by them elsewhere, and he had no doubt their intention was the same as their expressions—that the Bill was rendered necessary, and that they acted in the way they did act, because, in their opinion, the Government had committed an unconstitutional act in the course which they had taken in another place. Now he (the Postmaster-General) held that the Government had not committed an unconstitutional act; but that the present position of affairs had been brought about by what had occurred in another place, where a minority had tried to rule the majority. No matter how large a majority might be, honorable members all knew that a well combined force in a minority was able to stay any Ministry in the conduct of the public business, however strong, and however good the measures which the Ministry tried to bring forward. The present Ministry had striven to bring forward good measures, but they had been stopped from doing so. The strength of sides had been tried on several occasions, and the Ministry were always victorious. It would be impossible for any Ministry to carry out the work of the country if opposed by a minority in the way in which the Government had been opposed; and the minority did not only oppose them for a short time, but if the Parliament sat till Christmas, they would still continue to do so. Responsible Government could not exist unless the minority gave way to the majority. As things were, the Government had a very simple course; they were bound to maintain their position—and no one could argue otherwise—as long as they knew that there was a majority in their favor. His honorable friend, Mr. Elliott, had gone so ably through the matter, and so fully expressed what was felt by the Ministerial side of the House, that it was unnecessary for him (the Postmaster-General) to say more. He should certainly vote against the second reading of the Bill, and he hoped that all future Parliaments would oppose such a proposition. Perhaps the sooner the House went to a division the better.

The Hon. E. I. C. BROWNE said he had no desire to prolong the debate, or to prevent the House going to a division; but he thought that a few words from him were necessary,

after the course he took last session in introducing a Bill the object of which was similar to that of the measure now before the Council. He might almost feel proud, now, to find how many honorable gentlemen had come round to his way of thinking, especially the honorable gentleman who had charge of the present Bill. It was not for him to say what was the cause that influenced the Honorable Mr. Fitz' opinions. He should be only glad to find that his opinions were altered: whether "coming events cast their shadows before," or anything outside the House had convinced him; or, that the honorable member was unable to argue against the Bill, now, or that the course he took formerly was the wrong one, he (Mr. Browne) did not say. He granted what had been stated by the honorable gentleman in respect of the difference in the Bill of last session and the one now under consideration; but if the honorable gentleman had looked further into "Hansard," he would have found that he (Mr. Browne) had said, if the Bill went into committee, he should move the striking-out of the words proposing the repeal of the ninth clause of the Constitution Act. If that had been done, it would have brought the Bill he had introduced into exactly the same position as this. Therefore why the Honorable Mr. Fitz should have been so severe upon him, for really and practically introducing a Bill exactly similar to his own, he did not know. Why had he to stand alone in his glory? The Bill was kicked out; and, if it had been within the forms of the House, he would have been kicked out, too. It was not for him to be too severe, or to criticise strictly what might be the motives of the honorable gentleman. He was glad the honorable gentleman had brought in the Bill, and he should be happy to see it pass, notwithstanding what had fallen from the Honorable Mr. Elliott and the Postmaster-General. The honorable gentleman representing the Government had said, if the Council passed this Bill, they would soon be called upon to pass another. It was enough for honorable members to talk about what was before them. When another Bill was brought forward they would deal with it. Many honorable gentlemen saw better than they did, five months ago, that there was a necessity for the reform proposed in reference to the Legislative Assembly. As far as he could understand, if a Bill should be introduced proposing any alteration in the constitution of the Legislative Council he should oppose it. But the present Bill had no reference to that. It had been passed twice by the Legislative Assembly, and sent up to the Council; it affected the constitution of the other House, and of that House alone. The proper course for the Council was, now that they had carried out what was supposed to be the great principle of the constitution of the upper chamber, that no hasty legislation should pass, to read the Bill the second time. He called upon honorable members to reflect that if the Bill should not be passed, no electoral reform

could be hoped for in the future. By refusing to pass the Bill, they said to the Legislative Assembly that no electoral reform was required, and that the Assembly did not require to be reformed; and that no alteration should take place. Notwithstanding what had fallen from the Honorable Captain Simpson, that he did hope, at one time, that honorable members in another place would be brought to work for the good of the country, and that two-thirds might be brought to agree to an alteration, it was not so; and, so long as the two-thirds clause remained part of the Constitution Act, no alteration could be made in the constitution of the Assembly. Why, he asked the Postmaster-General seriously, should not the Constitution Act be touched? If it was found that the Act wanted reform, why should it not be reformed? Nothing was perfect in this world, and why should the constitution be regarded as perfect? He (Mr. Brown) had no desire to see it hastily altered; but if it was necessary to re-consider or revise it, they were not prevented from doing so. Last session, he was told by the Honorable Mr. Fitz, who now wanted to reform the Assembly, that the constitution had received the greatest consideration from the gentleman who was then the god of his idolatry, William Charles Wentworth. But why should other honorable members bow down before it, because of that, if they saw that an alteration would be beneficial to the Assembly? As a matter of course, he should vote for the second reading of the Bill.

The Hon. C. B. WILSH said he thought it was unfortunate that, among so many speakers, the House had not been informed how it was that a clause which required two-thirds to pass any alteration in the constitution, could be expunged by a simple majority. He voted against the Bill on the previous occasion, and he did not say anything upon it; but that was his reason. And, until the less could be said to contain the greater, he denied that a simple majority could pass a Bill of the kind before the House.

The Hon. H. B. FITZ rose to reply.

The Hon. G. ELLIOTT: The honorable gentleman had no right to reply.

The question was then put, and the House divided. When the lists were given in by the "Tellers" to the Chairman, and before the votes were declared,

The Hon. G. ELLIOTT (seated in his place) raised a point of order, as to whether the second reading of the Bill could be carried by a simple majority; or, whether a majority of two-thirds of the whole House was not necessary. It appeared to him an anomaly that one portion of a clause of the Constitution Act which required a two-thirds majority to alter the constitution could be repealed by a simple majority. He required the Chairman's ruling on the point.

The CHAIRMAN: When the House knew the result of the division.

The Hon. G. ELLIOTT: Before the division was declared.

The CHAIRMAN: He could decide anything afterwards. At present the two lists were with him. A division having been called for, it appeared that the "Contents" were nine, and the "Non-contents" six. Before declaring those, he might inform the Council that he had taken some trouble to look into this matter, and he thought there were very great difficulties surrounding the question. According to their printed list of members, they numbered twenty-one. There were only, he thought, fifteen in the House, to-night; some four or five were away, by leave. According to his idea, they should have an absolute majority of the Council for the time being in favor of the second reading of the Bill. Clause 10 of the Constitution Act said:—

"Provided always that it shall not be lawful to present to the Governor of the colony for Her Majesty's assent any Bill by which the number or apportionment of representatives in the Legislative Assembly may be altered unless the second and third readings of such Bill in the Legislative Council and the Legislative Assembly respectively shall have been passed with the concurrence of a majority of the members for the time being—"

As he had said, the Council numbered twenty-one members.

The Hon. H. G. SIMPSON: Might he draw the Chairman's attention to the fact that that referred to Bills for the alteration of the representation of the country, and not to the repeal of the two-thirds clause?

The CHAIRMAN: It did not refer to anything in connection with the Legislative Council.

The Hon. J. J. GALLOWAY: Look at section twenty-six of the Constitution Act.

The CHAIRMAN: He was, of course, very happy to have any information. Such Bill, the clause he was reading said, must be passed by a majority of the members for the time being

"of the said Legislative Council and of two-thirds of the members for the time being of the said Legislative Assembly and the assent of Her Majesty shall not be given to any such Bill unless an address shall have been presented by the Legislative Assembly to the Governor stating that such Bill has been so passed."

Of course, the House had nothing to do with that. That was a matter for the Governor. The Council had nothing to do with that, because they had to confine themselves to their own House. What did the honorable Mr. Galloway say?

The Hon. J. J. GALLOWAY: He had referred to the twenty-sixth clause.

The Hon. E. I. C. BROWNE: He put it to the Chairman that the Bill now before the House was not such a Bill as was described in the proviso of the tenth clause of the Constitution Act. The Bill there specified was a Bill affecting

"the number or apportionment of members in the Legislative Assembly."

Such a Bill must be introduced under certain circumstances to that House and carried by

a majority of two-thirds of the Assembly. But, no such Bill was now before the Council. The Bill they were dealing with was a Bill to repeal the proviso of the tenth clause—to repeal that part of the Constitution Act;—and there was nothing in the Constitution Act which said that that Act itself, either partially or wholly, was not to be repealed by a simple majority. He apprehended that the Chairman did not hold that clause seven, or clause six, or five, or eleven, or twelve, could not be repealed, as they now proposed to repeal clause ten. And why should they not be repealed by a simple majority? Because, there was nothing in the Act to restrain the Council from doing so. Neither was there anything in the Act to restrain them from repealing the two-thirds clause by a simple majority; and he apprehended that they were free to do it if they chose. They were restrained from altering the constitution of the Legislative Assembly or of the Legislative Council except under certain circumstances; but the Act did not say anywhere that they should not touch the Constitution Act except under these special circumstances. Therefore, he said, the Council could deal with the Act in any way, the same as they could deal with any other Act.

The CHAIRMAN: He did not think the honorable gentleman had read clause ten lately.

The Hon. E. I. C. BROWNE: Five minutes ago.

The CHAIRMAN: Because it forbade the presentation of the Bill to the Governor—

The Hon. E. I. C. BROWNE: What?

The CHAIRMAN (*reading*):

“Provided always that it shall not be lawful to present to the Governor of the colony for her Majesty’s assent any Bill;”

And so on. Now, he said, the Council numbered twenty-one members.

The Hon. E. I. C. BROWNE: With all respect, he would ask the Chairman to read all of that clause.

The Hon. G. ELLIOTT was understood to say that the Chairman had ruled; and that it was now too late to dispute the point, after the division was declared.

The Hon. E. I. C. BROWNE said he should not have taken this course had it not been pointed out to him by the honorable gentleman who had taken it in opposing the Bill.

The CHAIRMAN: He would read the division again:—“Contents,” 9; “Not Contents,” 6. Read the Bill.

The Clerk read the title of the Bill according to the customary formula.

The following are the division lists:—

Contents, 9.	Not-Contents, 6.
Hon. St. G. R. Gore	Hon. J. F. McDougall
“ H. G. Simpson	“ G. Elliott
“ J. J. Galloway	“ C. B. Whish
“ E. I. C. Browne	“ L. Hope
“ W. Thornton	“ W. D. White
“ G. Harris	“ T. L. Murray Prior.
“ J. C. Heussler	
“ W. Hobbs	
“ H. B. Fitz.	

The Hon. G. ELLIOTT: The honorable gentleman ruled that there should be a majority of the whole members?

The CHAIRMAN: My ruling is, that it is a majority of the whole House that is required.

The Hon. J. F. McDUGALL: That is your ruling?

The CHAIRMAN: That is my ruling.

The Hon. St. G. R. GORE: I am to understand, sir, that the question is not carried?

The CHAIRMAN: The House will clearly understand that I rule, that there is not a majority of members of the whole House for the Bill. There are twenty-one members. I say that nine are not a majority.

The Hon. H. B. FITZ: Honorable gentlemen—When we dispute the Chairman’s ruling, we appeal to the House. I dispute the Chairman’s ruling, and therefore I appeal to the House against it; and I shall move that the House decide whether this Bill is carried or not by a simple majority.

The Hon. G. ELLIOTT: I very much doubt whether the honorable gentleman can move that motion. There is the ruling. I cannot see that the honorable gentleman can proceed further. The question has been decided, and we have left our seats. The question has been negatived, and some honorable members may have left the House since the division.

The Hon. H. G. SIMPSON: As bearing upon the question of order, read Standing Order, No. 9.

The Hon. G. ELLIOTT: There is no question before the House. The question has been decided.

The Hon. J. F. McDUGALL: I submit, sir, that there is no question before the House. You have given your ruling, sir.

The Hon. E. I. C. BROWNE: The question is not decided.

The CHAIRMAN: I beg leave to undeceive honorable members. The question raised, so far as it rests with me, and whether I am right or wrong, I have decided.

The Hon. H. B. FITZ: The House will appeal against your ruling.

The CHAIRMAN: As I take it, the honorable gentleman will give a notice of motion, disputing my ruling; then I will see his authority.

The Hon. G. ELLIOTT: I submit that the honorable gentleman is too late. The question is passed, and honorable members may have left the House.

The CHAIRMAN: Honorable gentlemen will please understand me, that in every decision—as I am not here as a permanency, I am here representing somebody else—so far as preserving the dignity of the House, I am to assist honorable members as far as I can. I have ruled a certain way, as I have stated before. I may not be right. I do not know. I simply give my decision; and, if the honorable gentleman has given notice of motion to dispute it, he will satisfy me that he is in a position to do so. I have decided.

The Hon. H. B. FITZ: As a matter of privilege, I now beg to move, I having disputed the Chairman's ruling—

That the second reading of the Constitution Act Amendment Bill has been carried by a sufficient majority.

The Hon. J. F. McDougall maintained that it was not competent for the honorable member to make the motion, inasmuch as the Chairman had ruled that it required a majority of honorable members to decide the question.

The Hon. H. B. FITZ said he did it as a matter of privilege.

The Hon. H. G. SIMPSON directed attention to the ninth Standing Order; and said that a matter of privilege took precedence of everything else.

The POSTMASTER-GENERAL said he took it that a certain Bill was to be read a second time—

The Hon. H. G. SIMPSON: Has been.

The POSTMASTER-GENERAL: He preferred to choose his own phraseology. A Bill was to be read a second time; a division was called for; and, on the division, the Chairman was appealed to, and he decided that it required a majority of the whole House to pass the second reading; and that, therefore, the present majority did not pass the second reading of the Bill. He (the Postmaster-General) took it, the Bill was off the paper now, and was therefore lost.

The Hon. J. J. GALLOWAY: It was not for the President to decide a point in dispute in the House. It was for the House itself to decide, and the House ought now to entertain the motion before anything else. The motion was quite pertinent.

The Hon. W. THORNTON: He should like to be informed by the Honorable Mr. Elliott what was the course for the House in case it should be proved that the President decided wrongly. Was an important law to be lost to the country through an error on the part of the President? Was all the work on the Bill—were all the arguments and the trouble of honorable members—to go for nothing? For all that had been urged by his honorable friend, Mr. Elliott, he should say that—small as his acquaintance was with Parliamentary practice—the second reading of the Bill should be declared to have been carried by a sufficient majority. It had been passed by the other branch of the Parliament, where there was an abundance of barristers; and the objections raised in the Council had not been offered there. There was nothing in the Bill affecting the constitution of either House, which would not be changed by it in any way whatever.

The Hon. H. B. FITZ said he might state that he had been informed by the honorable the Speaker of the Legislative Assembly that there was a despatch on the subject—

The CHAIRMAN: The honorable member had no right to speak of the other House.

The Hon. H. B. FITZ: There was a despatch from Lord John Russell to the effect that the tenth clause of the Constitution Act could be repealed by a simple majority.

The Hon. G. ELLIOTT repeated his objection that the honorable member's motion was too late.

The Hon. H. B. FITZ: He had put the question to the House to decide. He presumed that the House could deal with a matter of privilege.

The Hon. G. ELLIOTT: He submitted that the honorable gentleman ought to have adopted that form in the division. Instead of that, he had put it off to the wrong time to decide. He (Mr. Elliott) did not understand why the honorable Mr. Thornton asked him questions. He was not in the Council to answer questions. He knew very little about the Standing Orders of the House; but with the rules of the other House he was familiar.

The Hon. ST. G. R. GORE: A certain Bill was brought before the House. The second reading of that Bill was then put to the House, and was carried by a majority. The Chairman said it was not carried by such a majority as was required by some authority which was not exactly specified—some visionary authority of his own—and declared that the Bill was not carried by a majority at all. Some honorable members thought that was not a correct ruling, and it was a well-known fact that the House decided upon such a point raised. The motion which had been brought forward asserting that the Bill had been carried, could be, he thought, fairly put to the House. The Chairman had, in the estimation of the House, made a mistake; and, as the case had been put by his honorable friend opposite, Mr. Browne, he had decided entirely wrong in point of law. It appeared to him very strange if Parliamentary practice did not give the House some means to set themselves right against a mistake of their Chairman.

The POSTMASTER-GENERAL: This was not a matter for the House to decide, as his honorable friend, Mr. Galloway, had put it. This was a question of the reading of the Constitution Act by one section of the House. Nine gentlemen said that it should be read in a certain way. They had been defeated in their views upon the Bill. He had no doubt that upon the present motion, if put, they would decide in the same way as they had before voted. The other side said it required a majority of the whole House, eleven, to enable a certain Bill to pass the second reading. What he put to the House was, that after what had taken place, honorable members present could not again vote to decide as an indisputable fact that which was disputed, and thus override what, he contended, was acknowledged by the constitution.

The Hon. E. I. C. BROWNE deprecated the course pursued by the honorable the Postmaster-General, who complained that a mino-

rity of the other branch of the Legislature had acted unconstitutionally in trying to rule the majority, whereas the honorable gentleman was endeavoring to do the same in that Council. He (Mr. Browne) considered the majority had a right to read the Constitution Act for themselves. He thought that when the ruling of the honorable the Chairman was disputed, it was for the Council itself to decide upon such ruling. He made those remarks with all deference to the honorable the Chairman.

The Hon. C. B. WHISH said that, as far as regarded the question before the Council, it was of quite a different character. Ordinarily a majority of a quorum of the Council could deal with any questions coming before them. But they could not do so in the present case, and therefore the last question was decided.

The motion was then put and carried.

WAGES ACT OF 1870 REPEAL BILL.

Upon the order of the day for the resumption of the debate on this Bill being read,

The Hon. J. C. HEUSSLER said that, previous to the debate on this question being adjourned at the last sitting, he was about to move that the consideration of it be referred to a select committee. There was also another amendment, moved by his honorable friend, Captain Simpson, which was afterwards withdrawn. He would now move—

That a Select Committee be appointed to inquire into the working of the Wages Act of 1870, with power to send for persons and papers, and to sit during any adjournment; such committee to consist of the Honorable E. I. C. Browne, the Honorable G. Harris, the Honorable G. Elliott, the Honorable J. J. Galloway, the Honorable T. L. M. Prior, and the Mover.

The CHAIRMAN reminded the honorable member that he would require the sanction of the whole House for such a committee.

The Hon. W. THORNTON said he did not think that the appointment of a select committee on the Act would have the effect of throwing any additional light upon the manner in which it had worked, for the reason that there was only one side whose evidence could be obtained. They could get the opinion of merchants, money-lenders, and persons who were opposed to the Act; but they could not get the evidence of those who had suffered from it not being in force. At any rate, even were a committee appointed, he should certainly oppose some of the names which had been proposed as members of it, inasmuch as they were those of three or four honorable gentlemen who had expressed themselves as opposed to the measure. If there was to be a committee, he would move that it be appointed by ballot.

The Hon. Sr. G. R. GORE said he had made up his mind to oppose the appointment of the committee, as he did not see that any advantage would be gained from it, both for the reasons mentioned just now by his honor-

able friend, the Collector of Customs, and also, because, in his opinion, it was not competent for the Council to say whether in their estimation the Act had worked well or ill, as it would be an interference with the great political relations between the lender and borrower. He thought the Council should reject the committee, the appointment of which could have no beneficial result, but would entail the loss of a great deal of time and money.

The Hon. H. B. FRIZ said that it so happened that although the measure had been before the Council on two or three occasions, he had never been present to express his views upon it. He thought that there was a great deal to be said on both sides of the question. There was no doubt that the present Act interfered with small farmers obtaining advances; and on the other hand, it prevented much injury from being inflicted on the laboring classes. He could mention a few cases which had come to his knowledge before the present Act became law. One was in reference to a station formerly belonging to the honorable member, Mr. Yaldwyn. When the mortgagee took possession of it, all the men had wages due to them, and they sued the manager, Mr. Davidson, at Ipswich. That gentleman had not the money to pay, and the Bench stated that they had no option in the matter but to send him to gaol. Mr. Thompson, who appeared for Mr. Davidson, begged the Bench to postpone taking action for one day, as his client was about to place himself under the protection of the Insolvency Act; which he did, and the men did not get any wages. He also knew of a number of old servants of his who had taken a farm at Peak Mountain, one of whom told his men that he could not pay them their wages until he had sold his crop. The men remained, but before the crop was gathered, an Ipswich merchant took possession of the farm and the crop, and the men lost their money. Now, according to equity and justice, there was no doubt that the crop belonged to those men much more than to the merchant, and yet they lost everything. He agreed with the Honorable Mr. Thornton, that if witnesses were summoned to give evidence before a committee only one class could be obtained. No doubt merchants, as stated by the honorable gentleman, and money lenders, would be examined; but he believed there would be very great difficulty in getting from stations in the interior, and from farms, men who could give evidence as to how they had suffered by mortgagees taking possession of property before the present Act came into force. He would rather see the Act in operation a little longer, in order to ascertain how it really did work; and with that view, he would advise the Honorable Mr. Harris to withdraw the Bill now before the Council, for the present session; and then, if necessary, bring it forward again next session, by which time public opinion

might be ascertained on the matter. There was no doubt that the Bill was a protection to the working man, although it might cause some inconvenience to the money lender.

The Hon. G. HARRIS said that on the last occasion of the Council meeting, it was understood that the debate should be postponed, with the view of a committee being appointed, as proposed by the Honorable Mr. Heussler. It appeared, however, that the views of honorable gentlemen had since changed, and if it was the wish of the House that the second reading of the Bill should be postponed, he was quite willing to do so. He would therefore move that the second reading be postponed until that day fortnight.

The Hon. J. C. HEUSSLER, by permission of the Council, withdrew his amendment for the appointment of a select committee.

The Hon. W. THORNTON thought that the object of the postponement was to ascertain some particulars relative to the working of the present Act. That, however, would hardly be attained by a postponement of only a fortnight; and he thought it would be better for the honorable gentleman to withdraw the Bill altogether, and thus allow honorable members an opportunity of judging of the merits of the Act.

The motion was then put and carried.