

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Council**

**THURSDAY, 10 SEPTEMBER 1885**

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**LEGISLATIVE COUNCIL.***Thursday, 10 September, 1885.*

Seat of the Hon. James Gibbon.—Message from His Excellency the Governor.—Seat of the Hon. James Gibbon.—Message from the Governor.—Seat of the Hon. James Gibbon.—Customs Duties Bill.—Local Government Act Amendment Bill.—Address to the Governor.—Townsville Jetty Line.—Northern Railway.—Western Railway Extension.—Railway from Mackay to Eton.

The PRESIDENT took the chair at 4 o'clock.

**SEAT OF THE HON. JAMES GIBBON.**

The HON. F. T. GREGORY said: Hon. gentlemen,—In moving that the report of the Select Committee appointed by this House to consider the message of His Excellency the Governor, respecting the question of the vacation of the seat of the Hon. James Gibbon, be now adopted, it may be well for me to explain the circumstances under which it devolves upon me to move the adoption of the report. Hon. gentlemen are already aware that the report in their hands has been adopted by the Select Committee in preference to a report prepared by the chairman, who subsequently declined to move its adoption, and who has attached his reasons for not agreeing to the report. Turning to the question itself, it is simply and clearly one of privilege, although it involves, of course, the vacation or otherwise of the seat of an hon. member of this Chamber. It is one of the most important questions that has come before this Council for some years, and it is certainly entitled to our most careful consideration. The question having been so recently fully discussed upon a motion of a similar character, it will be unnecessary for me now to go over the same ground. The question has now come before us in the shape or form of a message from His Excellency the Governor, and consequently it is our bounden duty to give it most careful consideration. Had it not been brought before us in this way I have very little doubt but that it would have been dismissed in a very summary manner indeed. As it is, I may briefly state that, as shown in the records of the proceedings of the Committee, now in the hands of hon. members—

**MESSAGE FROM HIS EXCELLENCY THE GOVERNOR.**

The Usher of the Black Rod announced a message from His Excellency the Governor.

The PRESIDENT: I think my instructions were positive that messages from the Governor were not to be introduced while a member of this House was speaking. I gave that instruction some time since, and I request that no hon. member shall again be interrupted. The message must wait. I may state that His Excellency the Governor quite coincides with me that members of this House should not be interrupted.

**SEAT OF THE HON. JAMES GIBBON.**

The HON. F. T. GREGORY, resuming, said: As it is, I may briefly state, as shown in the record of the proceedings of the Committee, now in the hands of hon. members, that the Committee has taken evidence, examined the journals of the House, and obtained information from other authoritative sources, establishing the facts contained in the report, which are as follows:—

"1. That the Honourable James Gibbon obtained leave of absence from the Governor of the colony on the 23rd of December, 1882, for twelve months.

"2. That the first session of the ninth Parliament commenced on the 7th of November, 1883.

"3. That the Honourable James Gibbon's leave of absence expired on the 23rd of December, 1883, having subsisted for the first forty-six days of the session.

"4. That the session terminated on the 6th of March 1884; during this last part of the session he did not take his seat in the House.

"5. That the second session of the ninth Parliament commenced on the 8th of July, 1884, and closed on the 23rd of December, following, during which session the Honourable James Gibbon failed to attend.

"6. That the third session of the ninth Parliament commenced on the 7th of July, 1885, and is still current; that up to the present time the Honourable James Gibbon has not given his attendance."

Upon those premises the Committee came to the following decision:—

"Your Committee therefore find that the Honourable James Gibbon was absent without leave for only a part of the first session of the ninth Parliament; that he was absent without leave for the whole of the second session of the ninth Parliament; that he has been absent without leave for a part of the present session."

I may here point out that it has been contended by the hon. the Postmaster-General and by the Hon. W. H. Wilson that leave of absence from the Crown is not equivalent to attendance in the Council—a decision which, I confess, surprises and astonishes me more especially as coming from two gentlemen of the legal profession who cannot be ignorant of the well-known legal maxim that the constitutional powers and prerogatives of the Crown cannot be limited by any restricted interpretation of statute law; and it is only by such restricted and unconstitutional interpretation that any argument of that sort can, for a moment, be entertained. The Committee, in their consequential verdict, have been guided by the obvious meaning of the 23rd section of the Constitution Act, 31 Victoria, No. 8, and although that section has been under consideration before, I may as well read it once again to the House before proceeding with my remarks:—

"If any Legislative Councillor shall for two successive sessions of the Legislature of the said colony fail to give his attendance in the said Legislative Council without the permission of Her Majesty or of the Governor of the colony, signified by the said Governor to the Legislative Council, or shall take any oath or make any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power."

And various other things which are irrelevant at the present time—

"or shall do, concur in, or adopt any Act whereby he may become a subject or citizen of any foreign State or power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or power, or shall become bankrupt or take the benefit of any law relating to insolvent debtors, or become a public contractor or defaulter, or be attainted of treason, or be convicted of felony or of any infamous crime, his seat in such Council shall thereby become vacant."

Taking that reading, and the only reading that I can see can be arrived at, as the meaning of the Constitution Act, the Committee found the consequential verdict as follows:—

"Your Committee consequently find that the Honourable James Gibbon has not failed for two successive sessions to give his attendance in the Legislative Council within the meaning of the 23rd section of the Constitution Act, 31 Vic., No. 38, and that his seat in the Council has not become vacant."

I think it is hardly necessary for me to add anything more to the statement which I have now made, as the whole matter has been so fully discussed on a previous occasion that I need only now draw attention to the reasons given for dissenting from the finding of the Committee in a memorandum attached to the report by the hon. the Postmaster-General and the Hon. W. H. Wilson. The reasons given by those gentlemen for dissenting from the finding of the majority of the Committee appear to me wholly untenable, inasmuch as, according to their arguments, when leave of absence is granted by the Crown, the words, "one year" would have to be read and construed as meaning

"one session," which would be an obvious absurdity. The leave granted by the Governor was unconditional for twelve months, and, as it happened in this case, covered about half the session of 1883-4, which, with the whole session of 1884, could not possibly be calculated as two entire sessions. At least that is my opinion. I think all other hon. members who have spoken on this side are of the same opinion—that part of a session does not mean a whole session—that if leave covers anything it absolutely covers leave to the termination of the twelve months. We, on this side, believe the interpretation of the 23rd section of the Constitution Act to be that a member must be absent two whole consecutive sessions before his seat can be declared vacant, and we intend to support that view. I therefore move that the report of the Select Committee be now adopted.

#### MESSAGE FROM THE GOVERNOR.

The PRESIDENT announced the receipt of a message from his Excellency the Governor, intimating that the Royal assent had been given to the Crown Lands Act of 1884 Amendment Bill.

The PRESIDENT: I may state to the House that my reason for not interrupting the Hon. Mr. Gregory, who was on his feet when the message arrived, was that I believe it is entirely in accordance with the Governor's wishes that hon. members of this Chamber shall not be interrupted by the delivery of messages. I had some correspondence with His Excellency last session upon this subject, a message having been delivered when the Hon. Mr. Mein was making an important speech, and His Excellency informed me that it was not his wish that any member of this House should be interrupted while speaking. I have therefore waited until the conclusion of the hon. gentleman's speech before announcing the message from the Governor.

#### SEAT OF THE HON. JAMES GIBBON.

Question—That the report be adopted—put.

The HON. W. H. WILSON said: Hon. gentlemen,—The matter submitted to the select committee on this question of privilege raises a most important constitutional question, and as I was a member of that committee I think it necessary that I should explain my reasons for not assenting to the report. Hon. gentlemen will find that the principal reasons relied upon by myself and the Postmaster-General are that the leave of absence in question did not extend to authorise an absence during the whole of the second session which happened after Mr. Gibbon's departure for England, and that he was consequently absent during the whole of that session without leave; that he failed to give his attendance for two successive sessions; that he had no leave to absent himself for that term; and that having so absented himself without leave, his seat is vacated according to the true intent and meaning of the 23rd section of the Constitution Act of 1867. Hon. gentlemen will notice that Mr. Gibbon, in the first place, applied for two years' leave of absence, and His Excellency Sir Arthur Kennedy, in acknowledging the receipt of his letter, informed him—as hon. gentlemen will observe by the letter of the 19th December, attached to the report—as follows:—

"Toowoomba, 19th December, 1882.

"SIR,

"I am directed by His Excellency the Governor to acknowledge the receipt of your letter of the 18th December, informing him of your intention to proceed to England on urgent private affairs, and applying for two years' leave of absence from your duties as a Legislative Councillor.

"His Excellency, on hearing from you again, will be happy to grant you one year's leave of absence, which is the limit fixed upon.

"I have, etc.,

"C. O'CALLAGHAN,

"Private Secretary.

"Hon. J. Gibbon, M.L.C.,

"'Teneriffe,' Brisbane."

Subsequent to that, Mr. Gibbon applied for one year's leave of absence, and that was granted in the letter of 23rd December, which is also attached to the report, and is as follows:—

"Toowoomba, 23rd December, 1882.

"SIR,

"I am directed by His Excellency the Governor to acknowledge the receipt of your letter of the 21st December, applying for one year's leave of absence, to proceed to England on urgent private affairs, and to inform you that His Excellency has much pleasure in complying with your request.

"I have, etc.,

"C. O'CALLAGHAN,

"Private Secretary.

"Hon. J. Gibbon, M.L.C."

His Excellency refused to grant two years' leave of absence, and, as a matter of fact, the term for which leave can be granted is for one year only. Mr. Gibbon took his seat in the Council for the last time on the 2nd November, 1882, and consequently he has now been absent from this House for nearly three consecutive years. At any rate, three whole successive sessions have passed since that gentleman left for England, and during that time he has not been present in the House, and we are now in the fourth session. I may refer hon. gentlemen to questions 37, 38, and 39 in the evidence, those questions having been put by myself. They were as follows:—

"By Mr. Wilson: Has Mr. Gibbon received the permission of Her Majesty, or of the Governor of the colony, to absent himself from the Legislative Council for two successive sessions of the Legislature? He received twelve months' leave of absence from the Governor.

"That is not an answer to my question. My question is:—Has he received the permission of Her Majesty or the Governor of the colony to absent himself from the Legislative Council for two successive sessions of the Legislature? No; not for two consecutive sessions.

"He did not receive any permission in the nature that I have stated? No."

Hon. gentlemen will see that, in the evidence itself, it is shown that Mr. Gibbon never received leave of absence for two consecutive sessions, and consequently I think he must be considered to have been absent for that time without leave. Hon. gentlemen cannot say that he had leave of absence for two consecutive sessions, and therefore if he had not leave he must have been absent without leave, and being absent without leave he vacates his seat. That, at all events, is my contention, and possibly it may be the opinion of Mr. Gibbon, or otherwise he would have resigned. Surely it could never have been intended by the Legislature, when this section was drafted, that a member who obtains leave for twelve months can stay away three years. The marginal note states, "Vacating seat by absence." That is, to a certain extent, an indication of what the clause contains, and although marginal notes are not generally considered as part of an Act, still they are often used for the purpose of interpretation. First, it is clear that a member absenting himself for two consecutive sessions loses his seat, but to defeat that forfeiture he asks for twelve months' leave of absence. He gets that leave, and, if the contention of hon. gentlemen opposite is correct he really gets three years' leave of absence instead of one. Surely that could never have been intended! He asks the Governor for two years' leave of absence; that is refused, showing that His Excellency would not tolerate such an extended leave. The Governor says, in fact, "I

will grant you one year's leave, because that is the extreme limit allowed; but if you are absent for two successive sessions—unless they happen to fall within the year—you will forfeit your seat." If a member can ask for one year's leave and obtain three years, then I think the sooner the Constitution Act is amended the better will it be for the country. The language employed in section 23 of the Act is evidently taken from an old Act—5 and 6 Victoria—which was passed in 1842; and if hon. gentlemen will refer to section 16 of that Act they will find that the language there used is identical with the language used in the 23rd section of our Constitution Act of 1867. We have evidently taken the language just as it is used there, and have transferred it to our Constitution Act; but other Legislatures have, I think, shown more wisdom, and they have, in revising that section, considered the circumstances that are likely to arise under it. For instance, in the colony of Victoria, in dealing with the section that corresponds to section 23 of our Constitution Act, they have framed it in this way:—

"If any member of the Legislative Council or Legislative Assembly shall for *one entire session* thereof, without the permission of the said Council"—

There is no permission of the Governor or Queen required—

"or Assembly, as the case may be, fail to give his attendance in such Council or Assembly, etc., his seat shall thereby become vacant."

That is the practice and law in Victoria. Well, if we look at the South Australian Constitution we will find that they have gone still further in the direction of limiting the general effect—and the mischievous effect, I consider—of our clause 23. In South Australia, by the Constitution Act of 1856, it is provided that—

"If any Legislative Councillor shall, for *two consecutive months* of any session of the Legislative Council, fail to give his attendance therein without the permission of the said Council, etc., his seat in such Council shall thereby become vacant."

So that the safeguards other Legislatures have thrown round the attendance of members are far more effectual than anything provided by us, and I think that similar provisions ought to be in force in this colony if they are not in force now. At any rate, what I have quoted goes to show that, as opportunity has offered, both Victoria and South Australia have considerably modified the provision with regard to attendance of members of the Council, and have framed it more in accordance with the requirements of our own times. On the question of intention as applied to the interpretation of Acts of Parliament, I will read an extract from "Dwarris" on Statutes. At page 556 he says:—

"In applying rules for interpreting statutes to questions on the effect of an enactment we can never safely lose sight of its object. That must be the truest exposition of a law which best harmonises with its design, its objects, and its general structure."

The design and object here is clearly to vacate a member's seat on an absence for an unreasonable time.

"You must try and discover the true intention, and whenever the intention of the makers of a statute can be discovered by fit signs, it ought to be followed in its construction in a course consonant to reason and discretion."

I do not think there can be any reason in holding that leave of absence for twelve months covers a period of three years.

"It should be considered what was the mischief against which the statute meant to provide." In this case the mischief is continued absence of a member from his duties.

"It becomes the duty of Parliament to suppress the mischief and provide the remedy."

Therefore the section should be construed so as to suppress the mischief and advance the remedy—that is, apply the remedy to the mis-

chief. How is this to be done? By holding that leave of absence does not extend to authorise an absence for a longer term than that granted, and if two successive sessions are not covered in some manner by presence the seat is vacated. I look upon this case as one of the worst and most flagrant of its kind. Here is a gentleman who is appointed a member of this House and who applies for twelve months' leave of absence, and goes to England; he determines to stay there, and he has neither the decency nor common honesty to resign his seat. It has been stated that, owing to the increased value of land in Brisbane, we shall see Mr. Gibbon here again; but I have it on the best authority that that is not correct. We shall not see him here again, because I am told he has sold all his property in Queensland, and will not return to the colony. I think the House should reflect on its position and on the contempt into which it is being brought by a member who simply ignores its existence and tramples upon its privileges. Similar cases may happen again, and it behoves this Chamber to investigate the matter thoroughly, and if it is the case that by getting one year's leave a member can secure three years, then the sooner we know it the better. I simply mention that because it was stated on a former occasion confidently that he would be here before the end of the session. Under these circumstances I think the House should assert its dignity in a matter of this kind and clear itself from the contempt which has been brought upon it by one of its members attempting to trample its privileges under foot. This may happen again. If it is the case that by getting one year's leave of absence a member can receive three years, the sooner it is altered the better. At first sight it may seem that the contention of the Hon. Mr. Gregory is the correct one, but the more the section is considered the plainer it becomes that leave when granted is leave on condition, and when a member absents himself against the form, design, and object of the statute his seat should be declared vacant. I trust the report will not be adopted, but, if it should be, that the law will be promptly amended.

The Hon. T. L. MURRAY-PRIOR said: Hon. gentlemen,—I regret that the Postmaster-General did not rise first to speak on this subject. In the first place, this is a decision of the House. We are the tribunal who have to decide whether a member's seat is vacant or not, and on a former occasion we, in fact, decided that it was not vacant by a very large majority. I believe the division was 15 to 5, and under the circumstances it would be better that it should be left alone. Many hon. members have expressed their opinions as to the absence of the Hon. James Gibbon, which need not, however, be alluded to. The question is merely a question of privilege, whether the hon. member's seat is vacant or is not vacant. It might be the seat of the Hon. Mr. Gibbon or any other member of this House. That his seat is not vacant I have not the slightest doubt, and I believe the great majority of members in this House have not the slightest doubt either, and any member voting on the opposite side who has formed a different opinion has not the opinion of the majority. For what reason this question has been brought forward again I fail to see. It is perfectly evident that we have taken a great deal of trouble, and that the members of the select committee have been detained in town for a long time for very little purpose. Perhaps it may be that there is some ulterior view in the matter; perhaps the case may be sent to law officers in England to decide what is the reading of the Constitution Act. It is evident that two lawyers, able men in their profession, disagree entirely

with the common-sense reading we have taken; and as the hon. gentleman opposite has alluded to certain matters which transpired in the committee I cannot allow that to pass without giving my opinion. My opinion is that in the committee the witness—an officer of this House—was examined very much as a witness would have been examined by a barrister before a judge to confuse him, and, in consequence, hon. members of the committee—myself amongst them—who had different opinions had to put questions to elicit answers different from what they might be taken for in the evidence. There was one question I put to Mr. Radford, which hinges upon the matter—it was almost at the end of the time, when the Hon. Mr. Wilson had put many questions. I merely asked Mr. Radford, “How many full sessions of Parliament has Mr. Gibbon been absent?” The answer was, “One full session of Parliament.” Mr. Gibbon was absent one full session of Parliament without leave. The Hon. Mr. Wilson seems to make nothing of the leave granted by Her Majesty or His Excellency the Governor. It is true the Hon. Mr. Gibbon was absent a part of that session, but he had leave for one part, which we say covers the whole. The report was entirely changed from the report brought up by the Postmaster-General by the majority of the committee. I thought the report brought up by the Postmaster-General was a sort of special pleading of the same kind which occurred in the committee; and the report brought up by the committee, and framed by the Hon. Mr. Gregory, merely gives a plain statement of facts, and ends with the decision of the majority of the committee, to which the Postmaster-General and the Hon. Mr. Wilson, being outnumbered, disagreed, and to which they appended an addendum of their own. My mind has not had the legal education of those gentlemen, but I take it that if a plain dissent had been given they would have carried out their object far better. This is what they added:—

“We dissent from the conclusions arrived at by the majority of the committee for the following reasons:—

“That, inasmuch as the Hon. James Gibbon did not give his attendance in the Legislative Council during any of the three sessions which followed the date of leave of absence granted to him for one year, from the 23rd December, 1882 (a period which did not expire until after the commencement of the second session of 1883), we consider that such leave of absence did not extend to authorise his absence during the whole of that session, and that he was consequently absent during the whole of that session without the permission of the Governor, within the meaning of the Constitution Act of 1867. We are also of opinion that leave of absence given for one session does not extend to prevent the vacation of his seat by a member if he fail to give his attendance for the whole of another succeeding session without the permission of the Governor. We consider that the said James Gibbon has failed to give his attendance for two successive sessions without the permission of the Governor signified to the Legislative Council, and that his seat in the Legislative Council has consequently become and is vacant; and that in terms of the 23rd section of the Constitution Act of 1867 the seat of the said James Gibbon should be declared vacant accordingly.”

This statement is contrary to fact, because it has been proved that the Hon. Mr. Gibbon really had, for part of a session, the leave of the Governor. I must say, when I first read over this addendum of the hon. gentlemen, I could hardly think that two hon. gentlemen, bred as lawyers, would bring forward such a statement, especially if it had to come hereafter before legal minds of high attainments. I can only say that as a very humble individual I should feel very much ashamed had I brought forward an addendum of the same sort; and I regret very much that it was brought

forward, not for the sake of the hon. gentlemen, but for the sake of the legal attainments in our Council, which ought to be of the highest order. It is as clear to me, as hon. gentlemen of the legal profession opposite are convinced in their way—taking a common-sense view of the matter—that the seat is not vacant, but that at the beginning of the following session, if the hon. gentleman is not present, it will be vacant. We have made a great noise for very little; and I trust that all hon. gentlemen will join in deciding that the report be adopted.

The POSTMASTER-GENERAL said: Hon. gentlemen,—I had not intended to do more than make one or two observations in regard to the subject-matter before the House, but the very extraordinary speech delivered by the last speaker, composed as it was of something really outside of that quality which he claims to possess so largely—namely, common sense—moved me to take notice of one or two statements that fell from him. He stated—of course, for what it was worth—that the two members of the committee who dissented from the majority had an advantage in being legally trained men, and that he had not that advantage, therefore his common sense was equal—from the positive assertion he made in regard to his opinion that he felt perfectly certain the seat was not vacant—that his common sense put into the scales with the common sense of the other gentlemen in question added to their legal training, outweighed the whole. I trust the Hon. Mr. Murray-Prior will excuse me for making this assertion, but I do it with the greatest respect. I am entitled to express my opinion, and I hold his opinion in the highest respect. I am not going to say one word in disparagement of it. I know what the hon. gentleman's opinion is worth, but doubtless before very long the matter will be analysed and decided in some other way. At any rate I consider it a compliment to the subject brought before this House that the first speaker to the question should state that it was one of great importance. That hon. gentleman evidently grasped its importance in a much more sensitive and higher degree than the Hon. Mr. Murray-Prior. He stated that the question was one of the most important that had come before the Council for some years. I agree with that opinion, as hon. gentlemen know, and I initiated the subject believing that it was of that quality. The subject has lain dormant for many years—it is no new thing. It is well understood amongst hon. members that it is a most objectionable feature that some hon. gentlemen believe they may get leave of absence from the Governor for a term, and absent themselves for the period mentioned in the 23rd section of the Constitution Act as well. I beg to say that I consider that is not a common-sense view of the interpretation of the statute, and that leave of absence is not to be held as presence; that leave of absence given by the Governor swallows up the privilege contained in the 23rd section of the Constitution Act; and that if a session is current at the expiration of the term for which leave of absence has been granted, the hon. gentleman who received leave of absence should be back in his place the first day after his leave of absence expired, for the performance of his legislative duties. I regret very much the observation made by the Hon. Mr. Murray-Prior in reference to the manner in which the witness was examined. I think if that gentleman is asked the question he will not concur in the statement, and that he did not imagine he was being cross-examined as if he were in a court of justice being questioned by barristers. Every question I put was put with the view of eliciting the truth—eliciting the facts and nothing more. It was

not the duty of the committee to do anything else besides expressing an opinion, and these are properly the only matters included in the report of the chairman. But it is also to be regretted that some quality or other adverse to a truthful result—to the honest work of the committee—should have been insinuated by the Hon. Mr. Murray-Prior in his observation that he had to put questions in order to get answers different from those which were given to questions put by the Hon. Mr. Wilson and myself. I regret, personally, that such a statement should have been made; and I take the opportunity of saying that there was no thought of legal training—there was no such thing as special pleading in the proceedings of the committee—from the initiation of the matter in this House until the moment the report was brought up. We endeavoured—I think I can say as much for the Hon. Mr. Wilson and the other members of the committee—to do our work on that principle so much admired by the Hon. Mr. Murray-Prior—namely, the common-sense one—and I do not think we departed from that principle. If hon. gentlemen will refer to the minutes of evidence they will notice that the total number of questions asked by the Hon. Mr. Wilson was three. It was stated also that there has been a great noise made about this matter. I have not heard of it. It only subsists, I trust, in the mind of him who suggested such a thing. The matter is undoubtedly most important. It should be cleared up; and I think the House should be satisfied that it has been brought up at last. I am of that opinion; but the reason why it possibly appears to have raised some noise is that when it was first introduced to this House the discussion on the point as to whether the seat of the Hon. James Gibbon were vacant or not took place at the raising of the question, when it should not have taken place. That was the initiatory error of judgment, I humbly submit; others are of opinion that the debate should have taken place then; but we can agree to differ on that point, and respect one another nevertheless. I will only add that I regret the circumstance, because it is clearly pointed out in the 24th section of the Constitution Act that when a question so arises respecting any vacancy in the Council the matter shall be referred to the Governor; and I submit that it is competent for any hon. member in this Chamber to raise the question, and having done so, it should be referred to the Governor. Therefore, that part of the proceedings should be blotted out of our memories, and the proceedings should be regarded as having commenced from the moment the Governor's message reached us. The Hon. Mr. Gregory stated that if the contention of the minority of the committee were correct, a leave of absence—I understood him to say—was practically valueless. I do not see how that contention can run parallel with the ground that the minority of the committee took up, because we do hold that leave of absence is of the greatest value. Leave of absence is not, we hold, to be considered as presence, for one day's leave of absence for each of two sessions would be sufficient. If a member wanted to be absent two sessions, a day's leave of absence during the first session would be quite sufficient; indeed, it would enable him to absent himself for three sessions according to the interpretation put upon the 23rd section of the Constitution Act by some hon. members. But leave for twelve months, as I said before, absorbs what may be termed the penal effect of being absent for two sessions under that section without leave of absence; otherwise there would be no need to apply for it at all. It is just as well, perhaps, to have the draft report that I brought up following in this debate the report

adopted by the committee, and I think hon. gentlemen will see that it contains a statement of the facts to be gathered from the evidence as shown by the minutes. The draft report is as follows:—

"The Select Committee to whom was referred the message of His Excellency the Governor, bearing date 5th August, 1885, respecting the question of the vacancy of the seat of the Honourable James Gibbon, have to report to your Honourable House as follows:—

"1. On the 26th day of June, 1883, His Excellency Sir Arthur Kennedy, then Governor, signified to the Legislative Council that he had granted the Honourable James Gibbon one year's leave of absence, to date from the 23rd day of December, 1882, as appears by letter of that date from His Excellency's Private Secretary to the President of the Legislative Council. No further leave of absence to the said James Gibbon has been signified to the Legislative Council.

"2. The first session of Parliament held after the 23rd day of December, 1882, commenced on the 2nd day of June, 1883, and ended on the 8th day of July, 1883.

"3. Another session began on the 7th day of November, 1883, and ended on the 6th day of March, 1884.

"4. Another session began on the 8th day of July, 1884, and ended on the 23rd day of December, 1884.

"5. The said James Gibbon did not give his attendance in the Legislative Council during any of such three sessions.

"6. We are of opinion that the leave of absence granted to the said James Gibbon, although it was formally expressed to be for twelve months a period which did not expire until after the commencement of the second session of 1883, did not extend to authorise the absence of the said James Gibbon during the whole of that session; and that he was consequently absent during the whole of that session without the permission of the Governor, within the meaning of the Constitution Act of 1867.

"7. We are also of opinion that leave of absence given for one session does not extend to prevent the vacation of his seat by a member if he fails to give his attendance for the whole of another succeeding session without the permission of the Governor.

"8. We therefore find that the said James Gibbon has failed to give his attendance for two successive sessions, without the permission of the Governor signified to the Legislative Council, and that his seat in the Legislative Council has consequently become and is vacant.

"9. And we recommend that in terms of the 23rd section of the Constitution Act of 1867 the seat of the said James Gibbon be declared vacant accordingly."

Hon. gentlemen will observe that we take the circumstances chronologically. We state these shortly and then give our opinion and our finding. When I say "we," I refer to the minority; and I think it would be very hard for any hon. gentleman to find a single sentence that is not strictly within the true facts as disclosed by the evidence attached to the report of the committee. The Hon. Mr. Gregory, in speaking of the interpretation of the statute, added, that he thought we endeavoured to undervalue the leave of absence from the Crown; and I understood him to say that our interpretation of the statute in conjunction with the leave of absence would be an interference with the prerogative of the Crown. But of course hon. gentlemen will see at once that there is no reason whatever given by that hon. gentleman; nothing transpired in the committee as shown by the report to warrant such a statement, and nothing was said by any other hon. member on either side in support of the statement; therefore it may be dismissed as a misunderstanding. I hope hon. gentlemen will consider this matter well. I do not know whether it is desirable that we should discuss it much more, but I think the action taken with regard to this serious subject will ultimately be productive of good. I hope that hon. gentlemen will, now that the subject has been well thought out and carefully discussed, give what assistance they

can in the future to modify and remedy what appears to the whole of us, I think, to be an intolerable evil which should be corrected as early as convenient.

THE HON. A. J. THYNNE said: This discussion has branched off into two or three different directions, and we have now got into a discussion on the method of carrying on the business of the committee. That has been called into question by my hon. friend Mr. Murray-Prior, and I think one may safely confine himself to the objection which he has taken to the questions put by the Postmaster-General and Mr. Wilson. A question is put by the Hon. Mr. Wilson to the following effect—"Has Mr. Gibbon received the permission of Her Majesty or the Governor of the colony to absent himself from the Legislative Council for two successive sessions of the Legislature? He received twelve months' leave of absence from the Governor." Well, hon. gentlemen, that was the question which was referred to the committee to decide, and that was the question which the Hon. Mr. Wilson asked the opinion of Mr. Radford upon—not a considered opinion, but an answer was given which possibly Mr. Radford might not have given full consideration to. I think, to a certain extent, Mr. Murray-Prior's feeling of doubt and uncertainty was justifiable, and for that reason I think it was a pity that the question was ever put at all. The opinion of the Clerk of this House was asked upon a question which was referred to a committee of the House, and which had been referred to the House itself to decide. Now, the Hon. Mr. Wilson favoured us with some information as to the enactments in force in other colonies upon this question, and in doing so he said that other colonies had been more careful in their legislation, and he referred to the colonies of Victoria and South Australia. Well, hon. gentlemen, the very fact of these colonies having been more careful shows that if there is an evil we have not provided against it, and I would point out for the consideration of hon. members the fact that has been quoted by Mr. Wilson, that this same provision has been in force since the enactment of 5 and 6 Victoria up to the present time. Under the clause which has been referred to, there is absolutely no restriction constitutionally placed on the power of the Governor for the time being, or upon Her Majesty, for granting leave of absence; and it is quite possible that for an unlimited number of years, or say for seven or ten years, leave of absence might be granted. There is no restriction—there is no restriction enacted, but like many other parts of our Constitution we have to look for protection against these evils to those who are at the head of affairs, and who are charged with the administration of our laws. If an evil has arisen from the laxity displayed in drafting our Constitution, the remedy for it is in the common sense and good judgment of His Excellency the Governor for the time being, and it will be quite time enough when this Council suffers seriously from a continued absence of hon. members, and we find that the representative of Her Majesty is careless in the use of his functions—it will be quite time enough, I say, for us to step in and amend the Constitution Act, if amendment is necessary. I indorse the remark which the Hon. Mr. Gregory made use of, that to put a restrictive construction or to limit the effect of Her Majesty's or the Governor's permission for leave of absence would be, to a certain extent, derogatory to the dignity of the office. After the construction hon. members on the other side have put on the section they say that this leave of absence is permission to be absent, and that if an hon. member exceeds the limit of his leave of absence

for ever so short a time his seat is vacant. Hon. members are driven to this, that in order to sustain the views they have taken up they are compelled to contend that in this instance the Hon. Mr. Gibbon's seat is not only vacant this session, but as a matter of fact it must have been vacant at the end of last session. If this is so, how is it that the Governor or Government have not made any attempt to test the question previously? If hon. gentlemen will look over the records of the House and notice what members have had leave of absence on previous occasions, it will be seen that a great many of them have placed their seats in jeopardy if the contention of the Hon. Mr. Wilson is a correct one and were to be adopted.

THE POSTMASTER-GENERAL: Hear, hear!

THE HON. A. J. THYNNE: The Postmaster-General says "Hear, hear," and I am very glad to hear him say so, because, by his saying so, he acknowledges that the practice in this House up to the present time has been different to that which the opposite side are now contending. The hon. gentleman has admitted that the practice up to the present time has been for hon. members to get leave of absence and remain over their term of leave. We have had, therefore, an established practice in this House, and there is an attempt now to change it. I say no sufficient case has been made out for interference; if there is a case at all there is not a strong enough case, in my opinion, to attack what I claim to have been an established practice of this House. Now, putting that matter aside and looking at section 23 itself, if any hon. gentleman has a doubt, I confess I have none, as to the construction to be put upon it. I am as confident as my hon. friend Mr. Murray-Prior, that, strictly speaking, the Hon. Mr. Gibbon's seat is not vacant; but if any hon. gentleman is in any doubt whatever, then we have to consider the Act in this way: A member absents himself, or is supposed to absent himself, for a certain specified period; the result of that absence is the infliction upon him of a penalty—the forfeiture of his seat—and there cannot be a more hackneyed expression in regard to the statutes than that a penal statute should be strictly construed. If Mr. Gibbon were on his trial for a breach of any other part of our enactments, there are very few judges or juries who would not give him the full benefit of a doubt—a much slighter doubt than can be raised under section 23 of the Constitution Act. I do not think, hon. gentlemen, that I can add much more to the remarks I have made. As I said before when the matter was under consideration in this Chamber, the question seems to me scarcely arguable as a question of construction of the statute, and scarcely arguable as a ground for upsetting an established practice in this House.

THE HON. W. FORREST said: I came here to-day hoping to hear from the Postmaster-General and the Hon. Mr. Wilson a very clear exposition of this clause in our Constitution Act, but I have been greatly disappointed. So far from giving any explanation they have shown a great deal of ingenuity in taking considerable time and trouble to obscure what to my mind is as clear as the sun at noonday. The Hon. Mr. Wilson's speech would be very appropriate if we were discussing the question as to whether it is advisable to alter the 23rd section of our Constitution Act. He might then have shown what they do in Victoria and New South Wales; but we have got to decide a question which comes directly under our own Constitution Act. The Acts of other colonies affect us not in the least degree. I quite concur in what has been said

by the Hon. Mr. Gregory, in moving the motion, that either Mr. Gibbon's seat has not become vacant or else the Governor's leave was of no value whatever. The hon. the Postmaster-General has tried to lay some stress—not only now but on a previous occasion—upon the following point: "Is leave equal to absence?" He asked the question several times, but he never tried to give us any answer; he never tried to really find out whether leave is equal to absence. I contend that it is, and I will show you why. If an hon. member is absent for two consecutive sessions without leave he forfeits his seat. His seat cannot be forfeited if he is present, but if he is absent for two consecutive sessions without leave it would be forfeited. Neither can it be forfeited if he has obtained leave from Her Majesty or the Governor, which clearly proves that so far as an hon. member's seat is affected leave is equal to presence. Were it otherwise, leave would be of no value whatever. I almost feel sorry to delay the House on such a simple matter. Let us decide the question in a practical way. Supposing that, during those forty-six days of the first session of the ninth Parliament which were covered by leave of absence, a call of the House had been made, would not the very fact of Mr. Gibbon's twelve months' leave not having expired be sufficient excuse for his non-attendance? None of the penalties that accrue to a member who does not obey a call of the House could be inflicted upon him, and I take it that that shows that his leave was in force during that special time. If he had been absent during any one of those forty-six days his leave would be ample excuse. I should like to have heard from the Postmaster-General and members opposite what the value of the Governor's leave is for twelve months; and if the tail of the leave can be cut off by a legal interpretation of an Act of Parliament I do not see why the head cannot be cut off also. I say that the Governor's leave is of full value for every moment for which it is granted or it is of no value whatever, and if it is of full value it is perfectly clear that Mr. Gibbon's seat has not become vacant. We are here to decide a question affecting the privileges of this House on a very important question, and I hope that members will look at it from that point of view, and not be carried away by their feelings or be influenced by anything but that which is contained in our Constitution. I have no hesitation in saying that I consider Mr. Gibbon's seat has not become vacant.

The Hon. A. RAFF said: I had no intention, hon. gentlemen, of saying anything on this subject after the matter had been so clearly discussed on both sides of the House, but I do not care to give a silent vote on the subject. I must say that I am of opinion that the evidence shows that the Hon. Mr. Gibbon has not vacated his seat, and that he has not been absent from this House for two consecutive sessions. If we are to consider his leave of absence from His Excellency the Governor of any value, it is clear to my mind that the hon. gentleman's seat has not yet become vacant.

Question put and passed.

#### CUSTOMS DUTIES BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly forwarding the Customs Duties Bill.

On the motion of the POSTMASTER-GENERAL, the Bill was read a first time, ordered to be printed, and the second reading made an Order of the Day for Wednesday next.

#### LOCAL GOVERNMENT ACT AMENDMENT BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly returning the Local Government Act Amendment Bill, and intimating that they insisted upon their disagreement to the amendment in clause 4, and did not insist upon disagreeing to the amendment in subsection 3 of clause 5.

On the motion of the POSTMASTER-GENERAL, the message was ordered to be taken into consideration on Wednesday next.

#### ADDRESS TO THE GOVERNOR.

The Hon. F. T. GREGORY: With the permission of the House, I beg to move that the following address be presented to His Excellency the Governor:—

We, Her Majesty's loyal and dutiful subjects, the members of the Legislative Council of Queensland in Parliament assembled, having had under consideration Your Excellency's message of date the 5th August last, relative to the question of the vacancy of the seat of the Honourable James Gibbon, a member of the Legislative Council, beg now to intimate to Your Excellency that we determine that the seat of the said Honourable James Gibbon has not now become vacant under the provisions of the 23rd section of the Constitution Act, 31 Vic. No. 35.

The PRESIDENT: The motion can only be moved with the consent of the House.

The POSTMASTER-GENERAL: I have no objection.

Question put and passed.

#### TOWNSVILLE JETTY LINE— NORTHERN RAILWAY.

The POSTMASTER-GENERAL moved—

That the Report of the Select Committee on the Townsville Jetty Line, Northern Railway, be now adopted.

Question put and passed.

The POSTMASTER-GENERAL moved—

1. That this House approves of the plan, section, and book of reference of the Townsville Jetty Line, from 0 miles, Northern Railway, to 2 miles 40 chains 53 links, as received by message from the Legislative Assembly on the 12th August.

2. That such approval be notified to the Legislative Assembly by message in the usual form.

Question put and passed.

#### WESTERN RAILWAY EXTENSION.

The POSTMASTER-GENERAL brought up the report of the Select Committee on the extension of the Western Railway from Dalby to Charleville, together with the minutes of evidence, and moved that it be printed.

Question put and passed.

#### RAILWAY FROM MACKAY TO ETON.

The POSTMASTER-GENERAL brought up the report of the Select Committee on the railway from Mackay to Eton, together with the minutes of evidence, and moved that it be printed.

Question put and passed.

The House adjourned at twenty-nine minutes past 5 o'clock.