1887.

NEW ZEALAND.

POWERS OF THE LEGISLATIVE COUNCIL AND THE HOUSE OF REPRESENTATIVES

(MEMORANDUM REGARDING THE).

By the Hon. Sir ROBERT STOUT, K.C.M.G., Premier.

Presented to both Houses of the General Assembly by Command of His Excellency.

The recent decision of Her Majesty's Privy Council on the questions submitted to it by the Legislative Council and Legislative Assembly of Queensland, regarding the power of the former to deal with money Bills, cannot fail to be of interest to every British colony. The value of the judgment of this Court of last resort in the Empire is enhanced by the fact that it is the opinion of able politicians and renowned lawyers. The following were the members of the Judicial Committee that pronounced on the points in dispute, namely: Lord Spencer (President), Lord Herschell, (Chancellor), the Duke of Richmond and Gordon, Lord Aberdare, Lord Blackburn, Lord Hobhouse, and Sir Richard Couch. The questions submitted to the Court were two—

First, whether "The Queensland Constitution Act, 1867," confers on the Legislative Council powers co-ordinate with the Legislative Assembly in the amendment of all Bills, including money Bills?

Second, whether the claims of the Legislative Assembly, as set forth in their message of the 12th November, 1885, are well-founded?

The message of the Legislative Assembly appears in the Appendix, where also will be found the other documents referred to the Judicial Committee. (See Appendix No. 1.) To these questions the Lords of the Committee replied that the first should be answered in the negative, and the second in the affirmative. Thus the contention of the Legislative Assembly was accepted in full.

The Constitution Act of Queensland has the following sections bearing on the subject:—

Section 1. There shall be within the said Colony of Queensland a Legislative Council and a Legislative Assembly.

Section 2. 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.

Section 18. 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.

These clauses in the Queensland statute are similar to certain clauses in the New Zealand Constitution Act. Section 32 of 15 and 16 Vict., cap. 72 (called the Constitution Act), provides,—

There shall be within the Colony of New Zealand a General Assembly, to consist of the Governor, a Legislative Council, and House of Representatives.

And section 54 is similar to section 18 of the Queensland Constitution Act. There is, however, in New Zealand an Act called "The Parliamentary Privileges Act, 1865," passed by the General Assembly of New Zealand; and section 4 of that Act is as follows:—

The Legislative Council and House of Representatives of New Zealand respectively, and the Committees and members thereof respectively, shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as on the first day of January, one thousand eight hundred and sixty-five were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, and by the Committees and members thereof, so far as the same are not inconsistent with or repugnant to such and so many of the sections and provisions of the said Constitution Act as at the time of the coming into operation of this Act are unrepealed, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise; and such privileges, immunities, and powers shall be deemed to be and shall be part of the general and public law of the colony, and it shall not be necessary to plead the same, and the same shall in all Courts, and by and before all Judges, be judicially taken notice of.

An interpretation, though not judicial, has been passed on this Act by Lord Coleridge and Sir George Jessel (the late eminent Master of the Rolls). I shall refer further on to the conflict which arose between the Houses, and which led to the obtaining of the opinion of Lord

Coleridge and Sir George Jessel, who were then the Law Officers of the Crown in England, being respectively Attorney- and Solicitor-General. They stated that they were of opinion that "The Parliamentary Privileges Act, 1865," did not confer on the Legislative Council any larger powers in respect of money Bills than it would otherwise have possessed. They thought that the Act was not intended to affect, and did not affect, the legislative powers of either House of the Legislature in New Zealand. Todd, in his "Parliamentary Government in the British Colonies," page 479, assumes that the opinion given by these eminent lawyers was a direct and unimpeachable settlement of the point at issue.

It may, however, be interesting to trace what has happened in New Zealand regarding the claim of the Legislative Council to alter or amend money Bills.

The first session of the first Parliament was assembled on the 24th May, 1854, and it concluded on the 17th August, 1854, Parliament being prorogued on that day to the 31st August, 1854. On that date the second session began. No Appropriation Bill was passed during the first session. The struggle for Responsible Government and the dealing with the waste lands of the Crown were the two questions that mostly occupied the attention of both Houses during the first session. In the second session an Appropriation Bill was passed. The Council claimed the right on that occasion to amend this Bill. The Hon. Major (afterwards Colonel) Kenny, indeed, considered that the estimates should be laid before the Council, and the Speaker urged that, even if the Council had no power to amend the Bill, yet that a copy of the estimates should have been furnished for the consideration of the Council.

The Council went into Committee on the Bill, and an amendment was moved by the Hon. Mr. Whitaker (now the Hon. Sir Frederick Whitaker) to the following effect:—

To strike out, after the words "out of the," the following words: "revenue arising from taxes, duties, and imposts levied within the colony, and which are hereby raised by Act of the Assembly, except such portions thereof as shall by an Act of the General Assembly be declared to be otherwise applicable."

The title of the first Appropriation Bill was as follows: "An Act to provide for the Appropriation of the Public Revenue of New Zealand." The preamble was as follows:—

Whereas, by an Act made and enacted in the Parliament holden in the fifteenth and sixteenth years of the reign of Her Majesty Queen Victoria, intituled "An Act to grant a Representative Constitution to the Colony of New Zealand," it is amongst other things enacted that, after and subject to the payments to be made under the provisions therein contained, all the revenues arising from taxes, duties, rates, and imposts levied in virtue of any Act of the General Assembly, and from the disposal of waste lands of the Crown, shall be subject to be appropriated to such specific purposes as by any Act of the said General Assembly shall be prescribed in that behalf, and that the surplus of such revenue which shall not be appropriated as aforesaid shall be divided among the several provinces in the like proportions as the gross proceeds of the said revenue shall have arisen therein respectively; but no specific provision has been made by the recited Act for the appropriation of Her Majesty's revenue levied under and by virtue of ordinances made and enacted by the Legislative Council of New Zealand before the passing of the said recited Act: And whereas it is expedient that the revenue arising from the disposal of the waste lands of the Crown, and from such revenues as aforesaid, should be appropriated in manner hereinafter mentioned.

The enacting clause was—

Be it therefore enacted by the General Assembly as follows.

The amendment moved by the Hon. Mr. Whitaker was carried by the Council, and the Bill as amended was forwarded to the House of Representatives, and after debate it was agreed that a Conference on the amendment should be asked; and after Conference it was agreed that certain amendments should be made in the Bill. These amendments were the same in substance, though not in words, as had been recommended by the Legislative Council. The amendments were,—

That in the thirteenth line of the preamble the words "that portion of," and the words "arising from the duties of Customs" in the thirteenth and fourteenth lines, be struck out, and the words "duties of Customs" in the seventeenth line be expunged, and the word "revenues" inserted instead.

In clause 1 the following words after "out of" in the first line be struck out, "the said duties of Customs," and the following inserted in lieu thereof: "Her Majesty's revenue arising from the Post Office, duties of Customs, and fees and fines of the Supreme Court, now levied within the colony."

In clause 2, the words "Customs and land" in the sixth line be expunged.

These amendments were accepted by both Houses. The Legislative Council passed several resolutions regarding this Appropriation Bill, with the object of guarding their rights (if any) and of declaring that the course adopted in the passing of this the first Appropriation Bill was not to be deemed a precedent. The resolutions were as follows:—

1. That the honourable member bearing the message with the Appropriation Bill inform the House of Representatives that the detailed estimates have not accompanied that Bill, and that whatever course may be hereafter followed in reference to Supply Bills, whether called upon either wholly to accept or wholly to reject, the Legislative Council is desirous it should be understood that the course now taken is not to be considered as a precedent.

2. That, under these circumstances, the Legislative Council have agreed, with extreme reluctance, to an Act which places large sums of money at the absolute disposal of the Executive Government, the particular mode of appropriating those sums not having been prescribed by the Act.

Resolved—(1.) That, as the Bill for appropriating the public revenues was not introduced into the Legislative Council until the 15th September, and as the Assembly is to be prorogued on the 16th instant, this Council has no alternative but either wholly to reject the Bill or to agree to it in the form in which it has been transmitted to them by the House of Representatives.

(2.) That, in consenting to pass the Appropriation Bill for 1854–55 without alteration of any of the sums voted by the House of Representatives, the Legislative Council have regard solely to the maintenance of the civil establishment of the colony, and desire in no way to prejudice any right to alter or amend the annual Appropriation Bill or any other measure for raising or disposing of the public revenues.

(3.) That, although the Act for granting a Representative Constitution to the colony of New Zealand contains no provisions for limiting or restricting the power of the Legislative Council to alter or amend any legislative measures whatever which may be submitted for their consideration, the question has nevertheless been raised whether the Legislative Council would be justified in making any alteration in a measure of Supply, or whether, by analogy to the British Constitution, the Legislative Council of New Zealand must not either wholly accept or wholly reject every such measure.

(4.) That, in order to avoid the evils which would result from any conflict of opinion between two of the branches of the General Assembly as to the nature and extent of their respective constitutional rights, all doubt upon the subject should be at once and authoritatively set at rest; and that, with a view to that object, His Excellency the Officer Administering the Government be respectfully moved to bring the question under the consideration of Her Majesty's Imperial Government.

(5.) That a copy of the preceding resolutions in reference to the right of the Legislative Council in respect of measures of Supply be forwarded to His Excellency the Officer Administering the Government, and that His Excellency's attention thereto be respectfully requested.

The House of Representatives made no reply to these resolutions, and the Council and the House were prorogued the next day.

In pursuance of the fourth and fifth of the above resolutions, His Excellency the Officer Administering the Government forwarded to the Right Hon. the Secretary of State for the Colonies a despatch, inquiring whether the Legislative Council would be justified in making any alteration in any measure of Supply which had been voted by the House of Representatives, or whether, by analogy to the British Constitution, the Legislative Council must either wholly accept or wholly reject every such measure. The Secretary of State (Sir G. Grey) replied as follows:—

The question raised by your despatch is one of great importance in itself, and touching on the very first principles of English constitutional law. In this country it has been the undisputed practice, as affirmed by the resolution of the House of Commons of the year 1678, that Bills of Supply ought not to be changed or altered by the House of Lords. It is quite true that the New Zealand Constitution Act contains no provisions to the same effect, but it appears to me that the analogy of the English Constitution ought to prevail, the reason being the same when the Upper House is not elected by the people; and in Canada, where the Constitutional Act is similar in this respect to that of New Zealand, the Lower Assembly has hitherto exercised without dispute the same privilege in regard to money votes as the British House of Commons.

This despatch was dated the 25th March, 1855.

In 1855 the Parliament met on the 8th August, and continued sitting until the 15th September. An Appropriation Bill was passed, and the Council again, to guard its rights, passed a resolution as follows:—

That any proceeding of the Legislative Council in reference to "The Appropriation Act, 1855," shall not form any precedent for a future session.

There seems to have been no question raised between the Council and the House on any question of Supply or money Bills.

In 1856 the Appropriation Bill was passed without any attempted amendments or any protest, although the Council discussed certain provisions in the Bill regarding the increase of the salaries of the Ministers.

In 1855–56 the form of the Appropriation Bill was the same—namely, a recital and a statement out of what the revenue was to be paid.

In 1856 provision had to be made for extending the Appropriation Bill.

There was no meeting of Parliament in 1857.

In 1858 the House met on the 10th April, and sat until the 21st August. An Appropriation Bill for 1857–58 was passed, and an Appropriation Bill for 1858–59. No amendment was attempted to be made in either of the Bills by the Legislative Council. In 1858 the form of the Act was altered: there was no preamble to the Appropriation Bill, and the Act began at once at the enactment clause. The appropriating clause was also different. It was,—

There shall and may be issued and applied towards making good the Supply granted to Her Majesty for the service of the year 1858-59, in addition to the sums mentioned in the Civil List Act and other Acts, the sum of seventy-two thousand six hundred and sixteen pounds and ten shillings out of the ordinary revenue, to be appropriated towards or for the purposes hereafter expressed.

The Legislative Council amended the Surplus Revenue Bill, which was strictly a money Bill. The amendment was made in the schedule, and was assented to by the House of Representatives without any objection.

There was no meeting of the Assembly in 1859.

In 1860 the Parliament met on the 30th July, and was prorogued on the 5th November. The Appropriation Bill was passed through all its stages by the Council without any amendment. The New Zealand Loan Bill, however, was amended by the Council, and the amendment was assented to by the House of Representatives; but the House was careful to provide that the amendment accepted was in furtherance of the provisions in the Bill. The amendment was accepted in the following words:—

Resolved, That the amendment made by the Legislative Council, it being in furtherance of the intentions of the House and to render the clause consistent.

The Debenture Bill of 1860, which was also a money Bill, was amended, and the amendment accepted by the following resolution of the House:—

That the amendments made by the Legislative Council be adopted, they being for the purpose of rectifying a clerical error, and in furtherance of the intentions of the House.

The Appropriation Bill was in the same form as that of 1858.

In 1861 the Appropriation Bill was passed without any amendment, and no question was raised regarding any Supply Bill.

In 1862 a provision was inserted by the Legislative Council in "The Native Lands Act, 1862."

The amendment made was adopted by the House, but the following resolution was passed:—

That the amendment of the 17th clause of the Native Lands Bill made by the Legislative Council is an infringement of the privileges of this House, inasmuch as it assumes to regulate the imposition of a fee and the limits within which it is proposed to be levied, contrary to the provisions of the 128th Standing Order and the practice of the Imperial Parliament in such matters.

The Bill was returned to the Assembly by the Governor, who proposed that the words added to section 17 by the Legislative Council should

be omitted, and that a 10-per-cent. *ad valorem* duty on the transfer of Native Lands should be imposed. The proposal of the Governor was accepted by both Houses. The Legislative Council, however, appointed a Committee to consider and report whether the amendment made by the Council was a breach of the privileges of the House of Representatives, and also, at the option of the Committee, to prepare a case to be submitted for the opinion of the Law Officers of the Crown in England as a guide to the Council in its future dealings with like questions.

The Committee reported in favour of a case being submitted for the opinion of the Law Officers; and His Excellency the Governor, Sir George Grey, forwarded the case proposed by the Council to His Grace the Duke of Newcastle to obtain the opinion of the Law Officers of the Crown. There was a memorandum by Mr. Domett setting forth the view entertained by the House of Representatives, and also a memorandum by Mr. Dillon Bell (now Sir Dillon Bell), the Native Minister, on the same subject. These documents appear in Appendix No. 2.

The opinion of the Law Officers of the Crown in England, Sir W. Atherton and Sir Roundell Palmer (now Lord Selborne), was given on the 9th April, 1863, and stated that the Legislative Council was within its rights in making the amendment. I have set out the opinion at length. (See Appendix No. 2.) It will be noticed that these eminent lawyers did not assert the Legislative Council had any authority the House of Lords did not possess, but that the amendment made did not directly impose any tax.

Mr. Hugh Carleton, who was Chairman of Committees of the House and had been Acting-Speaker, submitted the question to Mr. T. E. May (afterwards Sir T. E. May and Lord Farnborough). He took a different view from the Law Officers. Mr. Carleton forwarded their opinion to him, but still Mr. May saw no reason to alter his views. The correspondence was presented to the House in 1864 by Mr. Carleton, and ordered to be engrossed in the Journals of the House. (See Appendix No. 3.)

In 1864 the Parliament was a very short one. It met in Auckland on the 24th November, and was prorogued on the 13th December, 1864. No question was raised regarding any Bills of Supply.

In 1865 the form of the Appropriation Bill was altered, there being a preamble as follows:—

Whereas it appears by messages from His Excellency Sir G. Grey, Knight Commander of the Most Honourable Order of the Bath, and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its dependencies, and Vice-Admiral thereof, and by the estimates accompanying the same, that the sums hereinafter mentioned are required to defray certain expenses of the Government of this colony and of the public service thereof, and for other purposes, for the year ending on the thirtieth day of June, one thousand eight hundred and sixty-six: Be it therefore enacted, &c.

A similar preamble appears in the Appropriation Act of 1866. Neither in 1865 nor in 1866 did any question arise in either House about any Supply Bill.

In 1867 the form of the Appropriation Bill was altered, it taking the form adopted by the other colonies, as a grant of Supply to Her Majesty. It may be noted that in New Zealand the statutes are unlike, in form of their enacting clause, to those of the other colonies. In the other colonies—take, for example, Canada, Victoria, New South Wales—the legislation is by Her Majesty the Queen by and with the consent of the Legislative Council and Legislative Assembly, &c. In New Zealand it is the General Assembly that passes the laws. The General Assembly is the Governor and the two Houses, but not Her Majesty.

In 1867 the Appropriation Act had the following preamble:—

Most Gracious Sovereign,—We, your Majesty's most dutiful and loyal subjects, the House of Representatives of New Zealand in Parliament assembled, towards making good the Supply which we have cheerfully granted to your Majesty in this session of Parliament, have resolved to grant unto your Majesty the sums hereinafter mentioned, and do therefore most humbly beseech your Majesty that it may be enacted, and be it enacted, by the General Assembly of New Zealand in this present Parliament assembled, and by the authority of the same, as follows.

And this form has been continued up to the present time. This amendment in the form of the Appropriation Bill gave rise to no discussion—indeed, it does not seem to have been noticed by the House or Council.

In 1867 no question of privilege arose between the two Houses.

In 1868 the subject of the privileges and the constitution of the Council was discussed. The Hon. Mr. Holmes moved that a Committee, consisting of the Hon. the Speaker, the Hon. Major Richmond, C.B., the Hon. Dr. Pollen, the Hon. Colonel Kenny, the Hon. Mr. Johnston, the Hon. Mr. Lee, and the mover, be appointed for the purpose of exactly ascertaining the powers and privileges of the Council, with a view to the modification of its constitution. This Committee made a very lengthy report.

The report was referred back to the Committee, and a further report was brought up on the 21st August, and both reports were adopted on the 26th August. As the question of amending the constitution of the Legislative Council may possibly come early before Parliament, these reports are well worthy of consideration. They deal, not only with the powers of the Council, but with its constitution, and with amendments deemed necessary to promote its greater usefulness. (See Appendix No. 4.)

The adoption of the report gave rise to considerable debate, which appears in *Hansard*, Vol. III., pp. 9–18. No question arose on the Appropriation Bill, nor regarding any other money Bill.

In 1869 a very long and elaborate report was prepared by the Hon. Sir John Richardson and the Hon. Dr. Menzies on the privileges of the Council. (See Appendix No. 5.) The investigation dealt with —

(1.) As to the powers conferred on the Council by the Constitution Act and by any subsequent legislation.
(2.) As to the powers held or exercised by law, rule, or usage by the House of Lords and the House of Commons respectively.
(3.) As to the powers conferred on the chief colonies of Great Britain under constitutional government by any Constitution Act and legislation, and as held and exercised by the Legislature of the United States of America.

There was no question between the Council and the House on any Bill in this year.

In 1870 no question arose between the Houses as to any money Bills.

The next serious question that arose in connection with the privileges of the House was raised in 1871.

In that year a Bill termed "The Payment to Provinces Bill" was before the Legislature, and the Legislative Council amended the Bill by striking out clause 28 and making other alterations in the 14th, 15th, and 29th sections. The Bill as amended was returned to the House of Representatives, and the House disagreed with the amendments, the reason being given as follows: "That the clauses 14, 15, 28, 29, relate to the appropriation and *management* of money, and that the Legislative Council has not power to alter or expunge such clauses." On this message being forwarded to the Legislative Council, the Council referred it to the Standing Orders Committee, who brought up a report on the subject which was adopted by the Council.

Managers were appointed to draw up reasons for insisting upon their amendments; but the report was not agreed to, and another was adopted. (See Appendix No. 6.)

The House of Representatives adopted resolutions on the subject, which are embodied in the case submitted to the Law Officers. (See Appendix No. 6.)

The result was that both Houses agreed to make the Act only temporary—viz., till July, 1872—and to submit the question to the Law Officers of the Crown of England.

The case submitted to the opinion of the Law Officers appears in Appendix No. 6, as well as the opinion. The despatch by Earl Kimberley conveying the opinion was presented to the Council by message from the Governor, and ordered by the Council to be entered in its minutes.

In 1872 a Customs Bill, called the "Drawbacks Bill," was amended by the Legislative Council. The penalty, instead of being left in the Bill as it passed the House of Representatives, at £200, was amended by placing the words "not exceeding" before it. The Council also altered the procedure of the Customhouse officers in the seizing and detaining of goods supposed to be contraband. The alterations were brought before the House; but the Speaker ruled that the amendments were of a nature that could be made by the Legislative Council, and, after an adjournment of the question, the House agreed to the amendments made.

In 1873 the constitution of the Council was again discussed. This arose in consequence of a statement made in the Governor's Speech at the opening of Parliament that a measure would be laid before Parliament to initiate a reconstruction of the constitution of the Legislative Council.

A motion on the subject was proposed by the Hon. Mr. Waterhouse; it was amended, and ultimately lost. A Bill called "The Legislative Council Temporary Appointment Bill" was introduced into the Council and shelved, the Council agreeing, without a division, that it should be read that day six months.

There was no question raised between the Houses on any Bill in 1873; nor were there any differences between the Council and the House.

No question arose between the Council and the House of Representatives in 1874 or in 1875 on any Supply Bill.

In 1876 the Rating, Counties, and Municipal Bills were all amended by the Council; and, as the limit of rating and borrowing was interfered with by the Council, it is doubtful if the House of Commons would have allowed the House of Lords to amend the Bills in the manner in which the House of Representatives allowed the Council to do without protest.

In 1878 an important question was raised as to the power of the Legislative Council to alter a Bill providing for the construction of railways. This Bill was called "The Railways Construction Act;" it was an Act to provide for the construction and extension of railways; and the question was whether amendments could be made in the Act by the Council. The matter was fought very keenly. There were two Conferences between the Council and the House. The Speaker of the House ruled that the Bill was a money Bill, and could not be altered by the Legislative Council. The 3rd clause of the Bill, the Speaker stated, amounted to an appropriation clause.

The Managers agreed to the following course: that the clause should be amended, the Ministry recommending the Governor to forward a message to the House suggesting a proviso being added to clause 3. The report of the Managers appears in Appendix No. 7.

This course was taken, and a message was sent down to the House by the Governor. The

House agreed to the amendment on the ground that it was in furtherance of the wishes of the House.

The Hon. Mr. Hall (now Sir John Hall) pointed out that, as the Council had forwarded a message to the House of Representatives, stating that they had agreed to the Bill only on the reception of the report of the Managers of the Conference, the position contended for and obtained by the Council as to their power to alter the Bill had been established.

In the Public Works Appropriation Bill, which was headed with the usual address to Her Majesty as a Supply Bill, the 17th section authorized the construction of railways, and was to be deemed a special Act for that purpose. This 17th section was called in the Council a "tack," and there is no doubt that it had been put in for the purpose of enabling the Government to go on with the railways if the Railway Construction Bill did not become law. This was so stated in the Council by the Colonial Secretary, who, however, offered on behalf of the Government to advise His Excellency to send down a message to strike out the 17th section. A question as to the power to do this was raised by the Attorney-General (Sir R. Stout), and the Speaker of the House of Representatives ruled that, as this was a Supply Bill, he could not give it up to the Government until all the grievances of the House were redressed and until all the other Bills had been assented to; and, as a Supply Bill was different from other Bills, it not being in the possession of the Government of the day, they could not advise His Excellency to recommend an amendment of it. The result was that this 17th section remained in the Bill, and was not struck out.

In 1881 a Pensions Bill was introduced by the Hon. Mr. Shrimski in the House of Representatives. The Legislative Council proposed to strike out clause 6 in the Bill, and a very long debate and controversy arose in consequence between the two Houses. The Premier (the Hon. Sir J. Hall) wished to assert that the Council had power to make the amendment made; but the Speaker (Sir M. O'Rorke) held a different opinion, and made a long and able statement on the subject, which appears in *Hansard*, Vol. XL., pp. 455, 456. (See Appendix No. 8.)

The Council insisted on its amendment, and appointed as Managers the Hon. Sir F. Whitaker, the Hon. Mr. Acland, and the Hon. Mr. Waterhouse, to draw up reasons for insisting upon their amendment. (See *Hansard*, p. 515, Vol. XL)

The House of Representatives replied to these reasons by arguing the matter with the Council. (See p. 527, Vol. XL., *Hansard*.)

The Council offered to accept clause 6 if it was not made retrospective. The Hon. Sir F. Whitaker moved,—

1. That the complications which have arisen in the proceedings in the Pensions Bill render it desirable that the whole subject should be referred to the Standing Orders Committee to search for precedents, to consider the matter carefully, and report fully to the Council without delay, and that it be so referred.

2. That a message be sent to the House of Representatives informing them that the proceedings in reference to the Pensions Bill appear so unusual and complicated that the Council have referred the whole subject to the Standing Orders Committee to search for precedents, to consider the subject carefully, and report without delay to the Council.

This was done because of some dispute which had arisen as to the position of the Bill. A Select Committee dealt with the matter, and their report appears in *Hansard*, Vol. XL., p. 797.

The question of the Pensions Bill was submitted by the Agent-General to Sir T. E. May (see Appendix No. 9); and the view of the Speaker was upheld.

In 1886 two important questions were raised regarding the power of the Council—

1. In dealing with rates, could the Legislative Council alter, for example, the limit of the rate proposed to be authorized to be levied by Municipal Councils?

2. Could the Legislative Council interfere with the rates that were to be levied by Harbour Boards on vessels?

In the first case the House passed a resolution stating that the Council had no power, and it was a breach of the privileges of the House, to amend the rate. The Council had reduced the rate of 1s. 3d. to 1s. The Council waived its amendment. The Harbours Bill had been introduced in the Legislative Council, and when it reached the House of Representatives certain amendments were made by the House, one increasing the rating-power of Boards so far as levying dues on ships were concerned. The Council objected to the increase of the rate, and amended the amended Bill. The House of Representatives refused to allow the Council's amendment, alleging that their privileges had been interfered with. There was a Free Conference held, but that Conference could not agree. Another was appointed, and ultimately the Conference agreed to recommend the Ministry to advise His Excellency, if the Bill were passed, to send down a message suggesting an amendment in the rating-power, by limiting it. This was not mentioned in the report from the Conference, the Managers simply reporting that they had agreed to the Bill; but an undertaking was given by a Minister that the Government would recommend His Excellency to send down the amendment. The Bill was passed, and an amendment was sent down by message from the Governor, and agreed to by both Houses.

The power of the Legislative Council to

throw out a Bill which provided for the remission of taxation was discussed in the House. A Bill proposing to abolish the export duty on gold had often been before Parliament. On more than one occasion the Legislative Council had laid the Bill aside. The right of the Council to do this was challenged by Mr. Pyke, and a Committee was appointed, consisting of Major Atkinson, Mr. Conolly, Mr. Fergus, Colonel Fraser, Mr. Montgomery, Mr. Seddon, Mr. Guinness, Mr. Pyke, and the Minister of Mines, to search for precedents. The Committee reported as follows:—

Your Committee, having diligently searched for precedents and inquired into the usages and practice of the Imperial Parliament, to which the General Assembly of New Zealand is an analogous body, possessing and exercising the same rights and privileges, have the honour to report as follows —

1. That the right of granting aids and supplies to the Crown is in the House of Representatives alone, as an essential part of its constitution; and the limitation of all such grants as to matter, manner, measure, and time is in it only.

2. That, although the Legislative Council has exercised the power of rejecting Bills of several descriptions relating to taxation by negativing the whole, yet the exercise of that power by the Council has not been frequent, and is justly regarded by the House with peculiar jealousy, as affecting the right of the House of Representatives to grant the supplies and to provide the ways and means for the service of the year.

3. That, to guard for the future against an undue exercise of that power by the Legislative Council, and to secure to the House of Representatives its rightful control over taxation and supply, the House has in its own hands the power so to impose and remit taxes and to frame Bills of supply that the right of the House as to the matter, manner, measure, and time may be maintained inviolate.

4. That this power may be exercised in accordance with the practice of the House of Commons, initiated in 1861, and since continued, by embodying in one Bill the whole or any part of the financial arrangements of the year.

No action was taken on this report, but another Bill, providing for a gradual reduction in the gold duty, was introduced, and passed by the House of Representatives. This Bill was also laid aside by the Council. No steps were taken by the House.

It will be seen, from what has taken place between the Legislative Council and the House of Representatives, that the differences that have arisen parallel almost the history of the conflict between the two Houses in England regarding supply Bills. In the early days of the Parliament the Lords were allowed to amend the supply Bills without much objection, and greater latitude was granted in dealing with local taxing Bills than is now allowed by the House of Commons. In 1671 (see Appendix No. 10), and again in 1678, the Commons took a firm stand on their privileges regarding supply, and since then the House of Lords has not ventured to interfere with any Bill of supply.

So far as New Zealand is concerned, no Appropriation Bill has been attempted to be interfered with by the Legislative Council since the first Parliament. The question as to whether a particular Bill was one of supply has often been raised; but, whenever it could be shown that a Bill or clause of a Bill dealt with supply, then the power of the Legislative Council to alter or amend it has always been challenged.

The powers of the Lords to deal with the levying of rates, even though they were of local character, has been denied, the only concession being given that the Lords should have the right of altering private Bills. Since "The Native Lands Act, 1862," the power of the Council to alter the rating clauses of a Bill has not been specifically raised till last session, when, as I have already stated, the House of Representatives insisted that the Legislative Council had no power to deal with the imposition of rates even by local bodies. It was not until 1860 that the House of Commons passed the clear and explicit resolution, which was moved by Lord Palmerston,—

1. That the right of granting aids and supplies to the Crown is in the Commons alone, as an essential part of their constitution; and the limitation of all such grants, as to the matter, manner, measure, and time, is only in them. 2. That, although the Lords have exercised the power of rejecting Bills of several descriptions relating to taxation by negativing the whole, yet the exercise of that power by them has not been frequent, and is justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant the supplies and to provide the ways and means for the service of the year. 3. 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 to frame Bills of supply, that the right of the Commons as to matter, manner, measure, and time may be maintained inviolate.

If this English precedent be followed, then the right of the Legislative Council to lay aside a Bill remitting taxation will, in future, be challenged, and possibly the plan hinted at in Lord Palmerston's resolution—a "tack"—may be adopted. Whether this resolution of the Commons was or was not a stretching of the powers of the Commons need not be debated. Writers on constitutional history have assumed it was within the power of the House. (See Todd, Vol. I., p. 459, May.)

ROBERT STOUT.

Wellington, 3rd December, 1886.

APPENDIX No. 1.

Correspondence respecting the Powers of the Two Houses of the Legislature of Queensland.

Governor Sir A. MUSGRAVE, G.C.M.G., to Colonel the Right Hon. F. A. STANLEY, M.P. (Received, 12th January, 1886.)

Government House, Brisbane,
SIR,— 26th November, 1885.

I have the honour to forward to you an Address to Her Majesty the Queen, voted by the Legislative Council and Legislative Assembly on the 17th instant, concerning questions which have arisen between those two bodies with respect to their relative rights and powers, and which has been presented to me by the President of the Council and Speaker of the Assembly for transmission to you.

2. I also enclose a copy of a letter to me from the Colonial Secretary and leader of the Government upon the subject of this Address, with copies of the documents therein forwarded.

3. I agree entirely in the views expressed by Mr. Griffith, and believe that it would be difficult to

over-estimate the value which would attach to a declaration of the opinion of the Lords of the Judicial Committee of the Privy Council upon the questions involved. Even if there does exist some difficulty in bringing these questions before them as a Court, except by proceedings in the nature of an appeal, I cherish the hope that there may be found some mode of eliciting their judgment, as the legal advisers of Her Majesty in Council, on points of great importance in colonial constitutional law.

4. Almost all collisions and complications of any importance, in the administration of this group of colonies at least, have arisen from conflicting views of the rights and privileges of the two Legislative Houses. It will tend greatly to the avoidance of future mischief, not only in this colony but in others, if it should be found possible to provide an umpire in a body whose decision will be respected as entirely free from local or official bias, and to establish a precedent for reference of doubtful or disputed points to such an arbitrator in a friendly manner. Opinions given by the Attorney- and Solicitor-General as Law Officers of the Crown for the time being do not carry the judicial authority necessary for the purpose in view.

5. But, in respect of readiness to abide by the decision of a competent umpire, the two Houses of Legislature of this colony have furnished an example well worthy of imitation.

I have, &c.,
A. Musgrave.

The Right Hon. the Secretary of
State for the Colonies.

Schedule of Documents forwarded with Original Address from the Council and Assembly.

12 copies of Address.
12 copies of "The Constitution Act, 1867" (Queensland).
12 copies of Standing Orders of the Council.
12 copies of Standing Orders of the Assembly.
12 copies of the Members' Expenses Bill, 1884.
12 copies of the Members' Expenses Bill, 1885.
12 copies of Estimates of Expenditure, 1885–86, Executive and Legislative Departments.
12 copies of Appropriation Bill, 1885–86, No. 2.
12 copies of Extracts from Proceedings, Legislative Council, relating to Appropriation Bill.
12 copies of Extracts from Proceedings, Legislative Assembly, on same subject.
12 copies of Parliamentary Debates (local *Hansard*) on same subject in Legislative Council.
12 copies of Parliamentary Debates (local *Hansard*) on same subject in Legislative Assembly.

Enclosure 1.

Most Gracious Sovereign,—

We, your Majesty's loyal and dutiful subjects, the members of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, humbly approach your Majesty with a renewed assurance of our affection and loyalty towards your Majesty's person and Government.

Questions have arisen between the Legislative Council and Legislative Assembly with respect to the relative rights and powers of the two Houses, which questions we are desirous of submitting for the opinion of your Majesty's Most Honourable Privy Council.

We have caused a case to be prepared setting forth the questions which have so arisen, and which we desire to be so submitted, in the words following:—

1. The Constitution Act of Queensland, 31 Vict., No. 38, contains the following provisions:—

Section 1. There shall be within the said Colony of Queensland a Legislative Council and a Legislative Assembly.

Section 2. 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.

Section 18. 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.

2. Sections 1 and 2 are re-enactments of sections 1 and 2 of the Order in Council of the 6th June, 1859, providing for the constitution of the Colony of Queensland.

Section 18 is a re-enactment of section 54 of the Act of New South Wales, 17 Vict., No. 41, contained in the First Schedule to the Imperial Act, 18 and 19 Vict., c. 54.

3. The members of the Legislative Council are nominated by the Governor for life, subject to certain contingencies. The members of the Legislative Assembly are elected by the several constituencies into which the colony is divided.

4. During the sessions of 1884 and 1885 "A Bill to provide for the Payment of the Expenses incurred by Members of the Legislative Assembly in attending Parliament," was passed by the Legislative Assembly, and on each occasion rejected by the Legislative Council. No limit was proposed to the duration of this Bill.

5. In the estimates of expenditure for the year 1885–86, which were laid before the Legislative Assembly in the session of 1885, after the rejection of this Bill for the second time by the Legislative Council, there was included, under the heading of "The Legislative Assembly's Establishment," an item of £7,000 for "expenses of members," to be payable for the year 1885–86, under conditions precisely similar to those defined by the Bill which had been so rejected by the Legislative Council.

6. The estimates are not formally presented to the Legislative Council, but are accessible to members.

7. The Annual Appropriation Bill having been sent by the Legislative Assembly to the Legislative Council for their concurrence, containing an item of £10,585 for "the Legislative Assembly's establishment"—which sum, in fact, included the item of £7,000 for "expenses of members"—the Legislative Council, on the 11th November, 1885, amended the Bill by reducing the sum proposed to be appropriated for "the Legislative Assembly's establishment" from £10,585 to £3,585, and making the necessary consequential amendments in the words and figures denoting the total amount of appropriation, and returned the Bill so amended to the Legislative Assembly. There was nothing on the face of the Bill to indicate the special purpose for which any part of the sum of £10,585 was to be appropriated, except that it was for "the Legislative Assembly's establishment."

8. On the 12th of November the Legislative Assembly returned the Bill 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 recognized 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 Vict., 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.

9. On the same day the Legislative Council again returned the Bill to the Legislative Assembly, with the following message:—

The Legislative Council, having had under consideration the message of the Legislative Assembly of this day's date, relative to the amendments made by the Legislative Council in the Appropriation Bill of 1885-86, 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 recognize 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 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.

10. On the 13th of November the Legislative Assembly, by message, proposed the appointment of a Joint Select Committee of both Houses "to consider the present condition of public business, in consequence of no supplies having been granted to Her Majesty for the service of the current financial year." Such Committee was appointed on the same day, and on the 17th of November brought up their report, recommending, amongst other things,—

That, for the purpose of obtaining an opinion as to the relative rights and powers of both Houses with respect to money Bills, a case be prepared, and that a joint Address of both Houses be presented to Her Majesty, praying Her Majesty to be graciously pleased to refer such case for the opinion of Her Majesty's Most Honourable Privy Council.

11. The following Acts and documents are to be deemed to form part of this case:—

(1.) The Imperial Act, 18 and 19 Vict., c. 54.
(2.) The Order in Council of 6th June, 1859.
(3.) The Constitution Act of 1867 (Queensland).
(4.) The Standing Orders of both Houses.
(5.) A copy of the Members' Expenses Bill of 1884.
(6.) A copy of the Members' Expenses Bill of 1885.
(7.) The estimates of expenditure for 1885-86, Executive and Legislative Departments.
(8.) The Appropriation Bill of 1885-86, No. 2.
(9.) Extracts from the Journals of the Legislative Council relating to the Appropriation Bill.
(10.) Extracts from the Votes and Proceedings of the Legislative Assembly relating to the same matter.

The questions submitted for consideration are—

(1.) Whether the Constitution Act of 1867 confers on the Legislative Council powers co-ordinate with those of the Legislative Assembly in the amendment of all Bills, including money Bills.

(2.) Whether the claims of the Legislative Assembly, as set forth in their message of the 12th November, are well founded.

We humbly pray that your Majesty will be graciously pleased to refer the said case for the opinion and report of your Majesty's Most Honourable Privy Council.

A. H. Palmer,
President of the Legislative Council.
William H. Groom,
Speaker of the Legislative Assembly.

Legislative Chambers, 17th November, 1885.

The following speech was delivered by the Speaker of the House of Assembly on receipt of a message from the Legislative Council regarding the Bill:—

Mr. Speaker said,—I think it my duty, as guardian of the rights and privileges of the House, to call its attention to the message which

I have just read. It is the first time in the history of Responsible Government in Queensland that an attempt has been made on the part of the Upper Chamber to amend an Appropriation Bill. In the session of 1884, on the 11th December, I considered it my duty to call attention to amendments which had been made by the Upper Chamber in the Crown Lands Alienation Bill, and which distinctly infringed upon the privileges of this House. And in the session, on the 22nd September, I called attention to amendments made by the Upper Chamber in the Local Government Act of 1878 Amendment Bill. On that occasion I again felt it to be my duty to call the attention of the House to amendments by which I thought the privileges of this Chamber were decidedly invaded and infringed upon. But the amendment in the Appropriation Bill is of a much graver character, and, in calling the attention of this House to the amendment which has been made, it will be my duty at once to disclaim anything in the nature of a political contention. My desire is simply to call the attention of the House to the grave constitutional question which is involved in the amendment of the Appropriation Bill. If it is admitted that the Upper Chamber possesses co-ordinate powers with the representative branch of the Legislature, then Responsible Government in Queensland is entirely at an end; because the claim to amend a money Bill, if admitted, must undoubtedly extend to the amendment of taxation Bills; and thus the public policy of the country could be entirely thwarted and set aside by a Chamber which is responsible to no one. The voice of the public outside would be entirely set on one side, and the opinions and will of the majority in this House would also be entirely set on one side. This is therefore, as I said before, a matter of very great importance indeed, and one which I think this House should take proper time to consider before it arrives at a decision. I should not like, on the present occasion, to trouble the House with any long extracts from the different constitutional writers who have written upon this question; but there is one extract from "Hatsell's Precedents" which I consider it my duty to read, because it is one upon which the House of Commons has acted from the time it was delivered up to the present moment; and I may say, further, that the House of Lords has, from that time to this, acquiesced in it. It is probably one of the most ancient claims set up by the House of Commons, and will probably, on that account, be the more entitled to our consideration and respect. The occasion when this opinion was given was on the 9th May, 1689, when the Lords amended the Poll Bill by adding a clause for appointing Commissioners to rate themselves. To this the Commons disagreed, and on the 15th May the Commons appointed a Committee to draw up reasons and report them to the House; and this was one of the reasons:—

All money, aids, and taxes to be raised or charged upon the subjects in Parliament are the gift and grant of the Commons in Parliament; and are, and always have been, and ought to be, by the Constitution and ancient course and laws of Parliament, and by the ancient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament; and to be laid, rated, raised, collected, paid, levied, and returned for the public service and use of the Government as the Commons shall direct, limit, appoint, and modify the same. And the Lords are not to alter such gift, grant, limitation, appointment, or modification of the Commons in any part or circumstance, or otherwise to interpose in such Bills than to pass or reject the same for the whole, without any alteration or amendment though in ease of the subjects.

From the time that was delivered in 1689 up to the present time, and including the ninety-one instances collected by Hatswell, where the Lords interfered with supply Bills, and where the Commons insisted upon their rights, and where the Lords have almost invariably acquiesced in them, except in some minor details, the reasons I have read to the House have been invariably acted upon. It is therefore for the House to take into its most serious consideration the important matter which is brought before them by the Legislative Council's message. I discharge my duty in calling the attention of the House to the gravity of the question. It is one of extraordinary importance, because, as I said before, it is the first time in the history of parliamentary government in this colony that the Upper Chamber has attempted to amend the Appropriation Bill; and their claim to possess co-ordinate powers with the representative Chamber is of such a character that I believe, if it is acceded to, the whole of the policy of the Government, as expressed by the people, can be revolutionized and entirely set on one side by the other Chamber. I think I have discharged my duty now by calling the attention of the House to this matter. It is for the House itself to decide upon what course it will take in view of the extreme gravity of the present circumstance.

Mr. GRIFFITH then moved, That the Legislative Council's amendments be considered in Committee to-morrow.

Debate ensued.

Question put, and passed.

Enclosure 2.

The COLONIAL SECRETARY to Sir A. MUSGRAVE.

Colonial Secretary's Office,

SIR,— Brisbane, 26th November, 1885.

With reference to the Joint Address to Her Majesty lately agreed to by the Legislative Council and Legislative Assembly of this colony, submitting a case on which they desire to obtain the opinion of Her Majesty's Privy Council, I have the honour to offer the following observations for your Excellency's consideration.

2. Your Excellency will doubtless have observed that the questions submitted (and in particular the second question) are rather questions as to the constitutional rights and powers of the two Houses of the Legislature than technical questions as to the construction of the statute law. So far, at least, as the Legislative Assembly are concerned, I think I am right in saying that the literal interpretation of the words of the Constitution Act is regarded as a matter of small importance as compared with the larger question, Whether, on a true construction of the written and unwritten Constitution of the colony, the two Houses of the Legislature should be regarded as holding and discharging, relatively to one another, positions and functions analogous to those of the House of Lords and House of Commons.

For the assistance of Her Majesty's Government, and in compliance with a promise made by myself to the Joint Committee by which the Joint Address was framed, I enclose copies of the official reports of the debates in both Houses on the question which gave rise to the Address, which will indicate the line of argument adopted by both Houses respectively.

4. I am not aware of any instance in which a similar case has been submitted for the opinion of the Privy Council. The only analogous case that I have been able to discover is that of the case submitted in 1872 by both Houses of the Legislature of New Zealand for the opinion of the Imperial Crown Law Officers. Some reluctance, however,

existed in this colony to submit the matter, as one purely of law, for the opinion of the Law Officers. I am sure that very great satisfaction will be felt by both Houses of the Legislature if Her Majesty should think fit in this instance to refer the matter to the Privy Council, as prayed by the Joint Address. And I conceive also that such a reference would not involve any departure in principle from ancient theory and practice as to the functions of the Council, although those functions may not in recent times have been exercised under circumstances precisely analogous. But, even if the proposed reference is considered to be not supported by ancient theory or precedent, I venture to suggest that the establishment of such a precedent would not be disadvantageous.

5. In the event of the reference being made, I do not, of course, know whether it would be made to the Judicial Committee of the Council or in some other form, or whether, in either case, it would be thought advisable that the case should be argued by counsel. As to the desirableness or otherwise of its being so argued I have no suggestion to offer; but, if it is proposed, it would be a great convenience if information were given either to your Excellency, by telegraph, or to the Agent-General for Queensland in London, in order that the necessary arrangements may be made without delay for supporting the views of either House, if it should be thought desirable that they or either of them should be represented.

I have, &c.,
S. W. Griffith.

His Excellency Sir Anthony Musgrave,
G.C.M.G., &c.

The Colonial Office to the Council Office.

Downing Street, 3rd February, 1886.

My Lord,—

I have the honour to transmit to you a copy of a despatch from the Governor of Queensland, enclosing a petition from the Legislative Council and Legislative Assembly of the colony concerning questions which have arisen between those two bodies with regard to their relative rights and powers, together with certain documents which are specified in a schedule to the despatch, and which are in the nature of exhibits to the petition.

I shall feel obliged if you will be so good as to submit these papers to the Queen, with a recommendation that Her Majesty may be graciously pleased to refer this matter to the hearing and consideration of the Judicial Committee of the Privy Council, in pursuance of the power reserved to Her Majesty by the Act 3 and 4 Will. 4, c. 41, s. 4.

I should also be glad to be favoured with your opinion whether it is desirable that the case should be argued by counsel on behalf of the two Houses of the colonial Legislature, and whether each House should be represented separately.

I have, &c.,
Fred. Stanley.

The Lord President of the Council.

The Council Office to the Colonial Office.

Sir,— Whitehall, 3rd April, 1886.

I am directed by the Lord President of the Council to acquaint you, for the information of Earl Granville, that the Lords of the Judicial Committee have proceeded, in obedience to Her Majesty's order of reference of the 8th March, to consider the petition addressed to Her Majesty in Council by the Legislative Council and the Legislative Assembly of Queensland, which was transmitted to this office with a letter from the Right Hon. Sir Frederick Stanley on the 3rd February last past.

The Lords of the Committee present on this occasion were the Lord President, the Lord High Chancellor, His Grace the Duke of Richmond and Gordon, Lord Aberdare, Lord Blackburn, Lord Hobhouse, and Sir Richard Couch; and their Lordships, having considered the petition and the two questions therein raised, namely,—

1. Whether the Constitution Act of 1867 confers on the Legislative Council powers co-ordinate with those of the Legislative Assembly in the amendment of all Bills, including money Bills;
2. Whether the claims of the Legislative Assembly, as set forth in their message of the 12th November, are well founded—

agreed humbly to report to Her Majesty that the first of these questions should be answered in the negative, and the second question in the affirmative.

The report of the Judicial Committee has been approved by Her Majesty in Council to-day. Copies of the Order in Council approving the same will shortly be forwarded to you for transmission to Queensland.

I have, &c.,
Henry Reeve,
Registrar, P.C.

Sir Robert Herbert, K.C.B., &c.

APPENDIX No. 2.

Copy of Despatch from Governor Sir George Grey, K.C.B., to His Grace the Duke of Newcastle, K.G.

Government House, Auckland,
My Lord Duke,— 31st December, 1862.

A question of privilege having arisen between the Legislative Council and the House of Representatives of New Zealand, the Legislative Council has requested me to transmit a case, embodying the facts of the question at issue, to your Grace, with a request that you would be pleased to obtain, for their future guidance, the opinion on this case of the Law Officers of the Crown in England.

2. In compliance with the address of the Legislative Council, I have now the honour to enclose the documents necessary to enable you to obtain for the Council the opinion of the Law Officers of the Crown, if you would be pleased to do so.

I have, &c.,
G. Grey.

His Grace the Duke of Newcastle, K.G.

Enclosure.

Case for the Opinion of the Law Officers of the Crown.

A question of privilege has arisen between the Legislative Council and House of Representatives of New Zealand, upon which the Legislative Council are anxious to obtain, for their guidance, the opinion of the Law Officers of the Crown in England.

They venture to ask for that opinion partly because the question arises upon the construction of an Act of the Imperial Legislature, and partly because the question depends upon analogy to the practice of other constitutional governments, and in particular of the Imperial Parliament.

The circumstances out of which the question arises occurred in the passing of the Native Lands

Bill through the Colonial Legislature, and are as follow:—

A large extent of land in New Zealand, comprising many millions of acres, is still held by the aboriginal inhabitants, who have never surrendered their title to the Crown, and whose rights were guaranteed to them by the Treaty of Waitangi.

Hitherto the only mode in which such land has been acquired for purposes of colonization has been through the exercise of the Queen's right of pre-emption or exclusive purchase. Land so acquired is subject to the disposal of the General Assembly of New Zealand under the 72nd section of the Constitution Act.

It has been determined to effect a change in this system; to abandon the Crown's right of pre-emption or exclusive purchase; to institute Courts for defining the rights of Natives to their lands according to their own customs; and to permit the Native proprietors to dispose of their land as of common right.

With this view a Bill was introduced into the General Assembly through the House of Representatives in the last session—a copy of which, as finally passed, is herewith.

The Bill as passed by the House of Representatives contained, instead of what is now clause 19, a clause to the following effect:—

Upon the signing and sealing of every certificate by the Governor, or the issue of every Crown grant in exchange for a certificate under the provisions of this Act, there shall be paid to Her Majesty the sum of two shillings and sixpence for every acre of land described in such certificate or grant; and such sum shall be deemed to be part of the land revenue of the province in which such lands are situate, and shall be paid over to the Treasury of such province, subject to the appropriation of the Provincial Council of such province.

The Legislative Council amended the Bill by adding to clause 17 the following proviso:—

But no certificate shall entitle any tribe, community, or person named therein to sell, exchange, or lease for a longer period than seven years, or dispose of any land or interest thereby affected, unless such certificate shall have been indorsed by the Governor and sealed with the Public Seal of the colony as aforesaid, and the amount payable on such indorsement and sealing be duly paid.

The Bill was returned to the House of Representatives so amended. The amendment was accepted by the House of Representatives, and a message to that effect was transmitted to the Legislative Council, without notifying any exception thereto. A resolution, however, was passed, at the same time, in the House of Representatives to the following effect:—

That the amendment of the 17th clause of "The Native Lands Act, 1862," by the Legislative Council is an infringement of the privileges of this House, inasmuch as it assumes to "regulate" the imposition of a fee and the limits within which it is proposed to be levied, contrary to the provisions of the 128th Standing Order and the practice of the Imperial Parliament in such matters.

The Bill, thus amended, was transmitted to the Governor for the signification of Her Majesty's pleasure thereon.

The Governor, under the provisions of the 56th section of the Constitution Act, returned the Bill to the House of Representatives with a message proposing two amendments, a copy of which message is herewith.

The Governor's amendments were adopted by both Houses, and in that shape the Bill finally passed, and now stands.

The question submitted for consideration is, Whether the Legislative Council was warranted in amending the Bill as they did, or whether their amendment was, as the House of Representatives insists, a breach of the privileges of that House?

The general rule practically acted on by the two Chambers as regards money Bills and money clauses is understood to be analogous to that which governs the two Chambers of the Imperial Legislature, *mutatis mutandis*.

The following Standing Orders have been specially agreed to by both Houses:—

That, with respect to any Bill brought to this House from the Legislative Council, or returned by the Legislative Council to this House with amendments, whereby any pecuniary penalty, forfeiture, or fee shall be authorized, imposed, appropriated, regulated, varied, or extinguished, this House will not insist on its undoubted privilege in the following cases:—

(1.) When the subject of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences.

(2.) Where such fees are imposed in respect of benefit taken or service rendered under this Act, and in order to the execution of the Act, and are not made payable into the Treasury or Exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.

(3.) When such Bill shall be a private Bill for a local or personal Act.

Also, that provisions for giving full effect to the object of such Bills, but which might infringe upon the privileges of the House, ought, if printed in italics, to be treated by the House as forming no part of the Bill, and ought not, if adopted in Committee of Supply, to necessitate the return of such Bill to the Legislative Council as though amendments had been made.

The Legislative Council appointed a Select Committee to consider the question of privilege. The report of the Committee is as follows:—

Report of the Select Committee appointed to consider and report as to the question whether the amendments introduced into the Native Lands Bill by the Legislative Council be a breach of the privileges of the House of Representatives, and, if the Committee shall think fit to do so, then to prepare a case to be submitted for the opinion of the Law Officers of the Crown in England, as a guide to the Council in its future dealings with like questions.

Your Committee have considered the question referred to them. At this late period of the session they can do little more than state their opinion that the question involved is one of the greatest importance as affecting the legislative functions of this Council, particularly as the House of Representatives has passed a resolution on the subject which, if acted on, will bring the two branches of the Legislature into collision.

In the opinion of your Committee the Council has not exceeded its privileges in this matter.

As a guide to the Council in future upon a question of so great importance, your Committee recommend that a case be prepared to be submitted to the Law Officers of the Crown in England, by and under the direction of the Chairman, the case to embody the following material points:—

A copy of the Native Land Bill, in its original and amended state, the Governor's amendments, and the reports of such of the debates as may elucidate the points at issue should accompany the case.

The question to be stated is this: Whether, the House of Representatives having, in a Bill, imposed on a Crown grant, or an instrument in the nature of a Crown grant, a certain tax or duty, it is competent to the Legislative Council to introduce an enactment to the effect that no transaction shall take place under another class of instruments affecting Native lands until such instruments have been practically transmuted into or changed for Crown grants, so, in effect, rendering the latter class of instruments liable to such tax or duty.

HENRY SEWELL.

Committee Room, 13th September, 1863.

In the course of debate two arguments were urged which appeared to have great weight with the Council, one, that, if the present claim of the House of Representatives be admitted, the Legislative Council will be practically excluded from legislating on one of the most important questions, viz., the price of waste land, or, what is virtually the same thing, the taxation on alienation; the other, that, if the House of Representatives could, by imposing a tax or duty on a particular kind of legal instrument, exclude the Legislative Council from all consideration of questions connected with the subject-matter of such instruments, the field of legislation over which the power of the Legislative Council would extend would be greatly and most

injuriously narrowed. It would, in effect, be the same as if, a stamp duty being imposed on deeds in England, the House of Peers were thereby precluded from considering whether certain transactions should or should not be effected by deed.

The question of taxation, as the Council insists, is, in this case, merely incidental to a general question of policy, upon which the Legislative Council is unquestionably entitled to legislate and make amendments in Bills. It cannot, it is conceived, be debarred from doing so by the mere circumstance of a question of taxation being incidentally involved.

The report of the debate in the Legislative Council accompanies the case.

HENRY SEWELL,
Chairman of Committee.

Copy of Despatch from His Grace the Duke of NEWCASTLE, K.G., to Governor Sir GEORGE GREY, K.C.B.

SIR,— Downing Street, 17th April, 1863.

I have to acknowledge the receipt of your Despatch, No. 134, of the 31st December, forwarding, in conformity with a request to that effect which was made to you by the Legislative Council, a case embodying the facts relating to a question of privilege which had arisen between the two Houses, upon which the Legislative Council were desirous that the opinion of the Law Officers of the Crown should be obtained for their future guidance.

The House of Representatives are not parties to this application; but, as I have no reason to suppose that they object to it, and as I infer from your despatch that the reference is in conformity with your wishes and of those of your Responsible Advisers, I caused the case, with the documents which accompanied it, to be forwarded to the Law Officers of the Crown; and I now enclose for your information a copy of the report which they furnished upon the subject.

I have, &c.,
NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure.

The LAW OFFICERS to the Duke of NEWCASTLE.

MY LORD DUKE,— Temple, 9th April, 1863.

We are honoured with your Grace's command, signified in Sir Frederic Rogers's letter of the 28th March ultimo, stating that, in compliance with an application forwarded by the Governor of New Zealand from the Legislative Council of that colony, your Grace directed him to request that we would favour you with our opinion on a question of privilege which had recently been raised in New Zealand, and which is stated in the following terms, in the report of the Committee of the Legislative Council:—

Whether, the House of Representatives having, in a Bill, imposed on a Crown grant, or an instrument in the nature of a Crown grant, a certain tax or duty, it is competent to the Legislative Council to introduce an enactment to the effect that no transaction shall take place under another class of instruments affecting Native lands until such instruments have been practically transmuted into or changed for Crown grants, so, in effect, rendering the latter class of instruments liable to such tax or duty.

Sir Frederic Rogers was also pleased to annex the case which was received from the colony, and the papers which accompanied it.

The Standing Orders quoted in the case were passed under authority of the 52nd clause of the New Zealand Government Act 15 and 16 Vict., cap. 72.

Sir Frederic Rogers was further pleased to state that we would not fail to observe that the case was drawn on the part of the Legislative Council, and that the House of Representatives was not a party to the reference; but we would find among the papers a Ministerial memorandum in an opposite sense, from which it might be inferred that the question was fairly stated.

In obedience to your Grace's commands, we have taken this matter into consideration, and have the honour to report,—

That we are of opinion that, if, in a Bill introduced in the House of Representatives, and passed through that House, a certain tax or duty has been imposed upon a Crown grant, or an instrument in the nature of a Crown grant, it is competent to the Legislative Council, without any breach of the privileges of the House of Representatives, to make the efficacy for any given purpose of another class of instruments intended to affect Native lands under the provisions of the same Bill dependent upon their assuming the form of Crown grants or of those instruments in the nature of Crown grants on which the tax or duty has been so imposed by the House of Representatives.

It is, we think, a fallacy to represent this as a case in which the Legislative Council takes upon itself to impose any tax or duty. It merely provides that a particular kind of instrument shall be necessary to produce a particular effect. It has a right to decide for itself upon the form and character of the instrument which shall be sufficient for that purpose, and it cannot be deprived of that right merely because the form of instrument which it prefers is one on which a duty may have been already imposed by law, or will be imposed if the Bill should pass—the imposition of the duty on that form of instrument being the act, not of the Legislative Council, but of the House of Representatives.

We do not agree with the argument that the 2s. 6d. per acre was not in its nature a tax or duty. But the other argument urged on the part of the Legislative Council, that the House of Representatives cannot, by imposing a tax or duty on a particular kind of legal instrument, exclude the Legislative Council from the power of originating or amending Bills relating to such instruments, seems to us to be well founded; and we see no answer to the suggestion that the privilege contended for by the House of Representatives would, in effect, be the same as if, a stamp duty "being imposed upon deeds in England, the House of Peers were thereby precluded from considering whether certain transactions should or should not be effected by deed." It has never been supposed in England that the privilege of the House of Commons as to originating taxation is attended with such consequences as this.

We have, &c.,
W. ATHERTON.
ROUNDELL PALMER.

His Grace the Duke of Newcastle, K.G.

Enclosure 2.

MEMORANDUM for His Excellency the Governor.

Auckland, 29th December, 1862.

IN transmitting the accompanying resolutions of the Legislative Council to His Excellency the Governor, Ministers desire to append thereto the following remarks by the Colonial Secretary and Native Minister.

ALFRED DOMETT.

The difference of opinion as to the breach of privilege complained of by the House of Represen-

tatives evidently arises from the ambiguous mode of legislation adopted in the clause of the Native Land Bill inserted by the Legislative Council. A price fixed, virtually, for the sale of land, was imposed in the shape of a fee upon the instrument conveying the land. Considered in the latter light (as a *fee*, to be imposed not in respect of benefit taken, to be paid into the Public Treasury, and to be publicly accounted for) the imposition of the half-crown per acre on the certificate was evidently a breach of privilege by the Legislative Council.

Considered as a fixed uniform price of land, settled in a kind of commercial transaction between the Government or the Crown and the public as voluntary purchasers, the Legislative Council had an undoubted right to impose it.

The principle on which the exclusive right of the House of Representatives to deal with money is founded is, of course, that of the right (by some called *sacred*) of property. No man is to take that which belongs to another. Money taken in the shape of taxes, fees, &c., for Government purposes is to be taken only by the representatives of the people, that is, by themselves from themselves, or, in other words, it is considered not as taken but voluntarily given.

But, where the subject-matter is the fixing a sum to be taken for a full equivalent given, a mere exchange of money for a material object of barter, and where it is quite at the option of the payer to pay or leave it alone and not enter into the transaction at all, this principle of the right of property does not enter. There seems no reason, in this case, why the consent of the payers (through representatives) should be required, or why the Legislative Council should not legislate as well as the House of Representatives.

It is true another argument might be used. It might be urged that these two cases are similar in one respect, viz., that in both an equivalent for money is given, only in one case the return is in government and its advantages, or in the mental labour of the governing body, and in the other case in a material object, *i.e.*, in land: that, where any price is to be fixed by the Legislature, both the buyers and the sellers should concur in that price, and, as the lands to be sold belong to the whole public, and the whole public may be buyers, the House of Representatives alone should fix this price. But I think this would prove too much, and limit to an extent never demanded or advocated (as far as I know) the powers of this or any non-representative branch of a Legislature.

The above is the view taken of the clause by the Chairman of the Committee of the Legislative Council. On the other hand, the Native Minister urges the following (which expresses the opinion of the House of Representatives) as the more correct statement of the character and effect of the clause under consideration.

The Bill, as originally passed, conferred on the Natives the power of selling their lands after obtaining certificates of ownership.

The amendment of the Legislative Council deprived them of this power, because by it the original certificate was made only to confer a right of leasing. Unless the certificate obtained the signature and seal of the Governor it was not, under the amendment, to confer the power of sale; and for this signature and seal a fee of 2s. 6d. was to be paid.

There are three documents conferring power of sale under the Bill as originally passed and finally amended.

(1.) Certificate issued by the Court (after confirmation of its proceedings by the Governor), not signed or sealed.

(2.) Certificate signed by Governor and sealed with colonial Seal (for not more than twenty persons), having all the effect of a Crown grant.

(3.) Crown grants to be given in exchange for either of the foregoing classes of certificates.

A fee of 2s. 6d. was chargeable on the last two documents.

The amendment of the Council took away the power of sale from the first class of certificates, limiting it to the second class—that is, the Natives, to acquire a general power of sale, would have to pay the 2s. 6d. fee and get the second class of certificate. Looked at in this light, the Council's amendment evidently amounted to the imposition of a fee or tax, as it could not be to the Native the price of his own land. It is not a sufficient answer to say the European purchaser would really pay the 2s. 6d., because he would deduct it from the price to be paid to the Native.

And, as the Bill conferred on the Native the right of absolutely selling his land, only requiring the payment of 2s. 6d. per acre for the additional privilege of getting a Crown grant or equivalent document for it, the true opinion seems to be that the 2s. 6d. was always a tax or fee, not a price for land. In such case the amendment of the Legislative Council was a breach of privilege.

ALFRED DOMETT.

Further Memorandum on the same Subject by the Native Minister.

I SHOULD like to add a few words to Mr. Domett's minute, that the nature of my objection may not be misunderstood.

The Bill granted an absolute right of sale of their lands to the Natives, free from any tax or fee. If European buyers were content to hold and sell under the Maori certificate and a proper conveyance of it, they could do so; but, if they preferred to come in and exchange their certificate for a Crown grant, or to get the certificate sealed, which gave it the qualities of a Crown grant, for that special advantage they were to pay 2s. 6d. an acre. Now, the Legislative Council's amendment said that no Native should sell at all unless he had paid a tax of 2s. 6d. an acre on his land to the European Treasury.

In one case, the European paid for a privilege which converted his tenure under a Maori certificate into fee-simple according to English real property law—he paid a price for his English title, and the payment of it was optional with himself. In the other, the Natives' property was taxed absolutely, since he could not sell it without paying a tax, for which he literally got nothing in return.

The promoters of the amendment knew perfectly well that such a tax was ruin to the whole working of the Bill, and, not being able to defeat it directly, they resorted to this apparently indirect mode of securing to the provinces a revenue out of land which did not belong to the provinces.

F. D. BELL.

APPENDIX No. 3.

Privilege.—Mr. SPEAKER intimated to the House that he had received the following letters from Mr. Chairman of Committees respecting the privileges of this House;

And the said letters having been read,

Ordered, That they be recorded on the Journals of this House:—

SIR,— Auckland, 1st December, 1864.

I have the honour to request that you will lay upon the table of the House the enclosed copy of a letter from Mr. Erskine May, in addition to the correspondence already placed in your possession concerning an alleged breach of privilege.

I ask leave to observe that the letter in question is an answer to one from me (of which I have not preserved a copy) enclosing a copy of the opinion given on the same case by the Law Officers of the Crown, and requesting Mr. May to state whether his own had been in any way changed by the arguments adduced on the other side.

I have, &c.,
HUGH CARLETON, Chairman of Committees.

The Hon. the Speaker of the House of Representatives.

SIR,— Bournemouth, Hants, 19th January, 1864.

As the mover of the resolution agreed to by the House of Representatives in the session of 1862, "That the amendment of the 17th clause of 'The Native Lands Act, 1862,' is an infringement of the privileges of this House," I feel it my duty, having been informed that the Legislative Council do not admit that any breach of privilege has been committed, to take the opinion of Mr. Erskine May upon the question, and accordingly forward you a copy of the correspondence on the subject, requesting you to inform the House of that gentleman's decision.

I have, &c.,
HUGH CARLETON, Chairman of Committees.

The Hon. the Speaker of the House of Representatives.

SIR,— 40, Duke Street, St. James', 22nd July, 1863.

I have the honour to request your opinion upon a disputed point of privilege which has arisen between the Legislative Council of the General Assembly of New Zealand and the House of Representatives.

The practice of the Assembly in regard to money clauses is identical with that of the Imperial Parliament.

I am content, on behalf of the House of Representatives, to accept the statement of the case which has been drawn up by a Select Committee of the Legislative Council. I lay this statement before you, and desire to ask whether or not, in your opinion, an extension of the operation of a tax in the manner described, if made to the Lords, would be a breach of the privileges of the Commons.

I have, &c.,
HUGH CARLETON, M.G.A.

Thomas Erskine May, Esq.

SIR,— 23rd July, 1863.

In reply to your letter of the 22nd instant, I desire to state that I have perused the papers which you submitted to me, and particularly the report of the Committee of the Legislative Council of New Zealand upon the Native Lands Bill.

It appears to me that the amendment made by the Legislative Council to that Bill, having rendered a certain class of instruments liable to a tax or duty from which they were exempt under the Bill as passed by the House of Representatives, was an infringement of the privileges of the latter. No such amendment would have been accepted in this country by the House of Commons if made under similar circumstances by the Lords.

I have, &c.,
Hugh Carleton, Esq., &c. T. ERSKINE MAY.

House of Commons,
MY DEAR SIR,— 30th May, 1864.

I have no desire to be engaged in a controversy at the antipodes, but I have no objection to state, without entering into any arguments, that I adhere to the opinion stated last year—that, if such an amendment, having the objects designed by that in the Native Lands (New Zealand) Bill, had been made by the House of Lords to a Bill sent up to them by the Commons, the latter would not have assented to it, in accordance with their own privileges and the usage which is maintained between the two Houses.

I have, &c.,
Hugh Carleton, Esq. T. ERSKINE MAY.

APPENDIX No. 4.

Extract from Journals of Legislative Council, 18th August, 1868.

Legislative Council Committee.—The Hon. Mr. Holmes, from the Select Committee appointed to inquire into the powers and privileges of this Council, with a view to a modification of its constitution, brought up a report, which was read as followeth:—

In the consideration of the subject remitted to your Committee to report on, they have deemed it expedient to state concisely the authorities on which the powers, privileges, and immunities of the Legislative Council are based; to review the constitution of similar Chambers in other British colonies; to narrate the action which has hitherto been taken by the Council in the direction of a limitation of its numbers; and then to suggest such a course as, in their opinion, would be best adapted to extend its influence and to sustain its independence.

With reference to the first of these stages of consideration, it may be observed that the Constitution Act, which passed the Imperial Legislature in 1852, empowered the Legislative Council and House of Representatives, among other things, to make such standing rules and orders as might be necessary for the orderly conduct of business (52); defined the power of the General Assembly to make laws for the peace, order, and good government of New Zealand (53); and enabled it at any time to alter any of the provisions of the Act itself (68). This Act was amended in 1857 by an Imperial Act, repealing certain clauses, and enabling the General Assembly to alter, suspend, or repeal all or any of the provisions of the said Act, except those which were specified (2); and was further amended by the Imperial Act of 1862, with respect to the power of creating new provinces, repealing a previous Act on the subject, and making further provisions instead thereof.

In 1856, in pursuance of the power vested in it by the Act of 1852, the Legislature of New Zealand passed "The Privileges Act, 1856," whereby certain of the privileges, immunities, and powers of the General Assembly were defined and declared (1 to 10); such definition, however, was not to be construed, directly or indirectly, by implication or otherwise, to restrict in any manner whatever the privileges or immunities of the Legislature (12).

"The Parliamentary Privileges Act, 1865," repealed the fifty-second section of the Constitution Act, which had empowered the Legislative Council and House of Representatives to make standing rules and orders for their guidance (5), and conferred upon the Council and the House respectively, the privileges, immunities, and powers enjoyed and exercised by the House of Commons on the 1st of January, 1865, whether such were held by custom, statute, or otherwise (4).

Your Committee now proceed to state briefly the constitution of the Upper Legislative Chambers of some of the principal colonies of Great Britain.

In New South Wales the constitution was established in 1853. The Legislative Council consists of not fewer than twenty-one members, appointed for life by the Governor and Executive Council, of whom not less than four-fifths consist of persons not holding office under the Crown. The Council now consists of twenty-seven members, the Legislative Assembly consisting of eighty members.

In Victoria the constitution was established by a local Act in 1854, confirmed by the Crown, and was subsequently amended. The Legislative Council consists of thirty members, elected for six provinces, one of the members of each electoral district retiring every two years: the qualification of members being the possession of a freehold property worth £5,000, or of the annual value of £500; and the qualification of the elector being the possession of freehold property worth £1,000, or of the annual value of £100. The Assembly consists of seventy-eight members.

In Tasmania the constitution was established by local Act in 1855. The Legislative Council consists

of fifteen members, elected for twelve districts, each holding his seat for six years. The Council is competent for the transaction of business so long as seven members remain. The House of Assembly consists of thirty members.

In South Australia the constitution was remodelled in 1856. The Legislative Council consists of eighteen members elected by the inhabitants, one-third retiring by rotation every four years. The House of Representatives consists of thirty-six members.

In Queensland the constitution was established in 1859, and subsequently amended. The Legislative Council is without limit as to numbers, but consists of twenty members, nominated for life by the Governor; four-fifths of these consist of persons not holding office under the Crown. The numbers of the House of Assembly being thirty-two.

In the Dominion of Canada the constitution was established in 1867. The Senate consists of seventy-two members, apportioned in equal numbers to the three divisions constituting the Dominion. This number may be increased to seventy-eight. The members are summoned to the Senate by the Governor-General in the Queen's name, and hold their places in the Senate for life. Its House of Commons consists of 181 members.

Your Committee now proceed to narrate the changes which have taken place in the Legislative Council of New Zealand, and those further changes which have been desired.

By clause 33 of "The Constitution Act, 1852," the Governor was authorized to summon to the Legislative Council, before the first meeting of the General Assembly, such persons, being not less than ten, as Her Majesty should think fit; and thereafter from time to time to summon such other person or persons for supplying any vacancy or vacancies or otherwise.

On the 9th of February, 1855, instructions were conveyed to His Excellency Colonel Thomas Gore Browne, C.B., authorizing him to summon to the Legislative Council such person or persons as he might think fit, in addition to the present members of the said Council, or for supplying any vacancies that may take place therein, by death or otherwise, but so that the whole number of the said Council should not at any time exceed fifteen. (See Votes and Proceedings of Legislative Council, 1854 to 1858.)

On the 12th of August, 1861, instructions were given to His Excellency Sir George Grey, K.C.B., to the effect that the number of members of the Legislative Council should not exceed twenty.

On the 28th March, 1862, further instructions were given to His Excellency, revoking the previous instructions, and empowering him to summon such an additional number of persons to the Legislative Council as he might deem expedient. (*Vide* Appendix to the Journals of the House of Representatives, 1862, A. No. 1, pp. 4 and 7; also A. Nos. 4 and 5, pp. 3 and 4.)

On the 22nd August, 1862, the Council adopted a resolution requesting Her Majesty to place a limit on its numbers, of which the following is an extract:—

Your Majesty's Legislative Council, believing that its usefulness depends upon its freedom from party spirit, and viewing with apprehension the power vested by the above despatch in the Ministry of the day, who could, by suddenly introducing any number of members, seriously impair the independence of the Council, respectfully pray that your Majesty would be pleased to place a limit on its members. . . .

We respectfully solicit that the number of members of the Legislative Council should not exceed three-fourths of that of the House of Representatives, and that no greater number of new members be appointed, in addition to those required to fill up vacancies by death, resignation, or other causes, in any one year than would amount to one-eighth of the entire number composing the Legislative Council.

On the 17th April, 1863, His Grace the Duke of Newcastle informed His Excellency Sir George Grey that Her Majesty did not see any sufficient ground for exercising her Royal prerogative with a view to limit the number of the Legislative Council, which number is not limited by the law of the colony.

In consequence of this decision, a Bill was introduced into the Legislative Council in October, 1865, for the purpose of limiting the number of its members, but which Bill did not pass the second reading.

On the 30th July, 1866, a Bill of a similar purport was again introduced, and passed through all its stages in the Legislative Council, but lapsed in the House of Representatives.

On the 20th August, 1867, a still growing desire being evinced for some restriction of the number of members, a Bill was brought into the Council to effect this object; but, on the Government promising to consider the subject during the recess, and bring in a Bill, or give sufficient notice to enable some private member so to do, it did not proceed further that session.

The next question which engaged the attention of your Committee had reference to the mode whereby the influence of the Council might be extended, and its independence secured. And here it may be remarked that the period at which Bills have been introduced into the Council has very materially interfered with that due deliberation which should be given to them. The greater portion of the early part of each session of Parliament is not infrequently devoted by the House of Representatives to debates on great questions of policy, either originating with the Government or with private members, so that it is only towards the middle or close of the session that Bills are forwarded to the Council, thereby leaving little time for their consideration, and consequently the Bills are either laid by for a time, to the detriment of the public service, or passed hurriedly through all their stages without that careful and minute scrutiny which attends Bills referred to a Select Committee, or reviewed in a Committee of the whole Council; and this evil still occurs, even though repeated protests have been entered against the hasty legislation involved. An examination of the statement (A) attached to this report will show to what a length this injurious procedure has extended. Your Committee can see no reason why many of the Bills submitted to Parliament should not, in the first instance, be submitted to the Council. Any difficulties which might arise with reference to Bills affecting charges on the people might easily be removed by the course proposed in the twenty-first chapter of May's "Parliamentary Practice."

Your Committee would also remark that, in their opinion, it is desirable that the number of members holding any office of profit under the Crown during pleasure should be limited. In New South Wales and Queensland the number is restricted to one-fifth of the number of members. This proportion, even though including Ministers of the Crown, may be too large; but it would, nevertheless, be undesirable that public officers who may have great departmental knowledge and experience should be absolutely excluded from a seat in the Council.

The attention of your Committee has been drawn more particularly to the expediency of limiting the number of the members of the Council. It appears to be a rule in the principal colonies of the Empire,

either by law or by practice, to limit the proportion of the members of the Upper Chamber to about one-half of the number composing the Lower House, and this more especially appears to have been the case in the latest Constitution granted by the Crown, where the number of members of the Senate of the Dominion of Canada is not allowed to exceed seventy-eight; whereas the number of its House of Commons is 181. There are many and obvious reasons why this limitation should be enacted. Among others might be mentioned the fact that an undue extension has a tendency to impair the value attached to a seat in the Upper Chamber, and might expose the Chamber at any moment of popular or party strife to have its independence sacrified through the sudden introduction of members, with a view to carry out some object. While the Upper Chambers of all constitutional Legislatures recognize their position as one removing them entirely from party considerations, and as designed to be a guard against hasty and immature legislation, they would doubtless feel it to be their duty to weigh with more than ordinary anxiety and care the explicit declarations of public opinion, when deliberately given by all classes of the community, upon any measure, after the period of excitement which might have given rise to it had passed away. When such a spirit pervades the Upper Chamber there need be no apprehension of a conflict between the two branches composing the Legislature. Moreover, the experience of the past, as exhibited in statement (B) hereto attached, makes it evident that in the course of one or two sessions at most the Ministry of the day could have at command a sufficient number of vacancies to fill up, which, aided by the discretion, judgment, and good sense of the members of the Council, would enable them to pass any measures which had at least more than once received the unquestionable approval of a marked majority of the House of Representatives, and would thus avert the injurious consequences likely to arise from a conflict of opinion. Nevertheless it is necessary, should a limit be fixed, that some precaution should be taken by means of which a new Government might, where the limit has been attained, have an opportunity of appointing one or more Ministers to represent them in the Council.

Your Committee are therefore of opinion—

1. That a Bill for limiting the number of members of the Legislative Council should be introduced during the present session.

2. That the Council should press on the Government what it has so repeatedly urged — namely, the expediency of causing important Bills to be submitted to the Council at an early period of the session; and, further, should express its strong repugnance to entertain any Bill when, by reason of the late period of its introduction, it would be impossible duly to consider its provisions.

(A.) STATEMENT showing the Number of Bills introduced into the Legislative Council, either originating therein, or sent from the House of Representatives; with the Total of Each of the Four Weeks preceding the Day of Prorogation, and also of the Month.

—	Year.			
	1864.	1865.	1866.	1867.
Number of days of the session..	20	97	101	95
„ „ Bills introduced ..	19	87	89	108
Bills introduced during the last week of the session—				
House of Representatives ..	10	21	19	11
Legislative Council	4	2	2	1
Bills introduced during the last week but one of the session—				
House of Representatives ..	..	5	14	11
Legislative Council	..	..	2	2
Bills introduced during the last week but two of the session—				
House of Representatives ..	..	..	5	13
Legislative Council	5	..	1	1
Bills introduced during the last week but three of the session—				
House of Representatives ..	..	6	4	15
Legislative Council	..	1	2	9
Total of Bills introduced during the last month of each session ..	19	35	49	63
Percentage upon the total of the whole number of Bills introduced during the session	..	40·02	55·05	58·33

(B.) STATEMENT showing the Number of Members at the Close of each Session, and also of those added or subtracted before the Close of the following Session, from the Year 1854 to 1868.

—	No. of Members at Close of Session.	Before Close of following Session.	
		Added.	Sub-tracted.
Session I., ending 14th August, 1854	14	Nil	Nil.
Session II., „ 16th Sept., 1854 ..	14	Nil	Nil.
Session III., „ 15th Sept., 1855 ..	14	Nil	Nil.
Session IV., „ 16th August, 1856	13	2	3
Session V., „ 21st August, 1858	20	9	2
Session VI., „ 5th Nov., 1860 ..	19	1	2
Session VII., „ 7th Sept., 1861 ..	20	5	4
Session VIII., „ 15th Sept., 1862 ..	25	6	1
Session IX., „ 14th Dec., 1863 ..	28	5	2
Session X., „ 13th Dec., 1864 ..	28	Nil	Nil.
Session XI., „ 30th October, 1865	35	10	3
Session XII., „ 8th October, 1866	35	7	7
Session XIII., „ 10th October, 1867	36	4	3
Session XIV., commencing 9th July, 1868	34	6	8

N.B.—Average number of members at the close of the sessions 1865, 1866, 1867—35. Average number of members added to or subtracted from the Legislative Council during the last three years respectively—Added, 6 nearly; subtracted, 6.

Ordered, That the said report do lie upon the table.

Extract from Journals of the Legislative Council, 21st August, 1868.

Legislative Council Committee further Report.—The Hon. Colonel Kenny, from the Select Committee appointed to inquire into the powers and privileges of the Legislative Council, with a view to a modification of its constitution, brought up a report, which was read as followeth:—

Your Committee, having considered certain "papers relative to the appointment of members of the Legislative Council," remitted to them on the 20th instant for report, have to state as follows:—

On the 5th December, 1867, the Attorney-General forwarded a memorandum to the Hon. the Colonial Secretary on "the course followed in summoning persons to the Legislative Council," which course he considered not to be in accordance with the Constitution Act. He is of opinion "that the instrument whereby Her Majesty confers on the Governor authority to summon persons to the Legislative Council must specify the persons to be

summoned," and that "the Imperial Act imposed on Her Majesty the duty of selecting, and the power to authorize the summoning by the Governor, and on the Governor the ministerial act of summoning;" and he observes that there is "no general provision in the Act enabling Her Majesty to delegate" the power thus conferred on her. In practice, however, the Governor has nominated members to the Legislative Council, and they have at once taken their seats; but warrants have subsequently been sent from England "authorizing the summoning of the persons already summoned." The last such warrant appears to have been received in April, 1862. On the 28th of the previous March instructions had been received removing the limit of the number of the members of the Legislative Council, and from that time, without any apparent reason, the practice of informing the Secretary of State of appointments to the Legislative Council appears to have ceased, and consequently warrants have not since been issued. The Attorney-General further remarks that, if special warrants are necessary, "then an Act of the Imperial Legislature will be required to validate all Acts of the Assembly heretofore passed."

This memorandum was forwarded on the 10th of the same month to His Excellency the Governor, and the covering memorandum recommended that, if necessary, an Act of the Imperial Parliament should be passed to validate all Acts of the General Assembly heretofore passed, and to prescribe exactly the mode of summoning persons as members of the Legislative Council.

His Excellency forwarded these two memoranda on the 24th of the same month to the Principal Secretary of State for the Colonies.

In June, 1868, Mr. Adderley and Mr. Sclater-Booth brought into the House of Commons "A Bill to make Provision for the Appointment of Members of the Legislative Council of New Zealand, and to remove Doubts in respect to Past Appointments." This Bill, which it is believed has by this time become law, validates all past summonses to the Legislative Council, and, moreover, empowers the Governor to summon such persons as he may think fit to the Legislative Council; differing, in this latter respect, from the Constitution Act of 1852, where it is "amongst other things enacted that it shall be lawful for Her Majesty, from time to time, by any instrument under her Royal sign-manual, to authorize the Governor to summon persons to the Legislative Council"—transferring, in fact, the selection of persons, without limit as to number, from the Crown to the Governor.

So far, then, as the validation of the past Acts of the Colonial Legislature is concerned, the Imperial Government appears to have acted with promptitude; but they have apparently overstepped what was requested of them, in that they caused an organic change to be made in the Constitution Act, induced, no doubt, thereto by the practice which has latterly prevailed in New Zealand, and which might reasonably have been assumed to be in conformity with the wish of the New Zealand Parliament.

The further question, then, which your Committee had to consider was, Is this change desirable? It appears that, though the power of summoning persons was vested in the Crown, it was really exercised by the Governor, acting on the advice of the Ministry of the day. A similar course would doubtless prevail should the Imperial Bill become law.

Your Committee are of opinion that it is desirable that an Act should be passed leaving the selection and summoning of members in the hands of the Crown, with a power of delegation to the Governor; and they recommend that a respectful address be presented to Her Majesty in order to effect this object.

Your Committee are still of opinion that a Bill should be introduced limiting the number of members of the Legislative Council; that such Bill should be reserved for the signification of Her Majesty's pleasure thereon, with a request, should it be informal, that the proposed limitation of the Council should be embodied in the Imperial Act.

Ordered, That the said report do lie upon the table and be printed.

APPENDIX No. 5.

Report on Privileges, &c., of the Legislative Council.

MEMORANDA.

[NOTE.—The numbers refer to the pages of the author's work referred to.]

IN inquiring into the subject remitted to us to report upon, we have deemed it expedient to divide the investigation into three branches, viz.,—

1. As to the powers conferred on the Council by the Constitution Act and by any subsequent legislation.

2. As to the powers held or exercised by law, rule, or usage by the House of Lords and House of Commons respectively.

3. As to the powers conferred on the chief colonies of Great Britain under constitutional government by any Constitution Act and legislation, and as held and exercised by the Legislature of the United States of America.

We submit the opinions which have been expressed by eminent writers on the privileges of the Parliament of Great Britain and other Legislative Assemblies, and extracts from the Acts granting Constitutions to Victoria, New South Wales, and Canada.

We would observe, with reference to the first branch, that in the 54th section of the Constitution Act of New Zealand it is laid down "that 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." So early as 1854, on the introduction into the Legislative Council from the House of Representatives of the first Appropriation Bill, the Legislative Council raised the question whether it did not possess the power to amend or alter any such legislative measure submitted for its consideration; but, as it was proposed to prorogue the Assembly on the following day, the Council consented to pass the Appropriation Bill without alteration, referring the question of its rights to alter such Bills to the consideration of Her Majesty's Imperial Government. The reply, dated the 25th March, 1856, was to the effect "that, as the New Zealand Constitution Act was silent on the subject, the analogy of the English Constitution ought to prevail; and it pointed out that the undisputed practice, as affirmed by a resolution of the House of Commons of the year 1678, was that Bills of Supply ought not to be changed or altered by the House of Lords."

The Privileges Act of 1856 indicated certain privileges as pertaining to legislative bodies and

officers of the Government of the colony and provinces of New Zealand, conferred certain powers on the said legislative bodies, and gave protection to persons employed in the publication of papers under the authority of the same. At the same time it was expressly stated that the Act was not to be held directly or indirectly, by implication or otherwise, to restrict whatsoever privileges or immunities any such legislative body might possess.

"The Parliamentary Privileges Act, 1865," passed on the 26th day of September, repealed the 52nd section of the Constitution Act, which empowered the Legislative Council and House of Representatives to make rules for the orderly conduct of the business of such Council and House; and also repealed so much of "The Privileges Act, 1856," as applied to the Legislative Council and House of Representatives; and it enacted that "the Legislative Council or House of Representatives of New Zealand, and the Committees and members thereof respectively, shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as, on the 1st day of January, 1865, were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, and by the Committees and members thereof, so far as the same are not inconsistent with or repugnant to such and so many of the sections and provisions of the said Constitution Act as, at the time of coming into operation of this Act, are unrepealed, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise." The Act also provided that "such privileges, immunities, and powers shall be deemed to be and shall be part of the general and public law of the colony;" and further declared that, in cases of inquiry into such privileges, printed copies of the Journals of the House of Commons shall be evidence of such Journals. It also empowered the Legislative Council and House of Representatives and their Committees, or any joint Committee, to administer oaths, and protected publishers of reports acting under the authority of either branch of the Legislature. "The Privileges Act, 1866," exempted members of the General Assembly from attendance in Courts of law in certain cases. Since then there has been no further legislation on the subject.

With reference to the second branch of the inquiry we would observe that in 1704 the Lords communicated a resolution to the Commons at a Conference—to which resolution the Commons assented—"That neither House of Parliament have power by any vote or declaration to create to themselves new privileges not warranted by the known laws and customs of Parliament." (See May "On the Law, Privileges, Proceedings, and Usage of Parliament," 1868, p. 66.) Without entering minutely into the question of the rise and progress of the power to impose taxation and grant supplies, it may be sufficient to say that "Her Majesty's Speech at the commencement of each session recognizes 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." The grant from the Commons is not, however, "effectual in law without the assent of the Queen and the House of Lords." (P. 534.)

The claim thus recognized of originating grants appears to have existed for 300 years. In 1678 it was extended, and the Lords were precluded from amending Bills of Supply. (P. 537.) "This principle is acquiesced in by the Lords." (P. 538.) "In Bills not confined to matters of aid or taxation, but in which pecuniary burdens are imposed upon the people, the Lords may make 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." (P. 538.) Bills containing provisions of the above kind are sometimes introduced into the Lords, but ultimately passed in a form by which no privileges of the Commons are infringed upon. When Bills of Supply have had tacked to them enactments which, in another Bill, would have been rejected by the Lords, such a proceeding, invading the privileges of the Lords, "has been resisted by protest, by Conference, and by the rejection of the Bills." (P. 545.) In 1860 the Commons, on the rejection of the Paper Duties Repeal Bill, which overruled the financial arrangements voted by the Commons, resolved—"3rd. That, to guard for the future against an undue exercise of that power by the Lords" (viz., the power of the Lords to reject Bills of taxation) "and to secure to the Commons their rightful control over taxation and supply, their House has in its own hands the power so to impose and resist taxes, and to frame Bills of Supply, that the rights of the Commons as to the matter, manner, measure, and time may be maintained inviolate." (P. 545.) Acting upon this resolution, the Commons, in the following session, embodied the repeal of this duty in a general financial measure for granting taxes and duties, "which the Lords were constrained to accept." (P. 546.)

Lord Brougham, in his work on the British Constitution (1844), observes, in reference to the tenacious adherence by the Commons to certain privileges with respect to the Lords: "I allude particularly to the exclusion of the latter from the originating of any measure of Supply, and from all alterations upon any financial measure sent up from the Lower House. Although the Lords have never abandoned their claim to originate and to alter money Bills, as well as the Commons, yet, in practice, they never assert the right, and we may therefore take it that, by our Constitution, the Commons alone can begin any measure of Supply, and that the Lords have no power to alter it as sent up to them, but must either accept it wholly or wholly reject it." (P. 115.) The Commons have, however, he states, allowed this exclusive privilege to be broken in upon once and again, as when they withdrew from "the absurd pretence that a prohibition, being enforced by a pecuniary penalty, could not be touched by the Lords because it was a money clause." (P. 116.)

Mr. Hearn, in his work on the Government of England, observes that "although Parliament grants supplies to the Crown, and provides the ways and means for raising these supplies, the functions of the two Houses of Parliament are not in this respect alike. The House of Commons has acquired in this matter peculiar powers. It claims as within its exclusive jurisdiction all questions of finance. With the initiation of all such questions, and with all their details, this House exclusively deals. The House of Lords on these Bills, like the Crown on these and all other Bills, retains the general power of assent or rejection only, but not of amendment. The functions, then, of the several powers of the State in matters of finance may be thus briefly stated: The Crown makes requisitions

to the Commons for the supplies which the public service demands. The Commons grant the supplies, and provide the ways and means for raising them. The Lords assent to these grants and these financial arrangements. The Crown accepts the grants and assents to the legislation which they involve." (P. 353.)

The exemption of such Bills (money Bills) from amendment by the Lords may be dated from the Conferences of 1671 and 1678. "These principles may now be regarded as firmly settled. The House of Lords, indeed, has never formally abandoned its right of amendment, but it has for many years abstained from its exercise in cases calculated to excite dispute." (P. 353.) In 1860 the Lords rejected, for financial reasons, a Bill passed by the House of Commons for the repeal of the excise duties on paper. This action of the Lords was met by the Commons by declaratory resolutions, and in the following session by a Bill including various enactments for the repeal of some taxes (the paper duties among the number) and the imposition of others. The House of Lords, after some opposition, passed the Bill rather than reject it in its entirety; but such forbearance, it is said, is not to be expected where "questions of general commercial policy are involved." The precedent of the paper duties does not sanction the combination of a Tax Bill with an Appropriation Bill, or with any other measures not connected with ways and means. (P. 354.)

The constitutional theory of taxation, it is said, has been recognized by express enactment in the various Colonial Constitutions which during the present reign have received the sanction of Parliament. (P. 353.)

Mr. Todd, in his book on parliamentary government, remarks that "there is no rule or usage of the House of Lords to forbid the presentation and discussion of a petition for pecuniary redress or compensation, provided it be couched in general terms;" and the Lords "are not constitutionally debarred from instituting inquiries by their own Committees into financial matters or into questions which involve the expenditure of public money," because it is desirable "that they should be prepared, by full investigation and free inquiry, to give or withhold their assent intelligently" to every legislative measure, whether of Supply or otherwise. In 1852 the House of Lords inquired by a Select Committee into the claims of Baron de Bode for pecuniary relief; and in 1860 a Lords Committee upon Floating Breakwaters recommended "that a sum not exceeding £10,000 be placed at the disposal of the Admiralty" to enable that department to test any plans for the suitable construction of such works. (P. 433.)

Upon matters of Supply and taxation the Commons "have succeeded in maintaining their exclusive right to originate all measures of this description. They have gone further, and have claimed that such measures should be simply affirmed or rejected by the Lords, and should not be amended in the slightest particular. The Lords have practically acquiesced in this restriction, although they have never formally consented to it." (P. 457.) "Every Bill to impose or repeal a tax involves other considerations besides those which are purely questions of revenue: it necessarily includes principles of public policy or of commercial regulation; and on points of this kind the Lords, as a co-ordinate branch of the Legislature, are constitutionally free to act and advise as they may judge best for the public interests." Their power should, however, be only "resorted to upon extraordinary occasions." (P. 459.) In 1862 the Budget propositions, involving twenty-two millions of money, were introduced into the House of Commons in one Bill. When the Bill was before the Lords, Lord Derby, in debating the expediency of such a mode of introduction, remarked that "the one course interposes to us no greater obstacles than the other, because, as it is perfectly within our province and our right to reject a particular proposition in a single Bill, so it is equally within our competence to reject that same proposition when incorporated with others," and "leave the Commons to the consequences of their own proceeding." (P. 464.)

Mr. Homersham Cox observes in his work on the institutions of the English Government (1863): "The now established practice of the House of Commons admits of no discussion with or amendments by the House of Lords with respect to money Bills; but that practice was not completely established until after the seventeenth century." (P. 185.) "In 1678 the Commons resolved that all supplies were their sole gifts, 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 been seldom, or but faintly, controverted by the Lords." (P. 186.) Mr. Cox also quotes the proceedings of the House of Commons in 1860 with respect to the rejection of the Paper Duty Repeal Bill, and the consequent action taken by that House in 1861, in passing a Bill "in which measures for the repeal of some taxes and the imposition of others were combined." "The Lords," he observes, "passed the Bill, but not without a protest from several lords against the course taken by the House of Commons, on the ground that it was contrary to usage, and that measures of Supply and repeal of taxes ought not to be combined in the same Bill." He also quotes Blackstone as saying with reference to the right of the Lords to reject money Bills, "It is sufficient that they have a power of rejecting, if they think the Commons too lavish or improvident in their grants." Also De Lolme: "The Lords are expected simply and solely either to accept or reject them." (P. 188.)

Hallam says ("Constitutional History," Vol. III., p. 27) "that the importance of the exclusive privilege claimed by the Commons" (in money Bills) "has been rather exaggerated by them." "In early records Lords and Commons made money grants to the King without mutual communication." "22nd Edward III.: Commons alone granted three-fifteenths, levied on themselves." "After this both Lords and Commons are jointly recited, sometimes after deliberating together."

In Richard II.'s reign, Commons are recited to grant money with assent of Lords, apparently indicating that the vote originated with Commons, and that the grant was mainly theirs.

In the reigns of Henry IV. and V. the Commons grant, the Lords consent. Hallam doubts whether, in other than cases where it is specially mentioned, the Lords bore any part of the taxes.

Hallam further says that "in 1 Car. I. Commons began to omit names of the Lords, reciting the grant as if wholly their own."

The Commons further maintained that "the Lords could not amend Bills making a charge upon the people." Hallam, "Constitutional History," Vol. III., pp. 30, 31, and 32:—

If the Commons, as in early times, had merely granted their own money only, it would be reasonable that they should have, as they claimed, a fundamental right as to the matter, measure, and time. But that the peers, subject to

the same burdens as the rest of the community, and possessing no trifling proportion of general wealth, should have no other alternative than to refuse the necessary supplies of the revenue, or to have their exact proportion, with all qualifications and circumstances attending their grant, presented to them unalterably by the other House of Parliament, was an anomaly that could hardly rest on any other ground of defence than such a series of precedents as establish a constitutional usage, while, in fact, it could not be made out that such a pretension was ever advanced by the Commons before the present Parliament. In the short Parliament of April, 1640, the Lords having sent down a message requesting the other House to give precedency in the business they were about to a matter of Supply, it had been highly resented as an infringement of their privilege, and Mr. Pym was appointed to represent their complaint at a Conference. Yet even the boldest advocate of popular prejudices who could have been selected was content to assert that the matter of subsidy and Supply ought to begin in the House of Commons. There seems to be still less pretext for the great extension given by the Commons to their acknowledged privilege of originating Bills of Supply. The principle was well adapted to that earlier period when security against misgovernment could only be obtained by the vigilant jealousy and uncompromising firmness of the Commons. They came to the grant of subsidy with real or feigned reluctance as the stipulated price of redress of grievances. They considered the Lords, generally speaking, as too intimately united with the King's ordinary Council, which, indeed, sat with them, and had, perhaps, as late as Edward III.'s time, a deliberative voice. They knew the influences or intimidating ascendency of the Peers over many of their own members. It may be doubted, in fact, whether the Lower House shook off absolutely and permanently all sense of subordination, or, at least, deference, to the Upper till about the close of the reign of Elizabeth. But I must confess that when the wise and ancient maxim —"That the Commons alone can empower the King to levy the people's money"—was applied to a private Bill for lighting and cleansing a certain town, or cutting dikes in a fen, to local and limited assessments for local benefit (as to which the Crown had no manner of interest, nor has anything to do with the collection), there was more disposition shown to make encroachments than to guard against those of others. They began soon after the Revolution to introduce a still more extraordinary construction of their privilege: not receiving from the House of Lords any Bill which imposes a pecuniary penalty, nor permitting them to alter the application of such as had been imposed below. These restrictions upon the other House of Parliament are now become in their own estimation the standing privileges of the Commons. Several instances have occurred during the last century, though not, I believe, very lately, when Bills chiefly of a private nature have been unanimously rejected and even thrown over the table by the Speaker, because they contained some provision in which the Lords had trespassed on these alleged rights. They are, as may be supposed, very differently regarded in the neighbouring Chamber. The Lords have never acknowledged any further privilege than that of originating Bills of Supply. But the good sense of both parties and of an enlightened nation, who must witness and judge of their disputes, as well as the natural desire of the Government to prevent in the outset any altercation that must impede the course of its measures, have rendered this little jealousy unproductive of those animosities which it seemed so happily contrived to excite.

After the Revolution the Commons objected to the Lords providing for local and limited assessment; then "by-and-by to the Lords meddling with or first passing Bills imposing penalties or altering the application of such as had been imposed by Lower House."

Taylor, in his "Book of Rights," 1833, tells us that "Sir William Beetham says that no deliberative assembly existed until the reign of Edward I."

In 34 Edward I. "No tallage or aid shall be taken by us without the goodwill and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land."

It appears that laws were placed on the Statute Book in the reign of Edward II. without, and sometimes against, the consent of the other branches of the Legislature; which seems to have occasioned a petition of Commons as to an equal participation in drawing up statutes. (5 Richard II., 1381.)

In 9 Henry IV. we find a very important record of one of the first disputes, if not the first, about money Bills between the King and Lords and the Commons. (Pp. 117, 118, 119.)

Taylor further observes (1604), "The Commons say that their privileges and liberties are their right and inheritance no less than their very land and goods."

Guizot, in his work on representative government (1861), says: "Barons (vassals of the King) had a right to levy imposts only as representatives of their own vassals. E.J." "Although they were not elected, and had received neither appointment nor mandate, we may nevertheless say that they were regarded as representing their own vassals, and that it was only in virtue of the power which was attributed to them in this fictitious representation that they exercised the right of levying imposts on all the proprietors in the kingdom." "(NOTE.—This is expressly indicated by two writs, one in the reign of John, 17th February, 1208; the other issued by Henry III., 12th July, 1237.)" (P. 35.)

The Convocation of County and Burgh Deputies became an actual necessity as the principle, that consent in all matters of impost was right, came to be recognized. (P. 375.)

Guizot also cites, for the division of Parliament into two Houses, the following authorities: "Carte 17, Edward III., 1344. Parliamentary History, 6 Edward III., 1333. Hallam, 1327, or perhaps 8 Edward II., 1315" (organized, perhaps, between 1345–1355). (P. 418.) He tells, at page 514, that in 1407, Henry IV., Commons recognized these principles: Parliamentary initiative in its present form, and exclusive initiative of Commons in matters of subsidies. (P. 514.)

Guizot explains fully the causes of jealousy of the Commons and reasons for their seeking to have control of money Bills. (Pp. 434, 435, 436, 447, and 462.)

Arthur Mills, in a work on Colonial Constitution, 1856, says that "Upper House can originate, amend, or reject all Bills except money Bills;" "the extent of their parliamentary privileges is considerable, but hardly admits of legal definition;" and that "the election of representatives, as Lord Chief Justice Holt expresses it, is an original right vested in and inseparable from the freehold."

Earl Russell, in "English Government and Constitution," 1866, says, "It was a part of the practical wisdom of our ancestors to alter and vary the form of our institutions, as they went on, to suit the circumstances of the time, and reform them according to the dictates of experience. They never ceased to work upon our frame of Government as a sculptor fashions the model of a favourite statue. It is an art that, till of late years, had fallen into disuse, and the disuse was attended with evils of the most alarming magnitude." (Pp. 10, 11.)

Bagehot, on the English Constitution, 1867, says, "The evil of two co-equal Houses of distinct nature is obvious." "In both the American and Swiss Constitutions the Upper House has as much authority as the second." "If it does not produce a deadlock it is owing, not to the goodness of the legal Constitution, but to the discreetness of the members of the Chamber." (Pp. 127, 128.) At page 130 he says, "Since the Reform Act the House of Lords has become a revising and suspending House. It can alter Bills, and it can reject Bills on which the House of Commons is not yet thoroughly in earnest—upon which the nation is not yet determined. This veto is a sort of hypothetical veto: they say, We reject your Bill for this once, or these twice, or even these thrice, but, if you keep on sending it up, at last we will not reject it. The House has ceased to be one of the latent directors,

and has become one of the temporary rejectors and palpable alterers."

The Duke of Wellington's letter to Lord Derby quoted here is worthy of perusal: Mr. Bagehot goes on to say, "The House of Lords now is a Chamber with, in most cases, a veto of delay—with, in most cases, a power of revision—but with no other rights and powers." "As the Duke's letter in every line evinces, the wisest members—the guiding members of the House—know that the House must yield to the people if the people are determined." (P. 135.) And at page 169, "But I do not consider that, upon the broad principle of omitting legal technicalities, the House of Commons has any special function with regard to financial different from its functions with respect to other legislation." "It is to rule in both, and to rule in both through the Cabinet." And at page 270 he adds, "The House of Commons may, as was explained, assent in minor matters to the revision of the House of Lords, and submit in matters about which it cares little to the suspension veto of the House of Lords; but, when sure of the popular assent, and when freshly elected, it is absolute—it can rule as it likes and decide as it likes."

We would further observe, in reference to the third branch of the investigation, that the Constitution Act of New South Wales, of 1853, provides "that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax, or impost, subject always to the limitations contained in clause 62 of this Act, shall originate in the Legislative Assembly"—that is, the Lower Chamber; and by clause 62 it is provided "that 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 have been first recommended by a message of the Governor to the Legislative Assembly."

The Constitution Act of Victoria states that "it shall be lawful for the Legislature of Victoria by any Act or Acts to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Council and Assembly, and by the members thereof respectively: Provided that no such privileges, immunities, or powers shall exceed those now had, enjoyed, and exercised by the Commons House of Parliament, or the members thereof." And also that "all Bills for appropriating any part of the revenue of Victoria, and for imposing any duty, rate, tax, rent, return, or impost shall originate in the Assembly, and may be rejected, but not altered, by the Council." And, further, that "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 duty, rate, tax, rent, return, or impost for any purpose which shall not have been first recommended by a message of the Governor to the Legislative Assembly during the session in which such vote, resolution, or Bill shall be passed."

The Act of 20 Vict., 25th February, 1857, is "An Act for defining the Privileges, Powers, &c., of the Legislative Council and Legislative Assembly of Victoria," and differs from the New Zealand Act of 1865 chiefly as to the date from which the privileges, &c., of the House of Commons are to be taken as a guide. The Victorian Act fixes the date at 18 and 19 Vict.; the New Zealand Act at the 1st January, 1865.

The British North American or Canadian Constitution Act was passed in 1867, and it declares in clause 18 that "the privileges, immunities, and powers to be held, enjoyed, or exercised by the Senate and the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof;" and it further provides, in clause 53, that "Bills for appropriating any part of the public revenue or for imposing any tax or impost shall originate in the House of Commons," and in clause 54 it is declared that "it shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General."

Judge Story, in his Commentaries on the Constitution of the United States, says that "the first clause" (sec. 7, art. 1) "declares, all Bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other Bills. This provision, so far as it regards the right to originate what are technically called 'money Bills,' is, beyond all question, borrowed from the British House of Commons, of which it is the ancient and indisputable privilege and right that all grants of subsidies and parliamentary aids shall begin in their House, and are first bestowed by them, although their grants are 'not effectual to all intents and purposes until they have the assent of the other two branches of the Legislature.' The general reason given for this privilege of the House of Commons is, that the supplies are raised upon the body of the people; and, therefore, it is proper that they alone should have the right of taxing themselves. And Mr. Justice Blackstone has very correctly remarked that this reason would be unanswerable if the Commons taxed none but themselves. But it is notorious that a very large share of property is in possession of the Lords; that this property is equally taxed as the property of the Commons; and therefore, the Commons not being the sole persons taxed, this cannot be the reason of their having the sole right of raising and modelling the supply. The true reason seems to be this: The Lords, being a permanent hereditary body, created at pleasure by the King, are supposed more liable to be influenced by the Crown, and, when once influenced, more likely to continue so, than the Commons, who are a temporary elective body, freely nominated by the people. It would, therefore, be extremely dangerous to give the Lords any power in framing new taxes for the subject. It is sufficient that they have a power of rejecting, if they think the Commons too lavish or improvident in their grants. (Sec. 874.)

"This seems a very just account of the matter in reference to the spirit of the British Constitution, though a different explanation has been deduced from a historical review of the power. It has been asserted to have arisen from the instructions from time to time given by the constituents of the Commons (whether of county, city, or borough) as to the rates and assessments which they are respectively willing to bear and assent to, and from the aggregate it was easy for the Commons to ascertain the whole amount which the commonalty of the whole kingdom were willing to grant to the King. Be this as it may, so jealous are the Commons of this valuable privilege that herein they will not suffer the other House to exert any power but that of rejecting. They will not permit the least altera-

tion or amendment to be made by the Lords to the mode of taxing the people by a money Bill, and under this appellation are included all Bills by which money is directed to be raised upon the subject for any purpose or in any shape whatsoever, either for the exigencies of Government, and collected from the kingdom in general, as the land-tax, or for private benefit, and collected in any particular district, as turnpikes, parish rates, and the like. It is obvious that this power might be capable of great abuse if other Bills were tacked to such money Bills, and accordingly it was found that money Bills were sometimes tacked to favourite measures of the Commons with a view to insure their passage by the Lords, an extraordinary use or, rather, perversion of the power, which would, if suffered to grow into a common practice, have completely destroyed the equilibrium of the British Constitution, and subjected both the Lords and the King to the power of the Commons. Resistance was made from time to time to this unconstitutional encroachment, and at length the Lords, with a view to give permanent effect to their own rights, have made it a Standing Order to reject upon sight all Bills that are tacked to money Bills. Thus the privilege is maintained on one side and guarded against undue abuse on the other. (Sec. 875.)

"It will be at once perceived that the same reasons do not exist in the same extent for the same exclusive right in our House of Representatives in regard to money Bills as exist for such right in the British House of Commons. It may be fit that it should possess the exclusive right to originate money Bills, since it may be presumed to possess more ample means of local information, and it more directly represents the opinions, feelings, and wishes of the people; and, being directly dependent upon them for support, it will be more watchful and cautious in the imposition of taxes than a body which emanates exclusively from the States in their sovereign political capacity. But, as the Senators are in a just sense equally representatives of the people, and do not hold their offices by a permanent or hereditary title, but periodically return to the common mass of citizens, and, above all, as direct taxes are and must be apportioned among the States according to their federal population, and as all the States have a distinct local interest both as to the amount and nature of all taxes of every sort which are to be levied, there seems to be a peculiar fitness in giving to the Senate a power to alter and amend, as well as to concur with or reject, all money Bills. The due influence of all the States is thus preserved; for otherwise it might happen, from the overwhelming representation of some of the large States, that taxes might be levied which would bear with peculiar severity upon the interests, either agricultural, commercial, or manufacturing, of others being the minor States; and thus the equilibrium intended by the Constitution, as well of power as of interest and influence, might be practically subverted. (Sec. 876.) There would also be no small inconvenience in excluding the Senate from the exercise of this power of amendment and alteration, since if any or the slightest modification were required in such a Bill to make it either palatable or just, the Senate would be compelled to reject it, although an amendment of a single line might make it entirely acceptable to both Houses. Such a practical obstruction to the legislation of a free Government would far outweigh any supposed theoretical advantages from the possession or exercise of an exclusive power by the House of Representatives. Infinite perplexities, and misunderstandings, and delays would clog the most wholesome legislation. Even the annual Appropriation Bills might be in danger of a miscarriage on these accounts, and the most painful dissensions might be introduced. (Sec. 877.) Indeed, of so little importance has the exclusive possession of such a power been thought in the State Governments that some of the State Constitutions make no difference as to the power of each branch of the Legislature to originate money Bills. Most of them contain a provision similar to that in the constitution of the United States; and in those States where the exclusive power formerly existed, as, for instance, in Virginia and South Carolina, it was a constant source of difficulties and contentions. In the revised Constitution of South Carolina (in 1790) the provision was altered so as to conform to the clause in the Constitution of the United States. (Sec. 878.)

"The clause seems to have met with no serious opposition in any of the State Conventions; and, indeed, could scarcely be expected to meet with any opposition except in Virginia, since the other States were well satisfied with the principle adopted in their own State Constitutions; and in Virginia the clause created but little debate. (Sec. 879.) What Bills are properly 'Bills for raising revenue' in the sense of the Constitution has been a matter of some discussion. A learned commentator supposes that every 'Bill which indirectly or consequentially may raise revenue is within the sense of the Constitution a revenue Bill.' He therefore thinks that the Bills for establishing the Post Office and the Mint and regulating the value of foreign coin belong to this class, and ought not to have originated (as in fact they did) in the Senate. But the practical construction of the Constitution has been against his opinion. And, indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to Bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which may incidentally create revenue. No one supposes that a Bill to sell any of the public lands, or to sell public stock, is a Bill to raise revenue in the sense of the Constitution. Much less would a Bill be so deemed which merely regulated the value of foreign or domestic coins, or authorized a discharge of insolvent debtors upon assignments of their estates to the United States, giving a priority of payment to the United States in cases of insolvency, although all of them might incidentally bring revenue into the Treasury. (Sec. 880.)"

J. Richardson.
Jas. Menzies.

APPENDIX No. 6.

Report of the Managers appointed Last Session by the Legislative Council to prepare a Case for the Opinion of the Law Officers of the Crown in England respecting the Practice of the two Houses of the Legislature as regards Money Bills.

The Managers have the honour to report that, in accordance with the resolutions of both Houses of the Legislature, a case was prepared and agreed to by the respective Managers for the opinion of the Law Officers of the Crown in England, a copy of which case is appended to this report.

Appended to the case are stated at full length reasons in support of the views urged by the Legislative Council.

From causes to which the Managers do not think it necessary to advert more particularly, a delay, for which the Managers do not consider themselves

in any degree responsible, took place in the transmission of the case to England; it was, however, forwarded in a despatch from His Excellency the Governor to the Secretary of State on the 30th March last, but, so far as they are aware, no answer has yet been received to such despatch.

J. RICHARDSON.
H. SEWELL.
WALTER MANTELL.

Legislative Council Chamber, Wellington,
18th March, 1872.

THE Managers of the Legislative Council and of the House of Representatives transmit to the Colonial Secretary herewith a case, stating the facts upon which they are agreed, for reference to the Law Officers of the Crown, in accordance with the resolutions of both Houses, relating to the difference on a question of privilege which arose between both Houses last session.

Appended to the case are stated at full length the reasons submitted by the Managers of the Legislative Council in support of the view urged by the Legislative Council.

The Managers of the House of Representatives do not deem it necessary to submit any further statement beyond the statement of facts contained in the case.

It is requested that the Colonial Secretary will move His Excellency the Governor to transmit the accompanying papers to the Secretary of State by the outgoing mail.

W. B. D. MANTELL,
HENRY SEWELL,
For the Managers of the L.C.

F. D. BELL,
A. DE B. BRANDON,
For the Managers of the H. of R.

Case for Reference to Law Officers of the Crown.

A QUESTION has arisen between the Legislative Council and the House of Representatives of New Zealand, upon which the opinion of the Law Officers of the Crown in England is sought to be obtained. The Legislative Council amended a Bill by striking out a clause. The House of Representatives insisted that the Bill was of that class in which the Legislative Council is, by constitutional usage, debarred from making amendments.

The facts of the case are as follows: Under various Acts for regulating the public revenues of New Zealand, certain principal branches of revenue —viz., the duties of Customs, Post Office, stamps, &c.—are thrown together, and form the consolidated revenue of the colony, out of which the annual supplies for the public service are appropriated.

By "The Payments to Provinces Act, 1870" (of which a copy is herewith), certain capitation allowances, determined according to the population of each province, were made payable to the respective provinces of New Zealand out of the consolidated revenue for a period of seven years, the amount payable to each province being fixed on a gradually descending scale, varying in amount according to the population in the respective provinces each year. In the current year the rate per head of the population payable under such Act would have been £1 18s.

In the same Act was also contained a provision that, in every year during the same period of seven years, a sum of £50,000 should be paid out of the consolidated revenue to the provinces, in the ratio of their respective population, for distribution amongst the various Road Boards within such provinces, according to a scale fixed by the Act.

In the same session (1870) another Act was passed, intituled "The Immigration and Public Works Act, 1870" (a copy of which is herewith), whereby provision was made for various subjects—viz., the construction of railways, immigration, the construction of water-races on goldfields, the purchase of lands from the Natives, the extension of telegraphs, the formation of roads in the North Island.

And by another Act of the same session (1870), intituled "The Immigration and Public Works Loan Act, 1870" (a copy of which is herewith), authority was given to the Governor to raise by loan £4,000,000, to be applied in the way prescribed by the schedule to the Act—viz.,—

	£
For Railways	2,000,000
Immigration	1,000,000
Construction of roads in North Island	400,000
Waterworks on goldfields ...	300,000
Purchase of land in North Island	200,000
Extension of telegraph ...	60,000
Unapportioned	40,000
	£4,000,000

The amount was authorized to be raised by issue of debentures, the charge for interest and sinking fund not to exceed 6 per cent., and the same were to be a charge upon the consolidated revenue.

The 14th section provided that the "moneys raised under the authority thereinbefore contained should and might, subject to the provisions thereinafter contained, and to the provisions contained in 'The Immigration and Public Works Act, 1870,' be issued and applied to the purposes mentioned in the Act, and no other; and, as to purposes mentioned in the said schedule, should be issued and applied in sums not exceeding the amounts in the said schedule respectively provided."

It was further provided by the 19th section that, in the event of the Imperial Parliament passing an Act to guarantee any loan raised by the Colony of New Zealand for all or any of the purposes for which the loan thereby authorized might be applied, the Governor, or any such Agents as might be appointed under the Act, might raise any portion of the loan, with such guarantee, upon and subject to all or any of the terms, conditions, and stipulations expressed in such Act of the Imperial Parliament; and the Governor or such Agents as aforesaid was further empowered to enter into any such contract or arrangement as he might think fit with the Lords Commissioners of Her Majesty's Treasury in England, with regard to any portion of the loan, and the guarantee thereof; and, in and by any such arrangement or contract, the Governor or such Agent as aforesaid might fix the order of priority of charge on the Consolidated Fund of New Zealand which the loan so guaranteed, or any part or parts thereof, should take with relation to any other part or parts of the loan; and in and by such arrangement might provide for the transmission to England and investment of the sinking fund (if any) of the loan so guaranteed, provided that such contract or arrangement was not inconsistent with the purposes for which such loan was authorized to be raised.

In the session of the General Assembly just passed (1871) the Government introduced into the House of Representatives a Bill intituled "The Payments to Provinces Bill, 1871" (a copy of

which is herewith), the object of which was to alter the financial arrangements between the colony and the provinces, to reduce the amount of capitation allowance payable out of the consolidated revenue from £1 18s. per head to 15s. per head, and, in lieu of the £50,000 per annum payable under the Act of last year out of the consolidated revenue to the provinces for the service of the Road Boards, to apply £100,000 out of the moneys authorized to be raised by the loan under the Immigration and Public Works Loan Act, and which are referred to in the Bill as "the Public Works Fund," to the provinces for distribution amongst the Road Boards, "to be expended by them in the construction of new roads, bridges, and culverts, and in the maintenance thereof, for one year, and the completion of such works commenced last year as were not yet finished." And there was added in the Bill, as sent up to the Legislative Council from the House of Representatives, a clause which has given rise to the question now raised, upon which the opinion of the Law Officers of the Crown in England is requested. The clause was as follows :—

28. Notwithstanding anything herein contained, it shall be lawful for the Minister for Public Works, if he think fit, on the application of the Superintendent of any province, to expend any sum not exceeding one-half of the money to be allotted to such province for the year ending the thirtieth day of June, one thousand eight hundred and seventy-two, under section eleven of this Act, in payment of or in repayment to such province of the cost of permanent public works in such province: Provided, however, that, except in the County of Westland, such works shall have been authorized by any Act of the Superintendent and Provincial Council of the province now in force.

The Legislative Council objected to this clause. Accordingly, they expunged the clause, and the Bill in this amended form, and with some other unimportant amendments, was returned to the House of Representatives.

The House of Representatives returned the Bill, with reasons for disagreeing from the amendments of the Legislative Council in clauses 14, 15, 28, and 29, as follows :—

That the above clauses relate to the appropriation and management of money, and that the Legislative Council has not power to alter or expunge such clauses.

The Legislative Council replied as follows :—

At this late period of the session it would be impossible for the two branches of the Legislature to discuss with the requisite deliberation the important question of privilege raised by the House of Representatives. But the Council desires briefly to state its views of the question thus raised.

The present Bill, so far, at least, as concerns the application of the Immigration and Public Works Loan authorized to be raised last year, is not, in their opinion, a Bill of Aid or Supply. It imposes no new burden on the people, nor alters any existing burden, nor is it a grant of money by way of Supply.

The Colonial Parliament last year authorized a very large loan to be raised on the credit of the colony, to be expended strictly and exclusively on immigration, railways, and other public works and undertakings specified in the Act.

It is proposed by the present Bill to divert a part of the money so to be raised to other objects of a cognate character, and to that extent the Legislative Council is prepared to concur in the proposed measure. But it is proposed, further, to authorize the Governor to pay over one half of the amount so to be diverted to the provinces.

Such an application of the Immigration and Public Works Loan authorized to be raised last year is not, in the opinion of the Council, right or consistent with the engagements upon the faith of which Parliament last year consented to raise the loan.

The Legislative Council claims the right to exercise its own judgment upon that point. The concession of that right would so narrow as practically to destroy its proper functions as a legislative body in dealing with questions of a similar character, which come before them in a great variety of forms. For the foregoing reasons the Legislative Council earnestly trusts that the House of Representatives will accept the Bill as amended by the Legislative Council.

To this the House of Representatives made a rejoinder as follows :—

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.

To which the Legislative Council replied by the following message :—

This Council cannot assent to the reasons adduced by the House of Representatives for disagreeing to its amendments in the Payments to Provinces Bill, and maintains that the amendments to which the House of Representatives objects are strictly within the powers and privileges of the Council to make.

The Council considers the clauses in the Bill, in their original and unamended shape, to be objectionable in principle, and in manifest violation of the spirit and intention of the Public Works Act of 1870. The Council recognizes, however, that the Bill is a portion of the general financial policy of the Government, and that its rejection at this stage might be attended with great public inconvenience.

While, therefore, still maintaining its constitutional right to make the amendments in question, it consents to abstain from the exercise of this right on the House of Representatives agreeing,—

1. To amend the Bill so as to restrict its operation to the present financial year.
2. To refer the point in dispute between the two Houses to the Law Officers of the Crown in England, upon a case to be prepared by Managers appointed by each House.

Subject to these conditions, the Council will, on being made acquainted with the names of the Managers appointed by the House of Representatives to draw up the case for reference, cease to insist upon its amendments.

Whereupon the House of Representatives accepted the terms by the Legislative Council, and transmitted the following message to the Legislative Council :—

The House of Representatives have considered the reasons adduced by the Legislative Council for refusing to concur in the reasons of the House of Representatives for objecting to the amendments of the Council in the Bill intituled "The Payment to Provinces Act, 1871."

The House have concurred in the first proposition of the Legislative Council respecting the operation of the Bill, and have agreed to the following clause, to stand last clause of the Bill :—

"This Act shall continue in operation until the first day of July next, and no longer."

On consideration of the second proposal of the Legislative Council, the House of Representatives have agreed to the following resolution :—

"That this House will concur in the proposition of the Legislative Council that the opinion of the Law Officers of the Crown be obtained on the question whether, in accordance with the practice of the Imperial Parliament, the amendments made by the Council are within its functions, having regard to constitutional usage and to the powers conferred on the Council by 'The Privileges Act, 1865;' and that Mr. Speaker, Mr Brandon, and the Hon. Mr. Fox be appointed Managers to meet Managers on the part of the Legislative Council to prepare a case for the purpose. Such opinion to be taken with a view to assisting the Legislature in future action, but not to be binding on either House."

To this the Legislative Council replied by the following message :—

The Legislative Council have waived their amendments in the Bill intituled "The Payments to Provinces Act, 1871," and have agreed to the following clause to stand as the last clause of the Bill :—

"This Act shall continue in operation until the first day of July next, and no longer."

Also, the Legislative Council have appointed the Hon. the Speaker, the Hon. Mr. Sewell, and the Hon. Mr. Mantell as their Managers to meet the Managers appointed by the House of Representatives, to prepare a case in accordance with the resolutions agreed to by the House of Representatives, in accordance with the suggestions of the Legislative Council, contained in Message No. 84, of the 13th November.

Another distinct question has been raised as to the constitutional powers of the Legislative Council under an Act passed in the year 1865, intituled the Parliamentary Privileges Act (a copy of which is herewith).

By the 4th section of the Act of 1865 it is enacted that—

The Legislative Council or House of Representatives of New Zealand respectively shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as, on the 1st January, 1865, were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, and by the Committees and members thereof, so far as the same are not inconsistent with or repugnant to such and so many of the sections and provisions of the Constitution Act as at the time of the coming into operation of this Act are unrepealed, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise; and such privileges, immunities, and powers shall be deemed to be and shall be part of the general and public law of the colony; and it shall not be necessary to plead the same, and the same shall in all Courts, and by and before all Judges, be judicially taken notice of.

The only unrepealed clause in the Constitution Act which touches this question is the 54th, by which it is enacted that 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 opinion of the Law Officers of the Crown in England is requested upon the following points:—

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?

HENRY SEWELL.
W. B. D. MANTELL.
F. D. BELL.
A. DE B. BRANDON.

Reasons submitted by the Managers for the Legislative Council in support of the View of the Legislative Council.

A QUESTION has arisen between the Legislative Council and the House of Representatives of New Zealand, upon which the opinion of the Law Officers of the Crown in England is sought to be obtained. The Legislative Council amended a Bill by striking out a clause. The House of Representatives insisted that the Bill was of that class in which the Legislative Council is, by constitutional usage, debarred from making amendments.

The facts of the case are as follows:—

Under various Acts for regulating the public revenues of New Zealand, certain principal branches of revenue—namely, the duties of Customs, Post Office, stamps, &c.—are thrown together, and form the consolidated revenue of the colony, out of which the annual supplies for the public service are appropriated.

By "The Payments to Provinces Act, 1870" (of which a copy is herewith), certain capitation allowances, determined according to the population of each province, were made payable to the respective provinces of New Zealand out of the consolidated revenue for a period of seven years, the amount payable to each province being fixed on a gradually descending scale, varying in amount according to the population in the respective provinces each year. In the current year the rate per head of the population payable under such Act would have been £1 18s.

In the same Act was also contained a provision that, in every year during the same period of seven years, a sum of £50,000 should be paid out of the consolidated revenue to the provinces, in the ratio of their respective population, for distribution amongst the various Road Boards within such provinces, according to a scale fixed by the Act.

In the same session (1870) another Act was passed, intituled "The Immigration and Public Works Act, 1870" (a copy of which is herewith), whereby provision was made for various objects—namely, the construction of railways, immigration, the construction of water-races on goldfields, the purchase of lands from the Natives, the extension of telegraphs, the formation of roads in the North Island.

And by another Act of the same session (1870), intituled "The Immigration and Public Works Loan Act, 1870" (a copy of which is herewith), authority was given to the Governor to raise by loan four million pounds (£4,000,000), to be applied in the way prescribed by the schedule to the Act—namely,—

	£
For Railways	2,000,000
Immigration	1,000,000
Construction of roads in North Island	400,000
Waterworks on goldfields ...	300,000
Purchase of land in North Island	200,000
Extension of telegraph ...	60,000
Unapportioned	40,000
	£4,000,000

This amount was authorized to be raised by issue of debentures—the interest and sinking fund not to exceed 6 per cent.—and the same were to be a charge upon the consolidated revenue. The 14th section provided that "the moneys raised under the authority thereinbefore contained should and might, subject to the provisions thereinafter contained, and to the provisions contained in 'The Immigration and Public Works Act, 1870,' be issued and applied to the purposes mentioned in the Act, and no other; and, as to purposes mentioned in the said schedule, should be issued and applied in sums not exceeding the amounts in the said Schedule respectively provided."

It was further provided by the 19th section that, in the event of the Imperial Parliament passing an Act to guarantee any loan raised by the Colony of New Zealand for all or any of the purposes for which the loan thereby authorized might be applied, the Governor, or any such Agents as might be appointed under the Act, might raise any portion of the loan, with such guarantee, upon and subject to all or any of the terms, conditions, and stipulations expressed in such Act of the Imperial Parliament; and the Governor or such Agents as aforesaid was further empowered to enter into any such contract or arrangement as he might think fit with the Lords Commissioners of Her Majesty's Treasury in England, with regard to any portion of the loan, and the guarantee thereof; and in and by any such arrangement or contract the Governor or such Agent as aforesaid might fix the order of priority of charge on the Consolidated Fund of New Zealand which the loan so guaranteed, or any part or parts thereof, should take with relation to any other part or parts of the loan; and in and by such arrangement might provide for the transmission to

England and investment of the sinking fund (if any) of the loan so guaranteed: Provided that such contract or arrangement was not inconsistent with the purposes for which such loan was authorized to be raised.

In the session of the General Assembly just past (1871) the Government introduced in the House of Representatives a Bill intituled "The Payments to Provinces Bill, 1871" (a copy of which is herewith), the object of which was to alter the financial arrangements between the colony and the provinces, to reduce the amount of capitation allowance payable out of the consolidated revenue from £1 18s. per head to 15s. per head, and, in lieu of the £50,000 per annum payable, under the Act of last year, out of the consolidated revenue, to the provinces for the service of the Road Boards, to apply £100,000 out of the moneys authorized to be raised by loan under "The Immigration and Public Works Loan Act," and which are referred to in the Bill as "the Public Works Fund," to the provinces for distribution amongst the Road Boards, "to be expended by them in the construction of new roads, bridges, and culverts, and in the maintenance thereof, for one year, and the completion of such works commenced last year as were not finished." And there was added in the Bill as sent up to the Legislative Council from the House of Representatives a clause which has given rise to the question now raised, upon which the opinion of the Law Officers of the Crown in England is requested. The clause was as follows:—

28. Notwithstanding anything herein contained, it shall be lawful for the Minister of Public Works, if he think fit, on the application of the Superintendent of any province, to expend any sum not exceeding one-half of the money to be allotted to such province for the year ending the thirtieth of June, one thousand eight hundred and seventy-two, under section eleven of this Act, in payment of or in repayment to such province of the cost of permanent works in such province: Provided, however, that, except in the County of Westland, such works shall have been authorized by any Act of the Superintendent and Provincial Council of the province now in force.

The object of this clause, as it appeared to the Legislative Council, was, under colour of a repayment to the provinces of former outlay on public works, really to place in the Provincial Treasuries additional funds for provincial appropriation.

The Legislative Council objected to this clause. Though ready to give effect to the financial arrangements of the Government so far as they properly could, they considered that to divert £50,000 of the money authorized to be raised by loan last year for new public works specifically defined by the Act, to other services of a wholly different kind—namely, to replace in the Provincial Treasuries moneys already expended—was objectionable in principle, and in manifest violation of the spirit and intention of the Act authorizing the loan to be raised. Accordingly, they expunged the clause, and the Bill in this amended form (and with some other unimportant amendments) was returned to the House of Representatives.

The House of Representatives returned the Bill, with reasons for disagreeing from the amendments of the Legislative Council in clauses 14, 15, 28, and 29, as follows:—

That the above clauses relate to the appropriation and management of money, and that the Legislative Council has not power to alter or expunge such clauses.

The Legislative Council replied as follows:—

At this late period of the session it would be impossible for the two branches of the Legislature to discuss with the requisite deliberation the important question of privilege raised by the House of Representatives. But the Council desires briefly to state its views of the question thus raised.

The present Bill, so far, at least, as concerns the application of the Immigration and Public Works Loan, authorized to be raised last year, is not, in their opinion, a Bill of Aid or Supply. It imposes no new burden on the people, nor alters any existing burden, nor is it a grant of money by way of Supply.

The Colonial Parliament last year authorized a very large loan to be raised on the credit of the colony, to be expended strictly and exclusively on immigration, railways, and other public works and undertakings specified in the Act. It is proposed by the present Bill to divert a part of the money so to be raised to other objects of a cognate character, and to that extent the Legislative Council is prepared to concur in the proposed measure. But it is proposed, further, to authorize the Governor to pay over one-half of the amount so to be diverted to the provinces. Such an application of the Immigration and Public Works Loan authorized to be raised last year is not, in the opinion of the Council, right or consistent with the engagements upon the faith of which Parliament last year consented to raise the loan.

The Legislative Council claims the right to exercise its own judgment upon that point. The concession of that right would so narrow as practically to destroy its proper functions as a legislative body in dealing with questions of a similar character, which come before them in a great variety of forms. For the foregoing reasons, the Legislative Council earnestly trusts that the House of Representatives will accept the Bill as amended by the Legislative Council.

To this the House of Representatives made a rejoinder as follows:—

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.

To which the Legislative Council replied by the following message:—

This Council cannot assent to the reasons adduced by the House of Representatives for disagreeing to its amendments in the Payments to Provinces Bill, and maintains that the amendments to which the House of Representatives objects are strictly within the powers and privileges of the Council to make.

The Council considers the clauses in the Bill, in their original and unamended shape, to be objectionable in principle, and in manifest violation of the spirit and intention of the Public Works Act of 1870. The Council recognizes, however, that the Bill is a portion of the general financial policy of the Government, and that its rejection at this stage might be attended with great public inconvenience.

While, therefore, still maintaining its constitutional right to make the amendments in question, it consents to abstain from the exercise of this right, on the House of Representatives agreeing,—

1. To amend the Bill so as to restrict its operation to the present financial year.
2. To refer the point in dispute between the two Houses to the Law Officers of the Crown in England, upon a case to be prepared by Managers appointed by each House.

Subject to these conditions, the Council will, on being made acquainted with the names of the Managers appointed by the House of Representatives to draw up the case for reference, cease to insist upon its amendments.

Whereupon the House of Representatives transmitted the following message:—

The House of Representatives have considered the reasons adduced by the Legislative Council for refusing to concur in the reasons of the House of Representatives for objecting to the amendments of the Council in the Bill intituled "The Payments to Provinces Act, 1871." The House have concurred in the first proposition of the Legislative Council respecting the operation of the Bill, and have agreed to the following clause, to stand the last clause of the Bill:—

"This Act shall continue in operation until the first day of July next, and no longer."

On consideration of the second proposal of the Legislative Council, the House of Representatives have agreed to the following resolution:—

"That this House will concur in the proposition of the Legislative Council that the opinion of the Law Officers of the Crown be obtained on the question whether, in accordance with the practice of the Imperial Parliament, the amendments made by the Council are within its functions, having regard to constitutional usage and to the powers conferred on the Council by 'The Privileges Act, 1865;' and that Mr. Speaker, Mr. Brandon, and the Hon. Mr. Fox be appointed Managers to meet Managers on the part of the Legislative Council to prepare a case for the purpose. Such opinion to be taken with a view to assisting the Legislature in future action, but not to be binding on either House."

To this the Legislative Council replied by the following message:—

The Legislative Council have waived their amendments in the Bill intituled "The Payments to Provinces Act, 1871," and have agreed to the following clause, to stand as the last clause of the Bill:—

"This Act shall continue in operation until the first day of July next, and no longer."

Also, the Legislative Council have appointed the Hon. the Speaker, the Hon. Mr. Sewell, and the Hon. Mr. Mantell as their Managers to meet the Managers appointed by the House of Representatives, to prepare a case in accordance with the resolutions agreed to by the House of Representatives, in accordance with the suggestions of the Legislative Council contained in Message No. 84, of the 13th November, 1871.

Thus the difference between the two Houses was terminated. The Bill was passed in the form agreed to, and the present statement (prepared on behalf of the Legislative Council) is submitted to the Law Officers of the Crown in England, in accordance with the arrangement come to between the two Houses.

A case will, it is understood, be also submitted to the Law Officers of the Crown, embodying the views taken by the House of Representatives in support of their reasons. This mode of submitting the question to the Law Officers of the Crown has been adopted by the Managers on either side as most convenient.

The broad denial by the House of Representatives of the power of the Legislative Council "to vary or alter the management or distribution of any money as prescribed by the House of Representatives," by the assertion of their sole right "by Act of one session to vary the appropriation or management of money prescribed by Act of a previous session," obliges the Legislative Council to examine the principles which ought to govern the two branches of the Legislature in dealing with money questions.

The leading resolution of the House of Commons on this point is that of the 3rd July, 1678. referred to by Mr. May as that "upon which all proceedings between the two Houses in matters of Supply are founded," and is as follows:—

That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that 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.

Further, Mr. May says,—

In Bills not confined to matters of aid or taxation, but in which pecuniary burdens are imposed upon 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. All Bills of this class must originate with the Commons, as the House of Commons will not agree to any provisions which impose a charge of any description upon the people, if sent down from the Lords, but will order the Bills containing them to be laid aside. 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 in their disagreement, or will lay the Bill aside.

As regards the legal right of the House of Lords to reject money Bills, their power "as a co-ordinate branch of the Legislature to withhold their assent from any Bill whatever to which their concurrence is desired," is unquestionable. It is a power, however, rarely exercised. The last memorable instance was that of the Paper Duties Repeal Bill. Under what circumstances such a power may constitutionally be exerted cannot, it would seem, be exactly defined. "The constitutional power of the Commons to grant supplies without interference on the part of the Lords has," as Mr. May points out, "been occasionally abused by tacking to Bills of Supply enactments which, in another Bill, would have been rejected by the Lords, but which, being contained in a Bill which their Lordships had no right to amend, must either have been suffered to pass unnoticed, or have caused the rejection of a measure highly necessary for the public service. Such a proceeding is as great an infringement of the privileges of the Lords as the interference of their Lordships in matters of Supply is of the privileges of the Commons, and has been resisted by protest, by Conference, and by the rejection of Bills."

Such appear to be the leading principles governing the two branches of the Imperial Legislature in respect of money Bills; and they do not appear to justify the propositions maintained by the House of Representatives.

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?

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 the Committee of Supply are stated by Mr. May (at pp. 556 and 557, "Treatise on Law, &c., 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 these 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 authorized 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 "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.

But as regards Bills not of this class, but affecting charges more or less permanent, already created by law, on the consolidated revenue, and which are beyond the control of the Committee of Supply, the Legislative Council insists that there is no rule debarring it from exercising its ordinary legislative functions. Were it otherwise, it might be compelled to submit to, without the power of varying, changes of a fundamental character in the Civil List, or to reductions in the salaries of Judges,

with a condition altering their tenure of office, or, as in the present case, to the diversion of money authorized to be raised by loan for specific services, to a wholly different purpose.

The parliamentary precedent which appears to be most in point is that of the West India Bishoprics Bill in 1868, reported in *Hansard* (Lords, July 7, 13; Commons, July 27, 28). In that case a charge had been made on the Consolidated Fund, by way of endowment for bishoprics in the West Indies, to the amount of £20,500 a year. It was proposed to rescind such grant, and a Bill for that purpose was sent up to the House of Lords from the House of Commons. An amendment was proposed in the House of Lords, the effect of which was to extend the saving of vested interests to a case not provided for by the Bill, and so to diminish the saving to the Consolidated Fund. The Bill so amended was returned to the Lower House, where the Lords' amendment was taken into consideration, and an amendment was proposed upon the Lords' amendment, the effect of which, if carried, would have been to diminish still further the saving to the Consolidated Fund. Upon this the question was raised whether such proposed amendment ought not to have been previously sanctioned by resolution of the House. A double question, therefore, seems to have presented itself—namely, as to the power of the Upper House to amend the Bill, and the power of the Lower House to amend the Lords' amendment in the way proposed; the effect of which would, it was argued, be practically to make a new grant out of the Consolidated Fund. The Speaker ruled as follows:—

It appears to me, as far as the privileges of the House are concerned, the question turns upon whether there is any new charge upon the Consolidated Fund; and, while the Bill proposes to relieve the Consolidated Fund of £20,000, this amendment would relieve it of £18,000 only. The question of the merits of the Bill is a matter for the consideration of the House. The honourable member for Edinburgh (Mr. McLaren) has asked me whether, in point of form, this amendment can be put. The question is whether it is relevant; and it appears to me that it is relevant to the amendment of the Lords. I do not mean to say it is not a somewhat complicated question. I adhere to the substance of the opinion I gave last night, that, as there is no new charge upon the Consolidated Fund, therefore I think it is a matter more to be decided by the House on its merits than by any opinion from the chair.

The Lords' amendment was agreed to.

There is a special ground in the present case for maintaining the right of the Legislative Council to amend the Bill as they did. It has been pointed out that by "The Immigration and Public Works Loan Act, 1870," it was provided that, in the event of the Imperial Parliament passing an Act to guarantee any loan raised by the Colony of New Zealand, for all or any of the purposes for which the loan thereby authorized might be applied, the Governor or his agents might raise any portion of the loan so authorized, with such guarantee, upon and subject to all or any of the terms, conditions, and stipulations expressed in such Act of the Imperial Parliament. He was also authorized to fix the order of priority which such guaranteed portion of the loan should have over other parts of the loan. By an Act of the Imperial Parliament (1870, chap. 40) the Imperial Treasury was authorized to guarantee, in such manner and form as they might think fit, payment of the principal of all or any part of any loan, not exceeding £1,000,000, raised by the Government of New Zealand for the purpose of the construction of roads, bridges, and communications in that country, and of the introduction of settlers into that country, and payment of the interest of any such loan at a rate not exceeding 4 per cent.

The Treasury was directed not to give any such guarantee unless and until provision had been made by an Act of the Legislature of New Zealand, or otherwise to the satisfaction of the Treasury—

1. For raising the loan and appropriating the same to the purposes mentioned in the Act.
2. For charging the consolidated revenue of New Zealand with the principal and interest of the loan, immediately after the charges on that fund existing at the time of the passing of the Act.
3. For providing a sinking fund of 2 per cent.
4. For charging the consolidated revenue of New Zealand with any sum issued out of the Consolidated Fund of the United Kingdom under the Act, with interest at 5 per cent., immediately after the sinking fund of the said loan.
5. For rendering an annual abstract of accounts of expenditure of the money raised by means of the said loan, under such heads as the Treasury from time to time desire.
6. For remitting to the Treasury half-yearly the sinking fund, and for its investment and accumulation.

The Treasury were restricted, by the terms of the Act, from guaranteeing more than £200,000 in any one year, and were bound, before guaranteeing any portion other than the first, to satisfy themselves that the portion already guaranteed had been or was being spent for the purposes mentioned in the Act.

It was further provided that every Act passed by the Legislature of New Zealand which in any way impaired the priority of the charge upon the consolidated revenue of New Zealand created by that Legislature in respect of the loan, and the interest and sinking fund thereof, should, so far as affecting such priority, be void unless reserved for Her Majesty's pleasure; and that the Treasury should cause to be prepared and laid before both Houses of Parliament a statement of any guarantee given under the Act, a copy of any accounts received by them respecting the expenditure of the said loan, and an account of all sums issued out of the Consolidated Fund of the United Kingdom for the purposes of the Act.

On the 19th April, 1871, Messrs. Vogel and Julyan, Agents appointed by the Governor for the purpose, intimated to the Treasury the acceptance by the colony of the guarantee offered by the Imperial Government, upon the terms stipulated in the Imperial Act.

The Treasury assented by letter of the 20th May, 1871; and under the arrangement so made debentures to the value of £200,000 have been issued with the Imperial guarantee, and are now held at the disposal of the Colonial Government.

But the claim now made by the House of Representatives, of the right, of its sole authority, "by Act of one session to vary the appropriation or management of money prescribed by Act of a previous session," and by virtue of such right to divert at pleasure the moneys raised under the Loan Act of 1870 to other purposes than those prescribed by such Act, if admitted, might possibly have the effect of subverting the objects of the loan, and might conflict with the conditions imposed by the Imperial Act.

Another distinct question has been raised as to the constitutional powers of the Legislative Council under an Act passed in the year 1865, entitled "The Parliamentary Privileges Act," a copy of which is herewith. The object of this Act was to define more exactly by statute the powers and pri-

vileges of the two Houses of the Legislature, and the respective members thereof, which had been partially defined by a former Act of 1856, a copy of which is herewith.

By the 4th section of the Act of 1865 it is enacted that "the Legislative Council or House of Representatives of New Zealand respectively shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as on the 1st January, 1865, were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, and by the Committees and members thereof, so far as the same are not inconsistent with or repugnant to such and so many of the sections and provisions of the Constitution Act as, at the time of the coming into operation of this Act, are unrepealed, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise; and such privileges, immunities, and powers shall be deemed to be and shall be part of the general and public law of the colony; and it shall not be necessary to plead the same, and the same shall in all Courts, and by and before all Judges, be judicially taken notice of."

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.

The only unrepealed clause in the Constitution Act which touches this question is the 54th, by which it is enacted that "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."

All supplies for the public service are, or are presumed to be, recommended by the Governor to the House of Representatives, either by message or by the mouth of a Minister.

Practically, the Legislative Council, though it has from time to time claimed co-ordinate power with the House of Representatives in the matter of money Bills, under "The Parliamentary Privileges Act, 1865," has governed itself by the usage of the House of Peers in the Imperial Parliament.

Under the foregoing circumstances, the opinion of the Law Officers of the Crown in England is requested upon the following points:—

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?

HENRY SEWELL.
W. B. D. MANTELL.

Despatch from the Right Hon. the Earl of KIMBERLEY to Governor Sir G. F. BOWEN, G.C.M.G.

(No. 45.)

SIR,— Downing Street, 26th June, 1872.

I have to acknowledge your Despatch No. 35, of 30th March, enclosing a case prepared by the Managers of the two Houses of the Legislature of New Zealand on the subject of a difference which had arisen between them on certain points of law and privilege.

According to the request of your Responsible Advisers, I referred the case to the Law Officers of the Crown, and I transmit to you a copy of their opinion. I have, &c.,

KIMBERLEY.

Governor Sir G. F. Bowen, G.C.M.G.

(Enclosure.)

The LAW OFFICERS of the CROWN to the Earl of KIMBERLEY.

MY LORD,— Temple, 18th June, 1872.

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 honour 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 recognized by the House of Commons in England.

2. We are of opinion that "The Parliamentary Privileges Act, 1865," does not confer on 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.

We have, &c.,
J. D. COLERIDGE.
G. JESSEL.

The Right Hon. the Earl of Kimberley.

APPENDIX No. 7.

The Hon. Mr. HALL.—I have the honour to bring up the following report of the Managers of the second Free Conference on the Railways Construction Bill:—

The Managers, being unable to agree upon the question whether clause 3 of the Bill is or is not an appropriation clause, recommend that the amendments made in the said clause be omitted; and that the Ministry should advise His Excellency the Governor to avail himself of the powers conferred by the 56th section of the Constitution Act by transmitting the following amendments for the consideration of the Legislative Council and House of Representatives, instead of those that the Legislative Council proposed:—

"Provided always that no contract shall be entered into for the construction of any railway or any portion thereof unless—

"(1.) In the case of each line to be constructed plans and estimates shall be laid before the Governor in Council, with a certificate from the Chief Engineer that the route chosen for the railway is the best available one.

"(2.) Such plans and estimates be approved by the Governor in Council.

"And it is hereby declared that, within thirty days after the commencement of the then next session of Parliament, such plans and estimates shall be laid before both Houses of Parliament, together with a copy of any contract which may have been entered into with respect to the railway to which such plans and estimates refer."

I now move the following resolution: That, upon considering the report of the Managers for the Legislative Council of the second Free Conference on the Railways Construction Bill, this Council entirely approve the course which their said Managers have taken, and agree to the said report; and —relying upon the assurance given by the House of Representatives, through its Managers, that, upon His Excellency the Governor being advised to send down a message recommending the amendment to which the Conference have agreed, the House of Representatives will concur in the same—the Council will not insist further upon their amendments in clause 3 of the said Bill.

The Hon. Colonel WHITMORE.—On behalf of the Government, I agree that that advice shall be given.

APPENDIX No. 8.

Mr. SPEAKER.—I think if the Premier had known the view I entertain on this point he would scarcely have appealed to me on the subject; but, an appeal having been made, I may state at once that I hold a counter-opinion to that entertained by the honourable gentleman. I had occasion to look into a matter of this nature yesterday. Being desirous of supporting views taken by the honourable member for Wanganui (Mr. Ballance) in reference to the Bill that was before the House for the consolidation of the law relating to the privileges of Parliament, I referred to the latest work on the subject. I am quite aware that there are numerous references to the point in May, but I will not allude to them in the first instance, but will read to the House a few extracts from the latest work on Parliamentary Government in the British Colonies, by Mr. Todd, published last year. Alluding to the fact that in the Colonies of Canada and New Zealand certain Acts were passed respecting the powers and privileges of the two branches of their Legislatures, he says, speaking of the general powers of the two Houses of Parliament, the constitutional powers of the Upper House are defined as "established for 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.'" (P. 475.) Alluding, then, to the circumstance that the Imperial Parliament in the British North America Act pointed to the House of Commons "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," he says,—

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 great extent, derogate from and diminish the constitutional rights of the representative Chamber." (Pp. 476–7.)

And, then, remarking upon the relative powers of the two branches of the Legislature, he says constitutional practice—

. . . . 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.

Then, referring to the dispute that occurred in 1871 between this House and the Legislative Council as to the statutory right of the Legislative Council to amend Bills of Supply, he quotes the opinion of the Law Officers of the Crown, Coleridge and Jessel, given upon a case stated, as follows:—

(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 recognized by the House of Commons in England.

(2.) We are of opinion that "The Parliamentary Privileges Act, 1865," does not confer on 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 the 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. (Pp. 478–9.)

Which opinion is characterized by Todd in these words:—

This opinion is a direct and unimpeachable settlement of the point at issue. . . . 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.

The point has been suggested to me whether this Bill comes within what is understood to be a money Bill. To my mind this Bill deals with nothing but money, and therefore I am of opinion that, as a whole, it is a money Bill. In the 2nd clause it says that, after the passing of this Bill, pensions are not to be paid except in accordance with provisions therein contained, one provision

being that contained in the clause which has been struck out. I hold that the clause in this Bill relating to the limitation of pensions is wholly in accordance with the other portions of the Bill referring to pensions. There are some references in May to the subject, which I shall quote, as his authority is more familiar to the House than Mr. Todd's:—

On the 3rd of July, 1678, the Commons resolved, "That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that 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 is the same resolution that is quoted by Todd; and May's comments on it are as follow:—

It is upon this latter resolution that all proceedings between the two Houses, in matters of supply, are now founded. The principle is acquiesced in by the Lords; and, except in cases where it is difficult to determine whether a matter be strictly one of supply or not, no serious difference can well arise. The Lords rarely attempt to make any but verbal alterations, in which the sense or intention is not affected.

Here, it will be observed how the emphatic words "to limit" and "limitations" are used—which is exactly what the clause rejected by the Legislative Council proposed to effect—namely, that the enjoyment of pensions should be subject to the limitation that deduction should be made from the pension if the pension and salary of office combined exceeded the salary received prior to the pension being obtained. Reliance is then placed by the Hon. the Premier on the following dictum in May:—

On the 30th July, 1867, it was very clearly put by Earl Grey and Viscount Eversley that the right of the Lords to omit a clause which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a Bill which they could not amend without an infraction of the privileges of the Commons.

Now, what are the circumstances of this case? In the Parliamentary Reform Bill of 1867—the Bill for the representation of the people—there was a clause—and it was retained in the Act as clause 7—to the effect that the occupiers were to be rated in boroughs, instead of the owners of the properties—a subject, as it appears, rather foreign to the subject-matter of the Bill; and Viscount Eversley, so well known as Mr. Shaw-Lefevre, for eighteen years Speaker of the House of Commons, gave it as his opinion that the omission of this clause could not be objected to by the Commons, as it related to a subject separate from the main object of the Bill. But in our Bill regulating the mode of granting pensions the rejected clause did not relate to a subject distinct from pensions, but embraced a specific limitation and qualification of the enjoyment of such pensions. Lord Cairns's opinion was, that it was within the competency of the House of Lords to deal with the clause as they thought proper; but he adds,—

No doubt the other House might raise a question of privilege on their part; but with that their Lordships had nothing to do. If their Lordships rejected this clause they would interfere in the question of the incidence of taxation; but their Lordships were not the judges of the privileges of the other House or what they would do in such a case.

That is, as I understand it, the Lords had the indisputable right to reject the clause as they might reject a money Bill, but subject to encountering the resistance of the Commons on the score of the violation of their privileges. I have now given my opinion frankly, and I have only to say that, if the House of Representatives were to waive its privileges in this instance, I cannot see how it can refuse to waive them in all others whenever the Legislative Council chooses to encroach upon the special functions of this House in regard to money Bills.

APPENDIX No. 9.

Sir Francis Dillon Bell to Sir Erskine May, K.C.B.

London, 14th March, 1882.

Dear Sir Erskine May,—

In pursuance of your kind permission, I beg to bring under your notice a difference which arose lately between the two Houses in New Zealand about the right of amending Bills. The difference was cognate to the one about the Council amendment in the Railways Bill which you let me bring before you some time ago.

The present dispute is whether a Bill on the subject of pensions, which had been passed by the House of Representatives, was one which the Legislative Council could amend by omitting a certain clause.

The Speaker of the House (Sir Maurice O'Rorke) held that the Council could not strike out the clause; the Clerk of Parliaments (Major Campbell) thought they might. I was therefore asked to solicit your opinion.

I enclose a copy of the Bill. It was brought in by a private member, its general object being to "regulate the granting of pensions" to Civil servants. The dispute was about clause 6, which was alleged to affect injuriously the right of a Civil servant under the existing law. The clause is shown by being enclosed within lines on the copy of the Bill.

I also send you an extract from our *Hansard*, giving an account of what passed in both Houses.

The difference seems to have practically turned on the point whether the clause which the Council struck out was one coming within the principle defined by yourself in the case of clauses omitted by the Lords as being "upon a subject separable from the general object of the Bill;" but it was contended that the Bill was a money Bill, and as such incapable of being amended at all.

The points on which Sir Maurice O'Rorke would like your opinion are these:—

1. Was the Bill a money Bill?
2. Could the Council omit this particular clause?
3. If not a money Bill, was it one of such a character that it was capable of being amended generally in any way; for instance, could clause 6 have been amended by altering its retrospective effect, instead of being simply omitted?

To which I should like to add,—

4. Must a money Bill be brought in by a Minister, signifying the consent thereto of the Crown; or may a private member bring it in without such consent being signified?

You will see in the debates the formal reasons that were exchanged between the Houses when the Representatives disagreed to the Council amendment. There was a further interchange of reasons afterwards, but they were only repetition; at last there was a Free Conference, but the Houses were unable to agree. The Bill was therefore lost, and the same battle will probably be fought over again next session. An expression of your opinion, if you could spare a little of the time every moment of which is now so precious, would no doubt be accepted at once by both sides.

I have, &c.,

F. Dillon Bell.

Sir Erskine May, K.C.B., &c.

Sir ERSKINE MAY, K.C.B., to Sir F. D. BELL.

House of Commons, 23rd March, 1882.

DEAR SIR FRANCIS BELL,—

I have read, with great attention and interest, all the papers you have sent me regarding the New Zealand Pensions Bill. The case is exceedingly well argued on both sides; and I will very briefly state my own opinion upon the points in dispute.

1. As the Bill related to the granting of pensions payable out of the public revenues, and to such pensions exclusively, I consider it to have been a money Bill.

2. Such being the character of the Bill, I am of opinion that the Commons would not have accepted from the Lords any such amendment as that made by the Council, but would have disagreed to it on the ground of privilege, or would have laid the Bill aside.

3. I do not think clause 6 was separable from the other clauses of the Bill, or that the precedents cited of the omission of clauses by the Lords were applicable to this case.

4. For all purposes of privilege as between the two Houses a Bill relating solely to charges upon the public revenue is a money Bill, whether introduced by a Minister of the Crown or by a private member.

I need scarcely add that, in answering your questions, I have confined myself to the practice of the Imperial Parliament, and offer no opinion upon questions specially concerning the colonial Constitution, or the action of its authorities.

I have, &c.,

T. ERSKINE MAY.

Sir Francis Dillon Bell, K.C.M.G., &c.

APPENDIX No. 10.

Extracts from Journals, House of Commons.

JOVIS, 13° DIE APRILIS, 1671.

The House then proceeded to the reading of the amendments and clauses sent from the Lords to the Bill for an imposition on foreign commodities, which were once read:

And the first amendment sent from the Lords, being for changing the proportion of the impositions on white sugars from one penny per pound to half-penny half-farthing, was read the second time, and debated.

Resolved, &c., *nemine contradicente*, That, in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords.

Ordered, That it be referred to Mr. Attorney-General, Mr. Coleman, Sir George Downing, Mr. Attorney Montague, Mr. Coventry, Mr. Vaughan, Sir Robert Carr, Sir Thomas Meeres, Sir Thomas Littleton, Sir Edward Deering, Mr. Treasurer, Sir Robert Howard, Sir Robert Atkins, Sir William Coventry, Colonel Birch, Mr. Milward, Sir Thomas Lee, Sir Richard Temple, Sir John Birkenhead, Sir Phillip Warwick, or any five of them, to prepare and draw up reasons, in order to a Conference to be had with the Lords, to show them why the Commons do not agree with their Lordships' amendments and provisos to the Bill of additional impositions on foreign commodities; and report the same to the House. And they are to meet this afternoon, at five of the clock, in the Speaker's Chamber.

VENERIS, 14° DIE APRILIS, 1671 (Post Meridiem).

Sir ROBERT HOWARD reports, from the Committee appointed to consider of reasons to be used at the Conference to be had with the Lords, the said reasons, which he read, and opened to the House, and were approved of by the House.

Resolved, &c., That a Conference be desired with the Lords upon the subject-matter of the last Conference, and that Mr. Waller do carry up the message to the Lords.

SABBATI, 15° DIE APRILIS, 1671.

The House then attended the Conference with the Lords upon the reasons of disagreeing with their Lordships to their amendments to the Bill of additional imposition on foreign commodities.

And the Managers thereof report, That they had attended the Conference accordingly.

JOVIS, 20° DIE APRILIS, 1671.

A message from the Lords, by Sir John Coell and Sir William Beversham:—

Mr. SPEAKER,—The Lords have commanded us to acquaint you that they desire a present Conference with the House of Commons, in the Painted Chamber, upon the subject-matter of the last Conference concerning the Bill for an additional imposition on several foreign commodities.

The messengers being called in, Mr. Speaker acquaints them, That the House had agreed to a present Conference upon the subject-matter of the last Conference concerning the Bill for an additional imposition on several foreign commodities.

Ordered, That the former Managers do manage this Conference.

Mr. Attorney-General reports, from the Conference had with the Lords, That the single point insisted on at the Conference was the matter of privilege arising upon the Lords' alterations of the rate upon sugar imposed by this House; and the reasons offered, and precedents insisted on, by the Lords in justification of their privilege therein; when he opened and read to the House.

Resolved, &c., That it be referred to the persons who did manage the Conference, to consider of the matter of the last Conference reported from the Lords, and the reasons and precedents relating thereto; and to report the matter, with their opinions therein, to the House; and to search for precedents; and send for papers and records, or to direct the perusal of them, as they shall find convenient; and Mr. Powle and Mr. Waller are added to the Committee.

(Post Meridiem.)

Ordered, That it be referred to Colonel Birch, Sir John Birkenhead, Sir Charles Harbord, Mr. Coleman, Mr. Powle, or any two of them, to peruse the Journal of the House of Lords for the proviso in the time of Henry VIII., insisted upon by their Lordships at the Conference upon the Bill of impositions on foreign commodities.

Ordered, That the Committee appointed to draw up reasons for the intended Conference to be had with the Lords upon the said Bill of impositions do sit to-morrow morning at nine of the clock to perfect the same.

SABBATI, 22° DIE APRILIS, 1671.

Sir THOMAS LEE reports from the Committee the reasons and precedents agreed by the Committee to be offered in answer to the reasons and precedents delivered by the Lords, in writing, at the Conference desired by the Lords on Thursday morning last; which he read to the House, with some amendments and additions made at the table upon the question agreed to; and he also reports the opinion of the vote of the Committee, viz.:—

That a Conference be desired with the Lords.

upon the matter proposed and delivered, in writing, at the Conference desired by the Lords on Thursday morning last past.

Resolved, &c., That this House doth agree with the Committee that a Conference be desired with the Lords upon the matter proposed and delivered, in writing, at the Conference desired by the Lords on Thursday morning last past; and Sir Robert Carr is to desire the Conference.

Sir Robert Carr reports, That the Lords had agreed to a present Conference.

Mr. Attorney-General reports the Conference had with the Lords.

Resolved, &c., That the Lords' reasons, and the answer of this House, be entered in the Journal of this House; which are as followeth, viz.:—

Thursday, 20th April.

This Conference was desired by their Lordships upon the subject-matter of the last Conference concerning the Bill for impositions on merchandise, &c., wherein the Commons communicated to the Lords, as their resolution, That there is a fundamental right in that House alone, in Bills of rates and impositions on merchandise, as to the matter, the measure, and the time.

And, though their Lordships had neither reason nor precedent offered by the Commons to back that resolution, but were told that this was a right so fundamentally settled in the Commons that they could not give reasons for it, for that would be a weakening of the Commons' right and privilege,—

Yet the Lords in Parliament, upon full consideration thereof, and of that whole Conference, are come to this resolution, *nemine contradicente*:—

"That the power exercised by the House of Peers in making the amendments and abatements in the Bill intituled "An Act for an additional Imposition on several Foreign Commodities, and for encouragement of several Commodities and Manufactures of this Kingdom," both as to the matter, measure, and time, concerning the rates and impositions on merchandise, is a fundamental, inherent, and undoubted right of the House of Peers, from which they cannot depart."

Reasons, &c.

The great happiness of the Government of this kingdom is, that nothing can be done in order to the Legislature but what is considered by both Houses before the King's sanction be given unto it; and the greatest security to all the subjects of this kingdom is that the Houses, by their Constitution, do not only give assistance, but are mutual checks, to each other.

2. Consult the Writs of Summons to Parliament, and you will find the Lords are excluded from none of the great and arduous affairs of the kingdom, and Church of England, but are called to treat and give their counsel upon them all without exception.

3. We find no footsteps in record or history for this new claim of the House of Commons; we would see that charter or contract produced by which the Lords divested themselves of this right, and appropriated it to the Commons with an exclusion of themselves; till then, we cannot consent to shake or remove foundations in the laying whereof it will not be denied that the Lords and grandees of the kingdom had the greatest hand.

4. If this right should be denied, the Lords have not a negative voice allowed them in Bills of this nature; for, if the Lords, who have the power of treating, advising, giving counsel, and applying remedies, cannot amend, abate, or refuse a Bill in part, by what consequence of reason can they enjoy a liberty to reject the whole? When the Commons shall think fit to question it, they may pretend the same grounds for it.

5. In any case of judicature, which is undoubtedly and indisputably the peculiar right and privilege of the House of Lords, if their lordships send down a Bill to the Commons for giving judgment in a legislative way, they allow and acknowledge the same right in the Commons to amend, change, and alter such Bills as the Lords have exercised in this Bill of Impositions sent up by the Commons.

6. By this new maxim of the House of Commons a hard and ignoble choice is left to the Lords, either to refuse the Crown supplies when they are most necessary, or to consent to ways and proportions of aid which neither their own judgment or interest nor the good of the Government and the people can admit.

7. If positive assertion can introduce a right, what security have the Lords that the House of Commons shall not, in other Bills (pretended to be for the general good of the Commons, whereof they will conceive themselves the fittest judges), claim the same peculiar privilege, in exclusion of any deliberation or alteration of the Lords, when they shall judge it necessary or expedient?

8. And whereas you say, This is the only poor thing which you can value yourselves upon to the King, their lordships have commanded us to tell you that they rather desire to increase than any ways to diminish the value and esteem of the House of Commons, not only with His Majesty, but with the whole kingdom; but they cannot give way that it should be raised by the undervaluing of the House of Peers, and an endeavour to render that House unuseful to the King and kingdom by the denying unto it those just powers which the Constitution of this Government and the law of the land hath lodged in it for service and benefit of both.

9. You did, at the Conference, tell us that we did agree to a Book of Rates without so much as seeing it, and that never Book of Rates was read in the Lords' House, and that the said Book of Rates was signed by Sir Harbotle Grimston, then Speaker of the House of Commons, and not sent up lest the Lords' Speaker might sign it too.

The Book of Rates, instanced in by the House of Commons, was made in a way different from all former Books of Rates, and by an Assembly called without the King's writs; and which wanted so much the authority of Parliament that the Act they made was no Act till confirmed by this Parliament; and, though the work, which happily succeeded in their hands for restoration of the ancient government of the kingdom, will ever be mentioned to their honour, yet no measure for parliamentary proceedings is to be taken from this one instance, to the prejudice of the right of the Crown in making Books of Rates, and of the Lords in having their due consideration thereof when they shall be enacted in Parliament; which was so far from being according to former usage that the Lords, considering the necessity and condition of that time, and there being no complaint, passed that Bill upon three readings in one day, without so much as a commitment, little imagining the forwardness of their zeal to the King's service in such a time would have created an argument in the future against their power; and, if the Lords never did read Books of Rates in their House, it is as true that the House of Commons do not pretend, nor did show, that ever any was read there but this.

Introduce the Precedents thus:—

Though where a right is so clear and reasons so irrefragable, it is not to be required of those who

are possessed of the right to give precedents to confirm it; but those who dispute the right ought to show precedents or judgments to the contrary, not passed *sub silentio*, but upon the point controverted; yet the Lords have commanded us to offer and leave with you the following precedents:—

By records, both ancient and modern, it doth appear,—

1. That the Lords and Commons have consulted together, and conferred one with another, upon the subject of supply to the King; and of the manner how the same may be levied, as the 14 E. III, N. 5: "Apres Grand Tret and Parleance entre les Grantz et le ditz Chevaliers et autres des Communes esteans en dit Parliament est accordes et assentus par tous les Grants et Communes," &c., —that they grant to the King the ninth of corn and wool.

Another, 29 E. III., N. 2; and another, more particularly, in 51 E. III., N. 18, where certain lords were named, from time to time, to confer with the Commons for their better help, in consulting for the raising money.

And this was sometimes by the King's command, as the 22nd E. III., N. 3;

Sometimes by motion or appointment of the Lords, as the 5th E. III., N. 8; and in the case of the great contract for tenures and purveyances, 7 Jac., 14 Feb., 1609;

And sometimes by desire of the Commons, 47 E. III., N. 6, 4 R. II., N. 10, 11, 12, 13, 14, 15, upon a great sum demanded for the King, the Commons come to the Lords and desire a moderation of the sum, and their consideration how it shall be levied. And it is very observable in this record, No. 13, which saith, "that the Lords sent for the Commons often before them, and showed to them their advice how the same shall be levied; and thereupon was granted, by Lords and Commons, twelvepence of every man," 6 R. II., N. 14. And in the case of the great contract before-mentioned, 7° Jac., 18th June, 1610, the Commons, at a Conference, desire to know what project their lordships will propound for levying that which shall be given other than upon land; and afterwards, by the Commons' answer to the Lords' proposal, agreed that the manner of levying it may be in the most easeful and contentful sort that by both Houses can be devised. See the whole proceedings of this intended contract, which doth, in several remarkable instances, show that the House of Commons themselves did allow the House of Peers their part in treating and debating on the subject of money to be levied for His Majesty.

2. That in aids and subsidies the Lords have anciently been expressly joined with the Commons in the gift, as in the first we can meet with in our statutes—that in the body of Magna Charta, cap. 37: "The archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other our subjects have given unto us the fifteenth part of all their movables;" which undoubtedly included merchandise. And this style the ancient grants of subsidies, and the modern ones, too, do retain (the troublesome time of the war between the Houses of York and Lancaster only excepted); and even then it was, "The Commons, by advice and consent of the Lords, do give and grant;" till the beginning of Charles I. by the words, "We your Majesty's loyal subjects in Parliament assembled," the Lords implicitly; or by the words, "We the Lords Spiritual and Temporal, and Commons, in Parliament assembled;" the Lords expressly, are joined in the grant, as by perusal of the statutes will appear.

3. That in subsidies of this nature—viz., Customs—the Lords have joined with the Commons in the grant of them; and that in the very beginning of those impositions, as when forty shillings on every sack of wool (a native home commodity) was granted to Edward I., in the third year of his reign, to him and his heirs. The grant is, *Magnates, Prælati, et tota communitas concesserunt:* See Patent Roll, 3 E. I., M. 1., N. 1. As also in other Patent Rolls where subsidies are recited, as the 15 E. III., N. 1., M. 12, the Close Roll and the Patent Roll of 3 E. I., M. 6.

4. And more particularly in impositions of this very species—tonnage and poundage—the Lords were, even at the first beginning, joined with the Commons in the grant; as the Parliament Roll in the 47 E. III., N. 10, the first establishment of it by Act, doth declare, where it is, expressly, "The Lords and Commons do grant." And this style did continue, in Acts of this nature, till the end of R. II. After which, in those troublesome times, the style was various, till King H. the Eighth's time; and the style of Acts of Tonnage and Poundage was, "We, the Commons, by advice and consent of the Lords spiritual and temporal, do give and grant." This form of gift, in tonnage and poundage, lasted E. the Sixth's, Queen Mary's, Elizabeth's, and King James's time, as the statutes themselves do declare.

5. And, to prove most undeniably that the Lords have their share in the gift of aids and supplies to the King, see the Act 9, H. IV., commonly called the Indemnity of the Lords and Commons; which provides expressly that the Lords should commune apart by themselves, and the Commons by themselves; and at the latter end enacts that the King shall thank both the Lords and Commons for subsidies given to him.

6. That the Lords may make amendments and alterations in Bills which grant tonnage and poundage (the very question now between us) appears in an ancient book, Case 33, H. VI., fol. 17; which was a consultation of all the Judges of England, and the Master of the Rolls, and the Clerk of the Parliament called to inform them of the manner of proceedings in Bills of Parliament: Where it is said that, if the Commons grant tonnage and poundage to endure for four years, and the Lords grant it but for two years, it shall not be carried back to the Commons, because it may stand with their grant, but must be so enrolled: And that the Lords have made amendments and alterations in Bills granting tonnage and poundage appears by that of the 1 E. VI. and 1 of Q. Eliz., and, even in the very point now in dispute, such amendments as do lessen the sum to the King, as the first of H. VIII.

Read the proviso.

We have seriously consulted our judgments and reasons to find objections, if it were possible, against this power of the Lords, and are so far from finding any that we are fixed in opinion that the want of it would be destructive to the government and peace of the kingdom, and the right of the Crown, in balancing and regulating of trade, and the making and preserving leagues and treaties with foreign princes and States; and the exercise of it cannot but be for the security of all, and for the ease and benefit of the subject.

The modesty of your ancestors in these arduous affairs gave great deference to the wisdom of the Lords.

Their lordships are very far from desiring to obstruct this gift—no, not for a moment of time—much less for ever, as was hinted to them at the last Conference: And therefore they desire the

House of Commons to lay it to heart, and consider—if it should happen (which they heartily wish it may not) that there should be an obstruction upon occasion of this difference—at whose door it must lie, theirs that assume to themselves more than belongs to them, to the prejudice and diminution of the other's right, or theirs that do only exercise that just, lawful, and necessary power which, by the very nature and constant practice of Parliament is, and for many ages hath been, vested in both Houses.

Their lordships had under their consideration and debate the desiring a Free Conference with your House upon the reasons of the amendments in difference between the Houses; but, when they found that you had interwoven your general position with every reason you had offered upon particulars, it seemed to them that your judgments were prepossessed; and they hold it vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade, and have therefore applied themselves only to that point which yet remains an impediment in the way of free and parliamentary debates and Conferences, which must necessarily be first removed, that so we may come to a Free Conference upon the Bill itself, and part with a fair correspondence between the two Houses.

SATURDAY, 22ND APRIL.

The Commons have desired this Conference, to preserve a good correspondence with the House of Peers, and to prevent the ill consequence of these misunderstandings, which may possibly interrupt the happy conclusion of this session, and of all future Parliaments too, if they be not very speedily removed.

Wherein the Commons are not without hopes of giving your Lordships full satisfaction in the point in question, and that without shaking any foundations, unless it be such as no man should lay, much less build upon, the foundations of a perpetual dissension between the two Houses.

Three things did surprise the Commons at the former Conference concerning the Bill for an additional imposition on several foreign commodities:

First, that, where they expected a discourse upon some amendments to that Bill, they met with nothing but a debate of the liberties of their House in the matter, measure, and time of rates upon merchandise, with a kind of a demand that these liberties might be delivered up to your Lordships by our public acknowledgment, before there should be any further discourse upon that Bill.

Secondly, that your Lordships should declare so fixed and settled a resolution in this point before you had so much as heard what could be replied in defence of the Commons.

Thirdly and lastly, that your Lordships should be so easily induced to take this resolution, if there be no other motives for it than those precedents and reasons which your Lordships have been pleased to impart to us.

The Commons confess that the best rule for deciding questions of right between the two Houses is the law and usage of Parliament; and that the best evidences of that usage and custom of Parliament are the most frequent and authentic precedents.

Therefore the Commons will first examine the precedents your Lordships seem to rely upon; then they will produce those by which their right is asserted; and, in the last place, they will consider the reasons upon which your Lordships ground yourselves.

By the nature of the precedents which your Lordships produce there is an evident departure from the question. As the former Conference left it, there the doubt was narrowed to this single point: whether your Lordships could retrench or abate any part of the rates which the Commons had granted upon merchandize. Here the precedents do go to a joint power of imposing and beginning of taxes, which is a point we have not yet heard your Lordships to pretend to, though this present difference prepares way for it.

Therefore, either these precedents prove too much by proving a power of imposing, or they prove nothing at all, by not proving a power of lessening.

And yet they do not prove a power of imposing neither, for these words, "the Lords and Commons grant," must either be understood *reddendo singula singulis*—that is, the Lords grant for themselves, and the Commons grant for the counties, cities, and boroughs whom they represent; or else the word "grant" must be understood only of the Lords' assent to what the Commons grant because the form of law requires that both join in one Bill to give it the force of a law.

This answers the statute of Magna Charta, c. 37, and those few instances where it is said "the Lords and Commons grant"—viz., 47 E. III., N. 10; 4 R. II., N. 10, 11, 12, 13, 14; 6 R. II., N. 14. But what answers can be given to those ancient and modern precedents and Acts where the grant moves and is acknowledged to come from the Commons alone, of which a multitude shall be hereinafter mentioned?

The case of 14 E. III., N. 5—"Apres grant tret & parleance enter les grantz & chevaliers & Communs fuit assentus," &c.—is no grant of the 9th sheaf, as your Lordships cited it to be, but an agreement that the nones, granted in a former Parliament, should now be sold, because the money came not in fast enough.

22 E. III., N. 3, which your Lordships cite to prove that the King did sometimes command the Lords to consult with the Commons about raising money, proves little of that; but it proves expressly that the Commons granted three fifteens. And, as the grant runs wholly in their own name, so the record is full of many reasons why they could grant no more, and upon what conditions they granted so much.

And yet all these records wherein the Lords advised with the Commons about raising money, though they seem to make a show in your Lordships' paper, yet they prove two things of great importance to the Commons: First, that all aids must begin with the Commons, else the Lords need not to have conferred about the aids, but might have sent down a Bill. Secondly, that, when they are begun, the Lords can neither add nor diminish; else it was in vain to adjust the matter by private conference beforehand if the Lords could have reformed it afterwards—which shows how little service the records of 29 E. III., N. 11, 51 E. III., N. 18, can do your Lordships in the present question.

From the time of R. II. your Lordships come to 7° *Jac.* to tell us of the treaty between the Lords and Commons touching the contract for tenures *in capite*, wherein, the Lords and Commons being to be purchasers, it was less subject to objection to confer both of the method and manner how the price agreed might be paid, for the satisfaction of the King; but this matter hath so little affinity with the present question of lessening rates upon merchandise given by the Commons that nothing

but a scarcity of precedents could ever have persuaded your Lordships to make use of this instance.

As for the precedent of 3 E. I., cited by your Lordships, the Commons have most reason to rely upon that case. Your Lordships say, in the beginning of impositions, when 40s. upon a sack of wool was granted to E. I. and his heirs, the Lords joined in the grant; for the words are, *Magnates, Prælati, and tota Communitas concesserunt*, wherein are these mistakes:—

First, that record was not a grant of 40s. upon a sack, as your Lordships suppose, but a reducing of 40s. upon a sack, which E. I. took before Magna Charta was confirmed, to half a mark, viz., 6s. 8d. per sack: and it was at the prayer of the Commons, as some books say, and cite for it 3 E. I. *Rot. fin. Memb.* 24.

Secondly, the record which your Lordships cite is twice printed, once in the second part of the *Institutes*, page 531; and again in the fourth part of the *Institutes*, page 29. And by both those places it is evident that the *concesserunt* is to be applied only to the *tota Communitas*, and not to the *Magnates*, for this was a grant of the Commons only, and not a grant of the Lords. And, to demonstrate this beyond all possibility of scruple, the printed books do refer us to the Statute of 25 E. I., c. 7, called *Confirmationes Chartarum*, wherein it is expressly so declared by Act of Parliament; for, by the last statute, it appears that the *Male tot'* of 40s. upon a sack was again demanded by E. I.; and was therefore now abrogated, saving to the King and his heirs, the demi mark upon a sack of wool granted by the commonalty, which is the very same grant of 3 E. I., cited by your Lordships in the present question.

But this is also a convincing evidence that these words, "the Lords and Commons grant," are words of form, and made use of in such cases where the grant did certainly proceed from the Commons alone. And, to clear this point yet more fully by a modern precedent, we pray your Lordships to take notice of the statute of 2 and 3 E. VI., cap. 36, where a relief is given to the King by Parliament, and in the title of the Act, as also in the body of it, it is still called, all along, the grant of the Lords and Commons. Yet in 3 and 4 E. VI., cap. 23, this former Act is recited, and there it is acknowledged to be only a grant of the Commons.

And as for the case of 9 H. IV., called the Indemnity of the Lords and Commons, these things are evidently proved by it:—

First, that it was a grievance to the Commons, and a breach of their liberties, for the Lords to demand a Committee to confer with about aids.

Secondly, that the Lords ought to consider by themselves, and the Commons by themselves, apart.

Thirdly, that no report should be made to the King of what the Commons have granted, and the Lords assented to, till the matter be perfected, so that a plain declaration is made that the Commons grant and the Lords assent.

Fourthly, that the gift ought to be presented by the Speaker of the Commons.

The Book Case, 33 H. VI., 17, is the weakest of all, for the words are, "Si les Communs grant Tonage p' 4 Ans, & S'urs grant mes p' deux Ans ceo ne serra reliver aux Communs mes viâ versâ si Communs Grant p' 2 Ans, & S'urs p. 4 ceo ne ser' reliver.'

Now, first, this was no opinion of any Judge, but only of Kirkby, Cl' de Parl'.

Secondly, this was a case put by-the-by, and not pertinent to the matter in hand.

Thirdly, it is impossible to be law, being against the constant practice and usage of Parliament, for then your Lordships may not only lessen the rates and time, but you may chose whether you will send us the Bill or no back again with amendment, which was never heard of. And, if that may be, why was it not done so now?

Fourthly, that Clerk says your Lordships may increase impositions too, which part of the case you thought not fit to cite, because you pretend not to it.

Fifthly, *Brook.*, Parl'm 3, puts a quære upon the case, as it deserved.

But if the law books are to be heard in this matter, 30 H. VIII., Dyer 43, is a judicial authority where subsidy is defined to be a tax, "Assess p' Parliament & Grant al Roy p' les Communs durant vie de chest' ou Roy tantu p' Defence des Merchants sur le Mere."

The provisoes in the Bill of 1° H. VIII., which your Lordships seem mainly to rely upon, we conceive to be of no force at all, unless it be against your Lordships; for, by your Lordships' Journals, the case was this: The Bill itself did not pass till 3 H. VIII.; and upon the forty-third day of the Parliament the Lords assented to it. Afterwards, upon the forty-fifth day, two provisoes came in, one touching the merchants of the Hanse Towns, another touching the merchants of the staple of Calais. Both were signed by the King and the Chancellor; and the Bishop of Winchester did declare that the signing of those provisoes by the King's own hand was enough, without the consent of either House. So that the addition of those provisoes prove nothing for which your Lordships cited them, because—

1. They were signed by the King;
2. They were brought in, against all course of Parliament, after the Bill passed;
3. The provisoes were nothing but a saving of former rights, usually considered in former Acts of that nature;
4. Your Lordships' Journal declares that the King, without those provisoes, might have done the same thing by his prerogative. Only this may be fit to be observed by the way: that, as the Bill was a grant of the Commons alone, so the thanks for that Bill was given to the Commons alone; and so appears upon the endorsement of that very record.

The precedents for the Commons which on the sudden we find (for we have had but few hours to search) are all these following:—

11 E. I., *Walsingh.*, 471. *Populis dedit Regi tricesimam partem nonum.*

25 E. I., *Wals.*, 486, & pag' 74. *Populus dedit Regi denarium nonum.*

7 H. IV., *Wals.*, 566. *Postquam milites Parliamentares diu distulissent concedere Regi subsidium in fine tamen fracti concessere.*

6 H. IV., *Wals.*, 564. *Subsidium denegatum fuit Proceribus renitentibus.*

So, hitherto, when granted, the Commons gave it; when denied, the whole Bill rejected; never abated.

1 E. III., Stat. 2, c. 6. The Commons grieved that when they granted an aid, and paid it, the taxes were reviewed.

18 E. III., cap. 1. Statute at large. The Commons grant two fifteenths. The great men grant nothing, but to go in person with the King.

36 E. III., cap. 11. The King, having regard to the grant made by the Commons, for three years, of wood and leather, grants that no aid be levied but by consent of Parliament.

21 R. II., N. 75. Is the first grant of tonage and

poundage for life; and it was given by the Commons alone.

2 H. VI., N. 14. The Commons grant tonage and poundage for two years.

31 H. VI., N. 7, 8, 9, 10. The Commons grant tonage, &c., for life.

8 Ed. IV., N. 30. The Commons grant two-tenths and two-fifteenths.

12 E. IV., c. 3. The grant for tonnage and poundage for life is recited to be by the Commons, and most of the rates mentioned in the Bill.

The wars of Yorke and Lancaster are so far from weakening these precedents, it strengthens them rather, for no man can think the Lords were then in less power, or less careful of their rights, than your Lordships are now. Wherefore, if, in those days, those forms were approved by those mighty men, it is a sign the right is clear.

1 H. VIII. Commons, by assent of the Lords, grant tonage.

15 H. VII. In Ireland was the first grant of tonage and poundage: but it said, at the prayer of the Commons it is enacted: which, in a kingdom where they are not tied to forms, shows the clear right.

1 E. VI., cap. 13; 1 Mar., cap. 8; 1 El., cap. 19. We, your poor Commons, by advice, &c., grant: and also avers the right, time out of mind, to be in the Commons. In like manner this statute of the 1st of El., cap. 19, gives us occasion to put your Lordships in mind of another precedent, which appears in your own Journals, Wednesday, 15 Feb., 1 Eliz.; for, while the Bill was passing, the inhabitants of Cheshire and Wales petition the Lords upon the second reading, that, forasmuch as they were subject to pay the Queen a certain duty called mises, therefore they might be excused of the subsidy and abated their parts of it. The Lords, who then knew they had no power to diminish any part of the aid granted by the Commons, did therefore address themselves to the Queen in their behalfs. The Queen commands an entry to be made in the Journal of the House of Lords, that she was pleased that the Cheshire men and the Welsh men should be respited the mises when they pay subsidies, and respited the subsidies when they pay mises; which is a strong proof that, as the Commons alone grant, so nobody can diminish their grant; else what need had the Lords to apply themselves to the Queen for it?

17 Car. I. Tonage and poundage was granted once for a month; then again for three months: but still the grant was by the Commons. In those days (how tumultuous soever) the Commons did not rise against the Lords; they agreed well enough.

12 C. II., cap. 4, tonage.
Cap. 24, for £7,000.
Cap. 23, excise for life.
12 C., cap. 27, for £420,000.
Cap. 19, £70,000 more.
13 C. II., cap. 3, £1,260,000.
14 C. II., cap. 10, chimney money.
15 C. II., cap. 9, four subsidies.
16 & 17 C. II., cap. 1, Royal aid.
17 C. II., cap. 1, Oxon, £1,250,000.
18 C. II., cap. 1, Poll Bill.
19 Car. II., cap. 8, eleven months' tax.
20 Car. II., cap. 1, £310,000 (wine).
22 C. II., cap. 3, wine and vinegar.
23 Car., subsidies, 1d. per pound.
Additional excise.
Impost on the law:
And the preamble of this very Bill now in question.

All grants of the Commons; yet none of those Bills were ever varied by your Lordships or your predecessors, which, if there had been such a right, would, some time or other, have been exercised, though in very small values, purposely to preserve that right.

Thus an uninterrupted possession of this privilege ever since 9 H. IV., confirmed by a multitude of precedents both before and after, not shaken by one precedent for these three hundred years, is now required to be delivered up or an end put to all further discourse; which opinion, if it be adhered to, is, as much as in your Lordships lies, to put an end to all further transactions between the Houses in matter of money, which we pray your Lordships to consider:

Because there appears not to the Commons any colour from the precedents cited by your Lordships why your opinions should be so fixed in this point, we suppose the main defence is in the reasons that have been given for it.

That paper begins with an observation that your Lordships had neither reason nor precedent offered by the Commons to back their resolution, and yet concludes with an answer to a precedent then cited by the House of Commons, viz., the Act of Tonage and Poundage now in force; and if your Lordships heard but one precedent then, you have now a great number besides those 1 of 3 E. I., and H. VIII., and 9 H. IV., and divers others your Lordships furnished us with.

Before the Commons answer to your Lordships reasons in particular, they desire to say first, in general, that it is a very unsafe thing, in any settled Government, to argue the reasons of the fundamental Constitutions, for that can tend to nothing that is profitable to the whole.

And this will more sensibly appear to your Lordships if the grounds and foundations of judicature be examined.

For there are several precedents in Parliament and some in book cases, which prove that the judicature is not to be exercised by all the Lords, but only such as the King is pleased to appoint. So is the Book Case of 22 E. III., 3 A. 6. And so is the Parliament roll, 25 E. III., N. 4; and divers other rolls of Parliament.

Several other precedents there are where the Commons, by the King's good pleasure, have been led into a share of the very judicature. So are the 42 E. III., N. 20, 21; 31 H. VI., N. 10; 8 Ed. IV., Hugh Brice's case, in the rolls of Parliament.

Some precedents there are where it was assigned for error in the House of Peers that the Lords gave judgment without petition or assent of the Commons. So is 2 H. V., N. 13.

Would your Lordships think it safe that a dispute should now be made of the very rights of judicature, because we have such precedents?

If usage for so long a time have silenced all disputes touching your Lordships' judicature, shall that usage be of no force to preserve the privileges of the Commons from all further question?

Also there is a precedent of an Act of Parliament passed by the King and Commons alone, without the Lords—viz., 1 E. VI., c. 5, and that twice approved—viz., 1 Eliz., c. 7, and 5 Eliz., c. 19, which do both allow and commend this Act.

Shall we therefore argue the foundations of the Legislature because we have such precedents?

But, to come to particulars,—

1. Your Lordships' first reason is from the happiness of the Constitution, that the two Houses are mutual checks upon each other.

Answer: So they are still: for your Lordships have a negative to the whole.

But, on the other side, it would be a double check upon His Majesty's affairs if the King may not rely upon the *quantum*, when once his people have given it; and therefore the privilege now contended for by your Lordships is not of use to the Crown, but much to the contrary.

2. Your Lordships' reasons, drawn from the writ of summons, is as little concluding, for though the writ do not exclude you from any affairs, yet it is only *de quibusdam arduis negotiis;* and must be understood of such as by course of Parliament are proper, else the Commons, upon the like ground, may entitle themselves to judicature, for they are also called *ad faciend' de consentiend' de quibusdam arduis & super negotiis antedictis.*

3. Your Lordships proceed to demand where is that record or contract in Parliament to be found where the Lords appropriate this right to the Commons in exclusion of themselves?

Answer: To this rhetorical question the Commons pray they may answer by another question: Where is that record or contract by which the Commons submitted that judicature should be appropriated to the Lords in exclusion of themselves?

Wherever your Lordships find the last record they will show the first endorsed upon the back of the same roll.

Truth is, precedents there are where both sides do exercise those several rights; but none how either side came by them.

4. If the Lords may deny the whole, why not a part?—else the Commons may at last pretend to bar a negative voice.

Answer: The King must deny the whole of every Bill, or pass it; yet this takes not away his negative voice. The Lords and Commons must accept the whole general pardon, or deny it; yet this takes not away their negative.

The clergy have a right to tax themselves; and it is a part of the privilege of their estate. Doth the Upper Convocation House alter what the Lower grant? Or do the Lords or Commons ever abate any part of their gift? Yet they have the power to reject the whole. But, if abatement should be made, it would insensibly go to a rising, and deprive the clergy of their ancient right to tax themselves.

5. Your Lordships say, Judicature is undoubtedly ours, yet in Bills of judicature we allow the Commons to amend and alter: why should not the Commons allow us the same privilege in Bills of money?

Answer: If contracts were now to be made for privileges, the offer might seem fair: but yet the Commons should profit little by it; for your Lordships do now industriously avoid all Bills of that nature, and chuse to do many things by your own power which ought to be done by the legislative, of which we forbear the instances, because your Lordships, we hope, will reform them; and we desire, not to create new differences, but to compose the old.

6. Your Lordships say you are put to an ignoble choice either to refuse the King's supplies when they are most necessary, or to consent to such ways and proportions which neither your own judgment nor the good of the Government or people can admit.

Answer: We pray your Lordships to observe that this reason—

1. Makes your Lordships' judgment to be the measure of the welfare of the commons of England.

2. It gives you power to raise and increase taxes, as well as to abate; for it may sometimes, in your Lordships' judgments, be for interests of trade to raise and increase a rate, as well as to lessen it: and then, still you are brought to the same ignoble choice, unless you may raise the tax.

But it is a very ignoble choice put upon the King and his people that either His Majesty must demand and the Commons give so small an aid as can never be diminished, or else run the hazard of your Lordships' re-examination of the rates; whose proportions in all taxes, in comparison to what the commonality pay, is very inconsiderable.

7. If positive assertion can introduce right the Lords have no security, but the Commons may extend a right as they judge it necessary or expedient.

Answer: We hope no assertions or denials, though never so positive, shall give or take away a right; but we rely upon usage on our side, and non-usage on your Lordships' part, as the best evidence by which your Lordships, or we, can claim any privilege.

8. Your Lordships profess a desire to raise our esteem with His Majesty and the whole kingdom, but not by the under-valuation of the House of Peers.

Answer: We have so great confidence in His Majesty's goodness that, we assure ourselves, nothing can lessen His Majesty's esteem of our dutiful affections to him; and we hope we have deserved so well of our country, by our deportment towards His Majesty, that we shall not need your Lordships' recommendation to any who wish well to His Majesty or the present Government.

But we are so far from wishing to raise an esteem by any diminution of your Lordships' honour or privileges that there never was any House of Commons who had a more just and true respect of that noble Constitution of a House of Peers; of which your Lordships have had frequent instances, by our consenting to several clauses in former Bills for the securing and improving your Lordships' privileges.

9. We are sorry to see your Lordships undervalue the precedent of this last Act of Tonage and Poundage, because, though it were an Act of the last Convention, it was confirmed in this Parliament, and because the right of the Commons there asserted was pursuant to a former precedent in 1642; and possibly had not passed so if the younger members of that Convention had not learned from some of those great and noble Lords who now manage the Conference for your Lordships, and were then Commoners, that this was the undoubted right of the Commons.

To conclude, the Commons have examined themselves and their proceedings, and find no cause why your Lordships should put them in mind of that modesty by which their ancestors showed a great deference to the wisdom of the Lords, for they resolve ever to observe the modesty of their ancestors, and doubt not but your Lordships will also follow the wisdom of yours.

It was unanimously *Resolved*, That the thanks of the House be returned to Mr. Attorney-General for his great pains and care in preparing and drawing up the reasons delivered to the Lords, in answer to their reasons, which was by him performed to the great satisfaction of this House, in vindication of their privilege, and just and undoubted right of the Commons of England.

And Mr. SPEAKER did, accordingly, deliver the thanks of the House to Mr. Attorney-General.

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