Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

THURSDAY, 12 NOVEMBER 1885

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LEGISLATIVE ASSEMBLY.

Thursday, 12 *November*, 1885.

Musgrave Electorate.—Appropriation Bill No. 2—consideration in committee of Legislative Council's amendments.—Adjournment.

The SPEAKER took the chair at half-past 3 o'clock.

MUSGRAVE ELECTORATE.

The SPEAKER said: I have to inform the House that, pursuant to the provision in that behalf of the 8th section of the Additional Members Act of 1885, the returning officer for the electoral district of Musgrave has furnished me with a copy, certified under his hand, of the electoral roll for that district, and that upon its receipt, pursuant to the provision of the 9th section of the said Act, I have issued my writ for the election of a member to represent such district in the Legislative Assembly.

APPROPRIATION BILL No. 2—CONSIDERATION IN COMMITTEE OF LEGISLATIVE COUNCIL'S AMENDMENTS.

On the motion of the PREMIER (Hon. S. W. Griffith), the Speaker left the chair, and the House went into Committee to consider the Legislative Council's amendments in this Bill.

The PREMIER said there were several amendments made by the Legislative Council in the Bill, and he proposed to take them together. It was probably an unique instance in the history of constitutional government where an Appropriation Bill had been printed in that form—indicating amendments made in it by the upper branch of the Legislature. He proposed, of course, to move that the amendments be disagreed to. The question now might be considered, he thought, simply on constitutional grounds. He did not intend to discuss or raise for a moment the question of the propriety of the vote to which the Legislative Council took exception. They had to deal now with a much larger and higher question than that—whether the Legislative Council were to be allowed to interfere with an Appropriation Bill. That was the one question—a question on which he trusted the members of that Chamber would be unanimous, for he was sure that no authority of any value at all could be found—in fact he did not think any person who had even a rudimentary notion, the most elementary notion, of the principles of constitutional government could be found—who would maintain that a Legislative Council, a nominated Chamber, could exercise such a function as was sought to be exercised in the present case. He proposed to quote from one or two authorities on the subject, and that very briefly, for he did not think it worth while to discuss the matter at great length. He proposed to read from Mr. Todd's work on "Parliamentary Government in the Colonies," a passage beginning at page 475:—

"But whether constituted by nomination or election the Upper House in every British colony is established or the sole purpose of fulfilling therein 'the legislative functions of the House of Lords,' whilst the Lower House exercises within the same sphere 'the rights and powers of the House of Commons.' It is, therefore, most desirable that in general persons should be chosen as members of an Upper Legislative Chamber who already possess some measure of parliamentary experience and ability, besides being otherwise qualified for such honourable service.

"It is only as a legislative body that the Upper House in any colony can claim identity with the House of Lords. No kindred institution created by statute can be the counterpart of that august and venerable Chamber, either in respect to its unique position in the English political system, or in the dignity and eminent personal qualities for which its individual members are usually conspicuous. The adoption by a colonial Upper Chamber of the peculiar forms of parliamentary procedure which regulate the practice of the House of Lords is indeed a suitable method of marking the difference between themselves and the popular branch. But in no other way should a colonial Senate or Legislative Council invite a comparison between themselves and the time-honoured hereditary House of Peers. It is in order to discountenance such pretensions, and to assign to the Upper House in a colonial system its true place as exclusively a legislative institution, and not as an aristocratic body clothed with personal privileges, that the Imperial Parliament has pointed to 'the Commons House of Parliament of the United Kingdom,' as being equally the example to the Senate or Legislative Council, as well as to the representative Assembly, of the proper extent and limitation of the privileges, immunities, and powers to be defined on behalf of each House by a statute to be locally passed for that purpose.

"Pursuant to such Imperial statutes, which authorise certain colonial Legislatures, under an expressed limitation, to define their own powers and privileges by an Act to be passed for that purpose, the Parliaments of New Zealand and of Canada have severally legislated so as to confer upon both their legislative chambers 'the like privileges, immunities, and powers' as were actually 'enjoyed and exercised by the Commons House of Parliament of the United Kingdom.'

"In the case of New Zealand, the law was qualified by the addition of the words, 'so far as the same are not inconsistent with, or repugnant to, the Constitution Act of the colony,' a proviso which does not appear in the Canadian statute. The addition of this proviso, however, does not materially affect the question in its constitutional aspect.

"But neither the New Zealand nor North Canadian laws can be so construed as to warrant a claim by the Upper Chamber 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 right 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, shall 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 further 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.*'

"This 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."

Mr. Todd then referred to the case of the New Zealand Parliament, where the question was raised in 1871, on a Bill relating to the revenue of the provinces. That Bill was sent up by the House of Representatives in New Zealand to the Legislative Council, and the Legislative Council omitted one clause in it. The House of Representatives objected that that was an interferenc

with a money Bill, and after considerable negotiations, which were all recorded, a case was stated for reference to the Imperial Crown law officers. The matter was referred to them, and they gave their opinion upon it as stated in Mr. Todd's book; but it was important to see what was the contention which the Legislative Council set up. It had been assumed, and might be assumed from reading Mr. Todd's work, that their contention was that the two Houses were on an equal footing, because he said—

"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."

That was not quite accurate, because he found, on reference to the case set up by the Legislative Council, that they did not for a moment attempt to assert that they had a right to interfere with an Appropriation Bill. He had in his hands the proceedings contained in a despatch sent by the Governor of New Zealand to Lord Kimberley on the 30th March, 1872. There the case was stated, and it recorded the history of the Bill, and the messages which had passed between the two Houses, and added to them were the reasons submitted by the Legislative Council in support of their contention that they had a right to amend such a Bill as that. The Constitution Act of New Zealand did not contain any express provision as to the originating of Bills in either House, or any limitation of the powers of either House with respect to any Bill except this: that money Bills must be founded upon a message from the Governor to the House of Representatives. That involved that such Bills must originate in that House, but beyond that there was no formal written restriction upon the right of the Legislative Council to deal with money Bills. In the reasons urged by the Legislative Council—in which, of course, they put their case as high as they could—they drew a distinction between money Bills in general and supply Bills. They quoted the resolution of 3rd July, 1678, and the comment on it from May's work, and then they quoted a passage in which he pointed out:—

"In Bills not confined to matters of aid or taxation but in which pecuniary burdens are imposed on the people, the Lords may make any amendments provided they do not alter the intention of the Commons with regard to the amount of the rate or charge, whether by increase or reduction, its duration, its mode of assessment, levy, collection, appropriation, or management, or the persons who shall pay, receive, manage, or control it, or the limits within which it is proposed to be levied."

That was the well-known limitation or qualification of the rule, and their contention was this:—

"The question in the particular case is, whether the Legislative Council has a right to amend the Bill for altering the capitation allowance to provinces, and applying part of the public works loan to the service of road boards by striking out a clause, the effect of which will be to apply part of such loan to the aid of the provincial Treasuries.

"Is such a Bill a Bill of aid or supply? What is a Bill of aid or supply?"

It never occurred to them that the Legislative Council were justified in claiming to amend a Bill of aid or supply. Their argument throughout was that the Bill under consideration was not a Bill of aid or supply. They asked that question—he would read what was said:—

"The answer may, it is conceived, be given by referring to the character and functions of 'The Committee of Supply.' Whatever is within the province of the Committee of Supply must form the subject matter of a Bill of Supply; whatever is outside the functions of that Committee cannot, it is presumed, have that character. The functions of a Committee of Supply are stated by Mr. May (at pages 556 and 557, "Treatise on Law, etc., of Parliament"), as follows:—'The Committee of Supply votes every sum which is granted annually for the public service, the army, the navy, and the several civil and revenue departments. But the fact already explained should be constantly borne in mind—that in addition to those particular services which are voted in detail there are permanent charges upon the public revenue secured by Acts of Parliament which the Treasury are bound to defray as directed by law. In this class are included the interest of the National Funded Debt, the Civil List of Her Majesty, the annuities of the Royal Family, and the salaries and pensions of the judges and some other public officers. These are annual charges upon the Consolidated Fund, but the specific appropriation of the respective sums necessary to defray those charges, having been permanently authorised by statutes, is independent of annual grants, *and is beyond the control of the Committee of Supply.*

"Mr. May then proceeds to consider the functions of the Committee of Ways and Means:—

"The Committee of Ways and Means votes general grants from time to time *out of the Consolidated Fund*, and towards making good the Supply granted to Her Majesty, and Bills are founded upon these resolutions of the Committee by which the Treasury receives authority to issue the necessary amounts from the Consolidated Fund for the service of the year.

"Bills of this class are, it is presumed, properly, Bills of supply, which it is against parliamentary usage for the upper branch of the Legislature to alter."

So that it was clear the Legislative Council did not claim co-ordinate rights with the House of Representatives. They expressly declared they did nothing of the kind. They only claimed co-ordinate powers with respect to certain Bills which were not in their opinion Bills of aid or supply. They then referred to the distinct question raised by the Parliamentary Privileges Act, which enacted that each House should have the same privileges as the British House of Commons. They said:—

"It has, ever since the passing of this Act, been maintained and insisted on by the Legislative Council that its effect is to invest that body with all the constitutional authority of the House of Commons, and so to place it on an equal footing with the House of Representatives as regards the power of dealing with money Bills."

Then these questions were submitted for the opinion of the law officers:—

"1. Whether, independently of the Parliamentary Privileges Act, 1865, the Legislative Council was constitutionally justified in amending the Payments to Provinces Bill, 1871, by striking out the disputed clause (clause 28)?

"2. Whether the Parliamentary Privileges Act, 1865, confers on it any larger powers in this respect than it would otherwise have possessed?

"3. Whether the claims asserted by the House of Representatives in their messages to the Legislative Council are well grounded, or what are the proper limitations thereof?"

Now, the claims asserted by the House of Representatives in their messages were—

"That it is beyond the power of the Legislative Council to vary or alter the management or distribution of any money as prescribed by the House of Representatives; that it is within the power of the House of Representatives by Act of one session to vary the appropriation or management of money prescribed by Act of a previous session."

The opinion of the Crown law officers on that case, as stated by Mr. Todd, was: that, independently of the Parliamentary Privileges Act, the Legislative Council was not constitutionally justified in amending the Bill; that the Bill was a money Bill, and such a Bill as the House of Commons would not have allowed to be amended by the Lords; and that the Parliamentary Privileges Act did not confer upon the Council larger powers than it previously had. They thought, on the third question, that the claims of the House of Representatives, as contained in their message to the Council, were well founded. There could be no higher authority than that. The question was solemnly raised between the two Houses of the Legislature in a colony where constitutional principle has always been carefully

maintained, and was submitted to two of the most eminent constitutional lawyers of England—Lord Coleridge and Sir George Jessel. Their opinion was accepted as an unimpeachable judgment, and had been considered as such ever since. He (the Premier) might qualify that by saying, except by a section of the Legislative Council of Queensland. Probably the number of persons who believed that was not an unimpeachable settlement of the question at issue was not greater than the number of persons who voted for the amendment now under consideration. "Todd" added :—

"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 a foot-note Mr. Todd said :—

"See, to the same effect, the despatch of the Colonial Secretary to the Governor of New Zealand, of March 25, 1855, before the passing of the Parliamentary Privileges Act, Commons Papers, 1860, vol. xlvi., p. 466."

That, unfortunately, he (the Premier) had not been able to get. He would refer also to the report of a select committee appointed by the Legislative Assembly of Victoria, in 1877, in which the matter was investigated. It arose out of amendments the Council had made in a Railway Construction Bill. The following were the reasons given by the Legislative Assembly 'out of courtesy to the Legislative Council" :—

"Their contention is this:—That the Legislative Assembly was created to possess, and from the beginning claimed and exercised the same exclusive power over public expenditure claimed and exercised by the House of Commons. And that the Legislative Council was designed to possess with respect to aid and supply only the legal right of rejection (which is in effect merely a suspensive vote) enjoyed by the House of Lords.

"The select committee who framed the Constitution, in a report to the old Legislative Council, describe their intention with respect to the functions of the two Chambers in words that cannot be misunderstood. To the Council they said, 'We propose to entrust the legislative functions of the House of Lords,' and 'on the House of Assembly we propose to confer all the rights and powers of the House of Commons.'"

The Constitution of Queensland was later than the Constitution of Victoria, and in the same words, with the exception that in the Victorian Constitution there was a provision that the Legislative Council might not amend but might reject money Bills. That he did not think was material. He did not think that much could be added to the authorities on the subject. All reason, all law, all authority, went the one way. The difficulty was to argue on a matter upon which there was no serious contention put forward the other way, except the extraordinary position that, because the Legislative Council were not forbidden to amend a money Bill, therefore they had the right to do it — a course of argument which, if applied to the Constitution generally, would render the whole thing unworkable. The whole sum of money mentioned in that Appropriation Bill had been asked for by the Crown, and that House had agreed to grant it. The Legislative Council proposed to amend and revise their answer to the request from the Crown made to that House. He had given those reasons more out of courtesy to the Legislative Council than anything else, for he could not conceive the possibility that any member of the House entertained the slightest doubt as to the proper mode of dealing with the matter. If it were not for the serious difficulties that would be caused by the rejection of the Appropriation Bill, the House might very properly have resented what it might regard as an insult, and laid the Bill aside at once. But they desired to see the Queen's Government carried on, and did not wish rashly to provoke a quarrel. On the contrary, they desired to avoid one, and trusted that when the real position of affairs was fairly and temperately put before the Council they would see the position they had taken up was untenable, and would allow that House what it had always claimed, and must always claim and maintain—the exclusive right to the control of the public finances. He had caused to be circulated that morning, as promised, the reasons proposed to be offered to the Legislative Council for rejecting their amendments, but since then they had been altered in one or two particulars. The first alteration made reference to the form of preamble adopted in Bills of Supply, as showing that their rights had always been recognised. Since the beginning of responsible government the preamble to the Appropriation Bill had always run, "Whereas we, your Majesty's most dutiful and loyal subjects, the members of the Legislative Assembly, have cheerfully granted," and so on. On one occasion the Legislative Council of Victoria altered this preamble, with the result, of course, that the Bill was at once laid aside. The other alteration introduced the resolution of the House of Commons of 3rd July, 1678, which put the question in the clearest possible form. The message, it was observed, was framed in conciliatory language, because, as he had said before, they had no wish to provoke a quarrel with the Legislative Council, but merely to secure that the Queen's Government should be properly carried on. He did not propose to occupy the time of the Committee further, and would move that the amendments of the Legislative Council be disagreed to.

The HON. SIR T. McILWRAITH said he did not think the Premier had done justice to other members of the House or to a late colleague of his own when he said that there was no one with the most rudimentary knowledge of constitutional law but would come to the conclusion that the Upper Chamber had no right whatever to deal with money Bills. To say the least, it was a matter of grave doubt. It was certainly a matter of very grave doubt to the hon. gentleman's late colleague, Mr. Mein, when the question was raised in the Upper House a few years ago ; and the Premier himself was far from giving him (Sir T. McIlwraith) any assistance in a similar fight which he carried on with the Upper House. In fact he followed as far as he could on the lines laid down by the Hon. Mr. Mein.

The PREMIER : I did nothing of the kind.

The HON. SIR T. McILWRAITH said the hon. gentleman gave him no assistance whatever, and he cavilled at the quotations he made enforcing the same position which the hon. gentleman was trying to enforce at the present time. To say, therefore, that no one with the most rudimentary knowledge of law but must come to the conclusion that the Upper House had no constitutional right to do as it had done could scarcely be correct. It was certainly a bad compliment to the hon. gentleman's late colleague, who had the reputation of being a very good constitutional lawyer, and who was also a sensible, shrewd man of business, and one of the best authorities they had. The authorities quoted by the hon. gentleman, so far as they related

to Victoria, were not applicable to the present case, because the Constitution Act of Victoria distinctly provided that the Council could not amend a money Bill. With regard to the New Zealand case, he should have been very glad to have had time to go thoroughly into it. As everyone knew, the value of a precedent of that sort, like the value of a lawyer's opinion, depended entirely on the case submitted. They did not know how it bore on the point now at issue, nor how far the opinion given by Sir George Jessel and Lord Coleridge was applicable to Queensland. On that point he was not prepared to give an opinion, and he could not say that it did not bear out the contention of the Premier. If it did, all he could say was that the Premier could easily have settled the question if, foreseeing that a contention of that kind was coming on, he had taken the precaution of stating a case and getting an opinion on it from some constitutional lawyer of eminence. It was a great pity they had not got that opinion. Whether the Legislative Council had the right to amend money Bills or not they certainly ought not to possess it. That was an opinion he had frequently expressed in the House. The question ought to be definitely settled, and it would not be a bad result if the present dispute should lead to such a settlement. If the Council had the power to amend an Appropriation Bill by striking out items which they considered objectionable, and thereby saving money to the colony, it implied also the power of adding to the Estimates, and the state of confusion in the finances of the colony could easily be conceived when they were dealt with by two different bodies, one consisting of the elected representatives of the people, and the other representing whatever political party put them into the Council—one responsible to their constituents and the other only responsible as private individuals. That body had no constitutional right whatever to deal with the moneys of the people when they did not represent the people. It sometimes happened that sections of the House were extravagant with the public finances, and when that was the case in both Houses there would be no control whatever over the expenditure. The question as to whether the other Chamber had power to amend money Bills having arisen, the sooner it was definitely settled the better. He had very grave doubts, and was inclined to think they had the power. If they had, then they must commence a constitutional fight to take that power from them. The Premier had narrowed the question down to the point whether the Council had the power to amend an Appropriation Bill. The hon. member must remember that he at first got up and looked at it from another point of view, and the other Chamber no doubt had looked at it from a different point of view, and that was this: That there was no question whatever about their having co-ordinate powers with the Legislative Assembly over all but money Bills. There was a Bill submitted to them, in which the Assembly admitted that they had just as much to say in the matter as they—namely, the Payment of Members Bill. They admitted that, by passing the Bill and then sending it up to the Council for their concurrence. They therefore admitted that they had powers co-ordinate with their own, and acknowledged that the matter was decided against them when the Bill was thrown out there. What did they try to do now? They actually tried to put an Act of Parliament into a page of the Estimates, and thereby make the Upper House pass a law to which they had expressed their aversion. It was obtaining by a subterfuge a result which could not be obtained openly—that was actually, by the admission of the Government, depriving the other Chamber of part of their privileges. He believed that they had gone too far on the other side in asserting their rights in order to recover the ground they ought not to have had taken away from them. But at the same time that was their justification. The Council would actually have been deprived, by the action of the Government, of the power to express an opinion upon a subject upon which they were legitimately entitled to express an opinion, and the Assembly had acknowledged that by sending them a Bill agreed to by them. Then there was another point of view, and that was, that he considered it a discreditable thing for them to come forward now and say, "The whole machinery of the colony is likely to be put out of gear; the Civil servants and the Government contractors are to go without their money; we have taken steps to see that all this will come about, unless we get our screws paid ourselves." Instead of accepting the position before them, and reflecting and considering the injury that would be done to the Public Service, the Government placed the Upper House in the position of saying, "Well, gentlemen, why should you insist upon having your own salaries paid, or stand the consequences of this disruption of the Civil Service?" Of course he could see, and he had admitted it before, that they had only one course to pursue. They had first to establish their constitutional rights, and if they were against that Chamber it was their duty to try and get the Constitution Act amended so that they should have the sole control of money Bills, because if they had not got that, which he was doubtful about, they ought undoubtedly to have it. The subject could not be treated as the Premier wished to treat it—as a public question; at all events, solely on the question of the right demanded by the other Chamber to amend money Bills. They considered it otherwise than alongside of the Payment of Members Bill. That was the subject which forced the other Chamber to take the action they had taken, and it was a matter which he did not think the Assembly would come out of very creditably. He believed they were doing an illegal thing in putting payment of members on the Estimates. He considered they were doing an act which could be proved to be illegal in the courts of law, and he did not think that they would occupy a very enviable position before the country when they actually threatened the other Chamber that unless they took a certain course of action the result would be a grievous injury to the public servants, when they knew perfectly well that what was bringing the injury upon the public servants was the persistence of the Legislative Assembly in claiming payment for their past services.

The PREMIER said he was not inclined to discuss the question except upon broad constitutional principles. Members' expenses were voted upon the Estimates in New Zealand, and had been for twenty-five years or more, annually; and had been, upon more than one occasion, in Victoria. As he had said, he would only discuss the question upon broad constitutional principles, and should very much regret that any member of that Committee, in the desire to obtain any temporary advantage, should take up any other position. They had never yet seen any other position taken up in that House. The hon. leader of the Opposition had taken the opportunity, as he sometimes did, of repeating a statement that he made some weeks ago, as to what he (the Premier) had done in 1879, and the error of his statement was then pointed out. But the hon. gentleman had now repeated it. He assisted the hon. gentleman, upon the occasion referred to, in maintaining the privileges of that Assembly. He expressed a doubt, in the first instance, as to

whether the rule that applied to Supply Bills applied also to Bills dealing solely with local taxation—taxation not going into the revenue but into the coffers of local authorities. He expressed that doubt; but as soon as an authority was quoted on the subject he supported the hon. gentleman as strongly as anyone in the House. He could say that he had never, from the day he first held a seat in Parliament, done anything which tended to waive or diminish the privileges of the Legislative Assembly.

The HON. SIR T. McILWRAITH said he could judge perfectly well when he was receiving support and when he was receiving opposition. The dispute between the two Chambers in 1879 was protracted longer than the present one had been up to the present time; and when he came into the Assembly, armed with all the precedents he could obtain, so far from receiving any assistance from the hon. gentleman, the hon. gentleman quibbled over almost all of them, to show that they did not apply, and put the Government to an immense amount of trouble, until at last they found one that the hon. gentleman had to admit did apply. That was the support he received from the Premier. He knew that the hon. gentleman, as a lawyer, could go against the proposition he had made; but what he said was that he gave him no assistance, but on the contrary every opposition he possibly could.

The PREMIER said the hon. gentleman would persist in making those statements; but *Hansard* could be referred to; it was all reported there. The hon. gentleman's imagination carried him further than his facts. His (the Premier's) speech was reported in *Hansard*, which was then printed in larger type, and it occupied less than two columns in the book form. He was reported to have said:—

"If any authority could be found for that view he should gladly support the hon. gentleman, but he had not been able to find any."

That was referring to Bills dealing with local taxation, raised for the benefit of local authorities. He was followed by Mr. King and Mr. Beor, and said at once that the authorities quoted by them clearly settled the matter, and he should give the hon. gentleman all the support he could. The whole of his speech during the dispute between the two Chambers occupied two columns of the book *Hansard*.

Mr. CHUBB said there could be no doubt that the question before the Committee was one of very great importance. He rose, not so much to discuss the constitutional question as to refer to a matter which he thought had been lost sight of by the other Chamber. They had claimed co-ordinate powers with the Legislative Assembly, but while contending for that power and maintaining that the Parliament or Legislature of Queensland was the offspring of the Legislature of New South Wales—which undoubtedly it was—a reference to the history of the Constitution of New South Wales would show that in framing that Constitution such a right as was now contended for by the other Chamber was not claimed by or on behalf of the Legislative Council. He should refer to a work called "The Official History of New South Wales," published two years ago, and, without detaining the Committee at any great length, he would refer to a passage where, in 1853, a select committee was appointed by the Council, on the motion of Mr. Wentworth, to prepare a constitution for that colony. The committee sat and brought up a report which, amongst other things, stated:—

"As regarded the constitution of the Legislative Council they considered that the House was pledged to a constitution similar in outline to that of Canada. They desired to have a form of government based on the analogies of the British Constitution."

A Bill was drafted, and after it had passed through all its stages, certain declaratory resolutions were adopted without division. They were twelve in number, and the tenth was the one he wished to direct attention to. It said:—

"In passing this Bill, it has been the anxious desire of this House that the Legislative Council and House of Assembly should form as close an approximation as possible to the Constitution of both Houses of the Imperial Parliament; and the whole scope of this measure is to give stability to those British institutions which we have—to introduce those which we have not—to cement that union which now happily exists between this colony and the parent country—and to perpetuate if possible that identity of laws, habits, and interests, which it is so desirable to render enduring."

Those resolutions were adopted and the Bill was ultimately sanctioned by the Imperial Government in the same language in which it passed in New South Wales, and he would point out particularly that the 1st clause in the Queensland Act was, in the material part, letter for letter the same as the clause in the New South Wales Act. After the adoption of that Constitution the Legislative Council of New South Wales, on several occasions, claimed the right to amend money Bills, but their claim was never admitted for one moment by the Assembly. On one occasion, when the celebrated Crown Lands Alienation Bill was under consideration, the same authority said:—

"An amendment, suspending the operation of free selection in cases where persons had applied for the land and paid on it a deposit of 10s. per acre, was proposed, but the President gave it as his opinion that, in accordance with the precedents contained in "Hatsell," vol. 3, and in the fourth edition of "May," in respect to Bills of a similar nature, the Bill must be taken to be a money Bill; and, although it could not be doubted that, under section 1 of the Constitution Act, the power of dealing with such Bills in any way whatsoever, subject to the proviso contained in the said clause, was granted to the Council, nevertheless as under the 1st section of the Standing Orders it is laid down that, 'in all cases not hereinafter provided for, resort shall be had to the rules, forms, and practice of the Upper House of the Imperial Parliament,' and 'as the practice of that House, in reference to such Bills, had been of late years not to insist upon their right to alter or amend the same, it would not be competent for the Committee to entertain the proposed amendment.'"

Then, on another occasion:—

"The Appropriation Bill passed through both Houses, and was assented to on 7th May. The Loan Bill, having passed through the Legislative Assembly, was sent by message to the Council on the 28th April, whence, on the 5th May, it was returned, with certain amendments. With reference to this message, the Speaker said:—'Although he believed that hon. members had not been unobservant of the extraordinary character of the proceeding in the Legislative Council—of which this House is informed by the message he had just read—he felt it to be his duty thus formally to direct attention to so unprecedented and unconstitutional an interference with the right—the sole and absolute right—of the representatives of the people to determine all matters of taxation or supply.' No further action was taken on the Bill."

Again, in 1874:—

"On the 24th September Mr. Parkes introduced a Bill to make better provision for the representation of the people in the Legislative Assembly, which was read a first time on the 9th December. The Bill passed its second reading after midnight of the 10th February by a majority of 34 to 5. Having been discussed in committee on 14th May, the Chairman reported the Bill with amendments. The Bill was read a third time, on division, by 29 to 13, and on 20th May sent to the Legislative Council for concurrence, where it was read a second time on the 28th May, by a majority of 10 to 3; passed through committee with considerable amendment, and was returned to the Assembly on the 17th June. On the 18th Mr. Parkes moved that the House resolve itself into committee for the consideration of the Council's amendments. Mr. Burns called the attention of Mr. Speaker to the new clause, numbered 11, proposed by the Legislative Council, which provided for the payment of clerks of petty sessions out of moneys to be voted by Parliament, and requested the opinion of the Speaker whether

the clause, originating in the other branch of the Legislature, ought to be entertained by this House. The Speaker said that he had in 1871 called the attention of the House to amendments made in a Customs Bill, and pointed out that such amendments, if made by the House of Lords, would not be entertained by the Commons; but the House had, by a large majority, determined to entertain such amendments, and thus appeared to recognise the right of the Legislative Council to make them—otherwise he should have thought it his duty to point out what seemed to be an irregularity on the present occasion. Mr. John Robertson moved that the Bill be laid aside, which was negatived by 23 to 8, and the House resolved itself into committee accordingly. On the 23rd June, in committee, a point of order arose, which was reported to the Speaker thus:—'That the amendments made by the Legislative Council in this Bill, more especially the introduction of clauses 11 and 22, are improperly before this Committee, inasmuch as they involve charges upon the people in the shape of salaries and fees, and are, therefore, opposed to the provisions of the Constitution Act, and to the established rules, practices, and usages of Parliament with regard to the powers in such matters of this Assembly.'

"The Chairman having stated that he had given his opinion that the amendments were improperly before the Committee, the Speaker said that—believing the amendments to be contrary to the spirit of the Constitution Act, and such as would not be accepted by the House of Commons if inserted by the House of Lords—he agreed in the opinion expressed by the Chairman.

"Mr. Parkes then moved the adjournment of the House, stating that he was aware that the passing of his resolution involved the fate of the Bill. The motion passed, and the Bill was laid aside."

Hon. members would therefore see that on one or two occasions the Legislative Council in New South Wales had claimed the right to amend money Bills, but it had not been admitted by the Assembly. As he had said before, our Constitution Act was an exact copy of the New South Wales Act, particularly as regarded the 1st clause. The framers of the Act in New South Wales framed it on the analogies of the two Houses of Parliament at home, and the Legislative Assembly there had always maintained the undoubted privileges of the House of Commons. Possibly if that clause were construed by itself, as an abstract document without regard to any extraneous circumstances, there might be some force in the argument that there was such a power as that claimed; but to construe it in that way would be contrary to the spirit of the British Constitution, and to the constitution of every country having responsible government under British rule. At least that was his opinion, and, viewing the subject by the light of history, he had come to the conclusion that the right of dealing with appropriation of money rested entirely in that Assembly. He therefore felt bound to support the motion of the Premier.

Mr. NORTON said he thought the Premier was to be commended on having decided to discuss the question only on constitutional grounds. Both sides of the Committee would agree that he had exercised sound judgment in arriving at that conclusion. It was not quite fair that the members of another Chamber should, after having discussed a matter of the kind and amended the Bill, have failed to give some sort of explanation of the action they had taken. He believed the contention they had made was that they were not, by the Constitution of this colony, forbidden to amend money Bills. That, he believed, was the ground for the action they had taken. He agreed with the Premier that there was not one member of the Assembly who could coincide with the action taken by the Council on that ground. They were all agreed on that point. It was, however, only fair that the Council should state their reasons for the course they had adopted in this matter—or, if he might use the term without being offensive to them, that they should formulate their excuse for their action.

Whilst he said the Premier had shown good judgment in wishing to avoid discussing the question on any other than constitutional grounds, he had to add that the origin of the difficulty had arisen with the Premier himself. That fact ought not to be lost sight of. It was not to be wondered at that hon. members on the Opposition side should be inclined to take advantage of their position to put the facts of the case, as far as they could, in their true light. What was the whole secret of the difficulty? The Assembly passed a Bill some time ago by which they sought to give legal authority for the payment of the expenses incurred by members in their attendance at that House. That Bill was sent up to the other Chamber and was dealt with there. The other Chamber had a right to agree to the Bill or to reject it, and on its second reading they threw it out by a very large majority. It would not be contended for a moment that the other Chamber was not entitled to take the action they did in regard to that Bill. So far then the matter appeared to be settled. The next movement took place in the Assembly, and was initiated by the Government. In the Estimates they brought down, the Government included a sum of £7,000, to enable them, in the event of its being carried, to pay hon. members, without an Act being passed giving them proper authority to do so. That was the position of affairs; and when the Premier talked about not desiring to provoke a quarrel with the other Chamber, he ought to remember and admit that the action of the Assembly was the real ground of the quarrel. The other Chamber had justly considered the course adopted by the Government as a piece of trickery—that was the only word that could be applied to the device of the Government to pay their own supporters; and the other Chamber adopted the course they had taken in order to prevent that piece of trickery. Those were facts which should not be lost sight of; and whether the Council had done right or wrong they had very great justification for the action they had taken because the provocation was so great. The Premier had said that he wished to take as moderate a view of the matter as possible, although the action of the Council was one which the Assembly might resent as being a deliberate insult to that Chamber. But was not the action taken by the Government a deliberate insult to the Council? It was an insult and a trickery combined. He (Mr. Norton) regretted that an amendment of the Bill was proposed in the other Chamber at all. They had there a right to reject the Bill, and if they had rejected it no difficulty could have arisen, or any objection have been made by the Government or members of the Assembly that the members of the Council had acted unconstitutionally. And then, too, the Government would have been placed in their proper position of having to justify their action in putting the £7,000 on the Estimates. But the other Chamber had made an unfortunate mistake, and in making it they were just playing into the hands of the Premier by enabling him to say that he declined to discuss the question except on constitutional grounds. He (Mr. Norton) regretted exceedingly what had taken place. He believed there was not a shadow of doubt that the other Chamber would have to give way sooner or later—the sooner the better. At the same time, the action of members in another place was entirely owing to the deliberate trickery of the Government.

Question put and passed.

The House resumed, and the CHAIRMAN reported that the Committee had disagreed with the amendments of the Council.

The PREMIER moved that the Bill be returned to the Legislative Council with the following message :—

The Legislative Assembly having had under their consideration the amendments of the Legislative Council in the Appropriation Bill No. 2—

Disagree to the said amendments for the following reasons, to which they invite the most careful consideration of the Legislative Council :—

It has been generally admitted that in British colonies in which there are two branches of the Legislature the legislative functions of the Upper House correspond with those of the House of Lords, while the Lower House exercises the rights and powers of the House of Commons. This analogy is recognised in the Standing Orders of both Houses of the Parliament of Queensland, and in the form of preamble adopted in Bills of Supply, and has hitherto been invariably acted upon.

For centuries the House of Lords has not attempted to exercise its power of amending a Bill for appropriating the public revenue, it being accepted as an axiom of constitutional government that the right of taxation and of controlling the expenditure of public money rests entirely with the representative House—or, as it is sometimes expressed, that there can be no taxation without representation.

The attention of the Legislative Council is invited to the opinion given in 1872 by the Attorney-General and Solicitor-General of England (Sir J. D. Coleridge and Sir G. Jessel) when the question of the right of the Legislative Council of New Zealand to amend a money Bill was formally submitted to them by the Legislature of that colony. The Constitution Act of New Zealand (15 and 16 Victoriæ, c. 72) provides that money Bills must be recommended by the Governor to the House of Representatives, but does not formally deny to the Legislative Council—which is nominated by the Crown—the right to amend such Bills. The law officers were, nevertheless, of opinion that the Council were not constitutionally justified in amending a money Bill, and they stated that this conclusion did not depend upon, and was not affected by, the circumstance that by an Act of Parliament the two Houses of the Legislature had conferred upon themselves the privileges of the House of Commons so far as they were consistent with the Constitution Act of the colony.

The Legislative Assembly believe that no instance can be found in the history of constitutional government in which a nominated Council have attempted to amend an Appropriation Bill. Questions have often arisen whether a particular Bill which it was proposed to amend properly fell within the category of money Bills. But the very fact of such a question having arisen shows that the principle for which the Legislative Assembly are now contending has been taken as admitted.

The Legislative Assembly maintain, and have always maintained, that (in the words of the resolution of the House of Commons of 3rd July, 1678) all aids and Supplies to Her Majesty in Parliament are the sole gift of this House, and that it is their undoubted and sole right to direct, limit, and appoint, in Bills of aid and Supply, the ends, purposes, considerations conditions, limitations, and qualifications, of such grants, which ought not to be changed or altered by the Legislative Council.

For these reasons it is manifestly impossible for the Legislative Assembly to agree to the amendments of the Legislative Council in this Bill. The ordinary course to adopt under these circumstances would be to lay the Bill aside. The Legislative Assembly have, however, refrained from taking this extreme course at present, in the belief that the Legislative Council, not having exercised their undoubted power to reject the Bill altogether, do not desire to cause the serious injury to the Public Service and to the welfare of the colony which would inevitably result from a refusal to sanction the necessary expenditure for carrying on the government of the colony, and in the confident hope that under the circumstances the Legislative Council will not insist on their amendments.

Question put and passed.

The SPEAKER said : I shall resume the chair at five minutes to 6 o'clock.

On the House resuming,

The SPEAKER said he would resume the chair again at a later hour.

The House resumed at twenty-five minutes to 9 o'clock.

The SPEAKER said : I have to report to the House the following message from the Legislative Council :—

"Legislative Council Chamber,

"Brisbane, 12th November, 1885.

"MR. SPEAKER,

"The Legislative Council having had under consideration the message of the Legislative Assembly, under this day's date, relative to the amendments made by the Legislative Council in the Appropriation Bill of 1885-6, No. 2, beg now to intimate that they insist on their amendments in the said Bill—

"Because the Council neither arrogate to themselves the position of being a reflex of the House of Lords, nor recognise the Legislative Assembly as holding the same relative position to the House of Commons :

"The Joint Standing Orders only apply to matters of form connected with the internal management of the two Houses, and do not affect constitutional questions :

"Because it does not appear that occasion has arisen to require that the House of Lords should exercise its powers of amending a Bill for appropriating the public revenue, and therefore the present case is not analogous ; the right is admitted though it may not have been exercised ;

"Because the case of the Legislature of New Zealand is dissimilar to that now under consideration, inasmuch as the Constitution Act of New Zealand differs materially from that of Queensland, and the question submitted did not arise under the Constitution Act but on the interpretation of a Parliamentary Privileges Act. If no instance can be found in the history of constitutional government in which a nominated Council has attempted to amend an Appropriation Bill, it is because no similar case has ever arisen ;

"Because in the amendment of all Bills the Constitution Act of 1867 confers on the Legislative Council powers co-ordinate with those of the Legislative Assembly, and that the annexing of any clause to a Bill of supply, the matter of which is foreign to and different from the matter of said Bill of supply, is unparliamentary and tends to the destruction of constitutional government, and the item which includes the payment of members' expenses is of the nature of a 'tack.'

"For the foregoing reasons the Council insist on their amendments, leaving the matter in the hands of the Legislative Assembly.

"A. H. PALMER,

"President."

The PREMIER said : Mr. Speaker,—I think we cannot but deplore the message that has just been received from the Legislative Council. I do not propose now to point out at length the errors of fact into which the managers who prepared these reasons have fallen—they must be manifest to everyone who has any acquaintance with constitutional principles and practice, or with the incidents to which they refer. However, sir, I think we should not even now abandon all hope of arriving at a satisfactory conclusion upon this matter, and in that hope I propose, without any further observations, that the message be taken into consideration to-morrow.

Question put and passed.

ADJOURNMENT.

The PREMIER said : Mr. Speaker,—I rise to move that this House do now adjourn. I am not in a position at present to say what course the Government will be prepared to take to-morrow. I just now indicated that we still have hope that wiser counsels may yet prevail, and if I have any reason by to-morrow, at the meeting of the House, to anticipate that such will be the case, I shall be prepared to offer to the House some proposition. I cannot now say what may be the nature of it, but this I think I may indicate as a possible thing to do—that a joint committee of both Houses be appointed to consider the present state of public business. That is a thing that may or may not be desirable. I cannot now give notice of motion of it for to-morrow ; and even if I could do so I do not know yet that that would be the proper course to adopt ; but if, upon the meeting of the House to-morrow, the Government have any reason to suppose that it

would be for the public interest to adopt that course, I am sure the House will allow the motion to be moved without notice.

HONOURABLE MEMBERS : Hear, hear !

The HON. SIR T. McILWRAITH said : Mr. Speaker,—On a question of this kind of course the Government ought to have every latitude. I quite approve of the suggestion that the hon. the Premier has made. I, for one, shall be very glad to see the threatened deadlock come to an end, but I hope it will come to an end in such a way as to definitely settle the question whether or not the other Chamber have power to amend money Bills; because, leaving out of consideration the subject of payment of members, there is no doubt that this is a most important question. I do not agree at all with the Premier in having forced this subject on the other Chamber in the way he has done, because I have opposed the payment of members all through, and I am also opposed to the manner in which it has been attempted to be saddled upon the country. Still, the issue having been narrowed down to whether the other Chamber has power to amend money Bills, it will not be possible to allow the matter to pass without having made some attempt—and a great deal more than an attempt — at a solution. I think, myself, we can arrive at a solution of the question that will be quite agreeable to both parties. That the other Chamber really assume the power of dealing with money Bills in the same way that they have done here, I can hardly believe; and if the question were separated from the subject of payment of members I do not believe that they would have taken the course they have taken to-night.

Question put and passed.

The House adjourned at a quarter to 9 o'clock.