Queensland

Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 17 SEPTEMBER 1885

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LEGISLATIVE COUNCIL.

Thursday, 17 *September*, 1885.

Beer Duty Bill—second reading.—Customs Duties Bill—committee.—Message from the Legislative Assembly.—Local Government Act of 1878 Amendment Bill.

The PRESIDENT took the chair at 4 o'clock.

BEER DUTY BILL—SECOND READING.

The POSTMASTER-GENERAL said: Hon. gentlemen,—The subject-matter of the Bill, the second reading of which I have now the honour to move, is a fiscal innovation in this colony, but I think it is one which is amply justified by the circumstances of the colony in many ways, and also by the specially favourable position of the trade which the Bill affects. We have all been cognisant for many years of the satisfactory and lucrative character of the brewing business, both in regard to brewers themselves and to their companions in the trade, comprised under the title of licensed victuallers. The Government believe that this Bill is one that

will affect the traders only in its incidence, and that the consumers will not be at all affected by the excise duty proposed in the Bill; that is to say, that the beer will be retailed at the same price at which it has hitherto been retailed, and therefore it is not believed that the duty will fall in any degree whatever on the consumer. However, apart altogether from the revenue aspect of the measure, it is very desirable that the Government of any colony should be able to control and supervise breweries. The country has the supervision and control of public-houses at the present time; the control of distilleries and the supervision thereof; and also the control of the wholesale wine and spirit merchants, all of whom have to pay a license fee and be duly registered under the laws of the colony. We must be aware of course that there are some people who advocate that a correspondingly equivalent duty to that which is now proposed to be levied upon colonial brewed beer should be imposed upon the imported article. However, the Government do not take that view, and the great majority of the traders and the public of the colony are also not of that opinion, believing that any increased duty on the imported article would fall directly on the consumer; and I think, if hon. gentlemen will examine the question, as doubtless they have done, they will agree with that statement. Hence the Government do not deem it desirable to alter the duty in regard to imported beer, whether brought here from over the sea or from the other colonies. Before referring to a few details of the Bill. I would point out the relationship between the duty upon beer and that upon spirits. For example, as has been pointed out in another place, a hogshead of beer believed to contain fifty-four gallons, as a matter of fact seldom contains more than fifty gallons, a quantity which has been found to contain from three and a-quarter to four gallons of proof spirit. If the tax were levied upon the spirit contained in the beer, the duty would be from 40s. to 50s. per hogshead, but, as is provided by this Bill, excise duty in respect to a hogshead of beer—which we all know well must contain at least three gallons of proof spirit—will only be from 12s. to 15s. It has been alleged that the total production of beer brewed in this colony amounts to some 4,000,000 gallons, a statement which I am very much inclined to dispute, believing that the total quantity of beer produced by the breweries within our colony is probably at least 50 per cent. more than that. However, be that as it may, the excise duty upon colonial beer is very much to be commended, and it is, as I said before, desirable that the Government should have some control over the breweries. By this means that will be effected, and having in view the strides that the colony is making now in the matter of increased population, it is believed a wise step to take at a time when the brewing industry is comparatively wealthy—successful in the smaller towns, and largely profitable, and certainly most assuredly successful, in the city of Brisbane and one or two other provincial towns. We have to find money, and certain sources of revenue have to be looked for; and, all things considered, after very careful examination of the different possible sources of revenue, the Government came to the conclusion that those which are indicated in this Bill, and in the Customs Duties' Bill, are the proper items from which to derive extra revenue. The Bill, as will be observed, contains numerous provisions for the simple and efficient working of the system of obtaining duty by means of stamps. Clauses 3 to 10 comprise the powers of the Minister, the appointment of inspectors of breweries, the registration of brewers, the mode of registration, and the registration fee. It will be noticed in one part of the Bill that those registrations made before a date named will continue in force until the 7th January, 1877. Under clause 8 a bond is to be given by the brewer in every case, the sum of which is to be gauged by the quantity of beer that he is likely to produce every current month. Stamps are to be sold to the brewer, and the mode of affixing them to the casks and hogsheads is duly provided for in the Bill. Then there are clauses having reference to the mode of keeping books by the brewer. The books are to be open to the inspection of an inspector of breweries, and all entries are to be verified by declaration. There are the customary penal clauses in reference to the omission to perform any of the duties set forth in the Bill, and there is a penalty for not affixing stamps to the casks, hogsheads, or receipt books. In regard to bottled beer, hon. members will notice that the stamp is not affixed to the package, but to the delivery book, and the number of stamps affixed will be according to the amount sold. The butt of the delivery book will bear the same duly cancelled. In certain cases where beer goes bad, or where one brewer wishes to oblige another by either selling or giving or lending material which has not reached the stage of beer, he is allowed to do so under certain conditions. Hon. members will notice that there are also provisions compelling the brewer to notify any such sale or intended delivery to the inspector. That is a very wise provision to prevent abuse. There is also a provision for obtaining drawbacks on spoilt beer—a very wise provision in this climate, where we know that at special times of the year the brewer suffers seriously through the effect of a sudden change of climate upon his partially manufactured material. Therefore, it is quite fair and correct that clause 32 should give the drawback named in such cases. It will be noticed that there are the proper and usual provisions in a Bill of this kind for the inspector of breweries to visit either the breweries themselves or any other places where beer is stored or sold, and if any person obstructs or resists any inspector in the performance of his duty in that regard he will be liable to a penalty not exceeding £100. There are a few other provisions in relation to the foregoing details of the measure to which I do not think it necessary to refer. There are some matters of detail which may be discussed in committee. I shall, therefore, not further trouble hon. gentlemen by saying anything more on this occasion, but move that the Bill be now read a second time.

The HON. A. C. GREGORY said: I simply rise to draw the attention of the Postmaster-General to what appears to me to be an imperfection in clause 2. As it stands there is no provision whatever in the Bill to prevent anybody brewing beer from any other materials, so long as those materials do not contain malt. A man might manufacture his beer from raw grain, sugar, and acid. I wish to draw attention to the interpretation of the word beer, and suggest for the consideration of the Postmaster-General, that he may have time to look into the question and render the Bill more perfect.

The HON. A. J. THYNNE said: I think that on the second reading of a Bill of this kind it is right that we should express an opinion upon the wisdom of the measure itself. This seems to me a very cumbrous and very harassing way of raising what will be a comparatively small amount of revenue, and it is one which will tend to increase the number of our already too numerous stock of Civil servants at the expense of the general public, even although that general public might not be touched so much as the Postmaster-General said they would be. The

hon. gentleman seems to think that it would be the trade, and the trade alone, who will have to pay the duty which will be levied under the Bill; but the hon. gentleman gives tradesmen credit for a great deal of simplicity if he expects that they will deprive themselves in any way of the amount of profit which they have been getting up to the present time. They will find many ways of meeting the additional duty on beer, and I think they would be justified to a certain extent. Why the colony should go to the expense of having inspectors put upon every brewery in the land—sometimes two inspectors, with their salaries, their allowances, and so forth—I cannot see, and to me it is a matter that calls for serious protest. The Postmaster-General said he thought that these breweries should be under the control of the Government, but I fail to see that any reason has been offered for that contention. If it could be shown that breweries have been mismanaged, or if there is anything wrong with them at all, the matter would assume a different aspect. If materials are used that are poisonous to the public health, then there would be, perhaps, some ground for saying the breweries ought to be under the control of the Government; but unless we are to come under the tyranny of over-legislation, which is affecting every branch of our existence, what is the use of having every little institution in the colony put under the control of the Government. The Postmaster-General says that this is a prosperous industry, and therefore it must be taxed. He says, in effect, that whenever an industry becomes prosperous in this colony it should be taxed, and crushed at once by imposts of this kind, but I would remind the hon. gentlemen that the Government has been successful already in crushing down a good many of the industries of the colony without adding one more to the number. I regard this subject with such strong feelings that I cannot help expressing the feelings which come uppermost in my mind. Now, the hon. gentleman has brought forward another argument which seems to me a very fallacious one. He mentioned the quantity of proof spirit supposed to be in a cask, and he said that if that spirit was taxed at its proper rate it would be charged 40s. instead of 12s. or 15s., which the beer is charged at the present time. Now, I think that argument is leading to a wrong principle altogether. If beer is to pay this heavy duty then people will be driven to use alcoholic spirit in the beer in a different form — perhaps in a form more injurious to the public health than it now appears in diluted beer. The hon. gentleman might just as well say that colonial wine, because it has alcohol in it, should be taxed according to the quantity of alcohol; but if he follows out the argument I do not think he will consider it worth much.

The POSTMASTER-GENERAL: Colonial wine is taxed more than imported spirit.

The HON. A. J. THYNNE said colonial wine produced here is not taxed at all, but I believe that in a very short time we will have the Government coming down with the proposition to impose a tax on wine produced in the colony. Now, with reference to the beer duty, I must say that if the Government wish to raise revenue they could have attained their object without reverting to the enormously cumbrous system that they have introduced. The brewers have to import a considerable quantity of raw material which they cannot get at present in the colony. Why did not the Government impose a tax upon those products? They have already ample machinery for collecting the duty, and if they put half the amount of duty they now propose to put upon imported material required for manufacturing beer they would have saved to the colony the other half of the duty. I do not know that in this House we should be eager to interfere with a Bill of this kind. I did not intend to speak on the subject until I heard the Postmaster-General's speech, but I could not resist the feeling which led me to protest against this piece of legislation.

The HON. F. T. GREGORY said: Hon. gentlemen,—I cannot avoid drawing attention to the fact that in the mother-country the great aim of late has been to reduce the number of articles taxed with a view of reducing the expense of collection. Some years ago the number of articles taxed in the old country was so great that the number of officials employed in collecting the taxes on those articles became a serious evil. Therefore, I cannot help pointing out the desirableness of endeavouring, as far as possible, to reduce the number of articles to be taxed which require the appointment of fresh collectors. I do not intend to oppose the passage of the Bill, because I think the Government of the day must be held responsible for such a measure.

Question put and passed, and committal of the Bill made an Order of the Day for Wednesday next.

CUSTOMS DUTIES BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the President left the chair, and the House went into Committee to consider this Bill in detail.

Preamble postponed.

On clause 1—"Increased duties on certain goods"—

The HON. P. MACPHERSON asked the Postmaster General what special reason there was for the imposition of the tax on sewing-machines? With the permission of the Committee he would read an extract from a letter he had received from a friend, resident in Victoria, the general manager of a large manufacturing company. He said:—

"I have noticed through the telegraphic news from Brisbane, that your Government propose to put a tax upon imported machinery. It was at one time proposed to put a tax upon sewing-machines coming into Victoria, but when it was pointed out that the manufacture of those articles could not be expected to become a colonial industry, and that the sewing-machine was emphatically a poor person's tool of trade—that the tax would fall nearly altogether upon the industrious poor—the idea was at once abandoned, and sewing-machines, whole or in part, iron or woodwork, are admitted free even in such a protectionist colony as Victoria. *They are free in the interests of other protected industries*, as well as in the interests of the many poor people who use them. The Governments of Tasmania and South Australia at one time taxed these articles, but when its true character was pointed out to the several Governments the tax was repealed. This tax is particularly injurious to clothing manufactures—a most important industry because employing so many hands; and with politicians who wish to encourage local industries this is perhaps the strongest argument against it. I hope that you are convinced that in every way the tax would be objectionable. The objections on popular grounds ought to have great weight with the Griffith Ministry. But perhaps there is no intention of imposing this duty; at the same time I cannot help thus far anticipating an evil which is possible, and the telegraphic news from your city is very suggestive of it."

He should like to hear from the Postmaster-General the reason for the proposed tax on sewing-machines.

The POSTMASTER-GENERAL said he did not know whether the hon. gentleman was serious or not, but the only reply he could make was that the Government had well considered the matter, and that the tax had met with the almost unanimous approval of the Legislative

Assembly. There might be poor people in Victoria unable to buy a sewing-machine, but there were very few in Queensland. Doubtless it was the manufacturing tailor who took more interest in the matter than the poor people referred to in the letter quoted by the hon. gentleman.

The HON. W. FORREST said he quite agreed with the Hon. Mr. Macpherson in his objection to the tax on sewing-machines. A vast number of women depended on sewing-machines for their living; and the Postmaster-General could not be very conversant with what was going on in the colony, or he would know that it was a very hard living indeed. If the hon. gentleman would make himself acquainted with what was going on in connection with charitable institutions, he would find that a great deal of the assistance given by the benevolent persons who looked after those institutions was to poor women who had no means and who wanted a start. It was remarkable that a Government who proposed that tax on poor women had put money on the Estimates to pay themselves. He had just been reminded that, far from them being able to find the money to buy sewing-machines, the great bulk bought them on the time-payment system.

The POSTMASTER-GENERAL said that pianos, land, and houses were also bought on the time-payment system. If the hon. gentleman could show satisfactory statistics of a large number of poor people who were unable to buy sewing-machines, his observations would be worth listening to, but it was downright nonsense to say that large numbers of poor women were dependent on sewing-machines for a living, when they knew that it was not a fact.

Clause put and passed.

The remaining clauses, the schedule, and the preamble were passed without further discussion, and the Bill was reported to the House without amendment. The report was adopted, and the third reading of the Bill made an Order of the Day for Wednesday next.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

The PRESIDENT: I have received the following message from the Legislative Assembly:—

"MR. PRESIDENT,

"The Legislative having this day agreed to the following resolution"——

The message is not complete, and will have to be sent back to be amended. Will the Postmaster-General move that it be sent back for correction? The error is evidently a clerical one, but I cannot receive the message in its present shape.

The POSTMASTER-GENERAL: With the permission of the House, I move that the message just received, presumed to be from the Legislative Assembly, be returned for the correction of a clerical error.

The HON. W. D. BOX said: Hon. gentlemen,—As far as I could hear of what the President read, I am of opinion that the message should be sent back for correction.

Question put and passed.

On the motion of the POSTMASTER-GENERAL, the message was returned to the Legislative Assembly, with the intimation that it obviously contained a clerical error, which required correction.

LOCAL GOVERNMENT ACT OF 1878 AMENDMENT BILL.

On the Order of the Day being read, the President left the chair, and the House went into committee to consider the Legislative Assembly's message of 10th inst.

The POSTMASTER-GENERAL said the message received from the Assembly was as followed:—

"The Legislative Assembly having had under consideration the Legislative Council's amendments in the Local Government Act of 1878 Amendment Bill, beg now to intimate that they insist on their disagreement to the amendment of the Legislative Council in clause 4—

"Because it is the undoubted and sole right of the Legislative Assembly to determine and appoint the purposes, conditions, limitations, and qualifications of grants of money from the consolidated revenue, and the amendment of the Legislative Council relates wholly to the conditions under which such grants may be made to municipalities for waterworks.

"And do not insist on their disagreement to the amendments of the Legislative Council in clause 5."

The attention of the Committee might be confined to the amendment they made in clause 4, which was the addition of the words, "for any period not exceeding five years." The principle involved in the amendment was very fully debated on previous occasions, and under the circumstances he did not propose to go very fully into the question; but still it was desirable, in view of the fact that the Bill was again returned by the Legislative Assembly with the message now under consideration—it was desirable, not that he should express his personal views on the privileges of that Chamber in regard to a money Bill, but give the opinions of authorities on the subject, in order to help hon. gentlemen to come to a proper conclusion, and he trusted a wise one. He was aware that some hon. gentlemen held views contrary to those which he had expressed on a previous occasion, but where there was a matter of that kind before them the only course open was to refer to the sources of constitutional law of the country from which our Constitution was derived. He thought that that would be admitted by every sensible man. In that view, therefore, he proposed to pursue the subject at as short a length as he could, and, as it had been customary to quote from "May" and "Todd," perhaps it was just as well that he should leave those authorities alone—except partially—and refer to a work which was held in very high estimation indeed by members of Parliament in other parts of the world where constitutional government existed, and held also in great estimation by constitutional lawyers. The work he would now quote from was one written by Mr. Cox, M.A., and was entitled "Institutions of the English Government." On page 84, book i., there would be read as follows:—

"In the year 1702 the House of Lords resolved not to pass any money Bill sent from the Commons to which any clause was tacked that was foreign to the Bill. The object of this resolution was to prevent any abuse by the House of Commons of its exclusive power of originating and amending money Bills."

He need not refer to the practice of "tacking," which most hon. members well understood. That was an abuse that was attempted, and successfully so, in one or two instances. The object of the resolution was to prevent an abuse by the House of Commons of its exclusive power of amending money Bills; so that as early as the eighteenth century it was admitted by the House of Lords that the House of Commons had the exclusive right not only to originate, but also the exclusive right to make an amendment in, a money Bill. Again, on page 183, they found that "Blackstone" said:—

"That the exclusive privileges of the House of Commons as to money Bills extend to all Bills by which money is directed to be raised upon the subject for any purpose whatsoever, either for the expenses of Government or for private benefit, and collected in particular districts, as by turnpikes, tolls, parochial rates, and the like."

That was a most apposite clause in relation to the subject-matter before the Committee. On

the same page, part 2, under the heading of "The Amendment of Money Bills," it was said :—

"According to the established practice of Parliament the House of Commons will not permit the least alteration or amendment to be made by the Lords in the mode of taxing the people by money Bills."

At that time there was a discussion on the subject, and the Attorney-General of the day, in reference to the subject of Bills of Supply, stated as follows :—

"When they are begun the Lords can neither add nor diminish."

At page 185 he quoted as follows :—

"The now established practice of the House admits of no discussion with, or amendments by, the House of Lords with respect to money Bills."

Of course they all knew that that was not the practice a few centuries ago, but it was as firmly established now as it was possible for any law to be. On page 186, some amendments were referred to as having been made by the Lords, and the character of these amendments which would be permitted was described thus :—

"Amendments for the correction of clerical errors or in furtherance of the intentions and object of the Bill."

Moreover, they had a clause which was quoted the other night from another authority :—

"Within a very few years after, in 1678, the doctrine is carried still further, and the Commons resolved that all supplies are their sole gift, and that the 'ends, purposes, considerations, conditions, limitations, and qualifications of such grants' ought not to be altered by the House of Lords. From the end of the seventeenth century these claims have seldom, or but faintly, been controverted by the Lords."

They knew, as a matter of fact, that any attempt to initiate that doctrine was merely an attempt in words, and never succeeded. In 1860, the House of Commons, upon receiving a report in regard to a Bill which had been rejected by the Lords, appointed a select committee to search the journals of both Houses in order to ascertain and report upon the practice of both Houses; and the House of Commons resolved—

"That although the Lords had sometimes exercised the power of rejecting Bills relating to taxation, that power was regarded by the House of Commons with 'particular jealousy,' and that to guard for the future against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this House has in its own hands the power so to impose and remit taxes, and pass Bills of Supply that the right of the Commons, as to the matter, manner, measure, and time, may be maintained inviolate."

These were only a few instances of the practice that had been adopted, and he might conclude quoting from that work by referring to what "Blackstone" said on page 188 :—

"'It is sufficient that they have a power of rejecting if they think the Commons too lavish or improvident in their grants.' De Lolme, speaking of money Bills, says 'The Lords are expected simply and solely either to accept or reject them.'"

So much for Mr. Cox. Now, in the late numbers of "May" there was a recognition of the exclusive right of the Commons in matters of that kind. "May" said :—

"In modern times Her Majesty's Speech at the commencement of each session recognises the peculiar privilege of the Commons to grant all supplies, the preamble of every act of supply distinctly confirms it, and the form in which the Royal assent is given is a further confirmation of their right."

Then speaking on the same subject at page 641, he said—

"The legal right of the Commons to originate grants cannot be more distinctly recognised than by these various proceedings, and to this right alone their claims appear to have been confined for nearly 300 years."

At page 642 :—

"Neither will they permit the Lords to insert any provisions of that nature in Bills sent up from the Commons, but will disagree to the amendments, and insist on their disagreement."

Again, there was a clause referring to "tacking." It spoke of the constitutional power of the Commons to grant supplies without any interference on the part of the Lords. Nothing could be clearer than that declaration. Now, he was aware of the contention as suggested by an hon. member in a recent discussion in that House. He was aware that that hon. gentleman alleged that the Constitution Act provided the power that he assumed to claim for himself, at any rate in regard to dealing with money Bills, but as they were in committee and could speak frequently he would not at that moment say anything more than repeat the motion—namely, that the Committee did not insist on the amendment in clause 5. He trusted hon. gentlemen would regard the matter from a more serious point of view, as the Bill was a very important one. It was one in which the people generally were interested. The Bill was one which was entirely within the rights of the Representative Chamber to deal with exclusively, and as no evil could possibly arise, so far as he could see, under its operation he would be glad if hon. members would withdraw their objections. He trusted that better counsels would prevail, and that the Bill, which was very much wanted indeed, and which would be productive of great good in various parts of the colony—would be permitted to pass without further trouble.

The HON. F. T. GREGORY said it must be very satisfactory to the House that the Postmaster-General had opened the debate by clearly recognising what the point for discussion really was. The real question as now laid down was the right of that Chamber to deal with matters relating to the collection and distribution of revenue, and that was the point in which he now proposed to join issue with the Postmaster-General. He should certainly not go over the old ground by reading from "May" or "Todd," because it was quite unnecessary in the present case to take those authorities into consideration at all. He proposed to confine what he had to say to a very much sounder ground than anything that had been referred to by the Postmaster-General in his opening speech. The ground upon which he proposed to take his stand was that of the Constitution Act, under which the House had a right to deal with any question whatever; as if they had no Constitution Act they would really have no right to discuss any measure whatever affecting the country. The reason given in the Legislative Assembly's message was as follows :—

"Because it is the undoubted and sole right of the Legislative Assembly to determine and appoint the purposes, conditions, limitations and qualifications of grants of money from the consolidated revenue, and the amendment of the Legislative Council relates wholly to the conditions under which such grants may be made to the municipalities for waterworks."

Now it had been maintained that the rights of the Council did not extend to dealing with money Bills, but he contended it extended to every question except one, and that was the initiation of money Bills in this House. To refute the assertions to the contrary he need only read clause 2 of the Constitution Act, which was the Act under which they worked—31 Vic. No. 8. In the earlier part of the Act there was nothing whatever that pointed out what were the relative functions of the two branches of the Legislature, but when they came to clause 2 it was clearly defined as follows :—

"Within the said colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Council and Assembly, to make laws for the peace, welfare, and good government of the colony in all cases whatsoever: Provided that all Bills for appropriating any part of the public revenue for imposing any new rate, tax, or impost, subject always to the limitations hereinafter provided, shall originate in the Legislative Assembly of the said colony."

Now, that clause was perfectly clear and could not be got over in any way whatsoever. There were other clauses in that Act, which had been referred to, as having some bearing upon the clause he had read, but upon investigation they would be found not to alter or restrict the privileges of the House in any way. The words "subject always to the restrictions hereinafter provided" might cause hon. gentlemen to think that there were some provisions which more or less influenced or governed the contention which he now made, but after a careful perusal of the Act it would be found that the only restrictive clauses —if they could be called so—were clauses 18 and 19. He would read those clauses, but they were the only ones which bore upon clause 2. Clause 18 was as follows:—

"It shall not be lawful for the Legislative Assembly to originate or pass any vote resolution or Bill for the appropriation of any part of the said Consolidated Revenue Fund or of any other tax or impost to any purpose which shall not first have been recommended by a message of the Governor to the said Legislative Assembly during the session in which such vote resolution or Bill shall be passed."

That clause was a mere restriction upon the Legislative Assembly, while even if it was a restriction upon the Council it would not bear on the question at issue. Clause 19 said:—

"No part of Her Majesty's revenue in the said colony arising from any of the sources hereinafter mentioned shall be issued or shall be made issuable except in pursuance of warrants under the hand of the Governor of the colony directed to the public Treasurer thereof."

He thought it was clearly obvious to everyone present that that clause had no reference whatever to the Council. Having thus clearly defined the power of the Legislative Council to deal with money Bills, he could not see in what way they could be influenced or governed by what might be laid down in "May" or "Todd," or any other authority as to what was done in the mother-country. The Constitution of the mother-country was a peculiar one, and the rulings laid down in "May" were, in many instances, inapplicable to this colony. There was still in the mother-country a slight difference of opinion in regard to the powers of the two Houses, but it was quite unnecessary for him to go into a discussion upon that point. The question before them was what were their powers. The Constitution Act might have gone a good deal further than it did, and might have defined exactly how far the Legislative Council would interfere with money Bills, but it had not done so, and, therefore, their duty was only to maintain their rights so far as the Act provided. There was no doubt that when the Act was originally drafted it was done with considerable care. It was derived from the original Act under which the other Australian colonies received their constitutional rights. It was the outcome of many years' experience in the neighbouring colonies. It was prepared and drafted for Queensland; and the Act intended as the Constitution Act of this colony was framed after careful revision, and the outcome of that careful revision was the Act of 1867, which he was now quoting from, and under which they held their powers and rights. If they were going back from Act to Act they might go as far as the time of William the Conqueror, and the discussion would have no finality; they were therefore bound to stand or fall by the Act under which they held and exercised their powers. He had carefully investigated the Constitution Act under which they held their rights, and if hon. gentlemen opposite could show that the clause he had quoted was in any way nullified by any other part of the Act, or by any subsequent Act, he should be quite willing to alter his opinion if their argument affected the question. He would ask whether any instance could be shown in which the exercise of the powers possessed by the Council had proved detrimental to the best interests of the country? If they had not used those powers on many occasions the country would not have been governed by equally good and sound laws as those at present in existence. And the sound judgment and discretion shown by the Council on such occasions was to be inferred from the fact that there was no desire on the part of the people to curtail their privileges. The present discussion was important and instructive as placing on record the claims of that Chamber to the powers set forth in the Constitution Act, and the open challenge sent by the Assembly to test the extent to which they could coerce the Council rendered it unnecessary to go into the details of the point at issue, except so far as to say that he had no reason for altering the views he held when the amendments were originally made in the Bill. He should therefore insist on the amendments made by the Council.

The HON. G. KING said he had voted for the amendment objected to by the Assembly, and he did so, agreeing with the Hon. Mr. Gregory as to the construction of the 2nd clause of the Constitution Act. Referring, however, subsequently to constitutional authorities, a doubt had arisen in his mind as to our powers which had modified his views. There evidently was a difference of opinion on the subject, and the question was how to solve the difficulty. If the Assembly said they were right, and the Council said they were right, who was to decide? They must be guided by cases which had occurred elsewhere; and he would quote from "Todd" what bore on the subject:—

"In 1872 a difference arose between the two Houses of the New Zealand Legislature, as to the statutory right of the Legislative Council to amend Bills of supply. The Council contended that the New Zealand Parliamentary Privileges Act of 1865 had placed both Houses upon an equal footing in respect to money Bills, and empowered them to amend such Bills as freely as other measures. The Assembly resented this pretension as being an unconstitutional encroachment upon their peculiar privileges. Unable to agree, by mutual consent a case was prepared for the opinion of the law officers of the Crown of England, which was forwarded to Her Majesty's Secretary of State for the Colonies by the Governor.

"In due course a reply was received from these eminent legal functionaries, which was transmitted to the Governor for the information of the Colonial Legislature, and is as follows:—

"The Law Officers of the Crown to the Earl of Kimberley.

"My Lord,—We are honoured with your Lordship's commands signified in Mr. Holland's letter of the 12th instant, stating that he was directed by your Lordship to acquaint us that a difference having arisen between the Legislative Council and House of Assembly of New Zealand concerning certain points of law and privilege, it was agreed that the questions in dispute should be referred for the opinion of the law officers of the Crown in England.

"That he (Mr. Holland) was accordingly to request us to favour your Lordship with our opinion upon the accompanying case, which had been prepared by the managers of both Houses.

"In obedience to your Lordship's commands, we have the honor to report,—

"1. We are of opinion that, independently of the Parliamentary Privileges Act, 1865, the Legislative Council was not constitutionally justified in amending the Payments to Provinces Bill, 1871, by striking out the disputed clause 28. We think the Bill was a money Bill, and such a Bill as the House of Commons in this country would not have allowed to be amended by the House of Lords; and that the limitation proposed to be placed by the Legislative Council on Bills of aid or supply is too narrow, and would not be recognised by the House of Commons in England.

"2. We are of opinion that the Parliamentary Privileges Act, 1865, does not confer upon the Legislative Council any larger powers in this respect than it would

otherwise have possessed. We think that this Act was not intended to affect, and did not affect, the legislative powers of either House of the Legislature in New Zealand.

"3. We think that the claims of the House of Representatives, contained in their message to the Legislative Council, are well founded; subject, of course, to the limitation that the Legislative Council have a perfect right to reject any Bill passed by the House of Representatives having for its object to vary the management or appropriation of money prescribed by an Act of the previous session.

"J. D. COLERIDGE.
"G. JESSEL.

"This opinion is a direct and unimpeachable settlement of the point at issue, and one that is equally applicable in the interpretation of the Canadian Statute of 1868.

"The relative rights of both Houses in matters of aid and supply must be determined, in every British colony, by the ascertained rules of British constitutional practice. The local Acts upon the subject must be construed in conformity with that practice wherever the Imperial policy is the accepted guide. A claim on the part of a Colonial Upper Chamber to the possession of equal rights with the Assembly to amend a money Bill would be inconsistent with the ancient and undeniable control which is exercised by the Imperial House of Commons over all financial measures. It is, therefore, impossible to concede to an Upper Chamber the right of amending a money Bill upon the mere authority of a local statute, when such Act admits of being construed in accordance with the well-understood laws and usages of the Imperial Parliament."

In another place Todd said :—

"But neither the New Zealand nor the Canadian laws can be so construed as to warrant a claim by the Upper Chambers of either Parliament to equal rights in matters of aid and supply to those which are enjoyed and exercised by the Commons House of Parliament of the United Kingdom; for such a claim, if insisted upon, would to a like extent derogate from and diminish the constitutional rights of the representative Chamber.

"The Victorian Constitution Act, 1855, section 56, and the British North American Act, 1867, section 53, severally declare that 'Bills for appropriating any part of the public revenue, or for imposing any tax or impost, should originate in the [Assembly or] House of Commons.' No further definition of the relative powers of the two Houses is ordinarily made by any statute. But constitutional practice goes much farther than this. It justifies the claim of the Imperial House of Commons (and by parity of reasoning of all representative Chambers framed after the model of that House), to a general control over public revenue and expenditure, a control which has been authoritatively defined in the following words: 'All aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons, and it is the undoubted and sole right of the Commons to direct, limit, and appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, *which ought not to be changed or altered by the House of Lords.*'

"The parliamentary principle, moreover, has been generally, if not universally, admitted in all self-governing British Colonies by the adoption in both Legislative Chambers of Standing Orders which refer to the rules, forms, usages, and practices of the Imperial Parliament as the guide to each House in cases unprovided for by local regulations."

Then there was our 162nd Standing Order, which said :—

"In all cases not herein provided for, having reference to the joint action of both Houses of Parliament, resort shall be had to the rules, forms, and practice of the Imperial Parliament."

The HON. W. FORREST said he rose to correct the statement made by the Hon. Mr. King with regard to the position of Queensland being analogous to that of New Zealand, so far as the Constitution of each was concerned. He had found it necessary to correct the Postmaster-General last year on that very point. The Constitutions were not similar, because, in New Zealand, on a certain date, the Houses of Legislature took to themselves the respective and relative powers held by the House of Lords and the House of Commons. But in Queensland they had a written Constitution of their own, and if hon. members found it necessary to go outside that written Constitution why not go to New South Wales, whose Constitution was almost identical, and where the Upper Chamber had made amendments in money Bills, which had been accepted. He had read the debates which had taken place between the two Chambers with respect to their rights and privileges, and he noticed the careful manner in which those who favoured the pretensions of the other Chamber drew a herring across the trail. The moment the subject was opened they were off to "May," "Todd," or some other Paganini variation on the same string, as they had heard from the Postmaster-General that evening, while their own Constitution was entirely left out of the question. He agreed with the remarks of the Hon. Mr. Gregory with regard to the 2nd clause of the Constitution Act, which was not weakened, but rather strengthened, by other clauses in that Act. Before going further he should like to read the message received from the Legislative Assembly, in order that it might appear along with the clauses of the Constitution Act he was about to read. The message read thus :—

"The Legislative Assembly having had under consideration the Legislative Council's amendments in the Local Government Act of 1878 Amendment Bill, beg now to intimate that they insist on their disagreement to the amendment of the Legislative Council in clause 4,—

"Because it is the undoubted and sole right of the Legislative Assembly to determine and appoint the purposes, conditions, limitations, and qualifications of grants of money from the consolidated revenue, and the amendment of the Legislative Council relates wholly to the conditions under which such grants may be made to municipalities for waterworks."

He would now read the 2nd clause of the Constitution Act—

"Within the said colony of Queensland Her Majesty shall have power, by and with the advice and consent of the said Council and Assembly, to make laws for the peace, welfare, and good government of the colony in all cases whatsoever, provided that all Bills for appropriating any part of the public revenue for imposing any new rate, tax, or impost, subject always to the limitation hereafter provided, shall originate in the Legislative Assembly of the said colony."

What was there in that to prevent the Council amending any Bill whatever?

Clauses 34 and 35 also bore on the subject, and he would read them :—

"All taxes, imports, rates, and duties, and all territorial, casual, and other revenues of the Crown (including royalties) from whatever source arising within this colony, and over which the present or future Legislature has or may have power of appropriation, shall form one Consolidated Revenue Fund to be appropriated for the public service of this colony in the manner and subject to the charges hereinafter mentioned.

"The Consolidated Revenue Fund of this colony shall be permanently charged with all the costs, charges, and expenses incident to the collection, management, and receipt thereof, such costs and charges and expenses being subject, nevertheless, to be reviewed and audited, in such manner as shall be directed by any Act of the Legislature."

Did those clauses mean that the whole management of the revenue was in the hands of the other Chamber? Did it mean that the Legislature was the other Chamber, or both Chambers? And there was clause 39 of the Constitution Act, which said :—

"After and subject to the payments to be made under the provisions hereinbefore contained all the Consolidated Revenue Fund hereinbefore mentioned shall be subject to be appropriated to such specific purposes as by any Act of the Legislature of the colony shall be prescribed in that behalf."

Where was the power the other House wished to arrogate to itself? He would now read a portion of clause 40, bearing directly on the question :—

"The entire management and control of the waste lands belonging to the Crown, in the said Colony of Queensland, and also the appropriation of the proceeds of the sales of such lands, and of all other proceeds and

revenue of the same from whatever source arising within the said colony, including all royalties, mines, and minerals shall be vested in the Legislature of the said colony."

He was ashamed to think that the leader of that Chamber should allow himself to be carried away by his political feelings so far as to agree with the message received from the Legislative Assembly. If they admitted that, they admitted that they had no right to interfere with any money Bill, whereas the Constitution Act distinctly said they had that power. He should like to hear from the Postmaster-General—as the representative of the Government — where the other House obtained the powers they assumed in connection with the Bill? They were not there to legislate for other colonies, and they did not wish to apply the rights of those colonies to themselves. He would put a case to the Postmaster-General, as a lawyer :—Suppose a case came before the judges, and there was an Imperial Act bearing on the case which had been superseded by a local Act, would the judges go to the Imperial Act and say that it overrode the local Act? He should like the Postmaster-General to answer that question, and to state where the other Chamber got the powers they claimed in connection with the Bill?

The HON. A. C. GREGORY said the question was narrowed down by the statement of the Postmaster-General that the Legislative Assembly did not consider the amendment of the Council as unreasonable; but that they simply insisted upon their privileges. He could say a great deal with regard to the necessity for the amendment; but he would just show the necessity for some measures being taken to prevent the Executive Government from going away from their proper functions, and in doing so he would quote from a report on the Gold Creek Reservoir. On the 4th June, the Attorney-General was asked by the Colonial Treasurer whether the Government could advance an additional loan to the Brisbane Board of Waterworks, and the statement made in reply was :—

"In the case of the Brisbane Board of Waterworks, the necessary authority to advance money for the purpose of defraying the cost of supplying the city and suburbs with water is contained in section 3 of the Brisbane Waterworks Act of 1863; but there is this important difference between the provisions of that section and the provisions conferring lending and borrowing powers in the Local Government Act and the Divisional Boards Act — namely, that while the two last-named Acts do not require that the advance must be made from a loan raised for the purposes of a specified work and no other, the first-named expressly enacts that the advance for the purpose of supplying Brisbane and suburbs with water must be out of *any loan raised for the purpose of carrying the Waterworks Act into execution*; in other words, out of loan raised for the special purposes of the water supply of Brisbane—a water supply, it is to be observed, by means of the construction of reservoirs, etc., upon the heads of Enoggera Creek.

"I am of opinion, therefore, that the hon. the Colonial Treasurer has no power (in dealing with the Brisbane Board of Waterworks as a local authority) to advance them money from any other source than a loan specially raised by the authority of Parliament for the purposes of Brisbane water supply."

There the Government had the opinion of the Attorney-General that the money should not be advanced, yet they found the following minute, dated the 8th July :—

"Prepare cabinet minute authorising this loan on a term of forty years."

That was for a loan of £30,000; and subsequently the loan was granted. They passed that minute without authority to carry it out. At any rate they went considerably beyond the powers laid down in the Act. Therefore, he contended it was indispensable that the Bill under consideration should define particularly what the Executive Government should do; and the amendment in clause 4 was for the purpose of placing some limitation on the power of the Executive Government. Having disposed of the question relative to the necessity for the amendment of the Bill before them, in which it had been conclusively shown that it was an amendment of importance and one which should be introduced, he thought they might now proceed to consider some of the arguments that were brought forward in support of the motion that the amendment should not be insisted upon. Now, in the first place, the Postmaster-General had made quotations. He quoted from "Todd," from "May," and from other authorities, but the one he placed most importance upon was the one that was practically embodied in the message from the other House, but he quite lost sight of the fact that they did not refer to Bills of the nature before the Committee, but simply to Bills of supply. When they read the whole of the quotation from "May," taken from the 9th edition, they found that it was the sole right of the Commons to grant aid or supplies to His Majesty. Hon. gentlemen opposite then went on to give the rest of what had been quoted in support of the contention that the Chamber had no right to interfere with the public revenue, but the matter was restricted, according to "May," not to the general practice between the two Houses, but to the case of Bills of supply. The Bill that they had amended was not a Bill of supply, but even admitting for the sake of argument that it was, the case was not analogous. They had simply amended a Bill which dealt with municipal matters and local taxation such as the House of Lords frequently dealt with. An argument had been brought forward by another hon. gentleman that in New Zealand, under their Constitution Act, the Legislative Council in that colony claimed the right to amend a money Bill, and the opinion of Crown law officers in England was adverse to that. But first of all, the New Zealand Constitution was very different to that of this colony, inasmuch as they had no special provision therein such as hon. members here were able to quote from the Constitution Act. The circumstances of the case which had been referred to were these: The New Zealand Council inserted an amendment in a Bill which came up from the Assembly. The Assembly objected to the amendment on the grounds that it was not in accordance with the Constitution Act. The Council in reply quoted an Act similar to our Parliamentary Privileges Act, defining what the privileges of members should be, and a variety of small matters which might be termed privileges of the House as regarded the outer world, but not as regarded the two Houses one with the other, because in one part of that Act it was provided that the Legislative Council shall have the same rights and privileges as the Legislative Assembly. They, therefore, considered that that overrode the Constitution, but when the matter was brought before the Crown law officers at home they were practically told, "You must follow your own Constitution Act." Then again, the last joint Standing Order had been urged as another argument why the amendment should not be insisted upon, and why they should refer to the practice of the Imperial Parliament. That order said, "In cases not herein provided for, having reference to the joint action of both Houses of Parliament, resort shall be had to the rules, forms, and practice of the Imperial Parliament." Now, that was utterly outside the question at issue, as a joint Standing Order could not over-ride the Constitution Act. He therefore did not think it necessary to delay the House any further on that point. So far the arguments of the other side had

been based upon very imperfect premises, and the particular object seemed to have been to get away as far as possible from the point at issue, with the view, apparently, of mystifying hon. members with regard to the actual condition of things. Now, he thought it was clear and conclusive that it was unnecessary to fall back on the practice of the House of Commons, and they certainly should not have to fall back on the practices of half-a-dozen authorities that had been referred to. They might quite as well refer to the Swiss Constitution, which he believed was the most elaborate ever constructed and was hardly understood by the people themselves. He thought they might rest satisfied with the assurance that the nature of the arguments was not such as to lead them to abandon their amendment. The real question was not what other people did, but what were the specified provisions under which the Council exercised their power? That provision was contained in the Constitution Act; it had been quoted over and over again, but apparently on some ears it fell without effect —he presumed, like those ears which were mentioned, that refused to listen to the voice of the charmer. He would again quote the provisions of clause 2:—

"Provided that all Bills for appropriating any part of the public revenue for imposing any new rate tax or impost subject always to the limitation hereafter provided shall originate in the Legislative Assembly of the said colony."

Now, what are the limitations referred to? Clause 18 of the Constitution Act said:—

"It shall not be lawful for the Legislative Assembly to originate or pass any vote resolution or Bill for the appropriation of any part of the said Consolidated Revenue Fund or of any other tax or impost to any purpose which shall not first have been recommended by a message of the Governor to the said Legislative Assembly during the session in which such vote resolution or Bill shall be passed."

That restriction simply applied to the Legislative Assembly, and not to the Council. Then, clause 19 said:—

"No part of Her Majesty's revenue in the said colony arising from any of the sources hereinafter mentioned shall be issued or shall be made issuable except in pursuance of warrants under the hand of the Governor of the colony directed to the public Treasurer thereof."

Now, those were the only two clauses which had any bearing or any connection with limitations in clause 2. They had, therefore, simply got to look at their own plain written law. It was only in a case where a statute did not define clearly what it meant that they need look for other authorities. It was hardly necessary to point out the difference between the Houses of Parliament in Great Britain and the colonial legislatures. There was a time when the powers of the Commons were limited to applauding when they were permitted to applaud; but gradually they acquired one privilege after another, till matters had worked up to their present state, and it had become necessary for them to have compilations of what had been the practice for a long time to guide them in their proceedings; but in the colony they could have no such rules. Much had been said in another place with regard to their rights, and Todd, May, and others had been quoted in support of their arguments; but they never troubled themselves to look at the Constitution Act before arriving at the resolution to which they had come. He believed that three-fourths of those who had passed the resolutions contained in the message had not even read the Constitution Act, because if they had their common sense would have shown them that they were making a mistake. Since they had received a challenge from the other Chamber to state what were their privileges they should simply refer them to that Act.

The HON. P. MACPHERSON said he fully endorsed every argument adduced by the hon. gentleman who had just sat down. The Hon. Mr. King had quoted the joint opinion of highly eminent legal functionaries, and he would also quote the opinions of eminent legal men in the sister colony of New South Wales, which bore directly on the subject at issue. On the 18th May, 1871, Sir James Martin, now Chief Justice of New South Wales, said, in speaking of the Constitution Act of that colony from which ours has been adapted:—

"Mr. Wentworth thoroughly understood constitutional principles, and when he was called to frame an Act of Parliament, knew how to carry those principles into effect. No man could have used words more clearly to carry out his object than Mr. Wentworth. If it had been his design in framing this Constitution Act to have made it clear that the Council should exercise no power beyond that which the House of Lords exercised in reference to money Bills, he would have made that clear beyond all question. That being so, he asked hon. members to look at the clause in the Constitution Act which related to the powers of the two Houses to see in what way Mr. Wentworth (who was independent of the Legislature in this matter) dealt with the subject. These were the words of the 1st clause of the Constitution Act:—

"'There shall be in place of the Legislative Council now subsisting one Legislative Council and one Legislative Assembly to be severally constituted and composed in the manner hereinafter prescribed and within the said colony of New South Wales Her Majesty shall have power by and with the advice and consent of the said Council and Assembly to make laws for the peace welfare and good government of the said colony in all cases whatsoever.'

"If hon. members stopped there, that met every possible kind of case. A law imposing taxes was a law for 'the peace, welfare, and good government of the colony'; a law for the appropriation of money was a law for 'the peace, welfare, and good government of the colony.' They could not by any general words comprehend more appropriately than these words comprehended all kinds of legislation, because every law passed by the legislature was a law passed with a view to the 'peace, welfare, and good government of the colony.' In every respect, if the clause had gone no further, this Legislative Council and this Legislative Assembly would have had power to make these laws. But then there was this proviso:

"'Provided that all Bills for appropriating any part of the public revenue or for imposing any new rate or impost subject always to the limitation contained in clause 62 of this Act shall originate in the Legislative Assembly of the said colony.'

"This was the only distinction drawn by law in our Constitution Act between the powers of the two Houses.

"Their powers are the same in all respects, save that any Bill for imposing any new rate, tax, or impost must originate in the Legislative Assembly. But when a Bill of that kind has been originated in the Legislative Assembly, the power of the Council was just as great in regard to it as the power of the Legislative Assembly."

"There could not be the shadow of a doubt about it, and no one knew that better than Mr. Wentworth.

"Mr. SAMUEL: He never contemplated that such a case would arise!

"Sir JAMES MARTIN thought the hon. member was not justified in saying that. If anyone might undertake to speak of Mr. Wentworth in regard to such a matter it was he (Sir James Martin), for he assisted Mr. Wentworth to frame the Constitution Act, and took part in every detail, and he was sure that no single expression could be found uttered by Mr. Wentworth which would support the view his hon. friend had advanced here this evening."

He was content to abide by that opinion. If it were wrong, he erred in very good company. But in addition to that they had the opinion of Mr. Wentworth himself. The question arose in the Legislative Council of New South Wales as to whether a Land Bill was a money Bill, and it was in the course of the discussion that the President made the following remarks:—

"When first he took the chair of the House his attention was drawn principally to the question as to whether the Land Bills then before the Council were money Bills,

He did not at that time, nor did he now entertain any doubts that they were money Bills. If, therefore, as he then thought, the wording of the first Standing Order made the practice of this House on such Bills analogous to that of the House of Lords, the Council would have no authority to deal with them, except in the way of concurrence or rejection. On referring, however, to the 35th section of the Constitution Act, he found that the wording of the said Standing Order, giving it the construction he did, was *ultra vires*, and that consequently it did not, and could not, limit the powers of the House with regard to money Bills; those powers under the Constitution Act being, except as to the mere right of origination, co-ordinate with the powers of the Assembly."

Looking at the eminent source from which the authority came, need he say anything more, so far as the question of opinion or authority went? As the matter had been dealt with in that Chamber before, he would quote what the previous Postmaster-General—who put the whole question in the clearest manner—said on the subject :—

"Since he became a member of the Council, he had been the exponent of the views of the Council on the subject. They were not like the House of Lords. They had a written Constitution which gave them their rights clearly and distinctly. There was no power in this colony similar to that which was inherent in the House of Lords. Before the Constitution Act came into force, there was no power in the colony similar to the House of Lords, and the two Houses of Legislature that came into existence under the Constitution Act were altogether the creatures of that statute. The Council derived all their powers, all their privileges, from the Constitution, and nowhere else. To talk about taxation without representation was meaningless. Before the Constitution was conferred upon Queensland it was perfectly competent for the Imperial Legislature to enforce taxation on the Australasian Colonies, and the Imperial Government did impose taxation upon the colony of New South Wales, just the same as it did upon the colonies of America."

He had no doubt that before the session ended they would have to argue the matter on a more important question. He had no doubt as to the result of the division, and he hoped that Chamber would, from a feeling of self-respect, stand up and assert their privileges in spite of the Legislative Assembly.

The HON. F. T. GREGORY said he did not wish to curtail discussion, but he might state what he proposed to do in the event of the Committee insisting upon their amendments. He proposed to move that the Council insist on their amendments in clause 4, because, in the amendment of all Bills, the Constitution Act of 1867 conferred upon the Legislative Council powers co-ordinate with the powers of the Legislative Assembly.

The HON. W. H. WILSON said the question was one of privilege. The Legislative Assembly had taken exception to an amendment made by the Council, on the ground that the Bill in which the amendment was made was in effect a money Bill; there were no clauses in the Constitution Act, except the 2nd, which bore on the question, and that had been fully quoted already. He felt that it was impossible to construe that section of the Constitution Act except by falling back on the practice of the British Houses of Parliament. The Hon. Mr. King had well quoted "Todd" in respect to that contention, and when the author said that the relative rights of both Houses in matters of aid and supply must be determined in every British colony by the ascertained rules and practice of the British Parliament, he gave a sound opinion. The claims of that Chamber to equal rights with the Assembly in amending money Bills appeared inconsistent with the control of the House of Commons in financial matters. Even in New Zealand, where both Houses were placed on an equal footing in respect to money Bills, it was considered by Lord Coleridge and Sir George Jessel that the Council was not justified in amending the Bill under consideration at that time. They were of opinion that it was a money Bill, and such a Bill as the House of Commons would never have allowed to be amended by the House of Lords. They also stated that the Act did not confer on the Council any larger powers than it would otherwise have possessed, and that the claims of the House of Representatives were well founded, subject to the limitation that the Council had a right to reject a money Bill. According to that opinion the Legislative Council had a right to reject a money Bill, but not to amend it. In the 54th section of the New Zealand Constitution Act it was stated :—

"It shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to, any Bill appropriating to the public service any sum of money from or out of Her Majesty's revenue within New Zealand, unless the Governor on her Majesty's behalf shall first have recommended to the House of Representatives to make provision for the specific public service towards which such money is to be appropriated."

The HON. W. FORREST: Suppose you try the Constitution Act of Queensland by way of a change?—you carefully avoid that.

The HON. W. H. WILSON said they would get to that afterwards. The Legislative Council was established to fulfil the functions of the House of Lords; and to claim equal rights with the Assembly in matters of taxation would tend to diminish the constitutional rights of the representative Chamber. No further definition was ordinarily made by any statute in regard to the rights in dispute than that a tax Bill should originate in the Assembly. That was all that was stated in the Constitution Act of 1867. It did not say that the Council should not have the power to amend, but it did not say either that they had the power to amend; and if it did not say they had the power he did not think the power was possessed by that Chamber. He would quote in support of that opinion from "Clark on Colonial Law," who was, though not a great, yet the chief authority. In defining a Legislative Council he says :—

"The Council is a constituent part of the Legislature, their consent being necessary in the enacting of laws. In their capacity as legislators, they sit as the Upper House. They have the power of originating and rejecting Bills, and of proposing amendments (except in the case of money Bills")."

The HON. P. MACPHERSON: What is the authority?

The HON. W. H. WILSON: Edwards, volume 2, page 332-3. Reference had been made to the 162nd Standing Order, which provided that—

"In all cases not herein provided for, having reference to the joint action of both Houses of Parliament, resort shall be had to the rules, forms, and practice of the Imperial Parliament."

If that were so with their Standing Orders, he considered it equally so with the customs and usages of Parliament not specifically provided for. The Lords could reject, but could not amend a money Bill. That principle had been understood and acquiesced in since the end of the 14th century, in proof of which he would read from "The Electorate and the Legislature," by Spencer Walpole :—

"The limited powers which the Lords possess in the case of money Bills has been clearly understood since the end of the fourteenth century. Since the reign of Charles I., the matter has been made still more plain; and the preamble of supply Bills has recited the grant as the gift of the Commons alone, adding the usual words to show that the enactment was passed with the assent of both Houses of the Legislature. It is not clear that the Lords were not originally able to amend a money Bill sent up to them. Their right to do so was first denied by the Commons in the reign of Charles II. They have since steadily persisted in this denial, and the Lords have for some time past acquiesced in it. The most eminent

constitutional historian whom this country has yet produced was not able to reconcile himself to the manner in which the Commons' claim was made, or to justify the making of it; but most thinkers would probably agree that the convenience of the rule forms the best apology for it. For more than two centuries the Lords have not ventured to amend a money Bill. But it was, perhaps, naturally assumed that though they had no power of amending a money Bill they still retained the right of rejecting it. The right, however, if it existed, was suffered to lapse, and its existence was almost forgotten. In 1860, however, the Commons, in revising the financial arrangements of the year, decided on repealing an excise on paper. A Bill repealing the tax was passed through all its stages and sent to the Lords, and the Lords determined to reject it. Nothing, perhaps, which the Lords had done since their rejection of the second Reform Bill in 1831 had excited so great a feeling of indignation."

Further on he says:—

"In the following session the whole financial arrangements of the year, including the repeal of the paper duty, were included in one Bill and sent up to the Lords. The Lords could not obviously upset the whole financial arrangements of the year, and they were accordingly compelled to pass the Bill and to submit to the repeal of the paper duties. Since that time the same precedent has been adopted, and the whole of the financial arrangements of the year have been included in one Bill, and the Lords have virtually been rendered powerless in financial matters."

It had been urged that section 2 of our Constitution Act did not forbid them amending a money Bill, but because that section was silent that did not appear to him to give them any power to amend. There was nothing in the written law of England to prohibit the Lords from amending a money Bill, but there was also nothing in the written law of England which recognised the existence of the Cabinet. And to judge by our Standing Orders we fall back on usage in any case where matters are not expressly provided for, and this usage forms the life and soul of our political institutions. If the House had a right to alter or amend money Bills, they might go further — they might claim the right to impose taxation: that was what it would come to. Once let the right to remit be acknowledged, and the right to impose would soon follow. The question was, would that be tolerated in a nominee body? And it stands to reason that an irresponsible House must not touch the taxation of the people; yet, at the same time, they were attempting now to lay claim to that right. They were attempting to usurp a power that they had not got, that they had never had, and that they ought not to have. "Stubbs," page 264, said:—

"The practice as well as the formal determination of money grants may be safely regarded as having now become one of the recognised functions of the third estate."

And he might also quote "Hatsell," to the following effect:—

"That in Bills not of actual supply, yet imposing burthens, the Lords cannot alter the quantum of the Bill, but, in other clauses, they can make amendments."

Their Chamber was similar to the House of Lords in so far that they were not representative and therefore ought not to thwart the will of the representatives of the people, the latter being alone responsible to the people. Referring to what had been said with regard to the hard-and-fast nature of our Constitution Act, it appeared to him that it was impossible to embody in rigid statute law, and undesirable if it were possible, the elastic nature of the practice and customs of the British House of Parliament, and so while adhering to our own Act we would be safe in following the practice of the House of Lords where it defined the wisdom of not amending money Bills. He thought they should consult the honour of that Chamber as well as its privilege, and he did not think that it was to the honour of the House that they should claim for it privileges unclaimed by the House of Lords itself. That power of amending money Bills not having been expressly granted to them by the statute, they should follow the practice of the House of Lords and not attempt to tamper with money Bills. The Crown itself did not address the Council on the subject of taxation. That was left to the Assembly exclusively; and the preambles of taxation Bills said:—

"Whereas we, Your Majesty's most dutiful and loyal subjects, the members of the Legislative Assembly of Queensland in Parliament assembled, have, towards raising the necessary supplies to defray the expenses of the Public Service, freely and voluntarily resolved to give and grant to Your Majesty the several duties hereinafter mentioned."

Then followed the enacting clause by the Council and Assembly. With regard to the Bill itself, it would be rather an unfortunate thing, he fancied, if anything should occur to postpone it, because he believed there were several most important towns in the colony —Toowoomba, Rockhampton, Townsville, and Maryborough — that were waiting the result of the passing of that measure, and the question was whether it would not be better to waive the point under consideration so as to allow the Bill to come into immediate operation. He did not think it was advisable that the machinery of Parliament should be put out of gear by insisting upon privileges which, to his mind, had never existed, and which, if held to exist, would have to be abolished so as not to interfere with the just rights of the other branch of the Legislature. They must recollect that the Assembly had privileges as well as they, and they ought to do nothing that would in any way interfere with the usual course of legislation.

Mr. KING said that there was an old saying that in the multitude of councillors there was wisdom. Well, the Hon. P. Macpherson had read a speech of the Hon. C. S. Mein, and he (Mr. King) had fallen upon a speech of the Hon. Mr. Buzacott's, who was Postmaster-General at the time, and he would read it for the benefit of hon. gentlemen:—

"He moved that the Council do not insist on their amendments in clause 58. He knew it would be maintained by hon. members that it was within the limits of the Constitution Act that they should make the amendments, and that the Council had power to deal with any Bill that might come before them. It must be acknowledged, however, that, wherever representative government prevailed, the sole right to control taxation was claimed by the representative body. The broad principle was maintained that there should be no taxation without representation. The people's representatives, indeed, invariably controlled all matters of taxation and revenue—all financial matters. It might or might not be a defect of the Constitution Act that some special provision was not made to define precisely the duties respectively of the Legislative Council and the Legislative Assembly in this particular; at the same time, hon. members must all know from experience that it did not answer in any position of life for men to insist upon their extreme rights. The House of Commons had in reference to taxation deemed it necessary to insist always that the supreme and exclusive control rested with them: and they would never tolerate any amendments by the Lords in any measure dealing with taxation or public revenue. The Council should depart from what might be termed the strict letter of their Constitution, and would do well to follow the practice of the Imperial Parliament in that respect, as their Standing Orders provided for their doing. They must know that if both Houses claimed the right to deal with taxation there must be a collision. It was the one particular in which the Upper Chamber of Legislature in every country in the world, he believed, had practically surrendered control. At any rate, it would be seen from the standpoint occupied by the Representative House that the amendments under consideration infringed their privileges. They specified that the exception of mines from taxation, which was provided in the clause, should obtain. He (the Postmaster-General) would give the Council an argument why their amendment should be insisted upon:—It was quite possible

that there might be side by side shires under the Local Government Act, and divisions under this Bill if it became law. There might be a coal-mine or a copper-mine, or a gold-mine partly in each. If the House insisted on their amendment there would be seen the anomaly of a mining property taxed in a division; while in a shire or municipality contiguous it would be untaxed. He thought the House would see that, whatever might be the personal feelings of honourable members with regard to the powers and privileges of the Council, that would be a very undesirable proceeding; and therefore that to insist on exercising what might be deemed to be their abstract rights was on the present occasion inadvisable. He did not know that he need say anything further on the subject, because it was one that had been repeatedly discussed by the Council. He certainly did not wish to have the whole question raised as to whether the Constitution empowered them to insist on their amendments in the Bill."

Now, they had got several great authorities. The Hon. P. Macpherson quoted Wentworth and Sir James Martin, and Mr. Mein and he (Mr. King) and other hon. members had quoted Lord Coleridge, Sir G. Jessel, and the Hon. Mr. Buzacott. Really, it was a very embarrassing case, and there was great difficulty in coming to a decision on the relative merits of such eminent legal opinions.

The HON. A. J. THYNNE said he was sorry to see that the hon. members of that House who had advocated the abandonment of the rights of the House as claimed from its constitution up to the present time were those who were either younger members than himself or appointed at the same time. They had none of the members of long experience in that House counselling them to assent to the proposal of the Assembly in abandoning privileges which that Chamber had always claimed. One hon. gentleman, in speaking, said that they ought to preserve the honour as well as the privileges of that Chamber. He quite agreed with him, but he differed from him in the way in which he proposed that the honour and privileges of the House should be guarded. He thought it was a very doubtful way of guarding one's privileges and honour by waiving privileges which had been claimed since the establishment of the House. The hon. gentleman had urged them to waive their objections to that as a mere constitutional point, for a very minor reason comparatively, and that was that the Bill would have to be laid aside, but no matter what question might come up for discussion in either House it could scarcely claim the same importance as to the preservation of the rights and privileges of that Chamber. If on any occasion they abandoned, or neglected, or lost the rights and privileges to which they were entitled, they were doing a serious injury to the Constitution under which they lived; and no amount of local inconvenience would justify them individually or collectively in departing from what was really the true constitutional relationship of that House with the other branch of the Legislature. In this matter the privileges of the House were distinctly attacked, and he, for one, would not join with those who said that because they were attacked they should abandon their position. He looked up the history of that Chamber and found, year after year, the same question had been raised. Now, it would require very strong arguments to induce any hon. member to give up the privileges that had been claimed by their predecessors in that House, and the arguments that had been quoted were really not of such a class as would induce him to change the view which any reasonable man would take upon reading the Constitution Act. The argument that had been offered chiefly in support of the motion of the Postmaster-General consisted of references to the practice of the Imperial Parliament and the opinions of Lord Coleridge and Sir George Jessel. Now, those opinions, given by two well known leading men, came to his mind with a certain amount of discredit, for this reason: that the circumstances which led to the obtaining of that opinion were such as he thought the members of the Houses of Parliament ought not to have followed. In doing so they abandoned their own legislative position—they declined to take the responsibility which was really upon themselves, and they deputed it to other people. They deputed it to men—able men no doubt—but men imbued with the practices of the country in which they lived—men who had not seen the rise and growth of parliamentary government in these colonies. They were imbued with a knowledge of the rise and growth of Parliamentary Government in Great Britain, but he would point out that the history of Parliamentary Government in Great Britain and in the Australian colonies were two very different things. The Hon. Mr. Gregory made some allusion to the gradual change and origin of the Imperial Parliament, but it was enough for him to simply refer to the fact that the original powers of the Crown were very great—almost despotic. Gradually that power was curtailed, and the power of the nobility increased. Later on they had the growth of the power of the Commons, but who, in their turn, curtailed the powers of the Lords, and who, so late as 1860, had succeeded in wrenching almost all the power out of the hands of the Lords. Now, he did not think there was any hon. member who would contend that the relationship of the Lords to the Commons in matters of supply, at least, was a wrong one. It would be entirely inconsistent with the temper and state of the present age in British communities to have an hereditary succession invested with the power of taxing their fellow countrymen. That would be a gross interference, and would be destroying the principles of liberty which had made Great Britain what she was. It was a very good and sound rule in the Constitution of the House of Lords that they should not be allowed to interfere in the disposal of the money which was raised by the Commons, but he contended that that House was not at all to be compared in its functions with the House of Lords. In these colonies we first commenced our Government with a military possession—with military and martial law. It was afterwards modified by the addition to the Governor of a Council of Advice. Afterwards that Council of Advice was partly elective and partly a nominee council, and the growth of the Legislative Assembly and Legislative Council in New South Wales was to be traced in that way. They commenced with a partly nominee and partly elective House, but instead of remaining as one they divided into two. In that division a written Constitution had been provided which divided the responsibility between two portions of the Legislature who were originally one House. When they acted jointly as members of one House they had an equal vote upon all matters; but when they had separated the only distinction between the two was that in the Legislative Assembly money bills originated. The power which the nominee members had was not curtailed in any other respect. That was the history of parliamentary government in these colonies, and it was not analogous to the history of parliamentary government in Great Britain, and what applied to the Government in the old country did not apply in any way to the Legislative Councils of New South Wales or Queensland. Hon. gentlemen had said that that was a nominee House. He contended that the House was a representative House chosen by the people. It was a representative house in every

sense of the word, quite as much so as the Legislative Assembly, the only difference being that instead of being elected directly by the people they were really chosen by the representatives of the people—by the Ministers whom the people had elected. Members were appointed by Ministers, andthose Ministers were responsible to the people for their action. He had already alluded to the fact that when a man became a member of the House of Lords his functions became hereditary. They were functions with which neither the people nor the people's representatives had anything to do ; moreover there was no power whatever to remove a member from that body. In this colony members of the Council were ever in the position of being liable to have their seats forfeited for specified reasons defined in the Constitution Act. In the other colonies there were elected Houses of Parliament, but their position was not analogous to the House of Lords or to the Upper House here. He contended that the quotations which had been given from "May," "Todd," and other authorities did not apply at all to the circumstances of that House of Parliament. There was another thing that he would like to mention with regard to the opinion given by Lord Coleridge and Sir George Jessel. It was this—they were members of a Government ; they were of a political party ; they were members of a Government who were anxious, no doubt, to see how they could ease the difficulty that had arisen in an important colony like New Zealand. Those gentlemen had given an opinion, but it seemed to him that a pecular thing in connection with the opinion was that no reason whatever was given for the construction they put upon the Act. Now, eminent men such as those gentlemen were, had been in the habit of giving reasons for their interpretation, and decisions which were given without reasons were very rarely regarded as of any importance. The hon. member, Mr. King, alluded very strongly to the 162nd Standing Order ; yet, if they looked at the whole of those joint Standing Orders they would find that their scope and object were confined entirely to matters of detail ; they referred simply to the joint action of both Houses of Parliament, and the question before them now was not the joint action of both Houses of Parliament but was the separate action of one branch. He did not know that he could add very much more to what he had already stated, but in the discussions which had taken place there, and in other places, the fact had been alluded to that the Constitution of Great Britain was not a written one ; it was not. It was merely decided by precedents established year after year in the relationship of the two Houses to one another. In this colony, however, they had a written Constitution, and it was by that written Constitution alone they could be guided. Would the Postmaster-General contend that a corporate body or institution established under the authority of Parliament could be regulated in any other way than by the written charter of its existence? He thought not ; and it appeared to him that the hon. gentleman had been singularly unsuccessful in his endeavours to support his view of the case. That Chamber was simply a local body bound by no other consideration than the Constitution Act, which had stood the test of time for many years in New South Wales, where the same claim they were now making had been conceded. The Legislative Assembly in their message had conceded the principle for which the Council contended—they had done so beyond the power of revocation. They claimed that the Legislative Assembly had the sole right to determine upon the purposes, conditions, limitations, and qualifications of grants of money from the consolidated revenue ; but the Council in their amendment in the 5th clause had made it a condition that the surplus in a certain case should be paid back to the revenue, and the Assembly had conceded their right to make such an amendment. If the question were raised at all, the Assembly might have raised it on clause 5, and not on the amendment in clause 4, which was a restriction on the Cabinet for the time being rather than on the body receiving the money. The matter was one of such importance, that they should be very slow in abandoning their claims to the right to amend any Bill before them.

The HON. F. H. HOLBERTON said that last week he and two other members on the same side voted for the amendment : but they were not aware at that time that they were infringing the privileges of the other House. He believed that nothing could be better than the amendment made by the Council ; but at the same time it would be a great pity to do anything which would result in the Bill being thrown out.

The POSTMASTER-GENERAL said, with respect to the contention of the Hon. Mr. Thynne, that the objection of the Assembly should be taken to the amendments in clause 5 rather than that in clause 4, he might say that the amendment made by the Council in clause 5 was on the border line within which it was believed an amendment might be accepted by the Assembly. It was within the bounds of probability that in carrying the surplus to the municipal fund, it could still be devoted to the repayment of the loan, so that the amendment really did not make much difference to the clause. Turning to the constitutional point, he admitted a great deal of what had been said with regard to the 2nd clause of the Constitution Act, but he could not concur in the views of those who alleged that their constitutional practice was entirely within that Act.

The HON. SIR A. H. PALMER : There is no law on the subject.

The POSTMASTER-GENERAL said there was nothing, as the Hon. Sir A. H. Palmer observed, within the Constitution Act defining the powers, privileges, and rights asserted by the Hon. F. T. Gregory, and all the law they could find on the subject was that established by constitutional and parliamentary usage in the country from which they sprang. It had been said that the British Parliament and the Colonial Legislatures were not on parallel lines, but he differed from that view. It was stated by an hon. member opposite that, in forming the Constitution Act, the question in regard to the power of the Council was apparently left open. If that were the case—which he did not assent to—it was done for a very good reason, because Her Majesty would have disallowed the Bill if it had contained provisions giving a nominee Chamber the privileges and rights in regard to money Bills which were intended to be within the functions of the Legislative Assembly alone. That would be repugnant to British parliamentary usage. It was perhaps to be regretted that the discussion had drifted so much towards the constitutional point, and less to the desirableness of passing the Bill and not insisting upon the amendment. The most influential towns in the colony had been waiting for some months for such a measure to be passed into law, and if the Bill were lost at the present juncture the consequences would be most serious to those towns and municipalities, for the Treasurer would be unable to advance any moneys to them until his authority to do so, as

provided by the Bill, had been enlarged. So far as the constitutional point was concerned, if the Bill were lost, both the Assembly and the Council would be just in the same position as before. He had heard it observed that the message of the Assembly had been regarded as a challenge. That was too hard a term to be applied to a formal statement of the privileges claimed by the Assembly; and on behalf of the Government he said it should not be regarded in any other light. A great deal might be said on the constitutional point, but it was not desirable to go further into the question at present. The amendment made by the Council in the 4th clause might do a great deal of harm if it were adopted; and the circumstances of the colony were such that the Government should have it in their power to be able to give an elastic term for the repayment of loans on account of works in different towns over a colony of such an enormous area. He trusted that, in view of the welfare of thousands of the inhabitants of the colony, the Council would not press the matter in the direction indicated by the Hon. Mr. Gregory. He had some confidence in leaving the matter, trifling as it was, to the good sense of the Committee, believing that they would assent to his motion without in any way derogating from the privileges which some alleged, and some denied, attached to the functions of that Chamber.

The HON. F. H. HART said he was disappointed that the Postmaster-General had not replied to the question put by the Hon. W. Forrest, who asked where the Legislative Assembly got the powers under the Constitution Act which they arrogated to themselves. He was not going to travel over the ground already gone over many times in regard to the constitutional point at issue. He would only say that he had been in that Chamber years and years; that the question had been raised over and over again; and that he had heard it ruled by President after President that that Chamber had an undoubted right to amend such Bills as that under consideration. The question must be settled sooner or later, and he would be better pleased to have it settled at once. The measure was treated by the Government in another place as not worth discussion, and it was not worth while for him to take up time in discussing it now. He should support the motion to be moved by the Hon. Mr. Gregory.

The HON. F. T. GREGORY said the Postmaster-General just now stated that he regretted the measure had not been treated on the merits of the amendment; but how could they do so when the message of the Assembly only affirmed the rights of that Chamber against the rights of the Council?

The HON. W. GRAHAM said he had not intended to speak on the question, but he would not now record a silent vote. They had only to remember the speeches made by the Hon. Mr. King, the Hon. Mr. Wilson, and the Postmaster-General, to see whether they discussed what the Postmaster-General now called the question under discussion. They never alluded to clause 4, but spoke entirely on the question of privilege, and the arguments they brought forward struck him as most pitiable and hardly worth answering. Why should they quote from the New Zealand Constitution Act, or the practice of the Imperial Parliament, when they had the Queensland Constitution Act before them—an Act which they carefully avoided? He should like to know, if any hon. gentleman could inform him, the source from which the New Zealand Constitution Act was drawn—whether from the New South Wales Act or from the Imperial Act?

The HON. W. H. WILSON: From the Imperial Act.

The HON. W. GRAHAM said that as it was drawn from an Imperial Act it was probably drawn with some recognition of the Constitution Act of New South Wales. In Queensland they had an Act based on the New South Wales Constitution Act, and to him it seemed astonishing that everyone who had spoken on the other side had ignored the Constitution Act of their own colony.

The HON. A. H. WILSON said he had listened carefully to the arguments on both sides, and he could say that the Postmaster General had not the shadow of a chance. The bone of contention had been the right of the Council to amend a money Bill, while the amendment made in clause 4 had been carefully avoided. It was very important that such a Bill should pass, but he could not conscientiously give his vote in favour of the motion made by the Postmaster-General.

The POSTMASTER-GENERAL said the Hon. Mr. Gregory was under a misapprehension in saying that he stated the discussion had not taken place on the merits of clause 4. He never used the word "merits." If the Hon. Mr. Macpherson, as he said, erred in good company, he might also lay claim with those who were of his opinion to having erred in very good company too—quite equal to the company relied on by hon. gentlemen opposite. What he had said just now was that he regretted the subject-matter of the clause had been lost sight of—he did not say by hon. gentlemen opposite;—he thought the matter might have received more attention than it had received from members on both sides. The observation was not made for the purpose of saying anything offensive, but as a matter of regret to himself personally.

The HON. A. J. THYNNE said he did not propose to go into the question of the desirableness of adopting the amendment, but would say a word or two as to the probable loss of the Bill. If the Bill was lost or thrown aside, with or without amendment, the fault would not be with that House. It would be with the Government, who had it quite within their power to lay aside the measure and re-introduce it in a different form. That was a practice very often adopted. It would not answer for the Government to throw upon that House any inconvenience or injury that might be inflicted upon the different towns that were waiting for the passage of the measure to commence their water supply. It would rest with the other House, who had sent a challenge upon the right of the Council to make amendments, and that challenge had been taken up.

The HON. F. T. GREGORY said he might add, with regard to what fell from the Hon. Mr. Thynne, that even if the question of privilege had not been alluded to in the message the insistance upon the amendments would still have been carried.

Question put, and the Committee divided:—

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The Postmaster-General and Mr. W. H. Wilson.

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The Hons. Sir A. H. Palmer, F. T. Gregory, F. H. Hart, A. C. Gregory, A. J. Thynne, W. Graham, W. Forrest, A. H. Wilson, W. G. Power, P. Macpherson, and J. F. McDougall.

Question resolved in the negative.

On the motion of the POSTMASTER-GENERAL, the CHAIRMAN left the chair, and reported that the Committee had come to a resolution.

The HON. F. T. GREGORY moved that the report be adopted, and that the following message be sent to the Legislative Assembly :—

"MR. SPEAKER,

"The Legislative Council having had under consideration the Message of the Legislative Assembly, dated 10th instant, insisting on their disagreement to the amendment made by the Legislative Council in clause 4 of the Local Government Act of 1878 Amendment Bill, beg now to intimate that they insist on their amendment in clause 4, because in the amendment of all Bills the Constitution Act of 1867 confers upon the Legislative Council powers co-ordinate with those of the Legislative Assembly."

Question put and passed.

The House adjourned at eleven minutes past 9 o'clock.