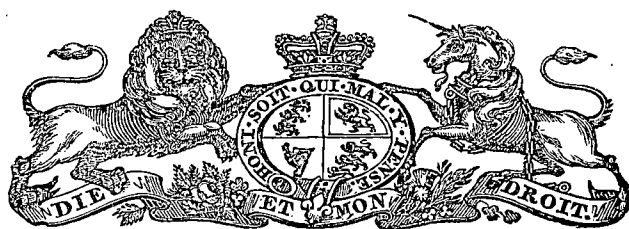


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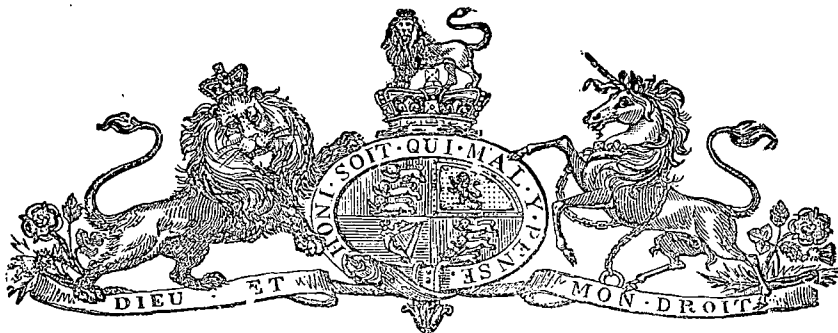
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CONSTITUTIONAL FUNCTIONS OF A  
LEGISLATIVE COUNCIL.

Correspondence, Documents, and Despatches, with reference to the  
Constitutional Functions of a Legislative Council in the Colonies of New  
Zealand and Victoria.

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Laid upon the Table by the Colonial Treasurer, and ordered by the House to be  
printed, October 4, 1881.



*PAPERS, Despatches, and Documents, having reference to the relative Powers of the two Houses of Parliament in matters of Finance in the Colonies of New Zealand and Victoria, respectively.*

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I.—AS TO NEW ZEALAND.

[From Parliamentary Government in British Colonies, by ALPHREUS TODD, C.M.G., Librarian of Parliament, Canada, author of Parliamentary Government in England.]

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So freely has the principle of local self-government been conceded in regard to the composition and constitution of the Legislative Chambers that, by the British North America Act, the local legislatures in the Canadian provinces are empowered to amend their constitutions at will, except as regards the office of Lieutenant-Governor, a liberty of which some of the Provincial Legislatures have, as above mentioned, already availed themselves, by the abolition of a second or upper chamber; and other provinces are contemplating a similar reform.

But whether constituted by nomination or election, the Upper House in every British Colony is 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." It is therefore most desirable that in general persons should be chosen as members of an Upper Legislative Chamber who already possess some measure of Parliamentary experience and ability, besides being otherwise qualified for such honorable service.

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

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

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

But neither the New Zealand or the Canadian laws can be so construed as to warrant a claim by the Upper Chambers of either Parliament to equal rights in matters of aid and supply to those which are "enjoyed and exercised by the Commons House of Parliament of the United Kingdom;" for such a claim, if insisted upon, would, to a like extent, derogate from and diminish the constitutional rights of the representative chamber.

The Victoria Constitution Act, 1855, sect. 56, and the British North America Act, 1867, sect. 53, severally declare that "bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the [Assembly or] House of Commons."\* No further definition of the relative powers of the two houses is ordinarily made by any statute. But constitutional practice goes much further than this. It justifies the claim of the Imperial House of Commons (and, by parity of reasoning, of all representative chambers framed after the model of that house) to a general control over public revenue and expenditure, a control which has been authoritatively defined in the following words:—"All aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons, and it is the undoubted and the 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. In 1872, a difference arose between the two houses of the New Zealand legislature as to the statutory right of the Legislative Council to amend bills of supply. The Council contended that the New Zealand "Parliamentary Privileges Act of 1865" had placed both houses upon an equal footing in respect to money bills, and empowered them to amend such bills as freely as other measures. The Assembly resented this pretension as being an unconstitutional encroachment upon their peculiar privileges. Unable to agree by mutual consent, a case was prepared for the opinion of the Law Officers of the Crown in England, which was forwarded to Her Majesty's Secretary of State for the Colonies by the Governor.

[The following is a copy of the Despatch and Case submitted for the opinion of the Honorable Attorney-General and Solicitor-General of England, the present Lord Chief Justice Coleridge and Sir George Jessel, the Master of the Rolls.]

No. 58.

*COPY of a Despatch from Governor SIR G. F. BOWEN, G.C.M.G., to the Right Hon. the Earl of KIMBERLEY.*

(No. 35.)

*Government House, Wellington, New Zealand, 30th March, 1872.*

MY LORD,

IN my Despatch No. 109, of the 20th November ultimo, I reported that, towards the end of the last Session of the New Zealand Parliament, a difference arose between the Legislative Council and the House of Representatives concerning certain points of law and privilege. Finally, however, an amicable arrangement was effected, on the understanding that the questions involved in the dispute should be referred for the opinion of the Law Officers of the Crown in England. Accordingly, a case has been prepared by the Managers of both Houses in the terms of Article 405 of the Colonial Regulations.

2. I have this day received the enclosed Ministerial Memorandum, in which my Responsible Advisers request me to transmit the annexed documents, forwarded in quadruplicate, as is required by the Regulations.

I am, &c.

G. F. BOWEN.

*The Right Hon. the Earl of KIMBERLEY.*

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Enclosure in No. 58.

*MEMORANDUM by Mr. GISBORNE.*

MR. Gisborne has the honor to transmit to His Excellency the enclosed papers, including a Case stating facts agreed upon for reference to the Law Officers of the Crown, in accordance with the Resolutions of the Legislative Council and House of Representatives, relating to a question of privilege between both Houses last Session.

His Excellency is respectfully requested to forward these papers to the Right Hon. the Secretary of State for the Colonies, in order that the opinion of the Law Officers of the Crown may be obtained on the questions at issue.

W. GISBORNE.

*Wellington, 30th March, 1872.*

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Sub-Enclosure to Enclosure in No. 58.

*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.

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\* By Section 33 of "The Constitutional Act," Tasmania, it is provided that "All Bills for appropriating any part of the Revenue or for imposing any tax, rate, duty, or impost shall originate in the House of Assembly."

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, } For the Managers of the  
HENRY SEWELL, } Legislative Council.  
F. D. BELL, } For the Managers of the  
A. DE B. BRANDON, } House of Representatives.

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 38s.

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 Gold-Fields; 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 Gold-Fields .....	300,000
Purchase of Land in North Island.....	200,000
Extension of Telegraph .....	60,000
Unapportioned .....	40,000
	<hr/>
	£4,000,000

The amount was authorised 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 thereafter 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 authorised 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 guarantees, 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 authorised to be raised.

In the Session of the General Assembly just passed (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 38s. 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 authorised 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 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 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 authorised 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, authorised 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 authorised 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 authorise 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 authorised 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 recognises, 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 operations 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 proposed 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 intitled ‘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 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. W. 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 intitled ‘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 November 13.”

Another distinct question has been raised as to the constitutional powers of the Legislative Council under an Act passed in the year 1865, intitled “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:—

- I. 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)?
- II. Whether "The Parliamentary Privileges Act, 1865," confers on it any larger powers in this respect than it would otherwise have possessed?
- III. 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 the 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 38s.

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, viz., The Construction of Railways; Immigration; the Construction of Water-races on Gold Fields; 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 Gold Fields .....	300,000
Purchase of Land in North Island.....	200,000
Extension of Telegraph .....	60,000
Unapportioned .....	40,000
	<hr/>
	£4,000,000

This amount was authorised 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 thereafter 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 authorised 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 authorised to be raised.

In the Session of the General Assembly just passed (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 38s. 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 authorised 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 among 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 authorised 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 authorised 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 authorising 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, authorised 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 authorised 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 authorise 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 authorised 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 operations 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 of 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 Payment 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 November 18, 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,” and 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 aid 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? What is 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 authorised by statutes, is independent of annual grants, and is beyond the control of the Committee of Supply.”



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

"The Committee of Ways and Means votes general grants from time to time *out of the Consolidated Fund* '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 authorised 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 £20,300 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 Hon. 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 authorised might be applied, the Governor or his Agents might raise any portion of the loan so authorised, 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 authorised 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 authorised 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 privileges 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:—

- I. 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)?
- II. Whether "The Parliamentary Privileges Act, 1865," confers on it any larger powers in this respect than it would otherwise have possessed?
- III. 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.

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

*"The Law Officers of the Crown to the Earl of KIMBERLEY.*

*"Temple, June 18, 1872.*

"MY LORD,

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

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

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

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

"(2.) We are of opinion that 'The Parliamentary Privileges Act, 1865,' does not confer 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."*

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

The relative rights of both Houses in matters of aid and supply must be determined in every British Colony by the ascertained rules of British Constitutional Practice. The local Acts upon the subject must be construed in conformity with that practice wherever the Imperial polity 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.

## II.—AS TO VICTORIA.

No. 86.

*DESPATCH from the Right Honorable SIR MICHAEL HICKS BEACH, Bart., Secretary of State for the Colonies, to Governor the Most Honorable the MARQUIS OF NORMANBY, (Victoria).*

*Downing-street, 3rd May, 1879.*

MY LORD,

IN his despatch of 27th December, 1878, Sir George Bowen informed me that the Legislative Assembly of Victoria had authorised Mr. Graham Berry, the Chief Secretary and Prime Minister, and Mr. Pearson, a member of the Assembly, to proceed to London as Commissioners or delegates, to solicit my advice and assistance, and to lay before me the views on the political affairs of Victoria entertained by the majority of the Assembly; and by the same mail he forwarded to me a statement that had been adopted by the Council, and other documents bearing upon the case. Shortly after the arrival of Mr. Berry and Mr. Pearson in England, I received them at this office, and Mr. Berry then left with me the letter of which I enclose a copy. The objects of their mission have since been fully discussed between us at several interviews, and I will now proceed to convey to you the opinion which Her Majesty's Government have formed upon the important question at issue, after full consideration of the statements that have been placed before them on behalf of the Government and the Assembly of Victoria on the one side, and of the Council on the other.

2. In a memorandum dated the 6th August, 1878, Sir George Bowen's Ministers had anticipated that they might be "compelled to despatch to England, on behalf of and with the express sanction of the Legislative Assembly, commissioners chosen from leading members of that House, to lay before Her Majesty's Imperial Government the matured result of its deliberation" on constitutional reform, "with a view to get that result embodied in an Act of the Imperial Legislature." On the receipt of that memorandum, I lost no time in placing before the Victorian Government the considerations which disposed me to the opinion that no sufficient cause had been shown for the intervention of the Imperial Parliament in the manner suggested.

3. The request urged by Mr. Berry in his letter of 26th February that Parliament should "by a simple alteration of the 60th section of the Constitution Act of Victoria, enable the Legislative Assembly to enact, in two distinct annual sessions, with a general election intervening, any measure for the reform of the Constitution," is, in my opinion, even more open to objection than the proposal I understood him to convey in his memorandum of 6th August. But it is not necessary to discuss the merits of this or any other proposal, for though fully recognising the confidence in the mother country evinced by the reference of so important a question for the counsel and aid of the Imperial Government, I still feel that the circumstances do not yet justify any Imperial legislation for the amendment of that Constitution Act by which self-government, in the form which Victoria desired, was conceded to her, and by which the power of amending the Constitution was expressly, and as an essential incident of self-government, vested in the colonial Legislature with the consent of the Crown. The intervention of the Imperial Parliament would not, in my opinion, be justifiable, except in an extreme emergency, and in compliance with the urgent desire of the people of the colony, when all available efforts on their part have been exhausted. But it would, even if thus justified, be attended with much difficulty and risk, and be in itself a matter for grave regret. It would be held to involve an admission that the great colony of Victoria was compelled to ask the Imperial Parliament to resume a power which, desiring to promote her welfare, and believing in her capacity for self-government, the Imperial Parliament had voluntarily surrendered, and that this request was made because the leaders of political parties, from a general want of the moderation and sagacity essential to the success of constitutional government, had failed to agree upon any compromise for enabling the business of the Colonial Parliament to be carried on.

4. It is nevertheless important that the question should be settled as soon as possible where it can be properly dealt with—that is, in the Colonial Parliament; and I shall be glad if, by the observations which I am about to make, I can remove some part of the misunderstanding which has been amongst the chief obstacles to such a settlement.

\* Extract from Report of Select Committee appointed by the Legislative Council of Van Diemen's Land on 19th August, 1853, to prepare the Draft of a New Constitution for this Colony. "Your Committee are of opinion that any Constitutional Act which may be adopted should be assimilated as closely to the British Constitution as the circumstances of the Colony will admit." "In constructing a Legislature, the constituent parts of which the Governor, the Legislature, and the House of Assembly bear as close an analogy to the three Estates of the British Parliament as circumstances will allow, &c."

5. Following the generally accepted precedent, the Constitution Act of Victoria established two Legislative Chambers, the Council and the Assembly, and laid down to a certain extent their mutual relations—of which, it appears to me, a better definition, rather than an alteration, is now required. For, as no party in Victoria desires to abolish the Council, I feel confident that there can be no wish in the words of your Ministers to “reduce it to a sham,” or by depriving it of the powers which properly belong to a second Chamber, to confer on the Assembly a complete practical supremacy, uncontrolled even by that sense of sole responsibility which might exert a beneficial influence on the action of a single Chamber. Nor can I suppose that the extreme view of the position of the Council, which it has recently to a great extent itself disclaimed can be supported by any who have sufficiently examined the subject.

6. The recent difference between the two Houses of Victoria, like the most serious of those which have preceded it, turned upon the ultimate control of finance. I observe that the address of the Legislative Assembly of the 14th February, 1878, dwells almost exclusively on the necessity of securing to that House sufficient financial control to enable adequate supplies to be provided for the public service, and it is prominently urged in Mr. Berry’s letter of the 26th February, in proof of the necessity for finding some solution of the present constitutional difficulty, that “scarcely a year passes but it becomes a question whether the supplies necessary for the Queen’s service will be granted.” But this difficulty would not arise if the two Houses of Victoria were guided in this matter, as in others, by the practice of the Imperial Parliament, the Council following the practice of the House of Lords, and the Assembly that of the House of Commons. The Assembly, like the House of Commons, would claim and in practice exercise the right of granting aids and supplies to the Crown, of limiting the matter, manner, measure, and time of such grants, and of so framing Bills of Supply that these rights should be maintained inviolate; and as it would refrain from annexing to a Bill of Aid or Supply any clause or clauses of a nature foreign to or different from the matter of such a Bill, so the Council would refrain from any steps so injurious to the public service as the rejection of an Appropriation Bill.

7. It would be well if the two Houses in Victoria, accepting the view which I have thus indicated of their mutual relations in this important part of the work, would maintain it in future by such a general understanding as would be most in harmony with the spirit of constitutional government. But, after all that has passed, it may be considered necessary to define those relations more closely than has been attempted here, and this might be effected either by adopting a joint standing order, as was proposed in 1867, or by legislation. Of these the former would seem to be the preferable course, for there might be no slight difficulty in framing a statute to declare the conditions under which one House of Parliament, in a colony having two Houses, should exercise or refrain from exercising the powers which, though conferred upon it, must not always be asserted. But I must add that the clearest definition of the relative position of the two houses, however arrived at, would not suffice to prevent collisions, unless interpreted with that discretion and mutual forbearance which has been so often exemplified in the history of the Imperial Parliament.

8. If, however, it should be felt that the respective positions of the two Houses in matters of taxation and appropriation can only be defined by an amendment of the Constitution Act, there may be other points, such as a proposal to enact that a dissolution of Parliament shall apply to the Legislative Council as well as the Assembly, that might usefully be considered at the same time; but I refrain from discussing them now, feeling that their merits can best be appreciated in the Colony itself.

9. It has been urged that some legislation is necessary to insure mechanically the termination, after reasonable discussion and delay, of a prolonged difference between the two Houses upon questions not connected with finance. I do not yet like to admit that the Council of Victoria will not, like similar bodies in other great colonies, without any such stringent measure, recognise its constitutional position, and so transact its business that the wishes of the people, as clearly and repeatedly expressed, should ultimately prevail; nor have I yet seen any suggestion for such legislation which I can deem free from objection.

10. I hope that the views which I have expressed may not be without influence in securing such a mutual agreement between the two Houses as to remove any necessity for Imperial legislation, and that, as both parties profess to desire only what is reasonable, and as there has been now an interval for reflection, a satisfactory and enduring solution of the difficulty may be arrived at in the colony. The course of action which Her Majesty’s Government might adopt, should this hope unfortunately be disappointed, must in a great degree depend upon the circumstances which may then exist; but I can hardly anticipate that the Imperial Parliament will consent to disturb, in any way, at the instance of one House of the Colonial Legislature, the settlement embodied in the Constitution Act, unless the Council should refuse to concur with the Assembly in some reasonable proposal for regulating the future relations of the two Houses in financial matters in accordance with the high constitutional precedent to which I have referred, and should persist in such refusal after the proposals of the Assembly for that purpose, an appeal having been made to the constituencies on the subject, have been ratified by the country, and again sent up by the Assembly for the consideration of the Council.

I have, &c.

(Signed) M. E. HICKS BEACH.

*Governor the Most Honorable the Marquis of Normanby, &c.*