would provide a good deal of amusement to hon. members, and that they would not get rid of it in a hurry; and he thought that forecast was now verified. In dealing with this question, every member claiming to understand it would want to put forward his own plan, and to argue the case in reference to his own particular fence; so that, with all this inevitable discussion, many sittings would be required for dealing with this Bill. It was better, at this period, to discharge the order from the Notice Paper.

MR. LEFROY said the withdrawal of the Bill would meet with the approval of the country. The fact of the Bill having been on the Notice Paper three months did not prove that the Bill had been before people in the country, because they did not see the Notice Paper, and he did not think the provisions of this Bill were well known in the country districts. When members of this House returned to their constituencies, they would be able to make known the provisions of the measure, and obtain opinions upon it. He would not say the Bill was excellent, but it was important, and the people whom it most affected were not generally aware of its provisions. The Government were acting wisely in withdrawing the Bill for this session.

Motion put and passed.

Order discharged.

ADJOURNMENT.

The House adjourned at 9:53 o'clock, p.m.

Legislative Council,

Monday, 5th November, 1894.

Municipal Elections: participation in by Civil Servants—Droving Bill: third reading—Railways Act Amendment Bill: second reading: committee—Municipal Institutions Bill: Message from Legislative Assembly; ruling of the President—Insect Pests Bill: first reading—Adjournment.

THE PRESIDENT (Hon. Sir G. Shenton) took the chair at 7:30 p.m.

PRAYERS.

MUNICIPAL ELECTIONS—PARTICIPATION IN BY CIVIL SERVANTS.

THE HON. J. C. G. FOULKES asked the Colonial Secretary whether the Government civil servants were permitted to take any active part in municipal elections.

THE COLONIAL SECRETARY (Hon. S. H. Parker): At present there is no rule on the subject, nor do I know anything to prevent civil servants taking an active part in municipal elections. The matter will, I hope, shortly engage the attention of the Government, and, in the meantime, I think it would be well if persons occupying positions in the civil service were not to take prominent part in such elections.

DROVING BILL.

THIRD READING.

This Bill was read a third time, and *passed.*

RAILWAY ACT AMENDMENT BILL.

THE COLONIAL SECRETARY (Hon. S. H. Parker): The purport of this Bill is to repeal section 10 of the Railway Act of 1878, and to substitute another section for it. By section 10 of the principal Act it is made compulsory on the Commissioner of Railways not only to deposit plans certified under his hands at his own office, but with the Resident Magistrates of all districts through which the railway passes. There is absolutely no reason for this, and it involves a great amount of expense to prepare the plans. This Bill proposes now to repeal this, and make it sufficient if the plans are deposited in the office of the Commissioner. It is further provided that the Com-

missioner may, under certain circumstances, sell goods or animals, the owners of which cannot be found. All the rights of owners are preserved, and no sale can take place until a month after the goods or animals are advertised. I move the second reading of the Bill.

Question put and passed.

IN COMMITTEE.

The Bill was considered in committee, and agreed to without amendments, and reported.

MUNICIPAL INSTITUTIONS BILL.

LEGISLATIVE ASSEMBLY'S MESSAGE.

RULING OF THE PRESIDENT.

THE COLONIAL SECRETARY (Hon. S. H. Parker): I observe, Mr. President, in the Message which has been transmitted from the Legislative Assembly, that the reason given for objecting to certain amendments made by this House is that of privilege. I think, before we go into committee to consider this reason, it would be as well if you would be pleased to give us your views on this question of privilege, which has been raised by the Assembly.

THE PRESIDENT (Hon. Sir G. Shenton): In accordance with the wish of the Hon. Colonial Secretary, I will state my views on this subject to hon. members. On the consideration by the Assembly of the amendment made by the Legislative Council in the Municipal Institutions Bill, the Speaker, having been requested to give a ruling, in doing so stated in the latter portion of it: "that no precedent can be found of the House of Lords being allowed to alter taxation." I shall, in the first place, deal with that contention, and throughout I shall endeavour to refer only to the latest authorities and cases. In the last session of the Imperial Parliament, during a debate in the House of Lords, the question of the Lords' power of amendment to Bills came under discussion.

The Duke of Rutland called attention to the popular error on the subject. He said the House of Lords had never surrendered their legal right to amend Money Bills; and when the question came to be considered by the Peers, it was admitted that the Duke's contention was right.

Lord Salisbury stated that he had no intention of moving any amendment to the Budget. He thought it highly desirable that the right of the House of Lords in this respect should be kept alive. He pointed out that the right to amend had been exercised by the Lords in the amendment to Mr. Gladstone's Budget in 1860—rejecting the part which provided for the repeal of the paper duty, and the Duke of Wellington's amendment to Mr. Canning's Corn Bill in 1827. He further stated that the distinction between the legal and moral authority of the House of Commons is too often overlooked. The legal authority of both Houses is the same. The House of Lords has the same legal right to reject a Bill as the House of Commons to pass it.

A resolution of the House of Commons has not by itself the force of law, and if that House has never departed from the resolution of 1678, as Lord Colchester declared, the House of Lords, in their turn, have never acknowledged it.

Lord Herschell said:

I do not, therefore, in the least degree dispute the wisdom of the accepted practice, that this House should not interfere with the finances of the year. At the same time, I think it is very important, in view of the changes that have come over the Constitution, and the proceedings and authority of the House of Commons, that we should rigidly adhere to our legal powers whatever they may be. It is necessary to call attention to the fact that the difference between the legal right of the House of Commons, and its moral authority, is of the widest possible character. The legal rights of the House of Commons are equally strong if they are exercised by a majority or a single vote. They are in all circumstances the same; but the moral authority of the House of Commons varies infinitely with the circumstances of the case. I deal with this matter because there is a constant tendency in the popular mind to confuse the moral authority and the legal authority of the House of Commons. I repeat that the legal authority is as great if represented by a single vote, while the moral authority varies with the circumstances. On this ground I attach very great importance to the preservation intact of the legal prerogative and right of the House of Lords, because we do not know when it may be expedient to insist on them and to exercise them. I quite understand the necessity of exercising any such power with great reserve and circumspection, but we know not when they may be wanted, and I earnestly protest against any attempt to diminish them.

The opinions I have just stated are those of some of the leading men in the House of Lords. But I also find that in 1861, Mr. Gladstone, speaking in the House of Commons in reference to the House of Lords, stated:—

By no proceedings has that House ever surrendered, as far as I know, the right of altering a Bill, even though it touch a matter

of finance. If I might say, for my own part, though anxious to vindicate the privilege of this House against the House of Lords where need may arise, yet I think that the House of Lords is right and wise in avoiding any formal surrender of the power, even of amendment, in cases when it might think it justifiable, to amend a Bill relating to finance.

I find also that, in 1891, when the Elementary Education Bill was before Parliament, the Lords made an amendment which was rejected by the Commons, because, as stated in their reasons, the amendment would create "a further charge upon the revenue." This was accepted by the Lords, but that House asserted by a resolution that they made no admission in respect of any deduction which might be drawn from the reasons offered by the Commons, and did not consent that these reasons should thereafter be drawn into a precedent.

I think, from the cases I have quoted, it is clearly proved that the House of Lords has never surrendered its legal right to amend Money Bills.

On referring to *May's Parliamentary Practice*, page 545, tenth edition, I find that—

Mr. Speaker Abercromby, speaking as the authorised guardian of the privileges of the House, remarked, after reference to precedent which had occurred in the year 1834, that the Bill affected "not only the proprietors of the land, but the great mass of the people of Ireland"; and that "as the principle of rating was necessarily incidental to such a measure, he considered that, if the privileges of this House were strictly pressed in such a case, they would almost tend to prevent the House of Peers from taking such a measure into its consideration in a way that might be, on all grounds, advisable. Influenced by these considerations, as appear by the debates which took place on three occasions, in the years 1838, 1847, and 1849, with the expressed sanction not only of Mr. Abercromby, but of Mr. Shaw Lefevre, the Commons waived the exercise of their privilege, and considered amendments made by the Lords, which, not only by the omission of provisions, but by distinct enactment, changed the area, and therefore the burthen of local taxation and imposed rates, higher than the rates fixed by the House of Commons. And, though the Commons disagreed to certain amendments which proposed to apply Loans drawn from the Consolidated Fund to objects other than those prescribed by the Commons, and to extend the time appointed for the application of their loans, their disagreement was not based on a claim of privilege.

The Speaker in his ruling states he is guided entirely by Standing Order No. 1. Although this ruling states that in all cases not provided for, resort shall be had to the Imperial Parliament, we must in the first instance refer to the Constitution Act, as our two Houses of Parliament are statutory bodies whose powers and duties depend upon and are defined by the Act which they administer, and those powers are just so much and so much only as that Act rightly construed allows, and it is in the Constitution Act alone that the powers of the Council and the limitation of these powers can be found.

I find that Clause 2 states that the Council and Assembly, subject to the provision of this Act, shall have all the powers and functions of the old Legislative Council.

Clause 64 defines that all taxes, imposts, rates, and duties, and all other revenues of the Crown, over which the Legislature has power of appropriation, shall form one consolidated revenue.

Clause 66 states all Bills for appropriating any part of the consolidated revenue,. or for imposing, altering, or repealing any rate, tax, duty, or impost, shall originate in the Assembly.

Clause 23, of the Amending Constitution Act, gives the Council power in the case of a proposed Bill which, according to law, must have originated in the Assembly, to return it at any stage to the Assembly with a message requesting the omission or amendment of any items or provisions therein. This of course refers to Bills coming within the provisions of Clause 66.

I consider, therefore, that the question at issue between the Council and the Assembly may only be decided by reference to the Constitution Act, to which both Houses owe their existence, and from which they derive their power.

This being the case, I think I am safe in stating that as the "Constitution Act Amendment Act, 1893," only refers to the power of the Council to requesting the omission or amendment of any items or provisions in any Bill that comes under the provisions of Clause 66, with all other Bills, the Council's powers and functions are co-ordinate with and equal to those of the Assembly, and the standing orders cannot be so construed as to be taken to place any limitation upon the power so conferred. If such is not the

case, why is the power of the Council to request amendments to Bills restricted to those enumerated in Clause 66?

Even supposing the Speaker's contentions are correct as to the powers of the House of Lords, I maintain no analogy can be drawn in the present case between the House of Lords and the Council, as the former House possesses no legal enactment of requesting amendments similar to those in the twenty-third clause of our "Constitution Act Amendment Act, 1893." In the Imperial Parliament the origination of Money Bills by the Commons is a rule of law, but the exemption of such Bills from amendment has no legal validity, and is a mere practice dependent on the prudent forbearance of the House of Lords.

Turning to the procedure of the other Australian colonies that have elected Legislative Councils, we find that both South Australia and Victoria have not only similar standing orders to our No. 1, but also 309 of the Assembly, but the former Council has power to amend all Bills except that class which come under the provisions of our Clause 66, but to those they can, under a compact with the Assembly, suggest amendments. In the South Australian Parliamentary Session of 1887, when the Districts Consolidating Act was under consideration by the Council, they amended a clause which altered the rate for the value of the assessment on unbuilt land from 5 per cent. to 2½ per cent. The Assembly disagreed to the same because it would diminish the local revenue, but never raised the question of privilege. In Victoria the Council is forbidden by the Constitution Act to amend any Money Bills. Still I find that in 1891, when the Local Government Amending Bill, which contained a clause appropriating out of the consolidated revenue the sum of £450,000 per annum for municipal purposes, was sent by the Assembly to the Council, they inserted a new clause amending the clause in the main Bill, which dealt with the valuation of unoccupied land for rating purposes, by reducing the rating value from 5 per cent. to 3 per cent. The Assembly accepted the amendment, and did not raise the question of privilege. In New South Wales, where the Legislative Council is nominated, I understand similar amendments have been made to Municipal Bills.

In my opinion, there is nothing in the Constitution Act which prevents the Council from making the amendment. The Bill does not come under the provisions of Clauses 64 and 66, as neither Bill nor amendment appropriates any part of the consolidated revenue. Nor does Parliament levy the rate to be assessed and levied by local authorities for local purposes in such portions of the colony as elect to come under its provisions. *

THE COLONIAL SECRETARY (Hon. S. H. Parker): I am sure hon. members must be grateful to you, Sir, for the able manner in which you have dealt with this subject. I think it would be unwise for us to consider either the message or your remarks this evening. It would show more respect to your opinions, and to the views of the other House, if we took time to consider them, and I now move that the orders of the day for the consideration of this message be postponed until the next sitting of this House.

Question put and passed.

INSECT PESTS BILL.

This Bill was received from the Legislative Assembly, and was read a first time.

ADJOURNMENT.

The Council, at 5 o'clock p.m., adjourned until Thursday, 8th November, at 4·30 p.m.

* This was a written ruling.