NEW SOUTH WALES

CONSTITUTION BILL.

THE

SPEECHES,

IN THE

Legislative Council of New South Wales,

ON THE SECOND READING OF

THE BILL FOR FRAMING A NEW CONSTITUTION FOR THE COLONY.

EDITED BY

EDWARD KENNEDY SILVESTER.

SYDNEY:

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1853.

INTRODUCTION.

In the second Session of the first Representative Legislative Council of New South Wales, it began to be felt by the leading members of the House, that certain grievances existed in the Constitution of the colony, the redress of which were essential to its political freedom.

Although then there was little apparent chance of the immediate redress of such grievances, a firm, grave, and resolute demand for what the Council considered the rights of the colony commenced.

These grievances naturally divided themselves into two classes: the first class relating to the sale, and disposal otherwise, of waste lands of the colony, and the control and distribution of the revenue arising therefrom; and the second, to those restrictions on constitutional freedom, enjoyed by the subjects at home, but denied to the colonists.

The work of reform, for both these classes of grievances, commenced almost simultaneously; and accordingly, on the 3rd of May, 1844, Mr. Cowper, member for the metropolitan county of Cumberland, moved, "That a Select Committee be appointed to inquire into, and report upon, all grievances connected with the lands of the territory; and that it be an instruction to the Committee to distinguish between the grievances which can be redressed in the colony, and those which cannot."

The motion having been carried, a Committee was appointed, consisting of Charles Nicholson, William Bradley, Robert Lowe, George Phelps Robinson, Major Wentworth, and Richard Windeyer; which brought up an elaborate report, in which the following recommendations are made as to the land grievances existing, which could not be redressed in the colony.

The Committee recommended, first, the total and immediate repeal of the 5th and 6th Victoria; being an act to regulate the sale of Crown lands, and fixing the minimum price of all Crown lands at one pound sterling per acre. Second, the repeal of that part of the 29th section of 5th and 6th Victoria, cap. 76, which excludes the Council from interfering in any manner with the sale or other appropriation of the lands belonging to the Crown, within the said colony, or with the revenues thence arising. Third, the investiture in the Governor and Legislative Council of the colony with the management of Crown lands, and the revenue arising therefrom, by an act of the Imperial Parliament.

On Friday, the 21st of June, 1844, Mr. W. C. Wentworth, senior member for the City, moved, "That a Select Committee, consisting of ten menbers, be appointed to inquire into, and report upon, all grievances

not connected with the lands of the territory; and that it be an instruction to such Committee to distinguish between those grievances which can be redressed in the colony, and those which cannot."

The motion was carried, and a Committee appointed, consisting of W. C. Wentworth, Dr. Lang, William Bradley, Captain Dumaresq, William Lawson, Francis Lord, Sir T. L. Mitchell, W. H. Suttor, Richard Windeyer, and the Attorney-General.

The recommendations in the report of the Committee, in respect to the grievances requiring redress from the Crown, or from the Imperial Legislature, were as follows :—

First.—That the schedules annexed to the 5th & 6th Vic., cap. 76, be repealed, and the whole control of the General Revenue placed in conformity with the provisions of the Declaratory Act, 18 Geo. 3. cap. 12. sec. 1, under the control of the Governor and Legislative Council.

Or, if those schedules be persisted in, that the Act 5 & 6 Vic , cap. 76, be amended, so that the whole of the hereditary revenues of the Crown be surrendered as an equivalent for the Civil List, and placed at the disposal of the Local Legislature in like manner as they have been in Canada.

Second.—That so much of the same Act, 5 & 6 Vic., cap. 76, as relates to the establishment of District Councils, be repealed.

That the grievance connected with the Police, Gaol, and Judical Expenditure be adjusted on the terms prayed for in the Address to Her Majesty, and the Petitions to both Houses of Parliament, prepared by your committee, and recommended to your adoption.

Fourth.—That an humble Address be presented to Her Majesty, beseeching her Majesty to direct that the Government of this Colony be henceforth conducted on the same principle of responsibility, as to Legislative control, which has been conceded in the Canadas, and that a tribunal for impeachments be established by law.

Fifth.—That an Act be introduced to enable persons having claims of any description against the Local Government to sue the Colonial Treasurer, or other public officer, as a nominal defendant, under such limitations as may be necessary to prevent frivolous and vexatious suits.

Sixth.—That an humble address be presented to Her Majesty, praying that Her Majesty will be graciously pleased to place the Judges of the Supreme Court on the same tenure of office, and security of salary, as belong to the Judges in the Mother Country. and thus effectually prevent the purity of the administration of justice from being hereafter subjected to any suspicions or doubts in the minds of Her Majesty's subjects in these Colonies.

These recommendations were embodied in resolutions, which were assented to by the Council, and were forwarded home in addresses to the Queen and both Houses of Parliament.

They recieved, however, little attention from the Minister of the day up to the year 1850, when the Act, conferring the present constitution, was passed by the Imperial Parliament, containing a clause empowering the Legislative Council of the colony to make such alterations in the Constitution (subject to the assent of Her Majesty in Council) as might seem meet.

On the proclamation in the colony of this Act, the Council was dissolved; but previously to its dissolution, Mr. Wentworth moved petitions to Her Majesty and both Houses of Parliament, which had been prepared by a Select Committee, protesting, insisting, and declaring as follows :—

" 'We, the Legislative Council of New South Wales, do accordingly hereby solemnly pro-
" 'test, insist, and declare as follows :—

1st—" 'That the Imperial Parliament has not, nor of right ought to have, any power to tax
" 'the people of this Colony, or to appropriate any of the moneys levied by autho-
" 'rity of the Colonial Legislature ;—that this power can only be lawfully exercised
" 'by the Colonial Legislature ;—and that the Imperial Parliament has solemnly
" 'disclaimed this power by the 18 Geo. III., cap. 12, sec. 1, which Act remains
" 'unrepealed.

2nd—" 'That the Revenue arising from the Public Lands, derived, as it is, mainly from " 'the value imparted to them by the labour and capital of the people of this " 'Colony, is as much their property as the Ordinary Revenue, and ought there- " 'fore to be subject only to the like control and appropriation.

3rd—" 'That the Customs and all other Departments should be subject to the direct " 'supervision and control of the Colonial Legislature, which should have the appro- " 'priation of the gross Revenues of the Colony, from whatever source arising; " 'and as a necessary incident to this authority, the regulation of the salaries of " 'all Colonial Officers.

4th—" 'That offices of trust and emolument should be conferred only on the settled " 'inhabitants, the office of Governor alone excepted; that this Officer should be " 'appointed and paid by the Crown; and that the whole patronage of the Colony " 'should be vested in him and the Executive Council, unfettered by Instructions " 'from the Minister for the Colonies.

5th—" 'That plenary powers of Legislation should be conferred upon, and exercised by, " 'the Colonial Legislature for the time being; and that no Bills should be " 'reserved for the signification of Her Majesty's Pleasure, unless they affect the " 'Prerogatives of the Crown, or the general interests of the Empire.

In the first Session of the new Legislative Council, on the 5th December, 1851, this Petition and Remonstrance was formally adopted in the following terms:—

" 'Solemnly protesting against these wrongs, and insisting upon these our undoubted " 'rights, we leave the redress of the former, and the assertion of the latter, to the " ' people whom we represent, and the Legislature which shall follow us.' "

" That we, the succeeding Legislative Council, do accordingly present, to your Honourable " House, our affirmation of the same grievances: all of which, with a slight modification in the " patronage of the Customs' Department, by no means commensurate with the rights in the said " protest and declaration insisted upon, remain unredressed.

" That these grievances having formed the subject of repeated representations and com- " plaints from the former Legislative Council, all of which have met with neglect or disregard " from Her Majesty's Colonial Minister, we owe it to ourselves and our constituents, to denounce " to your Honourable House, as the chief grievance to which the people of this Colony are sub- " jected, the systematic and mischievous interference which is exercised by that Minister even in " matters of purely local concernment.

" That whilst we are most anxious to strengthen and perpetuate the connexion which still " happily subsists with our Father land, we feel it a solemn duty to our Sovereign and our fellow " Countrymen in the United Kingdom, to warn them that it will be impossible much longer to " maintain the authority of a Local Executive which is obliged, by its Instructions, to refer all " measures of importance, no matter how great the urgency for their immediate adoption, for " the decision of an inexperienced, remote, and irresponsible Department.

" That in order, however, that Her Majesty's Confidential Advisers may have no excuse for " the continuance of these abuses, we unhesitatingly declare that we are prepared—upon the " surrender to the Colonial Legislature of the entire management of all our Revenues, Territorial " as well as General, in which we include Mines of every description, and upon the establishment " of a Constitution among us similar in its outline to that of Canada—to assume and provide for " the whole cost of our Internal Government, whether Civil or Military, the salary of the Gover- " nor-General only excepted, and to grant to Her Majesty an adequate Civil List, on the same " terms as in Canada, instead of the sums appropriated in the Schedules to the Imperial Act 13 " and 14 Victoria, chap. 59.

In the first Session of the New Legislature, this petition and remonstrance was again adopted; and, in forwarding it to the Secretary of State, His Excellency the Govornor-General writes:—

2. Your Lordship will observe that the Petition commences by adopting the Declaration and Remonstrance entered on the Minutes of the Proceedings of the late Legislative Council on the eve of being dissolved, a copy of which was transmitted in my Despatch, No. 105, of the 18th June last. It states that the complaints therein referred to, and which have formed the subject of repeated representations from the former Legislative Council, remain unredressed, and it proceeds to declare that, in order to afford no excuse for the continuance of these complaints

the Council "are prepared, upon the surrender to the Colonial Legislature of the entire ma-
"nagement of all our Revenues, Territorial as well as General, in which we include Mines of
"every description, and upon the establishment of a Constitution among us similar in its out-
"lines to that of Canada, to assume and provide for the whole cost of our Internal Government,
"whether civil or military, the salary of the Governor-General only excepted, and to grant to
"Your Majesty an adequate Civil List on the same terms as in Canada instead of the sums
"appropriated in the Schedule and the Imperial Act 13 and 14 Victoriæ, cap. 59;" and in conclusion humbly prays that her Majesty will be graciously pleased to cause such measures to be adopted as may be necessary to give early effect to this proposal.

3. I have already in my Despatch, No. 69, of the 12th April, 1850, expressed my opinion on the principal points now submitted for Her Majesty's consideration; but I deem it right to add, that when the motion upon which the petition was adopted was brought before the Council it was carried (after a division which was called for by the Colonial Secretary, on the part of the Government), by a majority of 21 to 8, the minority consisting entirely of the Official Nominee Members, with the exception of one Non-official Nominee Member, Mr. Parker.

4. It is also proper that I should state my conviction that the desire to have a Constitution conferred upon the colony, agreeing in its principles with that applied for in the Petition, is not confined to the Legislative Council alone, or to a party in the colony, but that it is supported by the general opinion of the most loyal, respectable, and influential members of the community. I have reason to believe, however, that neither the Council nor the public are anxious for Responsible Government to the extent that now exists in Canada, as it must be evident to every unbiassed person conversant with the subject, that although there are probably in this Colony more talented and educated gentlemen than are to be found in any one other British Colony, there are not, as yet, a sufficient number in it so independent in their fortunes as to be prepared to hold office under an administration depending upon the precarious tenure of being able to command a majority of the popular branch of the Legislature.

In the Session of 1852, a Select Committee was appointed (16th June, 1852) to prepare a Constitution for the colony, pursuant to the powers conferred on this House by the 13th and 14th Victoria, cap. 9; and the draft Bills for this purpose were brought up, and laid on the table of the House. The following is an abstract of their provisions: —

The Colonial Legislature to consist of a Legislative Council and Assembly, to be styled, collectively, "The Parliament of New South Wales."

The Legislative Council to consist of not less than twenty-one persons, appointed by letters patent under the Great Seal of the Colony. Two-thirds of these appointees shall consist of persons who shall have served in one of the Legislative Councils (as at present constituted) or in the Assembly. Appointments not to be made until after the return of the first writs for members of the Legislative Assembly. If a sufficient number of persons who have served in the Legislative Council or Assembly cannot be found willing to fill these appointments, any others may be appointed.

Members of the Legislative Council who have served in the Legislature in its present form, or in the Assembly, to hold office for life. Other members to hold office during Her Majesty's pleasure.

President of the Legislative Council to be appointed by the Governor, and to have the right of taking part in the debates.

Legislative Assembly to consist of seventy-two members, chosen by the following classes of electors:—every natural born or naturalized subject of Her Majesty having a freehold of £100, or a household of £10 per annum, within the district for which he votes, and held for six months before registration; and every person holding within such district a depasture license, or having a leasehold of £10 per annum with not less than three years to run at the time of registration. Provisoes that no man shall vote who shall have been attainted, &c., or unless he shall have served his prescribed term of punishment, or have been pardoned, nor any person who shall have omitted to pay all taxes, &c. chargeable upon him in respect of his freehold or leasehold, &c.

Any person qualified to vote may become a member of Assembly, unless specially disqualified. The disqualified persons are ministers of religion, and those holding offices of profit, &c. under the Crown; an exception, however, being made in favour of naval and military officers, and of those holding the following appointments for the time being:—The Colonial Secretary, Colonial Treasurer, Collector of Customs, Auditor-General, Postmaster-General, Attorney-General, Solicitor-General, Inspector-General of Police, Surveyor-General, and Chief Commissioner of Crown Lands.

Assembly to endure for five years, unless sooner dissolved by the Governor.

In a despatch, dated 15th October, 1852, in answer to that of His Excellency the Governor-General, Sir John Pakington, then Secretary of State for the Colonies, in a general way concedes the whole of the demands made in the petition and remonstrance; and in a despatch from his successor in office (the Duke of Newcastle), dated January 18th, 1853, is the following passage:—

One of the first subjects which engaged my attention on being entrusted with the Seals of this Department, was that Petition, and my Predecessor's Despatch of the 15th of last month relative to its contents. Recent, therefore, as has been my accession to office, I am thus in a condition to accompany the acknowledgment of the Despatch now before me with a communication of the deliberate views entertained by Her Majesty's Government on that question which commands so wide a concurrence of opinion throughout the community of New South Wales.

I have to state, then, that my colleagues and myself cordially adopt the conclusions of Her Majesty's late Government respecting the future administration of the Waste Lands of the Crown. You inform me that a Committee of the Council is engaged in the preparation of a scheme for the amendment of its constitution. As such a measure is impending, it is only necessary for me now to inform you, that as soon as it has passed the Legislature of the Province, and received the approval of Her Majesty, the disposition of the Waste Lands, and the appropriation of the fund arising out of their sale and management, will be placed without reserve under the supervision and control of the Legislative authority in the Colony. This policy would, of course, be inoperative, without legislation in this country; and it will be necessary to invite Parliament to empower Her Majesty to make the proposed transfer of the functions at present vested in the Crown.

I am ignorant of the shape which the project under the consideration of the Committee of the Council may eventually assume. The Legislative Council, indeed, in the Petition before adverted to, favoured a Constitution similar in its outline to that of Canada. It would be premature for me, without materials for forming a judgment, to pass an opinion upon the policy of totally reconstructing the frame of Government recently established; but I may state that I have always thought it probable that the experience and wisdom of the Council would dictate better provisions than Parliament for securing good Government in New South Wales, and promoting harmony in the connexion subsisting between Great Britain and this important Province of the Empire.

In the early part of the Session of 1853, on the motion of Mr. Wentworth, a second Select Committee was appointed, to prepare a Constitution, and the report, and draft Bills brought up by that Committee are subjoined.

ERRATA.

Page 77, line 38, first column, for *natural* read *national*.
42, second column, dele *to*.
78, 35, first column, for *abrogation* read *abnegation*.
48, first column, for *European* read *British*.
79, 51, first column, for *that* read *this*.
81, 52, second column, for *unmature* read *immature*.
82, 50, first column, for *fair* read *far*.
11 and 12, second column, for *anticipation* read *anticipations*.
13, second column, insert *not* after *doubt*.
83, 45, second column, for *declaration* read *declamation*.
84, 50, first column, for *allowed* read *allotted*.
second column, for *any* read *every*.
85, 13 and 14, first column, for *deliberating* read *deliberately*.
19, first column, for *wise* read *noisy*.
27 and 28, first column, for *legislation* read *legislative*.
86, 6, first column, for *legislative* read *legislation*.
39, first column, for *worst* read *best*.
89, 21, first column, for *experiences* read *experience*.
98, 4, second column, for *purposed* read *proposed*.
99, 45, first column, for *are* read *is*.

REPORT FROM THE SELECT COMMITTEE

ON THE

NEW CONSTITUTION.

The Select Committee of the Legislative Council, appointed on the 20th of May, 1853, to prepare a constitution for this colony, and having had the despatches from Sir John Pakington and the Duke of Newcastle, relative to such constitution, referred to them, bring up a bill and the draft of a proposed Act of the Imperial Parliament which will be necessary to give it legal validity, with the following report:—

In submitting the bill "to confer a constitution on this colony, and to grant a civil list to her Majesty," for the adoption of the house the committe appointed this session have found it necessary to suggest some alterations in the measure brought up by the committee of last session, though they fully concur not only in the scheme of legislation recommended by that committee, but also for the most part in the provisions of the proposed Act of Parliament, and the bill to be appended to as a schedule, by which unitedly this new Constitution is to be legalized and established.

The most important alterations that have been made in the measure recommended by the committee of last session, relate to the constitution of the Legislative Council, and the civil list to be granted to her Majesty upon the surrender to the colony of the waste lands and royalties which are at present vested in the crown.

As regards the constitution of the Legislative Council, your committee consider that—not only by the terms of their declaration and remonstrance of the 5th December, 1851, but by the letter of agreement to those terms of Sir John Pakington, of the 15th December, 1852, the house is pledged to a constitution "similar in its outline to that of Canada." The subsequent despatch of his successor, the Duke of Newcastle, appears indeed to admit of some latitude of discretion on this most important subject. But your committee are of opinion, that the offer contained in their declaration and remonstrance necessarily included a nominated Legislative Council in the first instance, and from this offer, independently of the question whether they are strictly bound by it or not, they see no reason to depart. They desire to have a form of government based on the analogies of the British constitution. They have no wish to sow the seeds of a future democracy; and until they are satisfied that the nominated, or the future elective Council, which they recommend, will not effect the object they have in view, of placing a safe, revising, deliberative, and conservative element between the Lower House and her Majesty's Representative in this colony, they do not feel inclined to hazard the experiment of an Upper House, based on a general elective franchise. They are the less disposed to make the experiment as such a fran-

chise, if once created, will be difficult to be recalled.

Actuated by these views your committee have introduced into the bill "to confer a constitution on the colony, and to grant a civil list to her Majesty," two clauses, which, to a certain extent, are framed in accordance with analogous clauses to be found in the Imperial Act, 31 Geo. III, c. 31, "for making more effectual provision for the government of the province of Quebec." That act authorizes the crown, whenever it thinks proper, to confer hereditary titles of honor, rank, or dignity, to annex thereto an hereditary right of being summoned to the Legislative Council. Your committee are not prepared to recommend the introduction into this colony of a right by descent to a seat in the Upper House; but are of opinion that the creation of hereditary titles, leaving it to the option of the crown to annex to the title of the first Patentee a seat for life in such house, and conferring on the original Patentees and their descendants inheritors of their titles a power to elect a certain number of their order to form, in conjunction with the original Patentees then living, the Upper House of Parliament, would be a great improvement upon any form of Legislative Council hitherto tried or recommended in any British colony. They conceive that an Upper House framed on this principle, whilst it would be free from the objections which have been urged against the House of Lords, on the ground of the hereditary right of legislation which they exercise, would lay the foundation of an aristocracy, which, from their fortune, birth, leisure, and the superior education these advantages would superinduce, would soon supply elements for the formation of an Upper House, modelled, as far circumstances will admit, upon the analogies of the British constitution. Such a house will be a close imitation of the elective portion of the House of Lords, which is supplied from the Irish and Scotch peerage; nor is it the least of the advantages which would arise from the creation of a titled order, that it would necessarily form one of the strongest inducements not only to respectable families to remain in this colony, but to the upper classes of the United Kingdom and other countries who are desirous to emigrate, to choose it for their future abode.

In the bill proposed for adoption, your committee, it will be seen, have recommended a very large extension of the elective franchise. They are of opinion that, in addition to the franchise established by the 13 & 14 Vict., c. 59, the right of voting for the election of members of the assembly should be given to all persons having a salary of £100 a year, and to all occupants of any room or lodging paying £40 a year for their board and lodging, or £10 a year for their lodging only. It is conceived that this enlargement of the franchise in combination with the franchise now existing, will be a very close approximation to universal suffrage.

Your committee have also recommended that the number of members forming the assembly should not exceed the number of the present Legislative Council; and that the eighteen additional elective members, who will be substituted for the nominees, should be distributed among the electoral districts constituted by the Electoral Act of 1851, in strict accordance with the principle of distribution established by that Act; which, it will be recollected, was settled after the most careful consideration, and with a view to a fair and just representation of all colonial interests then subsisting. Your committee are of opinion that the working of this Act, and the result of the divisions on all the leading constitutional questions which have since arisen, have justified the most sanguine anticipations of its supporters.

Your committee, while on this subject, beg also to call the attention of your honorable house to the 17th clause of the bill, which contains a power to alter the present electoral divisions, as well as the apportionment of representatives to be chosen by each, whenever there shall be the concurrence of a majority of the Upper House, and of a majority of two-

thirds of the Lower House of the future Parliament, in favor of any such alteration. It is conceived that this provision is ample to meet any possible requirements of this kind that may from time to time arise among the various constituencies of the colony.

It will be seen, also, that the 40th clause of the bill reserves a full constituent power to alter the proposed form of constitution, whenever there shall be a majority of two-thirds of both Houses of Parliament in favor of any such alteration; reserving to her Majesty the right of assenting to or dissenting from any bill for this purpose that may be presented for the signification of her Majesty's pleasure thereon.

The civil list which your committee propose to grant to her Majesty is £24,700 less than the civil list recommended by the committee of last session, and £10,200 less than the Parliamentary grant for that purpose, contained in the first, second, and third parts of Schedule A. appended to 13 and 14 Vic., c. 59. The cause of this great apparent reduction is to be found in the elastic and rapidly expanding character of the colony, which, in fact, proves that any fixed provision for the various departments of goverment must soon become inadequate, however liberal it may appear at present. Your committee have, it will be observed, in all cases made the same provision for the salaries of the judges and other high officers of the crown which is to be found in the before mentioned schedule to the present Act of Parliament, and in some cases, where it was thought just and expedient, have recommended an increase of salary. Your committee trust that this fact, and the explanation already given of the reasons which have led them to assign no permanent fund for the departmental expenses of the higher offices of the crown, leaving them to be provided for in the same way as the expenses of all other departments are, viz., by annual vote—will be deemed satisfactory by her Majesty's advisers. Your Committee cannot, however, take leave of this subject without the expression of a hope that the liberal provision which your Honourable House has just made for the public service will abundantly shew "that as long as the representatives of the people are entirely free to grant or refuse according to their deliberate views of the exigencies of the public service, her Majesty's faithful Commons in this colony can never arrive at any other conclusion, than that it is the soundest policy, as well as the truest economy, to maintain that service in the utmost efficiency."

Among the grants enumerated in the civil list, is a fund for pensioning off those officers who now hold offices which may be considered as the responsible offices of the Government, and in which vacancies will probably occur as soon as responsible Government, properly so called, is introduced among us. Now, as there can be no doubt the moment the consolidated revenue of the colony is placed at the disposal of a Legislative Assembly, consisting entirely of members elected by popular constituencies, that responsible Government will take effect, and that one of the first measures under such a new order of things may be to displace the actual incumbents of those responsible offices—the question arises, what is the nature and amount of the compensation to which these displaced functionaries will be entitled, and whether they are to be entitled to such compensation only when so displaced, or at once and at their own option, the moment their tenure of office is changed, as it will be, from a tenure dependent on the pleasure of the Crown to a tenure practically dependent on the pleasure of the Legislative Assembly? It appears to your committee if the offices held by these functionaries are, as they contend, to be considered as abolished offices, and upon that ground entitling the holders of them to the full compensation which is usual in such cases in the mother country, that at all events the abolition of these offices is not to be deemed complete until the holders of them are actually displaced, and that even then the pensions to be assigned to them as an equivalent are to be continued only so

long as they are not in receipt of any other salaries under the Crown. Whenever any of them accept a new appointment, the pension thus assigned to them by the colony should, in the opinion of your committee, merge, or be reduced *pro tanto*, according as such salary or emoluments are of greater or less amount. Acting on these principles, your committee have inserted in the civil list to be granted to her Majesty, an adequate fund for pensioning off, at their present rates of salary, all the higher functionaries of the Government who may be displaced by the new order of things likely to arise when responsible Government takes effect among us.

Another grant in the civil list to her Majesty is a fund for pensioning the Judges of the Supreme Court. It is proposed, in analogy to the provisions made in England, Ireland, and Scotland, that in all cases of permanent disability or infirmity, or after fifteen years' service, a pension amounting to seven-tenths of the Judges' salary shall be demandable as of right. It is considered that no more effectual mode of ensuring the independence of the Judges, and rendering their offices objects of ambition to the bar, could be devised than a provision limiting their period of judicial service, and ensuring them a handsome competency for the remainder of their lives.

Your committee are of opinion that the power in several instances exercised by the Crown to create banking and other corporations in this colony, is one utterly inconsistent with that full local control which the colonial Government ought to possess, and are glad to find that her Majesty's ministers have expressed their intention to exercise this power no longer without the concurrence of the local authorities. Your committee are disposed to look upon this as a practical abandonment of an injurious prerogative, which cannot fail to give general satisfaction.

One of the more prominent Legislative measures required by this colony, and the colonies of the Australian group generally, is the establishment at once of a General Assembly, to make laws in relation to the inter-colonial questions that have arisen, or may hereafter arise, among them. The questions which would claim the exercise of such a jurisdiction appear to be as follow :—

1st. Inter-colonial tariffs, and coasting trade.

2nd. Railways, roads, canals, &c., running through any two of the colonies.

3rd. Beacons and light-houses on the coast.

4th. Inter-colonial penal settlements.

5th. Inter-colonial gold regulations.

6th. Postage between the said colonies.

7th. A general court of appeal from the courts of such colonies.

8th. A power to legislate on all other subjects which may be submitted to them by addresses from the Legislative Councils and Assemblies of the other colonies; and to appropriate to any of the above objects the necessary sums of money, to be raised by a percentage on the revenues of all the colonies interested.

As it might excite jealousy, if a jurisdiction of this importance were to be incorporated in the Act of Parliament, which has unavoidably become a necessary part of the measures for conferring a constitution on this colony, in consequence of the defective powers given by Parliament to the Legislative Council, your committee confine themselves to a suggestion that the establishment of such a body has become indispensable, and ought no longer to be delayed; and to the expression of a hope that the minister for the colonies will at once see the expediency of introducing into Parliament, with as little delay as possible, a bill for this express object.

W. C. WENTWORTH,
Chairman.

Legislative Council Chamber,
Sydney, 28th July, 1853.

17 Victoria, 1853.

A Bill to confer a Constitution on New South Wales, and to grant a Civil List to Her Majesty.

Whereas by the thirty-second clause of the Imperial Act, passed in the Session holden in the thirteenth and fourthteenth years of the reign of Her present Majesty, intituled "*An Act for the better Govern-*"*ment of Her Majesty's Australian Colonies,*" it was among other things enacted, that notwithstanding anything therein before contained, it should be lawful for the Governor and Legislative Council of this colony, after the separation therefrom of the colony of Victoria, from time to time, by any Act or Acts, to alter the provisions or laws for the time being in force under the said Imperial Act or otherwise, concerning the Election of the Elective members of such Legislative Council, the qualification of Electors and Elective members, or to establish in the said colony, instead of the Legislative Council, a council and a House of Representatives, or other separate Legislative Houses, to consist of such members, to be appointed or elected by such persons and in such manner as by such Act or Acts shall be determined, and to vest in such Council and House of Representatives, or other separate Legislative Houses, the powers and functions of the Legislative Council for which the same may be substituted: And whereas it is expedient that the powers vested by the said Act in the said Governor and Legislative Council should be exercised, and that a Parliament, consisting of a Legislative Council, and Assembly, should be substituted for the said Legislative Council, with the increased powers and functions hereinafter contained: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, as follows —

I. There shall be in place of the Legislative Council now subsisting one Legislative Council and one Legislative Assembly, to be severally constituted and composed in the mannerhereinafter prescribed, which Legislative Council and Assembly shall be called "The Parliament of New South Wales;" and within the said colony of New South Wales, Her Majesty shall have power by and with the advice and consent of the said Parliament to make laws for the peace, welfare, and good Goverment of the said colony, in all cases whatsoever; and all such laws being passed by the said Parliament, and assented to by Her Majesty, or assented to in Her Majesty's name by the Governor of the said colony, shall be valid and binding to all intents and purposes within the said colony: Provided that all Bills for appropriating any part of the surplus of the Consolidated Revenue Fund, or for inposing any new rate, tax, or impost, subject always to the limitation contained in clause fifty-three of this Act, shall originate in the Legislative Assembly of the said colony, and further that all bills affecting any imperial subject may be reserved in the discretion of the Governor for the time being for the signification of her Majesty's pleasure thereon, and if assented to by such Governor in the first instance, on behalf of her Majesty, may be disallowed by her Majesty in the manner and within the period hereinafter limited.

II. The bills on imperial subjects which may be reserved for the signification of her Majesty's pleasure, or which, after being assented to by the Governor in her Majesty's name, may be afterwards disallowed by her Majesty within the period hereinafter specified, are as follow; that is to say:—

1. Bills touching the allegiance of the inhabitants of this colony to her Majesty's Crown.
2. Bills touching the naturalization of aliens.
3. Bills relating to treaties between the Crown and any foreign power.
4. Bills relating to political intercourse and communications between this colony and any officer of a foreign power or dependency.

5. Bills relating to the employment, command, and discipline of her Majesty's sea and land forces within this colony, and whatever relates to the defence of the colony from foreign aggression, including the command of the municipal militia and marine.
6. Bills relating to the crime of high treason.

III. Whenever any question shall arise as to the right of the Governor to reserve any bill for the signification of her Majesty's pleasure thereon, or as to the right of her Majesty to disallow any such Bill, the same shall be determined by the judicial committee of the Privy Council, and in no other manner except by the consent of the said Parliament of New South Wales, and such question shall be raised by an address to her Majesty in her Privy Council by both Houses of the said Parliament, setting forth the question so to be determined: Provided, that all such bills shall be absolutely in abeyance pending any such determination, and that they shall be afterwards submitted for the signification of her Majesty's pleasure thereon, or remitted to the colony for the exercise of the Governor's discretion, according to the decision of the judicial committee in each such case.

IV. For the purpose of composing the Legislative Council of New South Wales, it shall be lawful for her Majesty before the time to be appointed for the first meeting of the said Legislative Council and Assembly, by an instrument under the Sign Manual, to authorize the Governor, with the advice of the Executive Council, in her Majesty's name, by an instrument under the Great Seal of the said colony, to summon to the said Legislative Council of the said colony, such persons, not being fewer than *twenty*, as her Majesty shall think fit, and it shall also be lawful for her Majesty from time to time to authorize the Governor in like manner to summon to the said Legislative Council, such other person or persons as her Majesty shall think fit, and every person who shall be so summoned shall thereby become a member of the Legislative Council of the said colony: provided always, that no person shall be summoned to the said Legislative Council who shall not be of the full age of twenty-one years, and a natural born subject of her Majesty, or naturalized by an Act of the Imperial Parliament, or by an Act of the Legislature of the said colony: provided also, that no Judge of the Supreme Court of the said colony appointed during pleasure, nor any Judge of the same court, or of any other court within the said colony, who may be hereafter appointed a Judge *quamdiu se bene gesserit*, shall be eligible to be summoned to the said Legislative Council; nor shall any prelate, priest, deacon, or minister of any religious denomination, whatever may be his title, rank, or designation, be so eligible.

V. Whenever her Majesty, her Heirs, or Successors shall think proper to confer upon any subject of the crown of Great Britain, by Letters Patent under the Great Seal of the said colony, any hereditary title of honor, rank, or dignity of such colony, descendible according to any course of descent limited in such Letters Patent, it shall be lawful for her Majesty, her Heirs, or Successors to annex thereto by the said Letters Patent, if her Majesty, her Heirs, or Successors shall so think fit, a right to each original patentee to be summoned to the Legislative Council of the said colony; and every person on whom such right shall be so conferred, shall thereupon be entitled to demand from the Governor his writ of summons to such Legislative Council, subject nevertheless to the provisions hereinafter contained.

VI. Whenever the number of persons to whom such hereditary titles shall have descended shall, together with the original patentees then under summons to such Legislative Council, amount to fifty or upwards, the Legislative Council so denominated as aforesaid shall cease and determine; and such original patentees, together with all such persons to whom such descendible titles shall have come, being of the full age of twenty-one years, and not having taken any oath of allegiance or obedience to any foreign

prince or power, and being duly required by the proclamation of the Governor to be published in the *Government Gazette* at least one calendar month previously to the day to be therein named for the election of members to serve in the said Legislative Council shall assemble together at such place as shall be directed in the said proclamation, and the major part of the persons so assembled, after appointing a chairman for the occasion by a majority of the votes of the persons present, shall proceed to elect twenty from the whole number then existing of persons to whom such descendible titles belong, and it shall thereupon be the duty of the chairman so appointed to return, within three days at the latest, to the Governor, the names of the persons so elected to serve as members of the said Legislative Council; and the twenty members so elected, together with the original patentees then summoned or thereafter to be summoned to the said Legislative Council, shall form thenceforward the Legislative Council of the said colony: Provided always, that whenever any vacancy or vacancies shall occur, from any of the causes in this Act specified, in the number of persons so elected to serve as members of the said Legislative Council, then, and in every such case, the like proclamation or proclamations *mutatis mutandis* shall be issued by the Governor, and the like proceedings *mutatis mutandis* be had and taken in regard to any such election to fill up any such vacancy or vacancies as are hereinbefore directed in regard to the first or original election under this Act: Provided always, that when the names of the persons or person so elected to serve as members or a member of the said Legislative Council are or is returned to the Governor as hereinbefore is directed, the same shall be published in the *Government Gazette.*

VII. Every member of the Legislative Council of the said colony who shall be so summoned, whether nominated by the Governor, with the advice of the Executive Council, or appointed as such original patentee by the Crown, or elected from the persons so having such descendible titles as aforesaid, shall hold his seat therein for the term of his life, but subject, nevertheless, to the provisions hereinafter contained for vacating the same.

VIII. It shall be lawful for any member of the Legislative Council of the said colony to resign his seat therein, by a letter to the Governor, and upon the receipt of any such letter by the Governor the seat of such Legislative Councillor shall become vacant.

IX. If any Legislative Councillor of the colony of New South Wales shall, for two successive sessions of the Legislature of the said colony, fail to give his attendance in the said Legislative Council, without the permission of her Majesty or of the Governor of the said colony, signified by the said Governor to the Legislative Council, or shall take any oath or make any declaration or acknowledgment of allegiance, obedience, or adherence to, any foreign prince or power, or shall do, concur in, or adopt, any act whereby he may become a subject or citizen of any foreign state or power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign state or power, or shall become bankrupt, or take the benefit of any law relating to insolvent debtors, or become a public contractor, or defaulter, or be attainted of treason, or be convicted of felony, or of any infamous crime, his seat in such Council shall thereby become vacant.

X. Any question which shall arise respecting any vacancy in the Legislative Council of the colony of New South Wales, on occasion of any of the matters aforesaid, shall be referred by the Governor of the colony of New South Wales to the said Legislative Council, to be by the said Legislative Council heard and determined: Provided always, that it shall be lawful either for the person respecting whose seat such question shall have arisen, or for Her Majesty's Attorney General for the said colony, on Her Majesty's behalf, to appeal from the determination of the said Council in such

case to Her Majesty, and that the judgment of Her Majesty, given with the advice of Her Privy Council thereon, shall be final and conclusive to all intents and purposes.

XI. The Governor of the colony of New South Wales shall have power and authority, from time to time, by an instrument under the Great Seal of the said Colony, to appoint one member of the said Legislative Council to be president of the said Legislative Council, and to remove him and appoint another in his stead; and it shall be at all times lawful for the said president to take part in any debate or discussion which may arise in the said Legislative Council.

XII. The presence of at least one-third of the members of the said Legislative Council, exclusive of the president, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the said Legislative Council shall be decided by a majority of votes of the members present, other than the president, and when the votes shall be equal the president shall have the casting vote: Provided always, that if the whole number of members constituting the said Legislative Assembly shall not be exactly divisible by three, the quorum of the said Legislative Council shall consist of such whole number as is next greater than one-third of the members of the said Legislative Council.

XIII. For the purpose of constituting the Legislative Assembly of the said colony, it shall be lawful for the Governor thereof, for the time being, within the time hereinafter mentioned, and thereafter from time to time, as occasion shall require, in Her Majesty's name, by an instrument or instruments under the Great Seal of the said colony, to summon and call together a Legislative Assembly in and for the said colony.

XIV. The Legislative Assembly shall for the present consist of *fifty-four* members, to be elected by the inhabitants of the said colony, having any of the following qualifications, that is to say:—

Every man of the age of twenty-one years, being a natural born or naturalized subject of Her Majesty, or legally made a denizen of New South Wales, and having a freehold estate in possession, situate within the district for which his vote is to be given, of the clear value of one hundred pounds sterling money, above all charges and incumbrances in any way affecting the same, of or to which he has been seised or entitled, either at law or in equity, for at least six calendar months next before the date of the writ of such election, or in case a registration of electors shall be established next before the last registration of electors, or being a householder within such district, occupying any house, warehouse, counting-house, office, shop, or other building of the clear annual value of ten pounds sterling money, and having resided therein six calendar months next before such writ or registration as aforesaid, or holding at the date of such writ, or at the time of such registration, a license to depasture lands within the district for which his vote is to be given from the Government of New South Wales, or having a leasehold estate in possession, situate within such district, of the value of ten pounds sterling money per annum, held upon a lease which at the date of such writ, or at the time of registration has not less than three years to run, or having a salary of one hundred pounds a year, or being the occupant of any room or lodging, and paying for his board and lodging forty pounds a year, or for his lodging only at the rate of ten pounds a year, and having occupied the same room or lodging for six calendar months next before such writ or registration as aforesaid, shall be entitled to vote at the election of a member of the Legislative Assembly: Provided always that no man shall be entitled to vote who has been attainted or convicted of treason, felony, or other infamous offence, in any part of her Majesty's dominions, unless he have received a free or conditional pardon for such offence or have undergone the sentence passed on him for such offence: and provided also, that no man shall be entitled to vote, unless at the time of such

election or registration of electors (as the case may be), he shall have paid up all rates and taxes which shall have become payable by him as owner or leaseholder in respect of such estate, or as occupier in respect of such occupancy, or as the holder of such license in respect of such license, except such as shall have become payable during three calendar months next before such election or registration respectively.

XV. Where any premises are jointly owned and occupied, or occupied without being owned, by more persons than one, each of such joint owners, occupiers, or leaseholders, shall be entitled to be registered as a voter and to vote in respect of the said premises, in case the whole value of such premises when divided by the number of such joint owners or occupiers as aforesaid, shall yield for every such joint owner, occupier, or leaseholder a sum which separately considered would under the three first provisions of the last preceding section, entitle such owner occupier, or leaseholder to be registered as a voter and to vote: provided however, that in case such joint owners, occupiers, or leaseholders shall own or be interested in such premises in unequal shares or proportions, no such joint owner, occupier, or leaseholder shall be entitled to be registered as a voter or to vote unless his share or proportion shall, regard being had to the total value of the premises, yield a sum entitling him to qualify.

XVI. Until further provision shall be made by the legislature of the said colony, all the provisions contained in the Electoral Act of one thousand eight hundred and fifty-one, passed by the late Legislative Council in the fourteenth year of her Majesty's reign, numbered forty-seven, except so much of the first clause thereof as relates to the number and constitution of the present Legislative Council, and so much of the third and other clauses thereof as is repugnant to this act shall be in force and apply to the election of members to serve in the Legislative Assembly constituted under this act, except as follows:—

First,—The electoral districts of East Camden and West Camden shall each return two members instead of one member to serve in the said Legislative Assembly; the electoral districts of the united counties of Cook and Westmoreland, and of Murray and Saint Vincent, and of Roxburgh and Wellington, shall each return two members instead of one member; the county of Cumberland shall be divided into two ridings, to be called the North and South Ridings; the North Riding commencing where the Great Western Road crosses Johnstone's Creek, and bounded on the south by the centre of that road bearing westerly to where it crosses the southern boundary of the electoral district of Parramatta, near Beckett's Bridge; thence by part of the southern, by the eastern, northern, and western boundaries of the said electoral district, to the Great Western Road, near the toll-bar: thence again by the centre of that road bearing westerly to Emu Ferry on the Nepean River; on the west and north by the Nepean and Hawkesbury Rivers to Broken Bay; and on the east by the sea coast and the southern shores of Port Jackson to Johnstone's Creek, and by Johnstone's Creek to the point of commencement, exclusive of the Hamlets of St. Leonards and Balmain, and also excluding so much of the Cumberland Boroughs as is embraced by the towns of Windsor and Richmond: and the South Riding, commencing where the Great Western Road crosses Johnstone's Creek, and bounded on the north by the centre of that road bearing westerly to where it crosses the southern boundary of the electoral district of the town of Parramatta, near Beckett's Bridge; thence by part of the southern boundary of the said electoral district, bearing westerly to the Great Western Road, near the toll-bar; thence again by the centre of that road, bearing westerly to Emu Ferry on the Nepean River; on the west by that river upwards to the confluence of the Cataract River; on the south by that river upwards to its source, and thence by a line bearing

east twenty degrees south to the coast at Bulli, being the southern boundary of the county of Cumberland; on the east by the sea coast to Port Jackson; and again on the north by the southern shores of Port Jackson to Johnstone's Creek, and by Johnstone's Creek to the point of commencement, exclusive of the city of Sydney, and the hamlets of Paddington, Surry Hills, Redfern, Chippendale, O'Connell Town, Camperdown, and Glebe; and also excluding so much of the Cumberland boroughs as is embraced by the towns of Liverpool and Campbell Town; and each of the said ridings shall return two members; the united counties of Northumberland and Hunter shall return three members instead of two; the county of Durham shall return three members instead of two; the city of Sydney shall return four members instead of three; the Sydney hamlets, the town of Parramatta, the Northumberland boroughs, and the Stanley boroughs shall each return two members instead of one member; the electoral districts of the pastoral districts of the Murrumbidgee, of the Lachlan and Lower Darling, of Liverpool Plains, and the Gwydir, and of New England and the McLeay, shall each return two members instead of one member to serve in the said Legislative Assembly as aforesaid.

Second,—The new electors entitled to vote by this act at the election of members of the Legislative Assembly, shall be inserted in the electoral lists appointed to be made by "the Electoral Act of 1851," in the electoral districts in which they shall be respectively resident; and all such lists shall continue to specify, as at present, the christian and surnames of all the electors (including those of such new electors), the nature of the qualification and the place where they respectively reside; and all such lists shall be signed, delivered, printed, and hung up for public inspection by the persons and in the way in the said act is prescribed, and shall be subject to the like claims and notice from any person whose name shall have been omitted therein, and to the like objections and notice as to the names of any person inserted therein, and to the like modes of altering, amending, or continuing any such lists as are in these said several respects provided for in the schedules C, D, E, F, and G, to "the Electoral Act of 1851" annexed, or in schedules to the like effect as nearly as may be consistently with the rights of such new electors.

XVII. It shall be lawful for the legislature of the colony of New South Wales by any act or acts to be hereafter passed, to alter the divisions and extent of the several counties, districts, cities, towns, boroughs, and hamlets, which shall be represented in the Legislative Assembly of the colony of New South Wales, and to establish new and other divisions of the same, and to alter the apportionment of representatives to be chosen by the said counties, districts, cities, towns, boroughs, and hamlets respectively, and make a new and different apportionment of the number of representatives to be chosen in and for the colony of New South Wales, and in and for the several electoral districts of the same, and to alter and regulate the appointment of returning officers in and for the same, and make provision in such manner as they may deem expedient for the issuing and return of writs for the election of members to serve in the said Legislative Assembly, and the time and place of holding such elections: provided always that it shall not be lawful to present to the Governor of the colony of New South Wales, for her Majesty's assent, any bill of the Legislative Council and Assembly of the said colony by which the number of representatives in the Legislative Assembly may be altered, unless the second and third reading of such bill in the Legislative Council and the Legislative Assembly shall have been passed with the concurrence of a majority of the members for the time being of the said Legislative Council, and of two-thirds of the members for the time being of the said Legislative Assembly; and the assent of her Majesty shall not be

given to any such bill unless an address shall have been presented by the Legislative Assembly to the Governor, stating that such bill has been so passed.

XVIII. Any person absolutely free (except as is hereinafter excepted) who shall be qualified and registered as a voter in and for any electoral district within the said colony, shall be qualified to be elected a member of the Legislative Assembly for any electoral district within the said colony.

XIX. Any person holding any office of profit, or having a pension from the crown during pleasure, or for term of years, shall be incapable of being elected or of sitting or voting as an elected member of the assembly in any assembly which may be hereafter convoked and holden, unless he be an official member of the government for the time being, holding one of the following offices:—Colonial Secretary, Colonial Treasurer, Collector of Customs, Auditor-General, Postmaster-General, Attorney-General, Solicitor-General, Inspector-General of Police, Surveyor-General, and Chief Commissioner of Crown Lands.

XX. If any elected member of the said assembly shall accept of any such office of profit or pension from the crown during pleasure, or for term of years, his election shall be thereupon and is hereby declared to be void, and a writ shall forthwith issue for a new election as if such member were naturally dead: provided that nothing in this act contained shall extend to any person in receipt only of pay, half-pay, or a pension as an officer in her Majesty's navy or army, or who shall receive any new or other commission in the navy or army respectively, or any increase on such commission, or to any such official member of the government or Executive Council promoted to any higher office.

XXI. No person shall be capable of being elected a member to serve in the said assembly, and of sitting and voting therein, who shall be a minister of the Church of England, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the Church of Rome, or under any other form or profession of religious faith or worship.

XXII. Any person who shall directly or indirectly himself or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in the whole, or in part, any contract or agreement for or on account of the public service, shall be incapable of being elected or of sitting or voting as a member of such assembly during the time he shall execute, hold, or enjoy any such contract, or any part or share thereof, or any benefit or emolument arising from the same: Provided always, that nothing herein contained shall extend to any contract or agreement made, entered into, or accepted by any incorporated company or any trading company consisting of more than twenty persons, where such contract or agreement shall be made, entered into, or accepted, for the general benefit of such incorporated or trading company: Provided also, that if any person, being a member of such Assembly, shall enter into any such contract or agreement, or having entered into it, shall continue to hold it, his seat shall be void.

XXIII. If any person by this Act disabled or declared to be incapable to sit or vote in any assembly hereafter to be summoned and holden shall nevertheless, after the dissolution or determination of this present Legislative Council, be elected and returned as a member to serve in the said assembly for any electoral district, such election and return are hereby declared and enacted to be void to all intents and purposes whatsoever; and if any person so elected and returned contrary to the provisions of this Act shall presume to sit or vote as an elected member of the said assembly in any session to be hereafter summoned and holden, such person shall forfeit the sum of five hundred pounds, to be recovered by any person who shall sue for the same in the Supreme Court of New South Wales, or in any other court of record in the said colony having competent jurisdiction.

XXIV. It shall be lawful for the Go-

vernor of the colony of New South Wales for the time being to fix such place or places within any part of the colony of New South Wales, and such times for holding the first and every other session of the Legislative Council and Assembly of the said colony, as he may think fit, such times and places to be afterwards changed or varied as the Governor may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the said Legislative Council and Assembly, from time to time, and to dissolve the said assembly by proclamation or otherwise, whenever he shall deem it expedient.

XXV. There shall be a session of the Legislative Council and Assembly of the colony of New South Wales once at least in every year; so that a period of twelve calendar months shall not intervene between the last sitting of the Legislative Council and Assembly in one session and the first sitting of the Legislative Council and Assembly in the next session; and every Legislative Assembly of the said colony, hereafter to be summoned and chosen, shall continue for five years from the day of the return of the writs for choosing the same, and no longer, subject nevertheless, to be sooner prorogued or dissolved by the Governor of the said colony.

XXVI. The Legislative Council and Assembly of the said colony shall be called together for the first time at some period not later than six calendar months next after the proclamation of this Act by the Governor of the said colony.

XXVII. The members of the Legislative Assembly of the colony of New South Wales shall, upon the first assembling after every general election, proceed forthwith to elect one of their number to be speaker; and in case of his death, resignation, or removal by a vote of the said Legislative Assembly, the said members shall forthwith proceed to elect another of such members to be such speaker; and the speaker so elected shall preside at all meetings of the said Legislative Assembly.

XXVIII. The presence of at least twenty members of the Legislative Assembly of the colony of New South Wales, exclusive of the speaker, shall be necessary to constitute a meeting of the said Legislative Assembly for the despatch of business; and all questions (except as herein is excepted) which shall arise in the said Assembly, shall be decided by the majority of votes of such members as shall be present, other than the speaker, and when the votes shall be equal the speaker shall have the casting vote.

XXIX. It is declared, that if it shall so happen that no candidate or candidates shall be proposed or seconded at any time duly appointed for the election of a member or members to serve in any electoral district of the said colony, it shall be the duty of the returning officer to notify the fact to the Governor, who shall announce to the speaker of the said Legislative Assembly the electoral district or districts in which no election shall have taken place; but no such refusal or failure to elect in any electoral district or districts shall be deemed or taken to make the Legislative Assembly incomplete, or to prevent it from meeting and dispatching business, so long as there shall be a quorum of members present.

XXX. No member, either of the Legislative Council or of the Legislative Assembly of the colony of New South Wales, shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor of the said colony, or before some person or persons authorized by such Governor to administer such oath:—

"I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria. So help me God!"

XXXI. Every person authorized by law to make an affirmation instead of taking an oath, may make such affirmation in every case in which an oath is hereinbefore required to be taken.

XXXII. It shall be lawful for any member of the assembly, by writing under his hand, addressed to the speaker

of the said house, to resign his seat therein, and upon the receipt of such resignation, by the speaker, the seat of such member shall become vacant.

XXXIII. If any member of the assembly shall for one whole session of the Legislature, without the permission of the assembly, entered upon its journals, fail to give his attendance in the said house, or shall take any oath or make any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power, or do or concur in or adopt any act whereby he may become a subject or citizen of any foreign state or power, or become entitled to the rights, privileges, or immunities of a subject of any foreign state or power, or shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said colony relating to bankrupts or insolvent debtors, or shall become a public defaulter, or be attainted of treason, or be convicted of felony or any infamous crime, his seat in such assembly shall thereby become vacant.

XXXIV. When and so often as a vacancy shall occur as aforesaid, upon a resolution by the assembly declaring such vacancy and the causes thereof, the speaker shall cause a writ to be issued for supplying such vacancy: Provided that the speaker may issue such writ when the assembly is not in session.

XXXV. The said Legislative Council and Assembly, at the first sitting of each respectively, and from time to time afterwards as there shall be occasion, shall prepare and adopt such standing rules and orders as shall appear to the said Council and Assembly respectively best adapted for the orderly conduct of such Council and Assembly respectively, and for the manner in which such Council and Assembly shall be presided over in case of the absence of the speaker, and for the mode in which such Council and Assembly shall confer, correspond, and communicate with each other relative to votes or bills passed by or pending in such Council and Assembly respectively, and for the manner in which notices of bills, resolutions, and other business intended to be submitted to such Council and Assembly respectively, at any session thereof, may be published in the *Government Gazette* or otherwise, for general information, for some convenient space or time before the meeting of such Council and Assembly respectively, and for the proper passing, entitling, and numbering of the bills to be introduced into and passed by the said Council and Assembly, and for the proper presentation of the same to the Governor for the time being, for her Majesty's assent; all of which rules and orders shall, by such Council and Assembly respectively, be laid before the Governor, and, being by by him approved, shall become binding and of force: Provided that no such rule or order shall be of force to subject any person not being a member or officer of the Council or Assembly to which it relates, to any pain, penalty, or forfeiture.

XXXVI. It shall and may be lawful for the Governor to transmit by message to the said Legislative Council or Assembly, for their consideration, the draft of any laws which it may appear to him desirable to introduce; and all such drafts shall be taken into consideration in such convenient manner as shall, in and by the rules and orders aforesaid, be in that behalf provided.

XXXVII. Every bill which has been passed by the Legislative Council and Assembly, whether with or without amendments, shall be presented for her Majesty's assent to the Governor of the said colony, and the Governor in all bills relating to the local or municipal affairs of the said colony shall declare at once according to his discretion that he assents to such bill in her Majesty's name, or, that he withholds her Majesty's assent; and in all bills touching or affecting any imperial subject, the Governor shall declare according to his discretion, but subject nevertheless to the provisions contained in this Act, and to such instructions as may from time to time be given in that behalf by her Majesty, her heirs, or successors, that he assents to such bill in her Majesty's name, or that he withholds her Majesty's

assent, or that he reserves such bill for the signification of her Majesty's pleasure thereon.

XXXVIII. Whenever any bill affecting any imperial subject which shall have been presented for her Majesty's assent to the Governor of the said colony, shall by such Governor have been assented to in her Majesty's name, the Governor shall by the first convenient opportunity transmit to one of her Majesty's principal secretaries of state, an authentic copy of such bill so assented to; and it shall be lawful at any time, within one year after such bill shall have been so received by the secretary of state, for her Majesty by order in Council, to declare her disallowance of such bill, and such disallowance, together with a certificate under the hand and seal of the secretary of state, certifying the day on which such bill was received as aforesaid, being signified by the Governor to the Legislative Council of the said colony, by speech or message to the said Council, or by proclamation in the New South Wales *Government Gazette*, shall make void and annul the same from and after the day of such signification.

XXXIX. No bill which shall be so reserved for the signification of her Majesty's pleasure thereon, shall have any force or authority within the said colony until the Governor shall signify either by speech or message to said Legislative Council and Assembly, or by proclamation, that such bill has been laid before her Majesty in Council, and that her Majesty has been pleased to assent to the said bill, and an entry shall be made in the journal of the said Legislative Council and Assembly of every such speech, message, or proclamation, and a duplicate thereof, duly attested, shall be delivered to the registrar of the Supreme Court, or other proper officer, to be kept among the records of the said colony; and no bill which shall be so reserved as aforesaid, shall have any force or authority in the said colony unless her Majesty's assent thereto shall have been so signified as aforesaid, within the space of one year from the day on which such bill shall have been presented for her Majesty's assent to the Governor as aforesaid.

XL. Notwithstanding anything hereinbefore contained the legislature of the said colony as constructed by this act shall have full power and authority from time to time, by any act or acts, to alter the provisions or laws for the time being in force under this act or otherwise, and to repeal any act or acts of the Imperial Parliament which it may be necessary to repeal in order to give effect to any such act or acts for altering the provisions or laws for the time being in force under this act or otherwise concerning the Legislative Council, the nomination or election of another Legislative Council, or of a separate Legislative House, to consist respectively of such members to be appointed or elected respectively by such person or persons, and in such manner as by such act or acts shall be determined, and to vest in such new Council and the Legislative Assembly for the time being, or in such other Legislative House, the powers and functions of the Parliament of this colony for which such Legislative House may be substituted: provided always that it shall not be lawful to present to the Governor of the said colony, for her Majesty's assent, any bill of the Parliament of the said colony by which any such alteration in the constitution of the said colony may be made, unless the second and third reading of such bill shall have been passed with the concurrence of two-thirds of the members for the time being of the said Legislative Council and of the said Legislative Assembly respectively: provided also that every bill which shall be so passed for any of such purposes, shall be reserved for the signification of her Majesty's pleasure thereon, and a copy of such bill shall be laid before both houses of the Imperial Parliament for the period of thirty days at the least before her Majesty's pleasure thereon shall be signified.

XLI. It shall be lawful for her Majesty, with the advice of her Privy Council, or under her Majesty's signet and sign manual, through one of her

principal Secretaries of State, from time to time to convey to the Governor of New South Wales such instructions as to her Majesty shall seem meet for the guidance of such Governor in the exercise of the powers hereby vested in him of assenting to or dissenting from, or for reserving for the signification of her Majesty's pleasure, bills to be passed by the said Legislative Council and Assembly, affecting any imperial subject, and so that such instructions do not in any way fetter the Governor's discretion in giving or refusing her Majesty's assent to bills of mere local or municipal concernment.

XLII. The appointment to all public offices in the colony hereafter to become vacant or to be created (other than Corporate Offices) whether such offices be salaried or not, shall be vested in the Governor, with the advice of the Executive Council.

XLIII. The commissions of the present Judges of the Supreme Court of the said colony, and of all future Judges thereof, shall be, continue, and remain in full force during their good behaviour, notwithstanding the demise of her Majesty, (whom God long preserve) or of her heirs and successors, any law, usage, or practice to the contrary thereof in any wise notwithstanding.

XLIV. It shall be lawful, nevertheless, for her Majesty, her heirs and successors, to remove any such Judge or Judges upon the address of both houses of Parliament.

XLV. Such salaries as are settled upon the Judges for the time being by Act of Parliament, or otherwise, and also such salaries as shall or may be in future granted by her Majesty, her heirs, and successors, or otherwise, to any future Judge or Judges of the said Supreme Court, shall in all time coming be paid and payable to every such Judge and Judges for the time being, so long as the patents or commissions of them or any of them, respectively, shall continue and remain in force.

XLVI. All laws, statutes, and ordinances which, at the time of the passing of this Act, shall be in force within the said colony, shall remain and continue to be of the same force, authority, and effect, as if this Act had not been made, except in so far as the same are repealed or varied by this Act, or in so far as the same shall or may hereafter by virtue and under the authority of this Act be repealed or varied by any Act or Acts of the Legislature of the said colony.

XLVII. All the courts of civil aud criminal jurisdiction within the said colony, and all charters, legal commissions, powers, and authorities, and all officers, judicial, administrative, or ministerial, within the said colony respectively, except in so far as the same may be abolished, altered, or varied by or may be inconsistent with the provisions of this Act, or shall be abolished, altered, or varied by any Act or Acts of the Legislature of the colony, shall continue to subsist in the same form and with the same effect as if this Act had not been made.

XLVIII. And whereas the Legislatures of the said colony have from time to time passed enactments which were to continue in force for a certain number of years after the passing thereof, and from thence to the end of the then next ensuing session of the Legislature, in which the same were passed, whenever the words "and from thence to the end of the then next ensuing session of the Legislature," or words to the same effect, have been used in any such temporary Act, which shall not have expired before the passing of this Act, the said words shall be construed to extend and apply to the next session of the Legislature, to be constituted under this Act.

XLIX. It shall not be lawful for the Legislature of the colony of New South Wales to levy any duty upon articles imported *bonâ fide* for the supply of her Majesty's land or sea forces, nor to levy any duty, impose any prohibition or restriction, or grant any exemption from any drawback or other privilege upon the importation or exportation of any articles, nor to enforce any dues or charges upon shipping contrary to or at variance with any treaty or treaties con-

cluded by her Majesty with any foreign power.

L. Subject to the provisions of this Act, and notwithstanding any Act or Acts of the Imperial Parliament now in force to the contrary, it shall be lawful for the Legislature of the colony of New South Wales to impose and levy such duties of customs as to them may seem fit, on the importation into the colony of any goods, wares, and merchandise whatsoever, whether the produce of or exported from the United Kingdom or any of the colonies or dependencies of the United Kingdom, or any foreign country: Provided always, that no new duty shall be so imposed upon the importation into the said colony of any article the produce or manufacture of, or imported from, any particular country or place which shall not be equally imposed on the importation into the said colony of the like article the produce or manufacture of, or exported from, all other countries and places whatsoever.

LI. For the purpose of this Act the boundaries of the colony of New South Wales shall not be curtailed on the north within the twenty-sixth degree of south latitude, and they shall be on the south and the south-west a straight line drawn from Cape Howe to the nearest source of the River Murray, and thence by the course of that river to the eastern boundary of the colony of South Australia; on the east the one hundred and sixty-second degree of east longitude; and on the west the one hundred and forty-first degree of east longitude, reckoning from the meridian of Greenwich.

LII. No alteration shall take place in the boundaries of the respective colonies of New South Wales, Victoria, or South Australia, unless the assent of the colony losing any portion of its territory by such alienation shall be expressed in some Legislative provision of such colony.

LIII. And whereas the Legislative Council of New South Wales, constituted under the Imperial Act passed in the Session holden in the thirteenth and fourteenth years of the reign of her present Majesty, intituled, "*An Act for the better Government of Her Majesty's Australian Colonies*," are desirous that her Majesty should owe to the spontaneous liberality of her people in this colony such grant by way of civil list, in lieu of the provision contained in the schedule to that act, as shall be sufficient to give stability and security to the civil institutions of the colony, and to provide for the adequate remuneration of able and efficient officers in the executive, judicial, and other departments of her Majesty's colonial service; the granting of which civil list belongs constitutionally only to her Majesty's faithful people, through their representatives in the said Legislative Council; and her Majesty's most dutiful and loyal subjects, the members of the said Legislative Council, in Council assembled, being desirous that a certain competent revenue for the purpose may be settled upon her Majesty (to whom may God grant a long and happy reign) as a testimony of their unfeigned affection to her Majesty's person and government, have accordingly freely resolved, in lieu of the aforesaid statutable provision for the like purpose, to grant to her Majesty a certain revenue payable out of the consolidated revenue fund of this colony: be it therefore enacted as follows:—

LIV. All taxes, imposts, rates, and duties, and all territorial, casual, and other revenues of the crown (including royalties) from whatever source arising within this colony, and over which the present or future legislature has or may have power of appropriation, shall form one consolidated revenue fund, to be appropriated for the public service of this colony, in the manner and subject to the charges hereinafter mentioned.

LV. The consolidated revenue fund of this colony shall be permanently charged with all the costs, charges, and expenses incident to the collection, management, and receipt thereof, such costs, charges, and expenses being subject nevertheless to be reviewed and audited in such manner as shall be directed by any act of the legislature.

LVI. There shall be payable in every year to her Majesty, her heirs and successors, out of the Consolidated Revenue Fund of this colony, the several sums not exceeding in the whole, the sum of sixty-three thousand and three hundred pounds, for defraying the expenses of the several services and purposes named in the first, second, and third parts of schedule A, to this Act annexed; the said several sums to be issued by the Colonial Treasurer in discharge of such warrant or warrants as shall be from time to time directed under the hand of the Governor; and the said Treasurer shall account to her Majesty for the same through the Lords Commissioners of her Majesty's Treasury, in such manner and form as her Majesty shall be graciously pleased to direct.

LVII. It shall be lawful for the Governor to abolish any of the offices named in the second part of the schedule, or to vary the sums thereby appropriated to such purposes connected with the administration of the government of this colony, as to her Majesty, her heirs, and successors, shall seem fit; and accounts in detail of the expenditure of the several sums expended under the authority of this Act, shall be laid before both Houses of the Parliament of New South Wales within thirty days from the beginning of the session next after such expenditure shall be made.

LVIII. The said several sums mentioned in the first, second, and third parts of the said schedule A, shall be accepted and taken by her Majesty, her heirs, and successors, by way of civil list, instead of all territorial, casual, and other revenues of the crown (including all royalties) from whatever source arising within the said colony, and to the disposal of which the crown may be entitled either absolutely or conditionally, or otherwise howsoever.

LIX. Not more than four thousand five hundred and fifty pounds shall be payable at the same time for pensions to the judges of the Supreme Court, out of the sum set apart for pensions in the first part of the said Schedule A; and not more than five thousand nine hundred pounds shall be payable in the whole by way of pension or retiring allowance for the present incumbents of any office or department mentioned in the first and second parts of the said Schedule A, who, on political grounds, may be removed from any such office or department: Provided always, that pensions shall be demandable by such judges, to the amount of seven-tenths of their actual salaries, on permanent disability or infirmity or after fifteen years service in this colony: Provided also, that the officers so liable to removal shall be the Attorney and Solicitor General, the Colonial Secretary, Colonial Treasurer, and Auditor General, and upon the removal from office of any of the present officers, they shall be entitled by way of pension or retiring allowance to the full amount of the salaries respectively received by them at the time of the passing of this Act: Provided also, that if after the assignment of any such pension or retiring allowance, any of such judges or officers shall accept any new appointment under the Crown, then and in every such case the pension or retiring allowance of any such judge or officer shall merge or be reduced, *pro tanto*, according as the salary or emoluments of any such new appointment are of greater or less amount than the pension or retiring allowance of such judge or officer.

LX. Not more than two thousand five hundred pounds shall be payable at the same time for pensions to superannuated officers out of the sums set apart for such pensions in the second part of the said Schedule: Provided always, that the amount of all such pensions for such superannuated officers shall be according to the several scales and rates fixed by the Superannuation Act of the Parliament of Great Britain and Ireland, passed in the session of the fourth and fifth years of the reign of His late Majesty King William the Fourth, and that a list of all pensions granted under this act, and of the persons to whom the same shall have been granted, shall be laid, in every year, before both Houses of the said Parliament.

LXI. Subject to the provisions herein contained it shall be lawful for the Le-

gislature of this colony to make laws for regulating the sale, letting, disposal, and occupation of the waste lands of the Crown within the said colony.

LXII. After and subject to the payments to be made under the provisions hereinbefore contained, all the Consolidated Revenue Fund, arising from taxes, duties, rates, and imposts, levied by virtue of any Act of the Legislature of the colony, and from the disposal of the waste lands of the Crown, under any such act, made in pursuance of the authority herein contained, shall be subject to be appropriated to such specific purposes as by any act of the same Legislature shall be prescribed in that behalf: Provided that the consolidation of the revenues of this colony shall not affect the payment of the annual interest, or the principal sums mentioned in any outstanding debentures or other charge upon the territorial revenue, as such interest, principal, or other charge severally becomes due, nor shall such consolidation affect the payment of any sum or sums heretofore charged upon the taxes, duties, rates, and imposts, now raised, levied, and collected, or to be raised, levied, and collected, to and for the use of this colony, for such time as shall have been appointed by any acts of the Legislature by which any such charge was authorized.

LXIII. 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 said Legislative Assembly, during the session in which such vote, resolution, or bill, shall be passed.

LXIV. No part of her Majesty's Revenue in the said colony, arising from any of the sources aforesaid, shall be issued, or shall be made issuable, except in pursuance of warrants under the hand of the Governor of the colony directed to the public Treasurer thereof.

LXV. This Act shall be proclaimed n New South Wales by the Governor thereof, within one calendar month after a copy of such Act shall have been received by such Governor, and shall take effect within the said colony from the date of the proclamation thereof.

LXVI. The proclamation of this Act and all proclamations to be made under the provisions thereof, shall be published in the New South Wales *Government Gazette.*

LXVII. In the construction of this Act, the term "Governor" shall mean the person for the time being lawfully administering the government of the colony of New South Wales.

LXVIII. The foregoing provisions of this Act shall have no force or effect until so much and such parts of the Act of the parliament of the United Kingdom of Great Britain and Ireland, passed in the thirteenth and fourteenth years of her Majesty's reign, intituled, "*An Act for the better Government of the "Australian Colonies,*" and the first, second, and third parts of the Schedule A therein referred to, and of another Act passed in the fifth and sixth years of her Majesty's reign, intituled, "*An Act "for the Government of New South Wales "and Van Diemen's Land,*" and of another Act passed in the said fifth and sixth years of her Majesty's reign, intituled, "*An Act for regulating the Sale of "Waste Lands belonging to the Crown in "the Australian Colonies,*" and of another Act passed in the eighth year of her Majesty's reign, intituled, "*An Act to "clear up doubts as to the regulation and "audit of the Customs of New South "Wales,*" and of another Act passed in the same year, intituled, "*An Act to "explain and amend the Act for the "Government of New South Wales and "Van Diemen's Land,*" and of another Act, passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled, "*An Act to provide "for the Administration of Justice in New "South Wales and Van Diemen's Land, "and for the more efficient Government "thereof, and for other purposes relating "thereto,*" and of another Act passed in the ninth and tenth years of her Majesty's reign, intituled, "*An Act to amend an "Act for Regulating the sale of Waste*

"*Land belonging to the Crown in the Australian Colonies, and to make further provisions for the management thereof*" as severally relate to the colony of New South Wales and as are repugnant to this Act, shall have been repealed; and the entire management and control of the waste lands belonging to the Crown in the said colony of New South Wales, and also the appropriation of the gross proceeds of the sales of any such lands, and of all other proceeds and revenues of the same, from whatever source arising in the said colony, including all Royalties, mines, and minerals, shall be vested in the legislature of the said colony: Provided that nothing herein contained shall affect or be construed to affect any contract, or to prevent the fulfilment of any promise or engagement made by or on behalf of her Majesty, with respect to any lands situate within the said colony in cases where such contracts, promises, or engagements have been lawfully made, before the time at which this Act shall take effect within this colony, nor to disturb or in any way interfere with or prejudice any vested or other rights which have accrued or belong to the licensed occupants or lessees of any Crown lands within or without the Settled Districts, under and by virtue of the aforesaid Act of the Parliament, passed in the ninth and tenth year of her Majesty's reign, intituled, "*An Act to amend an Act for regulating the sale of Waste Land belonging to the Crown in the Australian Colonies, and to make further provision for the management thereof,*" or any vested or other interest or right which has accrued or arisen by virtue of any order or orders of her Majesty in Council, issued in pursuance thereof: Provided also that if the legislature of the colony should at any time hereafter deem it expedient that any such vested or other right or interest should be abridged or abrogated, any law authorizing or enacting any such abridgement or abrogation, shall be wholly void and inoperative unless it contain an effectual provision awarding full compensation to all parties injuriously affected by such law: Provided that all parties who may be dissatisfied with any such award may appeal to the Supreme Court, which shall direct an issue to be tried before any one of the judges thereof, and a special jury of the said colony, in order to fix the amount of damages to which such dissatisfied parties may be respectively entitled.

SCHEDULE A.—PART I.

	Amount payable while the present Incumbent is in office.	Amount to be allowed as vacancies occur by removal of pres. Incmbts.
	£	£
To be placed at the disposal of Her Majesty, for the Salary of the Governor General, if Her Majesty see fit; otherwise to revert to the Consolidated Revenue Fund	7,000	7,000
One Chief Justice	2,000	2,000
Three Judges, including one for Moreton Bay	4,500	4,500
Master in Equity and Curator of Intestate Estates and Chief Commissioner of Insolvent Estates	1,000	
Attorney General	1,500	1,500
Solicitor General	1,000	1,000
Pensions for Judges, on their ceasing to hold office	4,550	4,550
Chairman of Quarter Sessions and Commissioner of Crt. of Requests	800	
	22,350	20,550

SCHEDULE A.—PART II

Colonial Secretary	2,000	2,000
Governor's Private Secretary	400	400
Colonial Treasarer	1,250	1,250
Auditor General	900	900
Pensions to Officers of Government, not liable to removal	2.500	2,500
Pensions to existing Officers of the Government, liable to removal. (Upon the demise of these latter Officers, their respective Pensions to revert to the Consolidated Revenue Fund)	5,900	
	12,900	7,050

SCHEDULE A.—PART III.

Public Worship	28,000	28,000

RECAPITULATION.

SCHEDULE A.—PART I.	22,350	20,550
" " PART II.	12,950	7,050
" " PART III.	28,000	28,000
	63,300	55,600

17 Victoria, 1853.

An Act to authorize her Majesty to Assent to a Bill of the Legislative Council of New South Wales, and to repeal so much and such parts of divers Acts of Parliament therein enumerated as relate to the Colony of New South Wales, and as are repugnant to the said Bill.

Whereas the Legislative Council of the colony of New South Wales, constituted and assembled by virtue of and under the authority of the Act of Parliament passed in the Session holden in the tenth and eleventh years of her Majesty's reign, intituled, "*An Act for the better Government of the Australian Colonies.*" did in the year one thousand eight hundred and fifty-three, pass a Bill, intituled, "*An Act to confer a Constitution on New South Wales, and to grant a Civil List to her Majesty,*" of which a copy is contained in the schedule to this present Act annexed: And whereas the said Bill was presented for her Majesty's assent to the then Governor of the said colony of New South Wales, and the said Governor did thereupon declare that he reserved the said Bill for the signification of her Majesty's pleasure thereon: And whereas it is by the final provision of the said reserved Bill provided, that the foregoing provisions thereof shall have no force or effect until so much and such parts of the said recited Act of Parliament, and of another Act passed in the fifth and sixth years of her Majesty's reign, intituled, "*An Act for the Government of New South Wales and Van Diemen's Land,*" and of another Act, passed in the said fifth and sixth years of her Majesty's reign, intituled, "*An Act for regulating the Sale of Waste Lands belonging to the Crown in the Australian Colonies,*" and of another Act passed in the eighth year of her Majesty's reign, intituled, "*An Act to clear up doubts as to the regulation and audit of the Customs of New South Wales,*" and of another Act, passed in the same year, intituled, "*An Act to explain and amend the Act for the Government of New South Wales and Van Diemen's Land,*" and of another Act, passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled, "*An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more efficient Government thereof, and for other purposes relating thereto,*" and of another Act passed in the ninth and tenth years of her Majesty's reign, intituled, "*An Act to amend an Act for regulating the Sale of Waste Lands belonging to the Crown in the Australian Colonies, and to make further provision for the management thereof,*" as severally relate to the colony of New South Wales, and as are repugnant to the said reserved Bill shall have been repealed: And whereas it is not competent to her Majesty to assent to the said reserved bill without the authority of parliament for that purpose, inasmuch as the said bill is in certain respects repugnant to the said several recited acts of parliament: And whereas it is expedient that her Majesty should be authorised to assent to the said reserved bill, and that so much and such parts as aforesaid of the said recited acts should thereupon be repealed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the consent and advice of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:—

I. It shall be lawful for her Majesty, with the advice of her Majesty's Privy Council, to assent to the said reserved bill, anything in the said recited Acts of Parliament, or any law, statute, or usage to the contrary in anywise notwithstanding.

II. If her Majesty, with the advice of her Privy Council, shall assent as aforesaid to the said reserved Bill, so much

and such parts of the said recited Acts as in any way relate to the colony of New South Wales, and as are repugnant to the said reserved Bill, or as in any way relate to the control and management of the waste lands of the crown, or to the appropriation of any revenues of the crown thence or otherwise arising within the said colony, and also the first, second, and third parts of the schedule A to the said first recited Act mentioned or referred to in the final provision of the said reserved Bill, shall be repealed upon and from the day on which the said reserved Bill (being first so assented to by her Majesty in Council) shall take effect in the said colony.

III. This Act may be amended or suspended by any Act to be passed in this Session of Parliament.

DEBATE

IN THE LEGISLATIVE COUNCIL

ON THE

SECOND READING OF THE CONSTITUTION BILL,

August 16th, 1853.

Mr. DARVALL presented the following petition, signed by 2630 of the inhabitants of the city of Sydney :—

To the Honorable the Legislative Council of New South Wales, in Council assembled. The humble Petition of the undersigned inhabitants of the colony of New South Wales,

HUMBLY SHEWETH,

That in the opinion of your petitioners the proposed Constitution Bill now before your Honorable Council is radically defective and opposed to the wishes and interests of the inhabitants of this colony, who believe that a Representative Legislature, consisting of two Elective Chambers, will alone possess that stability, energy, and usefulness which are maintained by public confidence, and without which no government can permanently exist.

That your petitioners earnestly remonstrate against any attempt, in the hasty manner now proposed in the Legislative Council, to impose a Constitution on the colony which is framed in direct opposition to the wishes of the people.

That the proposed alteration of the Electoral Act is calculated to increase that inequality in their representation of which the colonists have so justly complained, which inequality, instead of being increased, ought now to be rectified, and the representative system established on a just and satisfactory basis.

That your Honorable Council having been elected without reference to the proposed change of Constitution, the colonists are entitled to demand the interposition of such delay between the first and second readings of the proposed Bill as will enable them to express their views fully on this momentous question.

Your petitioners therefore pray that your Honorable Council will be pleased to postpone the further consideration of the measure in question for at least one month, in order to give the colonists at large the opportunity of expressing their sentiments on the subject.

And your petitioners, as in duty bound, will ever pray.

The petition was received.

THE SECOND READING.

On the order of the day being called for the second reading of the Constitution Bill,

Mr. WENTWORTH rose, — Mr. Speaker, I am not sorry after all the obloquy which has been attached to my name in connexion with this measure, the second reading of which it is now my duty to move, to have an opportunity of explaining to this House and the country at large the principles which actuated me in the course I have taken in the Select Committee appointed to prepare it. It may, however, be well that I should, before entering into any discussion of the measure itself, in the first place show the utter fallacy of one of the main propositions, of that which was in fact the substantial basis of the petition which had been agreed to at a public meeting yesterday, and which has been presented to the House this night by the hon. and learned member for Cumberland. That proposition is, that the House consists of members who have been elected without reference to the proposed changes of the constitution. Now, a more fallacious, a more erroneous, a more unjust and false charge, was never made. So far from this being the case, I broadly assert the present Legislative Council was elected chiefly in reference to this very purpose. Aye, I will go further, and aver that amongst all those who have any real knowledge of the political position of the colony, it was elected exclusively with reference to this very object—(cheers)—that the sole

function for which they were and ought to have been elected, was to frame the Constitution, which for the first time the Minister and Parliament of Great Britain had given them power to make for themselves. (Cheers.) I believe the minister who bestowed upon the representatives of the people in this colony the power to exercise this function, believed that the attention of the Council, elected under the present constitution, would in the first instance be turned to it alone. And I further believe that the mind of that minister must be filled with astonishment to find that three years have been allowed to elapse without any fruit having been matured from the great and important power bestowed upon us. (Cheers.) I contend, therefore, that there is not the shadow of foundation for this proposition in the petition; but that, on the contrary, it was to this body, this very Council, that the duty of framing a Constitution has been exclusively entrusted: and that it was with the knowledge that the Council had to perform the greatest and highest functions ever entrusted to them that its present members have been returned by the constituencies throughout the country. (Cheers.) The whole tenor of the petitions and speeches which have been made against the Electoral Act under which the Council has been elected, and also against the Bill now under consideration, is plainly that they both went to further the private interests of a party who were inimical to the welfare of the country, or who were prepared to sacrifice that welfare to their own personal aggrandisement, or the furtherance of their private ambition. I repudiate the gross aspersion, not only for myself, but for every hon. member of this House. I fling it back to its vile and contemptible authors with indignant scorn. (Loud cheers.) I assert, and before I sit down I will prove to the satisfaction of every calmly reflecting man, that it has been the most anxious desire of the Committee entrusted to frame this measure, to take the sense of the country upon the Constitution to be adopted—to obtain the real sense of the country, and, having obtained the sense of the people, to give it a local habitation and a name. (Cheers.) It is perfectly easy to show that the Committee and the Council have never had any feeling inimical to the rights and privileges of any class in the community. The Council, I repeat, under the Constitution of 1850, was elected for the express purpose of framing a Constitution for this colony. Well, what did it do in its first session? It simply did nothing in the matter but re-affirm the petitions and remonstrance of the previous session. And how was this deference to the opinion of this country met? Not a single voice was heard to offer a suggestion. The result of the delay was nothing but universal silence. (Cheers.) And what conclusion, I ask, had this Council a right to draw—were, I contend, compelled to draw—from this universal silence? Why, that the country had the fullest confidence in the Legislative Council; that they believed the representatives they had elected, in discharging the great duty cast upon them by the Parliament of Great Britain, would fulfil that duty conscientiously to themselves, and satisfactorily and beneficially to the public at large. It evinced, also, that the opinions of the constituencies of the colony remained the same as they were some four or five years ago, when, with one voice echoing throughout the length and breadth of the land, they repudiated the proposition of Lord Grey of a Constitution based on this very principle of double election now so loudly but so rashly demanded. The moment that mischievous proposition was published, the toscin of alarm was sounded throughout the colony. Never before, never since, had there been so great a manifestation of political feeling as took place on that occasion. Sydney, the metropolis of the colony, took the lead in the movement; but throughout the towns, the small remote inland towns of the colony, the feeling extended, until every district had spoken out unmistakably that the people of New South Wales would not have this mischievous principle introduced into their civil government, but

that they would have a constitution assimilated, as nearly as circumstances would allow, to the glorious constitution of their Father Land. (Great applause.) That was the opinion declared by the people of Sydney then, reiterated throughout the colony, and echoed, I believe, from the heart of every colonist. (Cheers.) This was four years ago, and there had been no expression of public opinion since to show that any reaction had taken place, or that the feeling of the country had changed in any way; and seeing this, the committee that framed this measure, and the House which appointed that committee, have a right to believe that it is the feeling still. (Cheers.) Now the next step taken by the Council in the performance of this duty, thrown expressly upon them by the Act of Parliament, and to perform which they had been elected by the country, was taken by myself. In the second session of Council under the Constitution of 1850, I, thinking it necessary and desirable that the Council should adopt some measure to take advantage of the boon conceded to them, and about which the great body of the people seemed so apathetic, moved for a select committee to inquire into and report upon the form of Constitution best suited for this colony. That committee sat for some months, anxious to receive all the opinions and information that could be afforded from out of doors. On the 17th Sept. it brought up its report, and a Bill, embodying its recommendations, which were in favour of a double legislature, consisting of a Representative Assembly and an Upper House nominated by the Crown, not, I admit, in the same form as is proposed by the present Bill, but in principle exactly similar. This report and Bill were published; and on the 28th September—again in deference to public opinion, to give time for approval of, or dissent from, the substantive proposition then brought before them—the House adjourned till November. This adjournment was made for the express purpose of eliciting the opinion of the country on the Bill prepared by the former committee. And the period of the adjournment passed away not only without the slightest opposition, but without the slightest expression of opinion from any section of the community. (Cheers.) If those who framed that Bill had been actuated by the sinister and selfish motives which had been so broadly imputed to them, they had, when the House met, the most glorious opportunity ever offered to evil-minded men to carry out sinister and selfish designs. (Cheers.) Why, if I had chosen to have done so, I could have carried that Bill, which so far as the elective principle is concerned was quite as objectionable as the present one, through the House triumphantly. There would have been no one to oppose it. (Cheers.) But at the suggestion of my honourable and learned friend the member for Cumberland (Mr. Darvall) who acted with me on that occasion, I consented to withdraw the Bill for the Session, in order to give still further time for the expression of public opinion, and to allow the measure to be more extensively discussed by the press. I was further induced to this course, because I thought it was prudent that we should wait until we were made acquainted with the fate of our petition of rights and our remonstrances, forwarded to the Queen and Parliament. In our then state of ignorance as to what concession the Minister of England was prepared to make, it was difficult, if not dangerous, for us to proceed with the measure; and for this reason, and for the purpose of giving further time for the expression of public feeling, the subject was allowed, as the wisest and most patriotic course, to stand over till this session. But again, the same universal silence prevailed. There was no feeling displayed of opposition to the Bill, which in principle I again contend was identical with that which is now before us. The public had only a right to expect that the same measure would be re-introduced. The Council had given them no anticipation that further enquiry and deliberation would take place on the subject, but the impression out of doors must have been, that as no opposition had been manifested against it, it would

be again brought in and adopted. They had no right to think anything else—to imagine there would be any difference between the bill of last session and that of the present; but till the beginning of the present session the public out of doors has been silently acquiescent in the proceedings of the Council, and in the constitution proposed for them, which, I again repeat, was identical in principle with the present measure. (Cheers.) How could the House avoid coming to the conclusion, under circumstances such as these, that the nominative principle contained in both bills met the approbation of the country? We found that it was in accordance with the spirit of those petitions sent to the foot of the Throne, four years ago, from all parts of the colony. We had heard of no alteration in the opinions of the people; we had waited patiently for the country to say what it would have; we had submitted a constitution which had neither been rejected nor opposed; and what course was open for the Council but the continuance of that course which had so constantly met the silent acquiescence of the country! (Great cheering.) If there were any blame to attach to the production of this measure, it fell not upon the members of the committee, nor upon any member of this House, or on any member of the Government, but on those only who, having all along failed in their duty, became now the impugners, not only of our measures but of our motives. (Loud cheers.) I do not know whether it is worth my while to refer at all to the proceedings out of doors yesterday in regard to this question. But I cannot help expressing my deep regret that so many members of this House should, by taking part in these proceedings, have forgotten alike what was due to themselves and to the dignity of the Council. (Cheers.) I feel that by the part they have taken in this matter, they have destroyed the freedom of the representatives of the country: they have degraded the position which the Legislature of the country ought to occupy; and I lament much to see some hon. members, my friends, and who have on most occasions acted with me, consent to sink from the rank of representatives to that of mere miserable delegates. (Loud applause, and "no, no," from Mr. Darvall.) My honorable and learned friend says No, no; but I ask the House can any hon. members who have identified themselves with the proceedings of yesterday act in this House as free agents? (Cheers.) Why, if the arguments they have put forward were refuted to their own absolute conviction—if the declamation and reasonings, if they could be called such, used at that meeting, could be utterly demolished—blown into thin air—if it could be proved to demonstration that the Constitution this Bill offered was calculated to secure on the most permanent basis the free institutions, and the moral, social, and material interests of the colony, they could not now support it. They had become the delegates, the pledged delegates of a noisy and intemperate faction, and they must continue in that degraded position to the end. (Cheers.) But, feeling all this deeply, I have also another duty to perform—I have to express my gratitude to the hon. and learned member for Cumberland (Mr. Darvall), for the chivalrous defence he made of the purity of my motives, at the meeting yesterday. I feel the hon. gentleman is the more entitled to my gratitude, because I am quite sure the generosity he displayed must have exposed him to considerable obloquy, and considering the parties he had around him, I have little doubt to some personal risk. (Laughter and cheers.) I can assure the hon. and learned member the good intention he exhibited of creating a favorable impression in my behalf in the minds of my constituency will be of no avail, for long before I shall stand before that constituency again, all that my hon. and learned friend has said in my behalf will be unsaid by somebody else who, for the moment may be the oracle of the mass. (Cheers.) I do feel regret, however, of no common kind, that the hon. and learned member should have committed himself in a manner so inconsistent with constitutional freedom, and that he should have descended from

his high estate to degrade himself to the rank of a mere delegate. (Cheers.) I will now proceed to advert to the much abused measure which I have had the honor to bring up, and to explain some of the principles on which it is founded. In doing this I shall not consider it my duty to take the course which is generally followed in reference to Bills at this stage, of drawing attention to all its important clauses. I shall not advert to those clauses which, not having been opposed out of doors, may be taken to have met with general assent. It will be enough for me to state briefly that these clauses embody the following great principles. Entire freedom on the part of the colony from taxation by the British government—a repudiation of the schedules reserved by act of the British Parliament—the entire disposal of all the revenues of the colony, whether ordinary, casual, or territorial—the control of the customs department, with the power, as it were, to use the pruning knife in cutting down that department—the investment of all colonial patronage in the Governor for the time being and the Executive Council—the plenary power of legislation so long contended for by the Council, and the want of which has so often impeded the passing into law of measures which were essential to the welfare of the country, and as a necessary consequence of these, responsible government; and in consideration of all these privileges gained by the colony, the Bill gives to her Majesty a civil list securing certain fixed salaries to the different heads of departments of the public service. To these rights and these concessions there did not seem to be any opposition, either in the House or out of doors, and I shall therefore proceed at once, and confine myself to those clauses only the introduction of which into the Bill has subjected me to so much obloquy and abuse. These are simple and few in number, and involve, first, the principle that the Constitution to be fixed by the measure shall not be altered, except by a majority of two-thirds of the members of both houses of the Legislature; second, the distribution of the eighteen representative members required to bring the number of the House of Representatives up to its present number, when the eighteen members who now hold seats as nominees are taken away; and third, the composition of the upper house, which the 4th and 5th clauses of the Bill proposed to erect. These three points, I take it, are the battle field of this question, and it is therefore unnecessary for me to refer to any thing else. On the first of these points, in respect to which so much clamour has been made, I will state, in passing, that there is not a single paltry joint stock company in the colony in which the same principle is not introduced. But, passing over this, I will turn for a precedent and authority for it to the constitution of those model States which seemed to be adopted as the climax of all that is excellent in constitutional freedom by the most vehement opponents of this measure; those States the name of which was in every man's mouth in reference to the constitution fitted for this colony: I mean the United States of America. I find that this same principle prevails in their Constitution. The fifth article of that Constitution provides—

> Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislature of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other may be proposed by Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner effect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the senate.

Now from this it will be seen that I have not adopted the power of impeding organic changes in the Constitution of this colony, which exists in the Constitution of the United States. If I had done so it would have been necessary that all such changes should have been agreed to by three-fourths, while in this bill the majority required is reduced to two-thirds.

But I will proceed still further to quote from a book of high authority on this point,—the work of one of the most wise and distinguished of American statesmen —I allude to Mr. Calhoun. Speaking of the power of the Legislature to modify the Constitution, Mr. Calhoun says—

> That it still continues to exist in the several States, in a modified form is clearly shown, by the fifth article of the Constitution, which provides for its amendment. By its provisions, Congress may propose amendments, on its own authority, by the vote of two-thirds of both houses; or it may be compelled to call a convention to propose them by two-thirds of the legislature of the several States: but, in either case, they remain, when thus made, mere proposals of no validity, until adopted by three-fourths of the States, through their respective legislatures; or by conventions called by them for the purpose.

Now I will ask whether these are not high authorities in support of the principles of the bill—a principle which if there were no precedents at all, is, I believe, absolutely necessary in a Bill like this. Can it be right, can it be rational, I would ask, that organic changes should be made in the Constitutions of great countries by bare majorities? (Cheers.) It was the object of the committee who framed this Bill to frame a Constitution in perpetuity for the colony—not a constitution which could be set aside, altered and shattered to pieces by every blast of popular opinion. What community of men could, I ask, be brought to live together under such a government as this would be? What security for person or the rights of property, or the administration of the law, or social order, would there be under such a Constitution? It has been argued against this clause, that there was no such principle as it contains in the British Constitution. This I admit to be true; but it arises out of circumstances entirely different from those which obtain here. The British Constitution contains an original and inherent power of legislation. Our power, on the contrary, is merely derivative. It is not in the power of Parliament to make such a provision, and even were it made it would not be binding on any subsequent Parliament. That is the reason why no such provision is to be found in the English Statute-book. And in fact all the more important measures carried through Parliament of late years, such as the Test and Corporation Act, the Catholic Emancipation Bill, and the Reform Bill, have been carried by very slender majorities. Yet slender as these majorities were, the House must recollect that these great measures, so essential to the freedom and advancement of the people, were only carried after considerable impediments and delay had been interposed by the great Conservative principle of the constitution. This great principle, though sometimes obstructive in a certain sense, has been productive, upon the whole, of the utmost good, and I confess that it is the object of my veneration. And I am of opinion, that no modification of the British constitution will be perfect without it. I shall not adduce any further authorities in support of this clause of the bill; enough has been said to show that those rapid and empty declaimers who are ready to pick a hole in any man's jacket (a laugh), and who opposed this necessary provision, neither understood the principles or the practice of the belauded model about which they talk and prate so much. (Laughter.) Such people are constantly setting up the constitution of the United States as a model, but in reality they are not aware of its fundamental articles. It must be very evident to all, that these people know very little about what they are speaking or petitioning. I have adduced these authorities as a conclusive argument of the ignorance of the whole bunch of them—(laughter), and I congratulate my hon. friend, the member for Cumberland, on the intelligence of his lately-gained friends (laughter), as well as on the very reputable cause to which he has lent his ability and eloquence. (Laughter.) Having examined objection No. 1, I will now proceed to objection No. 2, relating to the distribution of the additional representative members. A great deal of ridicule and abuse has been cast on the measure because of this clause, and also on the existing Electoral Act, because it is urged,

it gives a preponderance in the Legislature to one class. It may, perhaps, be satisfactory to some of those who have so bitterly abused me on account of my connexion with that class, to know that I can now be said hardly to belong to it. But although this is the case, I will avow that my opinion of the principle on which the Electoral Act is based is unchanged: and I can assure my friends the squatters that never with my consent shall that principle be abrogated. It was to my supposed great interest in squatting pursuits that I owe much of the obloquy which has been heaped upon me. Being a squatter, the belief has grown among the deluded and ignorant mass that I cannot be a patriot, —that it was being a squatter which had caused the dereliction from what were termed the liberal and constitutional predilections of my former years, and which have made me a leading member in what it is popular to call the squatocratic oligarchy. (Loud cheers.) I hope I shall at least show, in the course I intend to take in this bill, that I am neither going to desert the squatters, nor the opinions I have previously formed; for I trust I shall never become one of those weathercock politicians, of whom I see so many now around me. (Laughter and cheers.) The principal of the Electoral Act has perhaps been more unsparingly attacked than any thing which has proceeded from the Legislature of the country. It was not, however, a measure passed by this Council, but was the last act of the last Council. I admit having taken an active part in the passing of that measure, but my honorable friend, the Colonial Secretary, took a much larger part in it than I did. It was not a measure emanating from any individual member. It was a Government measure, and it ought to have been so. It was natural and right that such a measure should originate with the Government. It was conducted through its different stages by the honorable the Colonial Secretary, and I lent him my cordial support and assistance, agreeing, as I still do, entirely in the principle of the measure. I am firm in the conviction, that the representation of the country should be based on, or proportioned to, not the mere population, but the great interests of the country; and it should be so proportioned that no one interest shall have a preponderating influence over any other. Now, I contend, that the pastoral interest under the Electoral Act has no such preponderating influence. That interest is incomparably the largest, the most important interest in the country, and I hope it will continue so for ages. (Cheers.) I am quite confident, if the country is to continue to grow great and wealthy, this great interest must continue to flourish. It is for pastoral purposes alone that we can ever turn to successful account the illimitable wilds which exist in the interior of the colony, and which are under the system so much and so falsely cried down, producing annually millions of income to the colony. (Cheers.) Discontinue this system, give up pastoral pursuits, and this enormous amount of income will be simply destroyed. This would be a policy so preposterous that even the wildest democrat, if he understood the practical bearing of the question, would denounce it. The clamour which has been raised against the squatting system, and the distribution of the waste lands of the colony arose from those who have been deluded and misled. I repeat what I have said fifty times before, that a vast proportion of the waste lands of the colony are not and never can be made fit for anything but pastoral purposes,—that they have no value at all except that arising from the herbage by which they are covered. (Cheers.) And seeing that if these lands are to be of any value to the colony the squatting system must be preserved, then, I contend, that there is no preponderance given to the squatters under the Electoral Act, but that this great and leading interest of the colony has not its fair share in the representation of the colony. I find that the colony possesses eight millions of sheep, and one and a half million of cattle; that the income derived from these, by wool, tallow, and meat for food, certainly does not amount to less than

two millions annually. (Cheers.) Now in regard to the production of gold, this new branch of industry, or rather I would say this branch of anarchy and discord, it yields after all only about the paltry sum of £500,000 annually. Besides, in the course of years the pastoral interest must and will go on increasing, while the gold interest will in all probability, and I sincerely hope my prophecy will be fulfilled, be on the decline. It now yields only one quarter of the wealth of the colony which is derived from the pastoral pursuits. (Cheers.) With regard to agriculture, too, I find that the income derived from this interest also is only about one-fourth of that derived from pastoral pursuits, and I regret to find further that this branch of industry is rapidly on the decline. Though there are some other branches of industry—a few manufactures, for instance—it is not necessary for me to enter into a detailed account of them, as they, at least, in proportion to their importance to the colony, are sufficiently represented. To come more immediately to the seat of discontent in regard to the Electotal Act of 1851, namely, the amount of representation of the city of Sydney, I find that Sydney returns three members and the Hamlets one. Now the present bill virtually gives Sydney two more members, for it gives one additional member to the City and one to the Hamlets, and the Hamlets and the City are virtually the same. The representation thus given is in reality a part of the representation of the city, so that Sydney virtually returns six members. Now, this is a great bone of contention, it being contended that the representation of the city ought still to be increased; I believe however, that if we were to give half the representation of the country to Sydney the parties who now clamour would still complain. I think the House, therefore, should pay but little attention to querulous and exacting complaints, and rather consider calmly whether the representation which is given to Sydney under the Bill is not sufficient. Now, for my own part, I think this representation is much too large, and see no reason why the City of Sydney has any right to claim to be represented at all, except that there is a large mass of people congregated together in it. What interest does the population of Sydney represent? True there are hosts of people in the city calling themselves merchants, and I admit these give employment to a large number of others of lower degree. These merchants, however, are simply engaged in exchanging one commodity for another—the sending the produce of the colony home, and getting out the goods of foreign countries instead. But they as a class, with the exception of the ship owners, are productive of absolutely nothing to add to the real wealth of the colony. There is no urgent necessity for them—the colony could do without them: all that this class of people have done for me, for instance, I could have done for myself. I could have sent abroad for the tea, the sugar, the tobacco, the silks, the wine and spirits, and other articles I might require, and have obtained them just as well without the instrumentality of the merchants; and what I could thus have done, any other person might have done also. I cannot see, therefore, what claim the city of Sydney has to any representation at all, except to represent that single interest which it contains, the right of labour. The wealthy class of the city consists chiefly of these men of business—these lords of the Exchange as they call or think themselves. (Great laughter.) There is my honourable friend from Darlinghurst (Mr. Barker), who is a manufacturer in a certain sense; he manufactures flour out of grain. My honourable friend the member for the Sydney Hamlets (Mr. Smart), is in the same position. Then there are some leather manufactories, one or two brewers, an iron founder or two, and these I believe, with some trifling exceptions, are all. There is really nothing to represent here except a large mass of labour. (Great laughter.) Now, I dare say I am playing the game of my honourable and learned friend the member for Cumberland (Mr. Darvall) in making these observations, which I am very well

aware will be very unpopular out of doors. The honourable and learned member appears to be ambitious to step into my shoes as the representative of the city. (Laughter.) If such be his object, I can assure him that I shall soon give him an opportunity; and I will further tell him, that if his ambition be gratified, he will have for his constituents the most vacillating, ignorant, and misled body of people in the colony. And here again, in reference to this representation of large and crowded cities, as the party opposed to the Bill is so fond of American precedents, I will quote another passage from Mr. Calhoun's work—a work which I will say has great authority in America. Perhaps before quoting the passage it might be well to say who Mr. Calhoun was—or rather what he had been, for that great luminary was dead. He was a man who would have been elected President of the United States had it not been for the part he took in the great nullification question which was commenced by South Carolina. As it was he was appointed at one time Vice-President of the United States, and at another time President of the American Senate. These offices, great as they doubtless were, and showing as they did the very high estimation he was held in by his own country, could however, add nothing to the lustre of his genius, the depth of his wisdom, or the loftiness of his patriotism. I will now quote this great man's opinions as to what the representation of cities should be. The passage is a remarkable one, for it shows if even they had ever so many manufactories, to what proportion of the representation of the country the cities could really and justly lay claim. I will invite the attention of the House to the passage, as it appears to me to be conclusive that the amount of representation proposed to be given to the city of Sydney is too much. Speaking of the numerical majority of the constituencies of the cities, which was the principle on which these demagogues who clamoured against the Electoral Act insisted on, Mr. Calhoun goes on to say—

> Indeed, the numerical majority often fails to accomplish that at which it professes to aim—to take truly the sense of the majority. It assumes that, by assigning to every part of the State a representative in every part of its government, in proportion to its population, it secures to each a weight in the government, in exact proportion to its population, under all circumstances. But such is not the fact. The relative weight of population depends as much on circumstances as on numbers. The concentrated population of cities, for example, would ever have, under such a distribution, far more weight in the government than the same number in the scattered and scarec population of the country. One hundred thousand individuals concentrated in a city two miles square, would have much more influence than the same number scattered over two hundred miles square. Concert of action and combination of means would be easy in the one, and almost impossible in the other; not to take into the estimate the great control that cities have over the press, the great organ of public opinion. To distribute power, then, in proportion to population, would be, in fact, to give the control of the government in the end, to the cities; and to subject the rural and agricultural districts to that description of population which usually congregate in them, and ultimately, to the dregs of their population. This can only be counteracted by such a distribution of power as would give to the rural and agricultural population, in some one of the two legislative bodies or departments of the government, a decided preponderance. And this may be done, in most cases, by allotting an equal number of members in one of the legislative bodies to each elective district; as a majority of the counties or election districts will usually have a decided majority of its population engaged in agricultural or other rural pursuits. If this should not be sufficient, in itself, to establish an equilibrium,—a maximum of representation might be established, beyond which the number allotted to each election district or city should never extend.

Now, I think the maximum of representation which any city in the country, however large its population may be, should not be greater than that which was proposed in this measure for Sydney. In fact, I repeat, it is too great; for although, in deference to the opinion of the majority of the Committee, I consented to give in the present bill what is really an addition of two members to Sydney, I think it was quite sufficiently represented under the present Act. Now this population principle, which is so much talked about, and which in fact is the stock in trade of these agitators, was certainly not acted upon in the Reform Bill, which at all events must be admitted to have been a popular measure.

To prove this, it is only necessary for me to recur to the greatest and most populous city in the world—I mean the City of London. In that city there are altogether two millions and a half of inhabitants; and it must be remembered, too, that in many departments it is the most extensively manufacturing city. The number of the members of the House of Commons was 654, and the number of members returned for London is only 18. Now if this population principle had been introduced into the Reform Bill, London would return 55 members; and if the same mischievous principle were applied here, Sydney would return 17. But in passing the Reform Bill, this principle was wisely thrown overboard, and the example was followed in the Electoral Act of this colony, passed in 1851. Another reason why I do not think that Sydney should have an additional representation is, that it is the seat of Government, and that to grant the amount of representation contended for, will be highly inexpedient and dangerous. The members for the city would then be strong enough to take Government House by storm, as was once done or attempted to be done by my present honourable colleague (Mr. Campbell), and the party to whom he belonged. (Great laughter.) They would possess a dangerous power of coercing the Government, whilst the Government might also have a dangerous power of influencing them. I believe, if Sydney had not one member, that it would still always be substantially represented, and its interests adequately supported by the officers of the Government, and those members elected by other constituencies, but who ordinarily resided in the city. I think I have now sufficiently vindicated the principle of this principle, by the arguments I have used, and the authorities I have quoted. The distribution it involves of the representation of the town population is, I think, amply sufficient. But I cannot see how we could consistently have taken any other course than that which the committee has adopted. So long as the Electoral Act of 1851 remained on the statute book, we have no right to depart from the principle of that bill. I repeat, I took an active part in that bill, and from the experience we have had of its working, I am convinced it was one of the wisest measures the Legislature have ever passed. (Cheers.) It has worked most beneficially; it has proved that it was quite fitted to insure a fair representation of all the interests of the country in the House. The principle of providing the representative faculty contained in that bill has given us a Legislature fitted, and with full power and authority from the country to frame a constitution for the colony. Therefore, seeing that the bill has worked well, it will take a great deal more argument than I have yet heard to induce me to depart from the principle contained in this clause, and to adopt another which I believe to be as unjust as it is dangerous. (Cheers.) This brings me to those clauses of the bill, which, out of doors, were more immediately the cause of the opposition against the measure, and which are the main subject matter of grievance in the petition which has been presented this afternoon. These are the clauses which provide for the composition of the Upper House, and which had raised an unexpected clamour against the Bill out of doors. The fourth clause of the Bill enacted—

IV. For the purpose of composing the Legislative Council of New South Wales, it shall be lawful for her Majesty before the time to be appointed for the first meeting of the said Legislative Council and Assembly, by an instrument under the Sign Manual, to authorize the Governor, with the advice of the Executive Council, in Her Majesty's name, by an instrument under the Great Seal of the said colony, to summon the said Legislative Council of the said colony, such persons, being not fewer than twenty, as Her Majesty shall think fit, and it shall be lawful for Her Majesty from time to time to authorise the Governor in like manner to summon to the said Legislative Council such other person or persons as Her Majesty shall think fit, and every person who shall be so summoned shall thereby become a member of the Legislative Council of the said colony: Provided always, that no person shall be summoned to the said Legislative Council who shall not be of the full age of twenty-one years, and a natural born subject of Her Majesty, or naturalized by an Act of the Imperial Parliament, or by an Act of the Legislature of the

said colony: Provided also, that no Judge of the Supreme Court of the said colony appointed during pleasure, nor any Judge of the same Court, or of any other Court within the said colony, who may be hereafter appointed a Judge *quandiu se bene gesserit*, shall be eligible to be summoned to the said Legislative Council; nor shall any prelate, priest, deacon, or minister of any religious denomination, whatever may be his title, rank, or designation, be so eligible.

Now in the observations I shall address to the House, I shall confine myself to this clause, as being the only one refering to the appointment of a Nominee Council. With the exception of the two provisoes against the nomination of any judge of the Supreme Court, or any minister of religion, the House thus to be erected, is identical in spirit with the act now in force for the government of the United Canadas. I am not certain whether the committee were unanimous or not in the opinion, that in this proposal to assimilate the constitution they had to frame in its outline, to the constitution of Canada, they were not free agents; but I must state, that when I remember that in our petitions and remonstrances we stated our readiness on the concession of the redress of those grievances of which we have so long complained, to form a government similar to that of Canada, the House will do well very seriously to consider whether it was not bound by that offer. That offer was made in these terms:

> That in order that Her Majesty's confidential advisers may have no excuse for the continuance of these abuses (alluding to the grievance before set out) we unhesitatingly declare that we are prepared, upon the surrender to the colonial legislature of the entire management of all our revenues, territorial as well as general, in which we include mines of every description, and upon the establishment of a constitution among us similar in its outline to that of Canada, to assume and provide for the whole cost of our internal government, whether civil or military, the salary of the Governor-General only excepted; and to grant to your Majesty an adequate civil list on the same terms as in Canada, instead of the sums appropriated in the schedules to the Imperial Act 13 and 14 Victoria, chap. 59.

I know not whether the House, or a majority of the House will say that they are bound by that offer; but when I moved for the committee at the commencement of the session, I distinctly told the House and the country that, in my belief and judgment, we were bound by that compact; and on that occasion I believe my honorable and learned friend the member for Cumberland agreed with me. (Cheers.) If the House and the country thought I was wrong in holding this opinion—if they thought that the condition made by one Minister and abrogated by another, released them from this compact—if they disapproved them from the open avowal I made of my feelings on this subject, how was it that the committee, during all its tedious sitting, did not receive some intimation of such disapproval? The committee undertook its duties with the announcement on my part at least that I considered the compact binding; and I must say that it is too bad at this, the eleventh hour, to say that the measure is inimical to the interests of the colony; that it is hampered by conditions, not imposed by the ministers, and that it will be disastrous to the liberties of the country. I think the committee, the house, and the country has great cause to complain, not of those who have brought up the Bill, but of the standing aloof of those who dissent from the principle I asserted, and left us in the belief that we were framing a measure in accordance with the general voice of the country. (Cheers.) No doubt you will hear to-night a great deal about the conversions which have recently taken place among statesmen in England—of the changed opinions of Earl Grey, the Duke of Newcastle, Mr. Gladstone, and others, and also of those who ought to be really and essentially a conservative body, the members of the Privy Council. But conservative as that body ought to be, it seems that they veer and twist about pretty much as the Minister of the day wants them. No doubt Earl Grey continued to infuse his opinions into the Privy Council to induce them to support his constitution for the Cape of Good Hope, in the same way as he directed their Councils when he proposed his famous constitution for this colony. The opinions of the Privy Council on both occasions were but the echo of the opinion of the Minister, and they will

continue to be but an echo of the opinion of the Minister again. But with the sanction of these converted statesmen the experiment of a constitution at the Cape is now being tried—is now at work; and how is it found to answer? Why if you will take the trouble to read the Parliamentary papers which are in our own library, and which consist of a report of the proceedings and remonstrances at the Cape of Good Hope, which preceded the working of this constitution—this model experiment—you will find that nearly the whole of the influential colonists are opposed to and complain of it. We find that it is leading them to all sorts of political danger,—that it subjects their legislation in all its branches to the caprice and domination of even the colored and degraded races. And what is the principle of that constitution? It is that every man who has a freehold worth £25, or a leasehold property worth £5, and every person receiving a salary of £50 a year, and every servant earning wages of £25 a year, with board and lodging, shall vote for the election of members of both houses. I ask, when these two Legislative Chambers were elected on the same principle, and by the same constituents, what can they be but mere duplicates of each other? How can either of the houses so constituted possess a particle of the conservative element? The result will be at length to give the numerical majority to the lowest class; to the vagabond Hottentots, and the most ignorant and violent of the community, until the complete domination of the government is obtained by the class who have an equal right, an equal voice in the representation of the country with all others, as soon as they can accumulate the paltry sum of £25. God forbid that such a miserable form of representation should be sanctioned here! The very minister who proposed it for the Cape, admitted in a despatch to the Governor of this colony that the Legislative Council of New South Wales was a more competent authority than Parliament itself to frame a constitution for the colony. Why after such an admission has the noble Secretary taken it upon himself to frame a constitution for the Cape? Why has he not given to the people of the colony a duty, for which, from its peculiar circumstances, they alone were fitted to perform? The descendants of Dutch burghers at the Cape were not likely, if left to themselves, to choose the form of constitution adopted in other British colonies. They most probably, inheriting the habits of Dutchmen, would prefer looking to the father-land for the basis of their constitution, and it would not have been, if left to themselves, assimilated in any way to one adapted for a purely British colony. As it was, the new constitution framed at home, and thus forced on the colonists of South Africa by the Colonial Minister and the Governor of the colony, throws the greatest amount of power into the hands of the lowest and most degraded portion of the community; and what can be predicted of such a form of government but unbridled anarchy? Thus the white races, the brave and noble fellows who have resisted the bloody invasions of the colored tribes, are now to be governed by a system originating in the dictation of Exeter Hall, whilst they are engaged in deadly struggles to preserve their lands from pillage and their wives and children from frightful outrage. (Hear.) What must be the inevitable result? They must rise up against such a constitution and put it out of the colony! (Loud cheers.) I believe that in the whole range of the British colonies this new constitution of the Cape is the sole instance of the elective principle ruling in the constitution of an upper house. (Hear.) Let those who now advocate that principle for Australia look to the early history of the American States. They would see nominated councils in some overridden by similar councils in England, in others nominated councils, but in all some power of legislation originating in and deriving its authority from the king. All worked well to a certain extent; no objection was made to the nominee principle, until the appointment of the Secretary of State to the colonies, and the objectionable right of veto,

and the interferences of the crown were resorted to. The precedents which those colonies afford are of the utmost consequence for a British colony to attend to, because they refer to the acts of British colonists placed in circumstances of extraordinary interest. Surrounded by hostile tribes, with interminable forests to clear, foreign and adverse people and tribes, ever in their neighbourhood, these dauntless pioneers of civilization pursued their arduous course, and under a form of government now decried by a section in this colony, grew up to be a powerful, to be a moral, to be a religious people. (Hear.) Their form of government they cherished to the last moment of their connection with England, and some of those communities cherished it even now with the same reverence. (Hear, hear.) These are historical facts, which ought to weigh much more than a million theories propounded by a Gladstone. (Hear.) Indeed I am at a loss to know how the statesmen of England can acquire the knowledge of what is required by the colonists so well as they themselves. (Cheers) How could they know their objects and their wants? What experience has England of the real position, the wants, and wishes of New South Wales? If English statesmen were anxious to obtain information, where (in the absence of any work of high authority) could they seek for it except from the most erroneous and polluted sources? (Hear, and oh.) I emphatically repeat my question, "Where, except from the most polluted sources?" (Loud and prolonged cheers.) Look to certain books and brochures lately given to the British public under a name not necessary to mention in this Council, and I will ask honorable members to say whether information could be sought from a more depraved and polluted source? (Hear, hear, hear.) I will ask this Council whether the statements contained in those books are true or false; and whether any minister of the crown or any other individual seeking information as to the real state of this colony could rely upon any assertion contained in them. (Hear, hear.) The anarchist whose name is affixed to them has set forth that the only constitution which the colonists of New South Wales will accept, which they are resolutely demanding, and which they are determined to obtain, or else "cut the painter" from England, is a constitution similar in all its provisions to that of the United States, viz., a federal government. He describes them as demanding a great federation of all the colonies of Australia, of New South Wales, Victoria, Tasmania, and South Australia; each state to have a separate local government, and sending members to Congress to form a great central government. (Shouts of laughter.) Absurd as is this notable scheme, treated as it would be, if only propounded here, by the utter derision of the people, the writer has had the audacity to describe it as peremptorily demanded by the colonists; the penalty of their refusing it being, their cutting the painter. (Derisive laughter.) Now supposing that any minister of the day could be so weak as to place reliance on such abominable trash as this, what must be the inevitable result? (Loud cries of hear,) I am afraid I shall weary the Council by the remarks and the numerous authorities to which I am desirous to refer, in regard to the construction of the upper house. (Cries of no, no, and loud applause from all sides.) The question before the Council is so momentous a one, so important in its results to generations to come, that I know the House will deem no deliberation too careful, no discussion too long. (Hear.) I sincerely hope that the constitution the Council is about to frame will be a constitution that will be a lasting one—a conservative one—a British, not a Yankee constitution. (Loud and prolonged cheers.) I hope that it will be one under which in all times to come the people of New South Wales will repose in safety and security, and that it will assimilate in every possible respect with the constitution of the glorious father-land. (Loud cheers.) Seeing that the measure before the House is based on the high principles to which I have alluded, I do not think it would be decent to confine my remarks to my

own private opinions, nor to the opinions of those who have assisted to frame the Bill; I will therefore go to the most eminent authorities on constitutional history, to those who have treated of the constitution of Great Britain, and to those who have treated of the constitutions of British colonies and of the United States. It is only by carefully drawing contrasts between the working and the results of all, that the Council can form a just conclusion in deciding on the form of constitution to be adopted here. I have read with much attention the speeches of Mr. Gladstone on the structure of an Upper House; and I find that in the preference given by the right honourable gentleman to the introduction of the elective principle in the Canadian Upper Chamber, he was guided by the fact that the desire for its introduction there had not emanated from the democratic, but from the conservative party of Canada. But the circumstances of that possession of the Crown and of this are widely different. Two races there have long contended for the supremacy; and when some twelve years ago the two legislatures were combined in one, it was found that after a contest of fifty years between the French and English parties, the former obtained the majorities in both houses. How this was effected, whether by superior combination or dexterity, it is needless to inquire, but the result has been that the British party, disgusted at the measures taken successfully to swamp it, and finding the nominee principle working in their disfavour, by reason of the tactics of their French rivals, have petitioned to have the present Upper House abolished and a new Chamber elected. (Hear, hear, from Mr. Darvall.) However, the differences and successful or unsuccessful manœuvres of those divided races can form no reasonable precedent for the one united race of this colony; and the project of an elective Upper Chamber for Canada was only a proposition, now certainly favourably considered by some parties in England, but one which I very much doubt can be carried out. At all events, it can form no precedent for us. (Loud cheers.) Whilst on this topic, I will observe that honourable members have doubtless, with myself, seen lately in several numbers of the Sydney press some very able articles taken from recent American journals, which showed that the question of a nominated upper chamber was growing into favourable consideration with a large and influential portion of the thoughtful citizens of the United States. They could not but reflect upon the scramble for places, the jobberies of office, and the various other notorious evils, which were the consequence of the elective principle ruling throughout their system of legislation; and conclusions as to the superiority of the form of the Canadian constitution were drawn by some of their ablest men. (Hear.) If the Council would look to the whole range of the British colonies—throughout the West Indies and British America—and if it were considered that the nominee principle was universal throughout this extensive range—that it has ruled for nearly two centuries in some, for a great length of time in all—that, so far as can be collected from the best authorities on colonial matters, from the opinions of the local press, a single objection has never been raised against it; surely these are facts which ought to have great weight here. (Hear, hear.) I believe that, except in the peculiar case of Canada, no objection has ever been expressed, or ever existed; and I am of opinion, that the great prosperity enjoyed by the West India colonies (Jamaica especially), before the abolition of the slave trade, was enhanced by the justice and wisdom of the local Legislatures. I will here observe, that a certain Sydney agitator, who sets himself up as knowing every thing, has denied that Jamaica has an upper house, but that the second chamber there is called the Privy Council, and has no power of legislation. Now this is not the case. In the first instance, the body in question was certainly only constituted as a council of advice; but it soon, in its deliberations, usurped the functions of legislation, and ever since has exercised the powers of an upper house of the le-

gislature—powers which have never been questioned nor opposed. (Hear.) Seeing, therefore, that the form of constitution now proposed for New South Wales exists, and has long existed, in the wide range already mentioned, that no complaints (excepting those arising from the jealousies of antagonistic races) have been made against it, I would ask the Council, whether this colony is now to give up the great boon which it so earnestly prayed for four years ago? (Hear, hear.) And when it is remembered that this boon was desired because the colonists expressed their wish to be under a form of government which should assimilate as nearly as possible to the British Constitution, can we now adopt any other precedent than a nominated Upper House? (Loud and continued cheers.) We have then deliberately chosen the best model, and if we now deviate from that great landmark most assuredly we shall fall into a fatal error. (Hear, hear, hear.) The noble institutions of our British forefathers were wisely adopted two centuries ago by British colonists; and I sincerely hope that their example will be followed, not only by a great majority of the House, but that it will be cordially approved of by a great majority of thinking and respectable people out of doors. (Loud applause.) And this brings me to the important principle involved in the hereditary clauses of the bill. As the report of the Select Committee states, they are framed to a certain extent in accordance with analogous clauses to be found in the Imperial Act 3 George III., c. 31, for making more effectual provision for the government of the province of Quebec. The principle of conferring an hereditary right of being summoned to the Legislative Council, upon those upon whom the Sovereign might confer hereditary titles, rank, or dignity, is therein set forth, and was maintained by Pitt, Burke, Wilberforce, and all the great statesmen of that day, except Fox, whose attempt to defeat the measure failed, and the clauses were carried, enacting that the Sovereign might confer hereditary titles upon the colonists of Quebec, coupled with seats in the Upper House, which were to descend to their sons. The design of Pitt was to establish an hereditary class in Quebec, upon the same principle as that which rules in the case of the peerage of England. But in this age of the world, the committee were prompt to see that this hereditary right to seats in the Council could not be maintained, for it very often happens that the most brilliant fathers have the most stupid sons; and as talent and ability are not naturally hereditary, it could not for a moment be proposed, that the seats of those upon whom hereditary titles might be conferred, should descend to those who should come after them. But the committee did set forth their opinion that the creation of hereditary titles, leaving it to the option of the crown to annex to the titles of the first patentee a seat for life in the Upper House, and conferring on the original patentees and their descendants, inheritors of their titles, a power to select a certain number of their order, to form in conjunction with the original patentees then living, the Upper House of Parliament, would be a great improvement on any form of legislative council hitherto tried or recommended in any British colony; and they expressed their belief that an Upper House framed on this principle, whilst it would be free from the objections which have been urged against the House of Lords, on the ground of the hereditary right of legislation which they exercise, would lay the foundation of an aristocracy which from their fortune, birth, leisure, and the superior education which these advantages would superinduce, would soon supply elements for the formation of an Upper House, modelled, as far as circumstances will admit, upon the analogies of the British constitution. Now it must be borne in mind, that the principle of electing a portion of the Upper House from those holding hereditary titles is one which cannot be carried into practice for the next forty or fifty years; it is to be seen therefore that the committee proposed to sow the seed of an institution which will have ample time allowed it to grow to maturity. (Cheers.)

And it is also to be remembered that this principle of forming a house, the one portion patented by the Sovereign, and the other elected by those holding hereditary rank, obtains at present in the House of Lords in the case of the election of Scotch and Irish peers, upon whom no hereditary right of legislation is conferred, but only the hereditary right of election. (Hear.) When a generation having this hereditary right amongst them arises here, I (recalling the menaces of a certain portion of the colonial press, its tendencies to democracy, its recklessness of consequences) predict that it will be found a good and stable bulwark, necessary for the defence of good government and conservative institutions. A powerful body will be formed of men of wealth, property, and education—men not raised from any particular section of the community, but from every class that has the energy to aspire to rank and honor. (Hear.) The want of an incentive to a laudable ambition which the prospect of obtaining a title affords, is declared by almost all who have considered the subject, to be one of the greatest blemishes in the American constitution. (Hear, hear, hear.) It is well known that the great Washington had anxiously contemplated the introduction of a titled order into the constitution of the States, but it was an incident in the career of that illustrious man that he lived to become an object of suspicion to the ungrateful country he had served so faithfully and so long. (Hear, hear.) True, posterity has done justice to his memory and fully recognised his exalted patriotism, his noble virtues, his eminent services, the purity of his intentions; but in his lifetime he was doomed to find how shallow and transient is popular favour. (Loud cries of hear.) In reference to the hereditary clauses I would observe, that they have been adverted to out of doors as if they only were intended to include one class. This is a mistake; and no man, however humble, can be debarred from aspiring to see his children educated and looking forward to achieve a position of rank and honor, and occupied in far higher pursuits than the money-making schemes of this filthy, lucre-loving community. (Loud cheers and laughter.) What incentive is there now held out to those who, having made fortunes here, desire to see their sons occupied in higher pursuits than those of trade? Here are no poor, no middle class, in the sense in which these words are used at home; all are rich; yet what do people aspire to here, who having accumulated perhaps £50,000 or £100,000 do not care to pursue the drudgery of money-making any longer? I will tell the Council: they aspire to a speedy migration to other lands, seeing it is better for themselves and families to build up homes where the democratic and levelling principles so rapidly increasing here are scouted; and where there are high and honourable pursuits and distinctions to which the children of the prudent may aspire. (Loud and prolonged cheers.) Who would stay here if he could avoid it? Who, with ample means, would ever return, if once he left these shores, or even identify himself with the soil, so long as selfishness, ignorance, and democracy, hold sway? (Renewed cheers) And yet what a glorious country would this be to live in if higher and nobler principles prevailed; blessed with the most bounteous gifts of Providence, it affords in its rich and illimitable tracts happy homes for millions yet unborn. (Hear, hear.) With regard to the clauses in question, I know not the opinions of honorable members, but I can only say that if they be not adopted, the colony will be virtually disfranchised. (Loud cries of hear from all sides.) Why, I ask, if titles are open to all at home, should they be denied to the colonists? Why should such an institution as the House of Lords (which is an integral part of the British constitution) be shut out from us? I cannot now "pause for a reply," but I nevertheless should like to hear my honorable and learned friend (Mr. Darvall) answer that interrogatory. (Hear, hear, hear.) A great deal of ridicule has been cast on these hereditary clauses; but those who cast it knew very little of those who proposed them. (Hear) They had been twitted with attempting

to create a mushroom, a Brummagem, a bunyip aristocracy; but I need scarcely observe that where argument fails ridicule is generally resorted to for aid. I seldom care to allude to personal attacks upon myself, and if I allude to some which have been recently made, it is but to express my utter contempt for the vagabonds who made them. I am not the man to be deterred from pursuing the course which I conscientiously believe to be the right one. I may be mistaken in my opinions; but I am assured that in no wise have I forfeited the confidence and respect of those who well know the principles which have ever guided me in my public career. (Loud applause from all sides.) The paltry efforts of my dirty revilers therefore do not affect me. If it be true that there is any blot on my escutcheon (if I have one), which has not been of my handiwork, what blame on that account can attach to me. (Loud cries of hear.) I deem it sufficient to answer for myself alone. I submit my whole public life to the severest scrutiny, and if it will bear that test I do not see on what principle I can be blamed, or in any way held responsible for acts which it has not been in my power to prevent, nor in my choice to rectify. (Cheers.) I speak for myself alone; and, in the language of Pope, will say—

> Honour and shame from no condition rise,
> Act well your part; there all the honour lies.

(Loud applause.) This is my reply to the revilings of the dirty ruffians who have cast them. (Hear, hear.) I have been taunted with entertaining a desire to be one of the hereditary legislators of the colony. Whether I do or do not entertain that desire is a matter of very little moment; but admitting that I do, is it an improper object of ambition? or am I to be denounced for cherishing the hope that some son of mine will succeed me in the councils of my country. (Loud cheers.) If such an ambition were felt by some 50 or 60 other gentlemen of this colony, from whom ultimately might spring an honorable, wealthy, and educated aristocracy, I would ask are those mischiefs to be avoided, or ends to be desired and consummations devoutly to be wished for? Having thus adverted to the main principles of the bill, I will invite the attention of the Council to the constitutions of various States of America, and take opinions which have been furnished by the most eminent authorities, both British and foreign, as to their present and future tendencies, and their ultimate results. I would, with this view, in the first place, call the attention of the House to the Constitution of Congress. From the American Almanac of 1852 I proceed to read a description of what the Congress of the United States is.

The Congress of the United States consists of a Senate and House of Representatives, and must assemble at least once every year, on the first Monday of December, unless it is otherwise provided by law." The Senate is composed of two members from each State, and of course the regular number is now 62. They are chosen by the legislatures of the several States for the term of six years, one-third of them being elected biennially. The Vice-president of the United States is the President of the Senate, in which body he has only a casting vote, which is given in case of an equal division of the votes of the senators. In his absence a President is chosen *pro tempore* by the Senate. The House of Representatives is composed of members from the several States, elected by the people for the term of two years. The representatives are apportioned among the different States according to population. The thirty-second Congress is chosen according to the Act of Congress of 1842, the ratio being "one representative for every 70,680 persons in each State, and one additional representative for each State having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the Constitution of the United States." The law of 1842 also requires, that the representatives of each State "shall be elected by districts composed of a contiguous territory, equal in number to the number of representatives to which the said State may be entitled, no one district electing more than one representative." The present number of representatives is 233, and there are four delegates, one each from Oregon, Minesotah, Utah, and New Mexico, who have a right to speak, but not to vote. Since the 4th of March, 1817, the compensation of each member of the Senate and House of Representatives has been eight dollars a day, during the period of his attendance in Congress, without deduction in case of sickness, and eight dollars for every twenty miles' travel on the usual road in going to and returning from the seat of Government. The compensation of the President of the Senate, *pro tempore*, and the Speaker of the House of Representatives is sixteen dollars a day.

I will next invite your attention to a brief analysis of some of the leading provisions in the constitutions of the several states which compass this great federation :

1st. Qualification of Voters. There are property qualifications in Connecticut, Virginia, North Carolina, and South Carolina. Payment of taxes and citizenship required in the aforesaid states, and in New Hampshire, Vermont, New Jersey, Pennsylvania, Delaware, Georgia, Louisiana, and Ohio. Citizenship and residence in the State for three months, in Maine, Maryland, Alabama, Arkansas, Kentucky, Missouri, Tennessee, Indiana, and Michigan. Right of voting limited to the whites in all the States except the six States of New England, Pennsylvania, and Georgia. In New York coloured persons may vote if they possess a freehold of 250 dollars or more. 2nd. Qualification of members of State legislatures. Freehold or property qualification on thirteen States, viz , New Hampshire, Massachussets, Connecticut, New York (for senators), New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, Mississippi, Louisana, and Tennessee. Payment of taxes in four States, viz., Missouri, Ohio, Indiana, and Illinois. Citizenship and residence of various terms, in all the foregoing and in Maine, Vermont, Pennsylvania, Maryland, Alabama, Arkansas, Kentucky, and Michigan. The legislative body is styled the 'General Court" in Maine, New Hampshire, and Massachussets. The legislature in New York, and in all others, 'General Assembly.' The lower branch is elected for one year in fifteen States: for two years in Delaware, North Carolina, South Carolina, Mississippi, Louisana, Arkansas, Missouri, Tennessee, and Illinois. The Senate or Upper House is selected for four years in New York, Virginia, South Carolina, Mississippi, Louisiana, Arkansas, Missouri, Kentucky, and Illinois ; for three years in Alabama and Indiana ; for two years in Ohio and Michigan ; for five years in Maryland ; and for one year in all the others. 3rd. The Executive—Powers and mode of election :—The Governor is chosen by the people annually in the six states of New England ; by the people for two years in eight states, viz , New York, North Carolina, Georgia, Alabama, Mississippi, Tennessee, Ohio, and Michigan ; by the people for three years in two states, Pennsylvania and Indiana ; by the people for four years in five states, Delaware, Arkansas, Missouri, Kentucky, and Illinois. By the legislature or assembly for one year in New Jersey and Maryland ; by the legislature for two years in South Carolina ; and for three years in Virginia ; and in Louisiana, by the assembly, for four years, from the two candidates having the greatest number of votes, from the people. There are certain restrictions on the re-election of the Governor in Maryland, Virginia, North Carolina, Georgia, Mississippi, Missouri, Kentucky, Tennessee, Ohio, Indiana, and Illinois. The Governor has the pardoning power, either alone, or with his Council, in all the States, except Rhode Island, where he has only a vote in Council ; he has official patronage alone in Maine, New Hampshire, Massachussets, New York, Pennsylvania, Delaware, Maryland, and Louisiana, and with the Senate in Missouri, Kentucky, Indiana, Illinois, and Michigan ; he has a qualified negative, or power, of vetoing the Acts of the Legislatures, unless re-enacted by a two-thirds vote, in Maine, New Hampshire, Massachussets, Vermont, Connecticut, New York, Pennsylvania, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Kentucky, Indiana, Illinois, and Michigan. 4th. The judiciary is thus appointed. By the Governor and Legislature, or Senate, or Council, in Maine, New Hampshire, Massachussets, New York, Maryland, Louisiana, Missouri, Indiana, and Michigan. By the legislature alone in Vermont, Rhode Island, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Alabama, Arkansas, Tennessee, Ohio, and Illinois. By the Governor alone in Pennsylvania, Delaware, and Kentucky. By popular vote in Mississippi. The term of office of the superior judges is for life (or during good behaviour.) In Massachussets, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Louisiana, Kentucky, and Illinois ; until 70 years of age, in Maine, New Hampshire, Connecticut ; until 65 years of age in Missouri ; until 60 in New York. From periods varying from two to twelve in New Jersey, Georgia, Alabama, Mississippi, Arkansas, Tennessee, Ohio, Indiana, and Michigan, and for one year in Rhode Island and Vermont. They are removable by impeachment in sixteen states ; by conviction of misconduct in a court of law in Maryland ; by joint resolution of senate and two-thirds of assembly in New York "

I will now proceed to quote various passages from the very celebrated work of M. de Tocqueville, who was himself a democrat, at one time connected with the provisional government established in France under the administration of M. Lamartine. Consequently he was a man likely to regard democracy with a favorable eye, and to see no faults in it but such as were undoubted and palpable. The first passage I will quote will show M. de Tocqueville's opinion as to the effects of this system of democracies on the social condition of the people of Amercia. The first and most baneful of its effects, according to this author, is that it excludes from power the upper and best educated classes, and throws the government of the country completely into the hands of the lower classes. On this point the author writes,

It sometimes happens in a people amongst which various opinions prevail, that the balance of the several parties is lost; and one of them obtains an irresistible preponderance, overpowers all obstacles, harasses its opponents, and appropriates all the resources of society to its own purposes. The vanquished citizens despair of success, and they conceal their dissatisfaction in silence and in a general apathy. The nation seems to be governed by a single principle, and the prevailing party assumes the credit of having restored peace and unanimity to the country. But this apparent unanimity is merely a cloak to alarming dissensions and perpetual opposition. This is precisely what occurred in America; when the democratic party got the upper hand, it took exclusive possession of the conduct of affairs, and from that time the laws and the customs of society have been adapted to its caprices. At the present day the more affluent classes of society are so entirely removed from the direction of political affairs in the United States, that wealth, far from conferring a right to the exercise of power is rather an obstacle than a means of attaining to it. The wealthy members of the community abandon the lists through unwillingness to contend, and frequently to contend in vain against the poorest classes of their fellow-citizens. They concentrate all their enjoyments in the privacy of their homes, where they occupy a rank which cannot be assumed in public; and they constitute a private society in the State, which has its own tastes and its own pleasures. They submit to this state of things as an irremediable evil, but they are careful not to show that they are galled by its continuance; it is even not uncommon to hear them laud the delights of a republican government, and the advantages of democratic institutions when they are in public. Next to hating their enemies, men are most inclined to flatter them. Mark, for instance, that oppulent citizen, who is as anxious as a Jew of the middle ages to conceal his wealth. His dress is plain—his demeanour unassuming; but the interior of his dwelling glitters with luxury, and none but a few chosen guests, whom he haughtily styles is equals, are allowed to penetrate into this sanctuary. No European noble is more exclusive in his pleasures, or more jealous of the smallest advantage which his privileged station confers upon him. But the very same individual crosses the city to reach a dark counting house, in the centre of traffic, where every one may accost him who pleases. If he meets his cobbler upon the way, they stop and converse. The two citizens discuss the affairs of the State, in which they have an equal interest, and they shake hands before they part. But beneath this artificial enthusiasm, and these obsequious attentions to the preponderating power, it is easy to perceive that the wealthy members of the community entertain a hearty distaste to the democratic institutions of their country. The populace is at once the object of their scorn and of their fears. If the maladministration of the democracy ever brings about a revolutionary crisis, and if monarchical institutions ever become practicable in the United States, the truths of what I advance will become obvious. The two chief weapons which parties use in order to ensure success are the public press and the formation of associations.

One of the most disastrous consequences of this state of things, in the opinion of this author, is that the most talented individuals are rarely if ever now placed at the head of the Government, and that as a necessary result the best educated and most distinguished men in America take no part in public affairs. He says—

Many people in Europe are apt to believe without saying it, or to say without believing it, that one of the great advantages of universal suffrage is that it entrusts the direction of public affairs to men who are worthy of the public confidence. They admit that the people is unable to govern for itself, but they aver that it is always sincerely disposed to promote the welfare of the State, and that it instinctively designates those persons who are animated by the same good wishes, and who are the most fit to wield the supreme authority. I confess that the observations I made in America by no means coincide with these opinions. On my arrival in the United States, I was surprised to find so much distinguished talent among the subjects, and so little among the heads of the Government. It is a well authenticated fact, that at the present day the most talented men in the United States are rarely placed at the head of affairs; and it must be acknowledged that such has been the result in proportion as democracy has outstepped all its former limits. The race of American statesmen has evidently dwindled most remarkably in the course of the last fifty years. Several causes may be assigned to this phenomenon. It is impossible, notwithstanding the most strenuous exertions, to raise the intelligence of the people above a certain level. Whatever may be the facilities for acquiring information — whatever may be the profusion of easy methods and of cheap science, the human mind can never be instructed and educated without devoting a considerable space of time to those objects. The greater or the lesser possibility of subsisting without labour is, therefore, the necessary boundary of intellectual improvement. This boundary is more remote in some countries, and more restricted in others; but it must exist somewhere as long as the people is constrained to work in order to procure the means of physical subsistence: that is to say, as long as it retains its popular character. It is therefore quite as difficult to imagine a state in which all the citizens should be very well informed, as a state in which they should be all wealthy; these two difficulties may be looked upon as correlative. It may very readily be admitted that the mass of the citizens are sincerely disposed to promote the welfare of their country; nay, more, it may even be allowed that the lower

classes are less apt to be swayed by considerations of personal interest than the higher orders; but it is always more or less impossible for them to discern the best means of obtaining the end which they desire with sincerity. Long and patient observation, joined to a multitude of different notions, is required to form a just estimate of the character of a single individual; and can it be supposed that the vulgar have the power of succeeding in an enquiry which misleads the penetration of genius itself? The people have neither the time nor the means which are essential to the prosecution of an investigation of this kind. Its conclusions are hastily formed from a superficial inspection of the more prominent features of a question. Hence it often assents to the clamour of a mountebank, who knows the secret of stimulating its tastes, whilst its truest friends frequently fail in their exertions. Moreover, the democracy is not only deficient in that soundness of judgment which is necessary to select men really deserving of its confidence, but it has neither the desire nor the inclination to find them out. It cannot be denied that democratic institutions have a very strong tendency to promote the feeling of envy in the human heart: not so much because they afford to every one the means of rising to the level of any of his fellow citizens, as because these means perpetually disappoint the persons who employ them. Democratic institutions awaken and foster a passion for equality which they can never entirely satisfy. This complete equality eludes the grasp of the people at the very moment at which it thinks to hold it fast, and 'flies,' as Pascal says, 'with eternal flight.' The people is excited in the pursuit of an advantage, which is the more precious because it is not sufficiently remote to be unknown, or sufficiently near to be enjoyed. The lower orders are agitated by the chance of success; they are irritated by its uncertainty, and they pass from the enthusiasm of pursuit to the exhaustion of ill success, and lastly to the acrimony of disappointment. Whatever transcends their own limits appears to be an obstacle to their desires, and there is no kind of superiority, however legitimate it may be, which is not irksome in their sight. It has been supposed that the secret instinct which leads the lower orders to remove their superiors as much as possible from the direction of public affairs, is peculiar to France. This, however, is an error; the propensity to which I allude is not inherent in any particular nation, but in democratic institutions in general: and although it may have been heightened by peculiar political circumstances, it owes its origin to a higher cause. In the United States the people is not disposed to hate the superior classes of society; but it is not very favourably inclined towards them, and it carefully excludes them from the exercise of authority. It does not entertain any dread of distinguished talents, but it is rarely captivated by them; and it awards its approbation very sparingly to such as have risen without the popular support. Whilst the natural propensities of democracy induce the people to reject the most distinguished citizens as its rulers, these individuals are no less apt to retire from a political career in which it is almost impossible to retain their independence or to advance without degrading themselves. This opinion had been very candidly set forth by Chancellor Kent, who says, in speaking with great eulogiums of that part of the constitution which empowers the Executive to nominate the Judges—'It is indeed probable that the men who are best fitted to discharge the duties of this high office would have too much reserve in their manners, and too much austerity in their principles, for them to be returned by the majority at an election where universal suffrage is adopted' Such were the opinions which were printed without contradiction in America in the year 1830! I hold it to be sufficiently demonstrated that universal suffrage is by no means a guarantee of the wisdom of popular choice; and that whatever its advantages may be, this is not one of them.

The next quotation I shall make shows M de Tocqueville's opinion of the effects of this democracy on the constitution of the supreme legislature of America. Its effects on the constitutions of the several state legislatures may be collected from the revolting scenes which are continually recorded in the daily press of America, and which shew that even in the midst of the deliberations of these bodies, the bowie knife and revolver are frequently resorted to by members of these bodies with deadly effect. M. de Tocqueville, says—

There are certain laws of a democratic nature which contribute, nevertheless, to correct, in some measure, the dangerous tendencies of democracy. On entering the House of Representatives of Washington, one is struck by the vulgar demeanour of that great assembly. The eye frequently does not discover a man of celebrity within its walls. Its members are almost all obscure individuals, whose names present no associations to the mind; they are mostly village lawyers, men in trade, or even persons belonging to the lower classes of society. In a country in which education is very general it is said that the representatives of the people do not always know how to write correctly. At a few yards distant from this spot is the door of the Senate, which contains within a small space a large proportion of the celebrated men of America. Scarcely an individual is to be perceived in it who does not recall the idea of an active and illustrious career. The senate is composed of eloquent advocates, distinguished generals, wise magistrates, statesmen of note, whose language would at all times do honour to the most remarkable parliamentary debates of Europe. What then is the cause of this strange contrast, and why are the most able citizens to be found in one assembly rather than in the other? Why is the former body remarkable for its vulgarity and its poverty of talent,

whilst the latter seems to enjoy a monopoly of intelligence and sound judgment? Both of these assemblies emanate from the people; both of them are chosen by universal suffrage; and no voice has hitherto been heard to assert, in America, that the Senate is hostile to the interests of the people. From what cause, then, does so startling a difference arise? The only reason which appears to me adequately to account for it is, that the House of Representatives is elected by the populace directly, and that the Senate is elected by elected bodies. The whole body of the citizens names the legislature of each State, and the federal constitution converts these legislatures into so many electoral bodies, which return the members of the senate. The senators are elected by an indirect application of universal suffrage, for the legislatures which name them are not aristocratic or privileged bodies which exercise the electoral franchise in their own right, but they are chosen by the totality of the citizens; they are generally elected every year, and new members may constantly be chosen who will employ their electoral rights in conformity with the wishes of the public. But this transmission of the popular authority through an assembly of chosen men, operates an important change in it, by refining its discretion and improving the forms which it adopts. Men who are chosen in this manner accurately represent the majority of the nation which governs them; but they represent the elevated thoughts which are current in the community, the generous propensities which prompt its nobler actions, rather than the petty passions which disturb, or the vices which disgrace it. The time may be already anticipated at which the American Republics will be obliged to introduce the plan of election by an elected body more frequently into their system of representation, or they will incur no small risk of perishing miserably amongst the shoals of democracy. And here I have no small scruple in confessing that I look upon this peculiar system of election as the only means of bringing the exercise of political power to the level of all classes of the people. Those thinkers who regard this institution as the exclusive weapon of a party, and those who fear, on the other hand, to make use of it, seem to me to fall into as great an error in the one case as in the other.

I will in the next place refer to the mutability of the American laws; to the causes of it according to the opinions of this author, and to the admissions both of Hamilton and Jefferson, two of the staunchest supporters of the American constitution: and, I may add, two of the most distinguished statesmen America has yet produced. He writes—

When elections recur at long intervals, the State is exposed to violent agitation every time they take place. Parties exert themselves to the utmost in order to gain a prize which is so rarely within their reach; and as the evil is almost irremediable for the candidates who fail, the consequences of their disappointed ambition may prove most disastrous. If, on the other hand, the legal struggle can be repeated within a short space of time, the defeated parties take patience. When elections occur frequently, their recurrence keeps society in a perpetual state of feverish excitement, and imparts a continual instability to public affairs. Thus, on the one hand, the state is exposed to the perils of a revolution; on the other, to perfect mutability—the former system threatens the very existence of the Government, the latter is an obstacle to all steady and consistent policy. The Americans have preferred the second of these evils to the first; but they were led to this conclusion by their instinct much more than by their reason; for a taste for variety is one of the characteristic passions of democracy. An extraordinary mutability has, by this means, been introduced into their legislation. Many of the Americans consider the instability of their laws as a necessary consequence of a system whose general results are beneficial. But no one in the United States affects to deny the fact of this instability, or to contend that it is not a great evil. Hamilton, after having demonstrated the utility of a power which might prevent, or which might at least impede, the promulgation of bad laws, adds: 'It may, perhaps, be said that the power of preventing bad laws, includes that of preventing good ones, and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws which form the greatest blemish in the character and genius of our government.'—*Federalist, No.* 73. And, again, in No. 62 of the same work he observes, 'The facility and excess of law-making seem to be the diseases to which our governments are most liable * * * * * The mischievous effects of the mutability in the public councils arising from a rapid succession of new members would fill a volume; every new election in the State is found to change one-half of its representatives. From this change of men must proceed a change of opinions and of measures, which forfeits the respect and confidence of other nations, poisons the blessings of liberty itself, and diminishes the attachment and reverence of the people towards a political system which betrays so many marks of infirmity.' Jefferson himself, the greatest democrat whom the democracy of America has yet produced, pointed out the same evils. 'The inability of our laws,' said he, in a letter to Madison, 'is really a very serious inconvenience. I think we ought to have obviated it by deciding that a whole year should always be allowed to elapse between the bringing in of a bill and the final passing of it. It should afterwards be discussed and put to the vote without the possibility of making any alteration in it; and if the circumstances of the case require a more speedy decision, the question should not be decided by a

simple majority, but by a majority of at least two-thirds of both Houses.'

Sir, I admit, that while M. de Tocqueville speaks as it will be seen in the most disparaging terms of some of the more prominent tendencies of these novel democratic institutions; whilst he proves conclusively that the lower houses of legislature throughout the whole extent of the Union are composed of the coarsest and most unpolished materials, he draws a very different and highly flattering picture of the Senate at Washington, as compared with the House of Representatives. I consider it but fair, therefore, to those who are in favor of an elected Upper House, that I should give, at length, as I have done in one of the foregoing extracts, his account of the remarkable difference in the elements of those two bodies, and the causes which he assigns for the unmistakeable superiority of one over the other. Sir, according to this author, another of the bad consequences of the American democracy is, that it opens out no career to public men of great note and talent, and that, as a necessary consequence of this great want, public offices are for the most part filled with corrupt and incompeient functionaries. He says—

In nations in which the principle of election extends to every place in the State, no political career can, properly speaking, be said to exist. Men are promoted, as if by chance, to the rank which they enjoy, and they are by no means sure of retaining it. The consequence is, that in tranquil times public functions offer but few lures to ambition. In the United States the persons who engage in the perplexities of political life are individuals of very moderate pretensions. The pursuit of wealth generally diverts men of great talents and of great passions from the pursuit of power; and it very frequently happens that a man does not undertake to direct the fortune of the state until he has discovered his incompetence to conduct his own affairs. The vast number of very ordinary men who occupy public stations is quite as attributable to these causes as to the bad choice of the democracy. In the United States I am not sure that the people would return the men of superior abilities who might solicit its support, but it is certain that men of this description do not come forward.

Sir, another tendency, and I consider it a very injurious one, of this democracy is its extreme parsimony to its principal officers. The salaries of these, as a general rule, seem to decrease in proportion to the increase in their authority and responsibility; while, on the other hand, the pay received by inferior officers of all grades is greater than that received by similar subordinates under any of the old states of Europe. De Tocqueville on this point says:—

It must, however, be allowed, that a democratic State is most parsimonious towards its principal agents. In America, the secondary officers are much better paid, and the dignitaries of the administration much worse than they are elsewhere. These opposite effects result from the same cause: the people fix the salaries of the public officers in both cases; and the scale of remuneration is determined by the consideration of its own wants. It is held to be fair, that the servants of the public should be placed in the same easy circumstances as the public itself; but when the question turns upon the salaries of the great officers of the State, this rule fails, and chance alone can guide the popular decision. The poor have no adequate conception of the wants which the higher classes of society may feel. The sum which is scanty to the rich, appears enormous to the poor man, whose wants do not extend beyond the necessaries of life; and, in his estimation, the governor of a State, with his two or three hundred a year, is a very fortunate and enviable being. If you undertake to convince him that the representative of a great people ought to be able to maintain some show of splendour in the eyes of foreign nations, he will perhaps assent to your meaning: but when he reflects on his own humble dwelling, and on the hard-earned produce of his wearisome toil, he remembers all that he could do with a salary which you say is insufficient, and he is startled, or almost frightened, at the sight of such uncommon wealth. Besides, the secondary public officer is almost on a level with the people, whilst the others are raised above it. The former may therefore excite his interest, but the latter begins to arouse his envy. This is very clearly seen in the United States, where the salaries seem to decrease, as the authority of those who receive them augments.

Sir, if we were to infer that the different democracies which form this Corporation were a cheap government, we should jump to an erroneous conclusion; for niggardly as are the salaries they pay to their president and the other high officers of the State, they are munificent in all those branches of expenditure which concern the public. Munificent, I repeat, for two reasons: because the expenditure is directly or indirectly beneficial to themselves, and because for

the most part the taxation of the country which applies to it is derived from the rich. Monsieur de Tocqueville endeavours in vain to arrive at data which might enable him to draw accurate conclusions as to the comparative expenditure of America and the principal governments of Europe. But it appears there are no official statistics in America which could guide him in this research to any very accurate determination. The result, however, of his inquiry was, that the Government of the United States, with its four budgets, if I may so term them, the budget of its general government, the budget of its state government, the budget of its counties, and the budget of its towns, is not upon the whole economical, but the very reverse. This opinion, and the reasons of it, are summed up as follows:

It is by examining what actually takes place in the Union, and not by comparing the Union with France, that we may discover whether the American Government is really economical. On casting my eyes over the different republics which form the Confederation, I perceive that their Governments lack perseverance in their undertakings, and that they exercise no steady control over the men whom they employ. Whence I naturally infer that they must often spend the money of the people to no purpose, or consume more of it than is really necessary to their undertakings. Great efforts are made in accordance with the democratic origin of society, to satisfy the exigencies of the lower orders, to open the career of power to their endeavours, and to diffuse knowledge and comfort amongst them. The poor are maintained, immense sums are annually devoted to public instruction; all services whatsoever are remunerated, and the most subordinate agents are liberally paid. If this kind of government appears to me to be useful and rational, I am, nevertheless, constrained to admit that it is expensive. Wherever the poor direct public affairs and dispose of the national resources, it appears certain that as they profit by the expenditure of the State, they are apt to augment that expenditure. I conclude, therefore, without having recourse to inaccurate computations, and without hazarding a comparison which might prove incorrect, that the democratic government of the Americans is not a cheap government, as is sometimes asserted; and I have no hesitation in predicting, that if the people of the United States is ever involved in serious difficulties, its taxation will speedily be increased to the rate of that which prevails in the greater part of the aristocracies and the monarchies of Europe.

Now, sir, whilst it thus appears that the form of government in America is not less, if indeed it be not more, expensive than any form of government existing in the older governments of Europe; it would also seem that this democracy is not less—that it is more corrupt than any aristocracy in Europe that can be mentioned against it. It may be that in aristocracies, rulers sometimes endeavour to corrupt the people; but it is equally certain that in democracies, rulers frequently show themselves to be corrupt. But this sort of corruption—I mean the corruption of the heads of the government itself, is infinitely more pernicious to the morality of the governed than any direct bribery to which any portion of the people could be subjected. On this point De Tocqueville writes:—

A distinction must be made, when the aristocratic and the democratic principles mutually inveigh against each other, as tending to facilitate corruption. In aristocratic governments the individuals who are placed at the head of affairs are rich men, who are solely desirous of power. In democracies, statesmen are poor, and they have their fortunes to make. The consequence is, that in aristocratic states the rulers are rarely accessible to corruption, and have very little craving for money; whilst the reverse is the case in democratic nations. But in aristocracies, as those who are arriving at the head of affairs are possessed of considerable wealth, and as the number of persons by whose assistance they may rise is comparatively small, the Government is, if I may use the expression, put up to a sort of auction. In democracies, on the contrary, those who are covetous of power are very seldom wealthy, and the number of citizens who confer that power is extremely great. Perhaps in democracies, the number of men who might be bought is by no means smaller, but buyers are rarely to be met with; and besides, it would be necessary to buy so many persons at once, that the attempt is rendered nugatory. Many of the men who have been in the administration in France during the last forty years have been accused of making their fortunes at the expense of the state or of its allies; a reproach which was rarely addressed to the public characters of the ancient monarchy. But in France, the practice of bribing electors is almost unknown, whilst it is notoriously and publicly carried on in England. In the United States, I never heard a man accused of spending his wealth in corrupting the populace; but I have often heard the probity of public officers questioned; still more frequently have I heard their success attributed to low intrigues and immoral practices. If, then, the men who conduct the government of an aristocracy sometimes endeavour to corrupt the people, the heads of a democracy are

themselves corrupt. In the former case the morality of the people is directly assailed—in the latter, an indirect influence is exercised upon the people, which is still more to be dreaded. As the rulers of democratic nations are almost always exposed to the suspicion of dishonourable conduct, they, in some measure, lend the authority of the government to the false practices of which they are accused. They thus afford an example which must prove discouraging to the struggles of virtuous independence, and must foster the secret calculations of a vicious ambition. If it be asserted that evil passions are displayed in all ranks of society; that they ascend the throne by hereditary right; and that despicable characters are to be met with at the head of aristocratic nations, as well as in the sphere of a democracy; this objection has but little weight in my estimatinn. The corruption of men who have casually risen to power has a coarse and vulgar infection in it, which renders it contagious to the multitude. On the contrary, there is a kind of aristocratic refinement, and an air of grandeur in the depravity of the great, which frequently prevents it from spreading abroad. The people can never penetrate into the perplexing labyrinth of court intrigue, and it will even have difficulty in detecting the turpitude which lurks under elegant manners, refined tastes, and graceful language. But to pillage the public purse, and to vend the favors of the State, are arts which the meanest villain may comprehend, and hope to practice in his turn. In reality, it is far less prejudical to witness the immoralities of the great than to witness that immorality which leads to greatness. In a democracy private citizens see a man in their own rank in life, who rises from that obscure position, and who becomes possessed of riches and of power in a few years. The spectacle excites their surprise and their envy, and they are led to inquire how the person who was yesterday their equal, is to-day their ruler. To attribute his rise to his talents or his virtues is unpleasant, for it is tacitly to acknowledge that they are themselves less virtuous and less talented than he was. They are therefore led (and not unfrequently their conjecture is a correct one) to impute his success mainly to some one of his defects; and an odious mixture is thus formed of the ideas of turpitude and power, unworthiness and success, utility and dishonour.

Sir, while this form of democratic government stands thus pre-eminent over any other in its corrupting influences upon society, its inherent defects are still more apparent in the conduct of its foreign relations. Its inefficiency abroad is not less demonstrative than its tendency to corruption at home. It is equally incapable of devising or of persevering in any great scheme of foreign policy. It cannot look, as it were, before its nose. It is true, indeed, that no very palpable instances have yet been given of its inherent and necessary inferiority in this important consideration, to governments in which the monarchical or aristocratic elements preponderates; but the time cannot be very remote when this tendency will be made patent. The seed of this infirmity is in the nature of this constitution, and must germinate. M. de Tocqueville thus speaks of it:—

It is therefore very difficult to ascertain, at present, what degree of sagacity the American democracy will display in the conduct of the foreign policy of the country; and upon this point the adversaries, as well as its advocates, must suspend their judgment. As for myself, I have no hesitation in expressing my conviction that it is most especially in the conduct of foreign relations that democratic governments appear to be decidedly inferior to governments carried on upon different principles. Experience, instruction, and habit, may almost always succeed in creating a species of practical discretion in democracies, and that science of the daily occurrences of life, which is called good sense. Good sense may suffice to direct the ordinary course of society; and amongst a people whose education has been provided for, the advantages of democratic liberty in the internal affairs of the country may more than compensate for the evils inherent in a democratic government. But such is not always the case in the mutual relations of foreign nations. Foreign politics demand scarcely any of those qualities which a democracy possesses: and they require, on the contrary, the perfect use of almost all those faculties in which it is deficient. Democracy is favourable to the increase of the internal resources of a state; it tends to diffuse a moderate independence; it promotes the growth of public opinion, and fortifies the respect which is entertained for law in all classes of society; and these are advantages which only exercise an indirect influence over the relations which one people bears to another. But a democracy is unable to regulate the details of an important undertaking, to persevere in a design, and to work out its execution in the presence of serious obstacles. It cannot combine its measures with secrecy, and it will not await their consequences with patience. These are qualities which more especially belong to an individual or to an aristocracy; and they are precisely the means by which an individual people attains to a predominant position. If, on the contrary, we observe the natural defects of aristocracy, we shall find that their influence is comparatively innocuous in the direction of the external affairs of a state. The capital fault of which aristocratic bodies may be accused is, that they are more apt to contrive their own advantage than that of the mass of the people. In foreign politics it is rare for the interest of the aristocracy to be in

any way distinct from that of the people. The propensity which democracies have to obey the impulse of passion rather than the suggestions of prudence, and to abandon a mature design for the gratification of a momentary caprice, was very clearly seen in America on the breaking out of the French Revolution. It was then as evident to the meanest capacity as it is at the present time, that the interests of America forbade them to take any part in the contest which was about to deluge Europe with blood, but which could by no means injure the welfare of their own country. Nevertheless, the sympathies of the people declared themselves with so much violence in behalf of France, that nothing but the inflexible character of Washington, and the immense popularity which he enjoyed, could have prevented the Americans from declaring war against England; and even then the exertions which the austere reason of that great man made to repress the generous but imprudent passions of his fellow-citizens, very nearly deprived him of the sole recompense which he had ever claimed—that of his country's love. The majority then reprobated the line of policy which he adopted, and which has since been unanimously approved by the nation. If the constitution and the favor of the public had not entrusted the direction of the foreign affairs of the country to Washington, it is certain that the American nation would at that time have taken the very measures which it now condemns. Almost all the nations which have ever exercised a powerful influence upon the destinies of the world, by conceiving, following up, and executing vast designs—from the Romans to the English—have been governed by aristocratic institutions. Nor will this be a subject of wonder when we recollect that nothing in the world has so absolute a fixity of purpose as an aristocracy. The mass of the people may be led astray by ignorance or passion; the mind of a king may be biassed, and his perseverance in his designs may be shaken; besides which a king is not immortal: but an aristocratic body is too numerous to be led astray by the intoxicating influence of unreflecting passion: it has the energy of a firm and enlightened individual, added to the power which it derives from its perpetuity.

I have now directed the attention of the House to most of the great considerations which should influence us in framing a future constitution for this colony. I have already quoted from an author whose early and present prejudices are in favor of democracy, because he cannot but be to some extent a partial witness in its favor, and because if his candour compel him to bear testimony against this form of government, we may fairly infer that he has made out for it the best case he can. (Cheers.) It is important therefore that we should hear what he has to say as to the administration of justice among the people of these States. This is confessedly, or at least ought to be, the end and aim of all government; and governments are either good or bad, in proportion to the general security which they afford in their judiciary to the persons, property, and character of their subjects; in other words, in proportion to the purity of the administration of justice. As it is important to ascertain what have been the effects of a government based on universal suffrage, on this most important particular, I invite, Sir, the attention of the House to the testimony of this author. He says—

I am therefore of opinion that some one social power must always be made to predominate over the others; but I think that liberty is endangered when this power is checked by no obstacles, which may retard its course and force it to moderate its own vehemence. Unlimited power is in itself a bad and dangerous thing; human beings are not competent to exercise it with discretion; and God alone can be omnipotent, because his wisdom and his justice are always equal to his power. But no power upon earth is so worthy of honor for itself, or of reverential obedience to the rights which it represents, that I would consent to admit its uncontrolled and all-predominant authority. When I see that the rights and the means of absolute command are conferred upon a people, or upon a king, upon an aristocracy or a democracy, a monarchy or a republic, I recognise the germ of tyranny, and I journey onwards to a land of more hopeful institutions. In my opinion the main evil of the present democratic institutions of the United States, does not arise, as is often asserted in Europe, from their weakness, but from their overpowering strength; and I am not so much alarmed at the excessive liberty which reigns in that country as at the very inadequate securities which exist against tyranny. When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority, and implicitly obeys its injunctions; if to the executive power it is appointed by the majority, and remains a passive tool in its hands; the public troops consist of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain states even the judges are elected by the majority. However iniquitous or absurd the evil of which you complain may be, you must submit to it as well as you can.

A note on this authority shows the operation of these influences. It goes on to say,

A striking instance of the excesses which may be occasioned by the despotism of the majority occurred at Baltimore in the year 1812. At that time the war was very popular in Baltimore. A journal which had taken the other side of the question excited the indignation of the inhabitants by its opposition. The populace assembled, broke the printing presses, and attacked the houses of the newspaper editors. The militia was called out, but no one obeyed the call; and the only means to save the poor wretches who were threatened by the frenzy of the mob was to throw them into prison as common malefactors. But even this precaution was ineffectual. The mob collected again during the night; the magistrates again made a vain attempt to call out the militia: the prison was forced; one of the newspaper editors was killed upon the spot, and the others were left for dead. The guilty parties were acquitted when they were brought to trial.

M. de Tocqueville goes on to say—

If on the other hand a legislative power could be so constituted as to represent the majority without being necessarily the slave of its passions; an executive, so as to retain a certain degree of uncontrolled authority, and a judiciary so as to remain independent of the two other powers; a government could be formed which would thus be rendered democratic without any risk of incurring tyrannical abuse. I do not say that tyrannical abuses frequently occur in America at the present day; but I maintain that no sure barrier is established against them, and that the causes which mitigate the government are to be found in the circumstances and the manners of the country more than in its laws.

Sir, while such are the baneful influences which these democracies exercise over the interest of justice, it is curious to mark their equally tyrannical domination over public opinion. In America, when the majority has once irreversibly decided a question, all public discussion ceases; for all further discussion is proscribed. As this, Sir, is a branch of the subject into which the question of the liberty of the press, and the natural right which belongs to every man within certain limitations enters, I consider that M. de Tocqueville's chapter on the subject is most important for the consideration of the country, and particularly for the consideration of that portion of the public press which is desirous of forging similar chains for itself and for the country, I therefore quote it entire :—

It is in the examination of the display of public opinion in the United States that we clearly perceive how far the power of the majority surpasses all the powers with which we are acquainted in Europe. Intellectual principles exercise an influence which is so invisible, and often so inappreciable, that they baffle the toils of oppression. At the present time the most absolute monarchs in Europe are unable to prevent certain notions which are opposed to their authority from circulating in secret throughout their dominions, and even in their courts. Such is not the case in America; as long as the majority is still undecided, discussion is carried on; but as soon as its decision is irrevocably pronounced, a submissive silence is observed, and the friends, as well as the opponents of the measure, unite in assenting to its propriety. The reason of this is perfectly clear; no monarch is so absolute as to combine all the powers of society in his own hands, and to conquer all opposition with the energy of a majority which is invested with the right of making and of executing the laws. The authority of a king is purely physical, and it controls the actions of the subject without subduing his private will; but the majority possesses a power which is physical and moral at the same time; it acts upon the will, as well as upon the actions of man, and it represses not only all contest, but all controversy. I know no country in which there is so little true independence of mind and freedom of discussion as in America. In any constitutional state in Europe, every sort of religious and political theory may be advocated and propagated abroad; for there is no country in Europe so subdued by any single authority as not to contain citizens who are ready to protect the man who raises his voice in the cause of truth from the consequences of his hardihood. If he is unfortunate enough to live under an absolute government, the people is upon his side; if he inhabits a free country, he may find a shelter behind the authority of the throne, if he require one. The aristocratic part of society supports him in some countries, and the democracies in others. But in a nation where democratic institutions exist, organized like those of the United States, there is but one sole element of strength and of success, with nothing beyond it. In America the majority raises very formidable barriers to the liberty of opinion. Within these barriers an author may write whatever he pleases, but he will repent it if he ever step beyond them. Not that he is exposed to the terrors of an *auto-da-fé*, but he is tormented by the slights and persecutions of daily obloquy. His political career is closed for ever, since he has offended the only authority which is able to promote his success. Every sort of compensation, even that of celebrity, is refused to him. Before he published his opinions, he imagined that he held them in common with many others, but no sooner has he declared them openly, than he is loudly censured by his overbearing opponents, while those who speak, without having the courage to speak like him, abandon him in silence. He yields at length, oppressed by the daily efforts he has been making, and he subsides into silence as if he were tormented by remorse for having spoken the truth. Fetters and headsmen were the coarse instruments which tyranny formerly employed; but the civilization of our age

has refined the arts of despotism, which seemed however to have been sufficiently perfected before. The excesses of monarchical power had devised a variety of physical means of oppression; the democratic republics of the present day have rendered it as entirely an affair of the mind, as that which it is intended to coerce. Under the absolute sway of an individual despot, the body was attacked in order to subdue the soul; and the soul escaped the blows which were directed against it, and rose superior to the attempt; but such is not the course adopted by tyranny in democratic republics; there the body is left free, and the soul is enslaved. The sovereign can no longer say, "You shall think as I do on pain of death;" but he says, "You are free to think differently from me, and to retain your life, your property, and all that you possess; but if such be your determination, you are henceforth an alien among your people. You may retain your civil rights, but they will be useless to you, for you will never be chosen by your fellow-citizens if you solicit their suffrages; and they will affect to scorn you if you solicit their esteem. You will remain among men, but you will be deprived of the rights of mankind. Your fellow-creatures will shun an impure being; and those who are most persuaded of your innocence will abandon you too, lest they should be shunned in their turn. Go in peace! I have given you life, but it is an existence incomparably worse than death."

I hope, Sir, that the passages I have quoted from this author, so deeply as he is imbued with democratic prejudices, will be sufficient to impress upon this House, and upon the country at large, the conviction at which I myself many years ago arrived, that this co-operation, which was intended to secure the liberties of the people of the several states which compose it, has not yet answered its ends, but has in fact established a tyranny infinitely more degrading. Humanity has but one consolation to look forward to, and that is, the hope that it involves so many seeds of violence and decay,—that it cannot, in the nature of things, be long-lived, but must perish, sooner or later, by the abuse of its power, and the anarchy which must be the consequence. On this point M. De Tocqueville has this prediction, which it will be seen is concurred in by two great American statesmen, Hamilton and Jefferson, to whom I have already referred. He says:—

If ever the free institutions of America are destroyed, that event may be attributed to the unlimited authority of the majority which may at some future time urge the minorities to desperation, and oblige them to have recourse to physical force. Anarchy will then be the result but it will have been brought about by despotism. Mr. Hamilton expresses the same opinion in the *Federalist*, No. 51:—"It is of great importance in a republic not only to guard society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Justice is the end of government. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secure against the violence of the stronger. And, as in the latter state, even the stronger individuals are prompted by the uncertainty of their condition to submit to a government which may protect the weak as well as themselves; so, in the former state will the more powerful factions be gradually induced, by a like motive, to wish for a government which will protect all parties,—the weaker as well as the more powerful. It can be little doubted that if the state of Rhode Island was separated from the confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of the factious majorities, that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it." Jefferson has also thus expressed himself in a letter to Maddison: "The executive power of our government is not the only, perhaps not even the principal, object of my solicitude. The tyranny of the legislature is really the danger most to be feared, and will continue to be so for many years to come. The tyranny of the executive power will come in its turn, but at a more distant period." I am glad to cite the opinion of Jefferson upon this subject rather than that of another, because I consider him to be the most powerful advocate democracy has ever sent forth.

Sir, I will now bespeak the attention of hon. members to what I consider to have been one of the inevitable evils of the democratic constitution. Its strong tendency to corruption has been strongly put in various of the passages I have quoted from De Tocqueville, but I do not recollect that he has adverted to the fact that this constitution has been actually set aside with a view to give this corrupting influence full play. Since this fundamental alteration the contests of parties have become mere struggling for place and for a division of the spoils. Since General Jackson's pre-

sidency the practice has grown up, on each contest for the presidential chair, of a division among the victorious party of all the offices worth mentioning in the gift of the executive; and the result is, that at each succeeding election of a president there is a general turn out and displacement of officers, almost from the highest to the lowest grade. The way in which this great innovation on the original constitution of the United States took place is thus described by Calhoun, as well as the gross system of corruption which it has engendered. He says :—

The two elements in this department are blended into one when the choice of a President is made by the Electoral College, which, as has been stated, gives a great preponderance to the element representing the federal population of the several States over that which represents them in their organized character as governments. To compensate this, a still greater preponderance is gained to the latter in the eventual choice by the House of Representatives. But they have in neither case a veto upon the acts of each other, nor any equivalent means to prevent encroachments in choosing the individual to be vested for the time with the powers of the department; and hence no means of preserving the equilibrium, as established between them by the Constitution. The result has been, as it ever must be in such cases, the ascendancy of the stronger element over the weaker. The incipient measure to effect this was adopted at an early period. The first step was to diminish the number of candidates from which the selection should be made, from the five to the three highest in the lists; and, in order to lessen the chances of a failure to choose by the Electoral College, to provide that the electors, instead of voting for two, without discriminating the offices, should designate which was for the President and which was for the Vice-president. This was effected in the regular way by an amendment of the Constitution. Since then the Constitution, as amended, has been, in practice, superseded by what is called the *usage of parties;* that is, by each selecting informally persons to meet at some central point to nominate candidates for the presidency and vice-presidency, with the avowed object of preventing the election from going into the House of Representatives; and, of course, by superseding the eventual choice on the part of this body to abolish in effect one of the two elements of which the government is constituted, so far at least as the executive department is concerned. As it now stands, the complex and refined machinery provided by the Constitution for the election of the president and vice-president is virtually superseded. The nomination of the successful party by irresponsible individuals makes, in reality, the choice. It is in this way that the provisions of the Constitution, which intended to give equal weight to the two elements in the executive department of the government, have been defeated, and an overwhelming preponderance given to that which is represented in the House of Representatives over that which is represented in the Senate.

And again the same author has the following remarks :—

Another of its effects has been to engender the most corrupting, loathsome, and dangerous disease that can effect a popular government; I mean that known by the name of "The Spoils." It is a disease easily contracted under all forms of government; hard to prevent and most difficult to cure, when contracted; but of all the forms of governments, it is by far the most fatal in those of a popular character. The decision, which left the president free to exercise this mighty power, according to his will and pleasure,—uncontrolled and unregulated by Congress,—scattered broadcast the seeds of this dangerous disease throughout the whole system. It might be long before they would germinate;—but that they would spring up in time, and if not eradicated that they would spread over the whole body politic a corrupting and loathsome distemper, was just as certain as any thing in the future. To expect, with its growing influence and patronage, that the honours and emoluments of the Government, if left to the free and unchecked will of the executive, would not be brought in time to bear upon the presidential election, implies profound ignorance of that constitution of our nature which renders governments necessary to preserve society, and constitutions to prevent the abuses of governments.

While such, Sir, has been the corrupting and demoralizing effects of the exercise of the patronage vested in the President of the United States, it is a material part of this argument to ascertain what have been the results in the British Constitution of the vastly superior patronage which is vested in the Crown, but dispensed in reality by its responsible ministers. I need not refer you for information on this vital part of the question to any British authority; for Mr. Calhoun, in the brilliant comparison which he has drawn between the Roman and the British empires, has this remarkable, and to my mind, conclusive passage :

But the British Government is far superior to that of Rome, in its adaptation and capacity to embrace under its control extensive dominions without subverting its constitution. In this respect the Roman Constitution was defective, and, in consequence, soon began to exhibit marks of

decay, after Rome had extended her dominions beyond Italy; while the British holds under its sway, without apparently impairing an empire equal to that under the weight of which the constitution and liberty of Rome were crushed. This great advantage it derives from its different structure, especially that of the executive department, and the character of its conservative principle. The former is so constructed as to prevent, in consequence of its unity and hereditary character, the violent and factious struggles to obtain the control of the Government, and with it the vast patronage which distracted, corrupted, and finally subverted the Roman republic. Against this fatal disease the latter had no security whatever; while the British Government, besides the advantages it possesses in this respect from the structure of its executive departments, has, in the character of its conservative principle, another and powerful security against it. Its character is such, that patronage, instead of weakening, strengthens it: for, the greater the patronage of the Government, the greater will be the share which falls to the estate constituting the conservative department of the Government; and the more eligible its condition, the greater its opposition to any radical change in its form. The two causes combined give to the Government a greater capacity of holding under subjection extensive dominions without subverting the Constitution or destroying liberty than has ever been possessed by any other.

I feel, Sir, that I have wearied the House in the long and numerous quotations which I have given from these two celebrated writers; but though I know that these proofs of the different working of the British Constitution which I advocate, and of the American model, which some people among us would copy, but which I must say I heartily despise, are not necessary for the information and enlightenment of this House, I believe them to be indispensable for the information and enlightenment of the country at large; and it is with this conviction that I have been induced to trespass so largely on your patience and attention. (Loud cheers.) Though I have omitted many arguments that I might have urged, these doubtless will be brought forward by some of the many gentlemen in this house whose concurrence and support I depend upon; and if not, I shall have again to throw myself, at the last stage of this discussion, on the courtesy and attention of the House, whilst I endeavour to supplement what I have now offered with any important arguments which have escaped my recollection, and which those who follow me may perhaps fail to use. (Cheers.) As regards the United States of America, it may be difficult to predict the period of the dissolution of that great federation; but nothing can be clearer to my mind, than that, when that country shall be, as it soon will be, completely demoralized by the necessary presidential elections—when opposite parties shall no longer be equally poised, when one party shall have obtained a decided majority, the inevitable consequences will be that this party will become permanently dominant—that the election of President, instead of being as it now is, for four years, will end in being an election for life, and a despotism will be established that will monopolize the revenues of the country, and squander and lavish them in paying and rewarding those who have contributed to the elevation of the despot. (Hear, hear.) It is clearly shown in the works that I have quoted from, that the germs of such a despotism have been sown, and that the consummation cannot be very remote. (Loud cheers.) I think, Sir, I am now in a fair position to ask the House and the country to make choice between the American constitution and the constitution of our father land. (Cheers.) Let every man, both in and out of the House, ponder well upon it before he makes his election. The first question every man should put to himself should be, What do I want? Do I want the American constitution, or do I want the constitution of England? (Cheers.) That is the question which every man out of the House, in particular, should put to himself. Because, Sir, it is evident that if, notwithstanding all that has been shown of the defective constitution of America—if, notwithstanding the evident disease which pervades the body politic there—if that man deliberately arrived at the opinion that the American model is better than ours, he must be consistent in voting for an elective President, as well as an elective Upper House. (Loud cries of hear, hear.) *Ex necessitate*, he must vote for

a President—he cannot stop short of overturning the Throne. (Renewed cries of hear.) This, I fear, was the tenor of the observations addressed by my hon. and learned friend the member for Cumberland to the public meeting yesterday. (Cheers.) Now, Sir, I should hope that whatever may be the opinion entertained by persons out of doors—and I confess I think that opinion is confined to but a few—(Oh, from Mr. Darvall)—at all events, it is not so wide spread as my hon. friend's oh! would imply. No doubt there is a mass of heterogeneous people pouring in upon us—Americans, Germans, Californians, Chartists, and Socialists, and all manner of undesirable people—(Oh)—and no doubt my hon. and learned friend will soon have a good tail after him. (Mr. Darvall: A Chinese tail---laughter.) Still I believe that the opinions of the people of this colony and of this House are not in favour of American institutions. (Cheers.) But if they were, this would be the most conclusive argument in favour of a constitution which is framed with the express object of arresting the inflow of democracy (loud cheers), or at all events of opposing a bulwark against it, and of stemming the tide we may not stop: of keeping it from the portals of the constitution, and preserving intact the glorious fabric of our fathers. (Cheers.) Sir, this naturally brings me to the consideration of the petitions which have been presented to this House, and especially to the petition presented to-day by my hon. and learned friend (hear, hear), and I must say, that although I believe that petition is not a reflex of public opinion—(oh! oh!—)although I cannot believe, after the declarations of opinion, four or five years ago, that such a change can have come over those opinions;—notwithstanding, as I said before, that the public have had full, ample, unexampled opportunities, of expressing their wishes and desires—notwithstanding all this, Sir, I should be very unwilling that that petition should be totally disregarded. (Hear, hear, hear.) I know that to defer this bill may be in effect to abandon it; and though my honorable and learned friend does not see the drift of those mischievous people who have set him in motion, I do not hesitate to express my conviction that their object is to defeat this measure altogether—(hear, hear)—to defeat it until my honourable friend the Colonial Secretary and I shall have left the country, and then they think they shall have it all their own way. (Hear, hear.) But, Sir, I am not to be cheated by such shallow politicians as these. (Cheers.) I will not fall into the trick, the delusion, the snare. (Cheers.) But to take away all pretence of opposition to this measure, I am willing, after this debate shall have concluded, that this Bill should be read a second time, upon the understanding, however, that the second reading shall only be taken to affirm the principle that we are to have two houses, leaving it still an open question as to whether the Upper House shall be elected or nominated. (Hear, hear.) Sir, I am willing that the public should have three months to consider this measure, instead of the one month they ask for. I am willing that this House should be adjourned till the 20th November. (Hear, hear; and no, no, from Mr. Darvall.) No doubt my honourable and learned friend does not want so long an adjournment: it would suit his game better that the country gentlemen should be away. But it will not suit the game of the country; and I hope that in making this proposal I shall have the concurrence of the House. (Cheers.) And I also hope, that when everything has been said upon this great subject that can be said, and when the public have had an opportunity of hearing both sides of this question, and are no longer blinded by the *ex parte* statements of those who are at the head of this agitation; I say, Sir, when the country at large shall know our motives, and when it shall see the grounds on which I have brought this measure forward, I say I hope, Sir, that if any petitions do come in upon us from the country, those petitions will not be in favour of an elective Upper House, but in favour of a British Constitution, in all its plentitude, as far

as the circumstances of the colony will admit of its application. (Loud cheering.) I hope this concession, which is much larger than the concession asked for, will satisfy the country at large that my honourable friends and myself have no sinister motives in bringing forward this great measure, that we have no intention of purloining the liberties of the country—that we have no personal or private views to forward, no mean and selfish end to attain; but that we have brought forward this measure believing, in our conscience, that it will be conducive to placing the public weal on a firm and a solid basis. With these observations, Sir, I now beg to move that this Bill be read a second time.

The honourable and learned gentleman resumed his seat amid loud and prolonged cheering, and was warmly greeted by his friends.

Mr. JAMES MACARTHUR seconded the motion.

Mr. DARVALL moved the adjournment of the debate to the following Tuesday. Carried.

Mr. DARVALL: Having moved the adjournment of the debate on a former occasion, it is my duty now to address the House on the very important matter under discussion. And in doing so I feel that I labour under great disadvantage in addressing honourable members who are, to some extent, pledged to a course diametrically opposite to that which I now take, and under the further disadvantage of following after one of the most able and eloquent speeches to which this House has ever listened. I feel that, under these circumstances, I shall not appeal in vain to your indulgence while I endeavour to put before you my own views on the question we have now to deal with. I will first say that I should approach this subject with despair if I believed that the final determination of the measure rested with this House as at present constituted. I rejoice to know that this is not the case; and I further rejoice to believe that, however earnestly the promoters of this bill may desire to force this measure upon the country, that their attempt will be met with the hearty and unanimous opposition of every constituency in the land (hear, hear, and cheers); and that the united expression of public opinion will be backed up by a liberal and enlightened Government at home. Weighty as may have been the arguments of my honourable and learned friend, I have no hesitation in accepting the challenge offered, and taking up the gage. And I cannot but look with regret at a portion of my honourable friend's speech, which, while it is calculated to damage the reputation of the speaker, could never have advanced the object it proposed in any society or community, even in a comparative state of barbarism—I allude to those forcible but ill-timed expressions which he felt himself justified in making in allusion to the conduct of honourable members of this House. (Hear, hear.) Had that castigation been confined to myself personally, I would have submitted in silence. I would not have presumed to occupy the time of the house to relieve myself from a groundless charge; but when I find that those aspersions attack not only myself, but all public free discussion, I feel it both my right and my duty to answer the accusation. In a community of this kind every thing will be conceded to argument, to reason, to precedents—but nothing to violence; and it certainly argues a feeling of weakness in my honourable friend to seek to aid his own arguments, not by information, by logic, by precedent, or by reason, but by endeavouring to degrade the characters of those who differ from him, whose rights are as valuable, as legitimate, as his own—rights which he should be the last to tamper with, having been the first in former years to assert them. I shall not follow such an example; I shall not attempt to deprecate the public services of my honourable friend, who even now has great claims on the gratitude of the colonists; but believing that my honorable friend has been mistaken, I shall endeavour to refute his propositions. The honourable and learned member has thought it necessary to stigmatise as

conduct unbecoming a representative of the people, and lowering and degrading to the legislative dignity, for a member of this House to give to the public his opinion on the matter now under discussion. But in making this assertion he has displayed his want of knowledge of what has always been the custom in free countries. The honourable member should have recollected that in all the popular struggles on great constitutional questions in England, members of Parliament, of the highest character and influence, have habitually mixed themselves up with large gatherings of the people, when it became necessary that those who had well considered the questions should be heard. I cannot understand that because I am sent to this House by a constituency of the colony, therefore I am to forfeit my rights as a citizen ; I will never shrink from giving a public opinion when I think I shall be able to guide others in forming their judgment in a reasonable manner ; I will always mix freely with those who have sent me here, though, at the same time, I will not be controlled by them in contravention of the dictates of my own reason. (Hear, hear.) It is right and proper that a member should cherish after election that free communication with his constituents that he did before. It may be very well for my honourable friend, who contemplates the creation of irresponsible authority, and who considers himself neither responsible to the present generation, nor amenable to posterity, whom he would endanger by the proposed unwise measure, and by all the attendant evils of class legislation (ironical cheers.)—it may be very well for him to shut himself up within his own impenetrable dignity, and shrink from all intercourse with his fellow citizens. But I feel too highly the honour and distinction of popular election ever to shrink from a full and perfect understanding with my constituents on all matters of public importance, and more particularly on a question of this importance, now for the first time agitated. For though it is to some extent true that this Council was formed with a view of preparing a constitution for the colony, still at the time that the present members were elected the particular form which this constitution should assume was not submitted to any constituency. Neither I, nor any other honourable member, stated on the hustings that we were favorable to a nominee Upper House. This question was not raised. Certainly the honourable and learned member for Sydney did not then propound this principle ; it would have clashed too violently with his former oft repeated exclamations—"Gentlemen, the nominees are intolerable—an intolerable nuisance—they must be got rid of." (Cheers and laughter.) I look back with some astonishment at the career of my honourable friend ; I can recollect the period when he was a nominee member of this House, and on hearing the threats of his honourable friend that he would drive the nominee members out of the House, I shrunk behind the larger proportions of my honourable friend the Colonial Secretary (a laugh), lest that threat should be carried into execution. The hard words then uttered against nominee members by my honourable friend are fresh in my recollection ; how we were told that we had no right to interfere—that we were sent here by no constituency, but were merely the creatures of a tyrannical government. With these anathemas in my remembrance I much wonder how the honourable and learned gentleman can now propose to construct an Upper House of the materials he once so heartily despised. (Cheers and laughter.) In those days, when the colonists had no power to shake off the nominees, I opposed the unreasonable suggestions of my honorable friend ; but now the times are changed, and the colony is in different circumstances. I feel great pleasure in giving that course my hearty though feeble support. But what a change has come over the sentiments of the honourable and learned member ; forgetting all his former protestations, he now complains that I withdrew the support I once gave, and was the first to prefer the charge of inconsistency. It is right that

I should give an account of this presumed change; it is right, if I deserve it, that I should suffer. But this is the actual case:—Impressed with the conviction, some four or five years ago, that the retention of nominees in this House would be detrimentary to the interests of legislation, and agreeing with those who desired the removal of the nominees from the Lower House, and conceiving that any larger concession by the home Government would not be granted, I did concur, in the year 1849, in a memorial to the English Minister—a memorial which was only disfigured by one proposition—namely, that for making the second house a Nominee House. But I find great satisfaction in the recollection that this memorial, imperfect as it was, was the first embodiment of those righteous demands which became irresistible by their inherent justice. The demands we then made were declared to be but as a step in the progress of constitutional reform; and it would be doing injustice to any one who signed that memorial to say that it was considered a final measure of reform. I did sign that memorial, having assisted in its preparation; and I am now satisfied, after the best consideration that years of interval has enabled me to bestow on the subject, that the course then suggested was not such as could now be safely pursued. The circumstances on which that memorial was founded had entirely changed, and I now feel that it would be dangerous and unwise to impose on this country a nominee house; and I am the more satisfied in arriving at this conclusion, because I believe that the Government at home are as willing to concede the privileges we claim on our framing an elective Upper House, as they would on our agreeing to a nominee Council. I see clearly, that by yielding to these modifications of opinion which the advancing circumstances of the colony necessitated, I have subjected myself to a charge of inconsistency; but if I must submit to a charge of misconduct, I must feel glad that the charge can be so easily explained; if I am to be condemned, I will take care that it shall not be for doing anything discreditable, or for adhering obstinately to opinions after I have satisfied myself that they are unsound. (Hear, hear.) Not that I undervalue consistency in political principles, when once deliberately formed; but I have a higher duty to perform than to adhere unhesitatingly to all that I have said and done throughout my life; I have always suggested what I believe best to be done under the circumstances of the time, and which of my opponents can safely taunt me with any change that the altered condition of political affairs may have occasioned in my political opinions? Why, in the progress of the committee on the present measure, I have heard various schemes propounded by the honourable and learned member for Sydney—at some times with approval, at others with disapproval—his mind having experienced a number of revolutions before arriving at his present conclusions. (Hear, hear.) But I should not dream of taunting my honourable friend with inconsistency—whose simple object, and I hope, also, the simple object of this House, was to erect a form of government that should be the most conducive to public stability and happiness. I hope we shall cordially join in this one object, even if those who support my honourable friend should have to work with the prospect of being beaten—for beaten they will be (laughter), if not in this House, yet by the public sense out of doors. It might be necessary, in that event, for his Excellency to send honourable members to their constituencies (ironical cheers); but without that alternative, I hope that the services and great talents of my honourable friend may be retained, to remodel the Constitution now brought up, in a manner that would be more suitable to us, and more creditable to himself. (Hear, hear, and cheers.) My honourable friend has charged me with the desire of supplanting him in the honours of the metropolitan representation. I never for one moment entertained the thought of contesting an election with my honourable friend. I deem the repre-

sentation of the county of Cumberland amply sufficient for my ambition in elective matters, and I have no more earnest wish than that the country may still enjoy the assistance in this House of my honourable friend, whom I would rather now see changing his opinions than deserting the service of his country. (Hear, hear.) Another charge that has been made against me is that I have publicly expressed a preference for a republican form of government. Such a charge demands a full explanation. I venerate, above all forms of government of which I have ever read, the Constitution under which I have the happiness to live, and under which I hope to live and die. But looking to the far future—to the period when this country might cease to have any connexion with Great Britain—which may God long avert—(hear, hear)—our task is to secure such a Constitution for this empire as shall then make her transition safe and prosperous. And in looking back through the past history of nations, to aid us in considering our present course, we have no instance of a free people settling down by their spontaneous choice into a limited hereditary monarchy. We have instances without end of countries adopting wild republics, which were succeeded by general anarchy, and terminated in despotic governments (hear, hear); and after years of civil strife, they may regain their liberties, bit by bit, and may at length reduce a military despotism to a limited monarchy. But there is no precedent in the political annals of the past, of an enlightened nation arriving at that period of its history when it had to choose its own form of government, arriving at such a consummation without going through the first stages of confusion and disorder. But I will say that, at whatever conclusion these deliberations should arrive, I have so much reliance on Anglo-Saxon courage, integrity, and wisdom, and belief in their power of good self-government, that whatever form of government they may adopt, they will acquit themselves well. I will appeal to the histories of the two greatest and most enlightened powers of the Anglo-Saxon race—the one retaining a monarchical, the other adopting a republican form of government—and from these precedents I feel justified in predicting that the Anglo-Saxon race will, if left to themselves, always come safely out of any difficulties in which they may be involved. And, so far am I from desiring that republican institutions should supersede the power of the Queen, that I hope the crown of England will long maintain and protect the various colonies of the British empire. I will say no more on the personal bearings of this discussion. I shall studiously avoid saying any thing in the least discourteous to or disparaging of my honourable friend, but I shall not show this respect to the arguments adduced; and though I do not wish to possess my honourable friend's scalp, or raise the hair of his head, unless in fair debate (a laugh), I will proclaim war to the knife against a principle which condemns free public discussion of public measures. (Hear, hear.) It will now be my duty to enter more closely into the consideration of the measure before the House, and in doing so I will chiefly confine myself to the principal objections to it: first, to the proposal of a nominee Upper House; and secondly, to the revision (or rather the un-revision) of the Electoral Act. It is with the first of these that it will be my duty chiefly to deal. In listening to the eloquent speech of my honourable friend in introducing this measure, I looked in vain for the enunciation of any one principle of government. Remote analogies were attempted, quotations without end were made, and propositions were affirmed, apparently without foundation; but no fixed principle of government was attempted to be laid down. And before he (Mr. Wentworth) could claim the adhesion of the country, or the concurrence of this House, he must show in what manner are to be laid the foundations of that veneration and respect which alone can secure the stability of the Constitution he proposed. The honourable gentleman seemed to feel that a great deal of obloquy had

attached to his name for his connexion with this measure, and therefore attempted a laboured justification of his conduct. And it could well be understood that he should be impressed with this feeling; for he must have felt that the course he was now taking was diametrically opposed to the consistent desire he formerly manifested in his arguments and speeches in that House. It is impossible for any one to look back on the honourable member's career and not admit the truth of this—that his denunciations of the nominees in that House, up to the most recent period, were unceasing and most violent; and yet he had not told the House why it was probable that an element which, when limited as it then was, was deemed so mischievous, should, when uncontrolled, prove advantageous and satisfactory. The only supposition could be that the honourable gentleman had thought the analogy between a nominee Upper House and the British House of Lords so completely made out, that because the latter obtained a certain influence at home, therefore a House of nominees here would possess the same influence. In arguing this point the honourable member made frequent quotations from the celebrated writers Tocqueville and Calhoun. Now the opinions of the French author were entitled to just as much weight as those of any well educated French gentleman would be, as to how far the institutions of the United States attracted his notice favourably or unfavourably. But if the honourable gentleman relied on the political bias of the French traveller for any support in his views, he must feel himself leaning on a very feeble prop. I believe that this gentleman did not hesitate to take office under a government remarkable for its despotic tendency. The honourable and learned member also alluded to an American writer of great eminence; but it happened that the arguments throughout that book were strongly in favour of the American Senate—an elective Senate. (Hear, hear.) It is very true that when that writer drew a comparison between the Upper and the Lower House of America, he spoke disparagingly of the Lower House; but did the honourable member mean to infer from this that the same author would necessarily speak disparagingly of this Council, if it were composed of men of character and ability, and fairly represented the whole community, simply because it was a popular House? And would it then deserve the remarks that were quoted of the vulgar demeanour and discourteous conduct of the American House of Representatives? But if not so, of what value is the quotation? It is all in favour of an elective Senate, which we desire to have, and not in favour of a nominated Upper House, which we do not desire to have. My honourable friend either throws dirt at the embodiment of popular representation in this Council, or throws overboard his principle of a nominee Upper House altogether. (Hear, hear.) But I would remind the House that Mr. Calhoun was the proprietor of large slave plantations, and would naturally dread the power that might make that organic change in the government of the United States, and would speak favourably of a proviso which required a majority of three-fourths of the Senate to make any alteration in the constitution. I believe that these opinions of Mr. Calhoun were the only blots on that great man's character, and that the sentiments he enunciated were those which his own countrymen disowned. (Hear, hear.) The honourable and learned member next appealed to the early charters of the colonies which now formed the United States. But to what purpose were these quoted? Does not the honourable gentleman know how these colonies came to be founded—that it was to avoid civil and religious persecution, that the unhappy settlers first left their own country? Was it to be believed that a large measure of civil liberty would be dealt out to these early colonists by the same oppressors who had crushed them at home? And are we to look for precedents of constitutional freedom in the reign of one of the most bigoted and tyrannical kings that England has ever been ashamed of? And is it at this

advanced period of the world's history that we should be driven back to those days of violence and oppression to look for a model government or a chartered constitution? These charters were in many instances liberal, but they became so from having been fought for inch by inch. The freedom of these States might have been maintained without the shedding of English blood; and had such enlightened statesmen been in power then as now constituted the British cabinet, instead of such liberal politicians as the honourable and learned member for Sydney, America might now have formed with Great Britain the great united empire of the world. But yet it was to this dark age, disfigured as it was by bigotry and cruelty, that the honourable gentleman would drive us rather than permit an appeal to those enlightened statesmen who are prepared to deal with us as freemen and not as slaves. But the honourable and learned gentleman has altogether mistaken and misstated the case of the early colonists. They were in the first instance chartered with an amount of freedom which he seems entirely to have forgotten. After that, by degrees they asserted their right to a fuller measure of liberty, and finally, with one accord, before the war of independence took place, they asserted a principle which the honourable gentleman denies ever to have been maintained. In confirmation of this I will read a short extract from an almost elementary work on colonial law. [The extract then read by the honourable and learned member showed that in these charters the Governor was appointed by the people, except in some cases by special reservation, when this privilege was vested in the Crown. The people moreover elected a House of Representatives, from which body the Council was chosen, thus involving the principle of double election.] Now I could hardly believe my ears when the honourable and learned member emphatically told the House that, in these early colonies, where the results of freedom and national progress are so magnificently developed, they had all agreed to one form of government, which was nothing short of a nominee Council, and that it was left to us to be the first to assert this thoroughly elective principle. Now I will refer the honourable gentleman to another short passage, which I think will convey a useful lesson to the honourable member and others who heard him. The circumstance referred to happened in the State of New Hampshire, where, by a singular coincidence, the people were plagued by a wicked Governor, sent out apparently to rob them of the small measure of freedom conceded to them, of the name of Wentworth. (Loud laughter.) It was a most singular coincidence, and it shows how little there is in a name, for in all other circumstances these gentlemen were entirely dissimilar. (A laugh.) He however was a very bad Governor; and when the people proposed that they should have an elective Upper House, he did all he could to thwart the attempt. He dispersed the people by military force, drove away their delegates, and dissolved the Council of representatives.

The New Hampshire Legislature, at a late session, in spite of Wentworth's attempts to prevent it, had appointed a committee of correspondence, in consequence of which he had dissolved them. A meeting of the committee, held at Portsmouth, to appoint delegates to Congress, was dispersed by Governor Wentworth and the Sheriff; but the business was completed by a convention of delegates, which met at Exeter.

I will continue this quotation to show how greatly my honourable friend is mistaken in stating that an elective Upper House was never heard of before; as well might he assert that the principle of no taxation without representation was one derived nobody knew from where. I hope the imputation of this principle being a modern invention will not be tolerated, but that it will still be insisted on in this colony. These delegates came to the conclusion that their government would be imperfect if they submitted to taxation or legislation except by a representative body.

A committee of two from each province reported, in the form of a series of resolves accepted and adopted by the Congress, a 'Declaration of Colonial Rights.' The enjoyment of life, liberty, and property, were claimed in this declaration as natural rights. The privilege of being bound by

no law to which they had not consented by their representatives, was claimed for the colonists in their character of British subjects."

Now, did I hear my honourable friend aright when he said that an elective Upper House was now asked for the first time, and was previously unheard of —something to be laughed and sneered at?

The sole and exclusive power of legislation for the colonies was declared to reside in their separate Assemblies, reserving to Parliament the enactment of such laws only as might be essential to the *bonâ fide* regulation of trade, but excluding all taxation, internal or external. (Hear, hear, from Mr. Wentworth.) The common law of England was claimed as the birthright of the colonists, including the right of trial by a jury of the vicinage, the right of public meetings, and of petitions."

Now, is the honourable gentleman willing to give this colony common law, and insure the people that there shall be no taxation without representation? Why, where is the community of free Englishmen that would submit to be taxed without at the same time being represented? Why give exclusive rights to minorities, and why enforce taxation from any portion of the community by a branch of the legislation in which they are to have no voice? In these days, if Englishmen were called upon to frame a constitution in a new country, would a man be listened to who should propose the bestowment of hereditary honours, or to confer on an irresponsible minority the right of framing laws by which the whole community should be bound? Every man who is bound by the laws is entitled personally, or by delegates, to assist in making those laws; and the attempt to deprive him of this right is a cruel injustice. Why, honourable members would seem to entertain the opinions expressed by an old martyr —that God Almighty intended a particular class to ride booted and spurred on the rest of the community, who were created with saddles on their backs to ride upon. (Laughter.) To return to the quotation—

A protest was made against standing armies maintained in the colonies without their consent, and a similar protest against legislation by Councils dependent on the Crown—this last in allusion to the Quebec Act. All immunities hitherto enjoyed in the colonies, whether by charter or custom, were claimed as established rights, beyond the power of the mother country to abrogate. Eleven Acts of Parliament, passed since the accession of George III., the Sugar Act, the Stamp Act, the two Quartering Acts, the Tea Act, the Act suspending the New York Legislature, the two Acts for the trial in Great Britain of offences committed in America, the Boston Post Bill, the Act for regulating the Government of Massachussetts, and the Quebec Act, were enumerated in conclusions, as having been passed in derogation of the rights of the colonies.

Wentworth, Governor of New Hampshire, having lost all control over that province, shut himself up in the fort at Portsmouth, whereupon his house was pillaged by a mob. He prorogued the Assembly, now in session for the last time, and presently retired to Boston for safety, leaving the political control of the province in the hands of the Provincial Congress and the Local Committees.

This was the result of an attempt to thwart the constitutional demands of a comparatively uneducated people, not so advanced as we are in knowledge of political liberty by many years. I hope that the Government, in this matter, will stand neutral, and that those gentlemen who, by universal consent, will shortly be removed from this House, will take little or no share in the dicussion. I further hope that no part in this discussion will be taken by any nominees—(hear, hear, and oh! oh!)—Why! this was but an echo of a proposition made many times by the honourable and learned member for Sydney. These gentlemen should be urged now, as formerly, not to meddle with matters which did not concern them; they represent no body, and have no right to form laws for the government of the people. I have no doubt that the Government of this country are sufficiently wise to make this matter an open question; and if it should appear that a majority of the elective members of this House are in favour of the measure, I hope that then the Government will dissolve the present Council, and have another elected for the very purpose of determining on this matter. The honourable and learned member has been singularly unlucky in the reference he made to the history of the United States; for whatever views the colonists who ultimately resolved themselves into the United States might

have had of nobility, no single rag has been left to show their desire for such an order. The honourable gentleman was much mistaken, if he supposed that any body of Englishmen would consent to constitute a minority as a superior or privileged race with hereditary legislative power. It would be an odious effort of tyranny; not endured by any one who could resist it, but laughed at from one end of the world to another. The honourable gentleman, in dwelling so long on charters conferred by bad kings, altogether lost sight of the earlier Anglo-Saxon institutions. If he would refer to them, he would find, that in matters of local detail, the principles of election and of double election were pursued, even in the smallest country matters, beginning with tithings and hundreds, and providing for the election of freemen, liverymen, aldermen, and so on. These elective institutions have been entirely overlooked, and attention was directed to the case of the people driven out of their country by tyranny, and obliged to yield to fresh tyranny, in the land of their settlement, until they shook the intolerable yoke from off their necks. Allusion has also been made to the House of Lords, as being of great advantage to the British nation. I am unwilling to question that advantage, and it would, perhaps, now be dangerous to subvert that institution, which was, however, never voluntarily imposed upon themselves by the people of England. It was now only perhaps submitted to, because its removal might cause greater evil than was now suffered by its continuance. The glorious revolution would not have been consummated if the House of Lords could have had their will; and the only praise they were entitled to for that act was, that they resisted all appeals to their reason, even the most unanswerable arguments, and yielded to intimidation an assent which conviction could not wring from them. Another revolution would have occurred when the Reform Bill was introduced, had not the Peers abdicated their functions. And even if an analogy could be made out between the House of Peers and our nominee Upper House, should we desire the existence of such a body—a body that would enjoy class privileges, and in return for these, impede the march of freedom, and the progress of reforming legislation? Even could such a House obtain the influence enjoyed by the House of Lords, I should still hesitate to recommend the adoption of such a course. The investing of executive power in one responsible hereditary hand would be a sufficient check against the encroachments of those democratic principles which the honourable gentleman so dreads. A nominated body would not seek to represent the people, but their own peculiar interests. What voice had the people in the matter when they were conquered by foreign invaders, who thrust upon them the lords of the territory, the fathers of a future aristocracy? (Hear, hear.) England has arrived at her present form of government, not by original concessions to them, but by her own exertions; for the people had not, in the first instance, the power of electing their rulers, or of limiting their authority. If carried through this House, I am sure there will still be a corrective power out of doors, supported by an enlightened government at home, to avert this calamity. There exists no analogy whatever to justify the creation of such a body. The history of the nominee portion of the Legislature is sufficient to deter them from creating any such Legislative Chamber. Possessing no power in the House, the nominees are contemned out of doors. Whatever may be the character of any gentleman for probity and independence, the moment he accepts a seat on the nominee benches, he ceases to possess the least influence with the public—he becomes an object of suspicion. We have seen that it has heretofore been almost impossible for a nominee to obtain a seat in the House by the votes of the people. I believe my own election was a rare exception to the general rule in this matter. ("No, no; there were two others.") I am reminded of the fact, that two of the late members for Sydney had been nominees.

I ask, by what means did they obtain their seats? Was it by declaring to the electors, that the nominee system was good or desirable? I do not think the late member for Sydney (Mr. Lamb) would say any thing of the sort. So much with regard to the honourable member's arguments in favour of a nominee element. With regard to the manner in which it is proposed to constitute the proposed Upper House, what analogy, I would ask, does there exist between the plan suggested, and the mode in which occasional additions are made to the ranks of the nobility in England? Who in this colony is entitled by his public career, or his public acts, to such a distinction as that proposed? There exists not a single man whose superior merits entitle him to be thus placed in a position to sway, without restraint, the destinies of his fellow-citizens. Why, then, should the people of New South Wales submit to any such creation? The honours of the peerage were in general, in England, bestowed on men who have distinguished themselves by their public services. I would be glad to hear my honourable friend mention any gentleman in this country who, by such means, has rendered himself deserving of such distinction. (Hear, hear.) But, admitting that there are such men in this community, is there no other way of rewarding merit, without tampering with the liberties of the country? By all means, let my honourable friend, or any other gentleman, receive from her Majesty the honours to which he or they are entitled; but let him not seek for legislative powers to which he is not entitled. (Hear, hear.) These are honours which can only be conferred by his fellow-citizens. In reference to the supposed stability which would result from the proposed Constitution, I deny that any Government can be strong which does not ground its authority on the respect and confidence of the people. My honourable friend has been singularly unsuccessful in his attempt to support the arguments which he has advanced; he first referred to the Quebec Act, from which he proceeded to the Cape Act. Admitting, as my honourable friend did, that something was to be said in favour of this latter measure, he overcame the difficulty by saying that it was intended for a different kind of people—that the Cape colonists were a mixture of Dutch and English. Now I think it a very poor compliment to the people of this country to say that they are less qualified for self-government than Dutch boors. The honourable member, when he denounced the opinion that had been expressed by the members of her Majesty's government, as having been derived from polluted sources, did little justice to the arguments on which it rested. I believe that opinion has been arrived at after great consideration; it was the result of long experience, and had the advantage of being the opinion of men who had the opportunity of calmly witnessing from a distant point the working of various forms of colonial government. I believed it was to his honourable friend's own vigorous and forcible arguments that the feeling was so prevalent against a nominee Upper House. The long agitation in which he had been engaged had not been without its effect. He had taught the colonists to scout the idea of nominees. But now his principles had undergone an entire change, now he asserted that this colony was not fit to govern itself, but must submit to this pretended compact of third persons. However consonant it might be with the wants and requirements of the inhabitants of the Cape, this country was entirely unfit for self government, and must be thrown back upon the charters of the James's and the Charles's, in the darkest days of English liberties. But he would not succeed, and I think he ought to be congratulated that he will be unable to eradicate the principles he himself has instilled, for then and then only will he be able to cancel the debt of gratitude which is owed to him by the people of this country. I believe the people of this country will always obey the law, because they are convinced that it is right and reasonable, and I do not fear that in this measure the same good

feeling will actuate the community that has hitherto prevailed. I have always said, and I always feel what I say, that, thanks to a liberal Governor, and to a prudent Colonial Secretary, the course of Government here has been free from any great objection, and rather than accept the change that is offered us, clogged by the condition that accompanies it, I would rather we should remain as we are at present; for under the present system we have some control over the nominee element, which, with the form of constitution proposed by my hon. friend, we should be altogether deprived of. I regret to have to confine so much of my arguments to answering those of my learned friend, but I must allude to them, as my hon. friend was placed in the van of the battle, and to all that he said, so much weight is attached both in the House and out of it. He had stated that there was no precedent for an elective Upper House, and I must say I was much surprised when I heard him say so. He must have known that one of the best governed countries in Europe, Belgium, was an example to the contrary. The Belgians were a people notoriously difficult to govern, until their right to an elective Chamber was given to them; and what has been the consequence of that concession? That country has remained quiet amidst all the revolutions of Europe, although its frontier was exposed along its whole length to the continual influx of exciting and revolutionary spirits. What had preserved that country amidst such dangers? Why, nothing but a form of government very similar to that we propose to establish here. It was formed under the auspices of England, and it had had the effect of rendering that country, instead of the battle field of Europe, the protection of the peace and good order of its inhabitants. My honourable friend's remark that there was no precedent for such a form of government, must be allowed to be fallacious in the face of such an example. Here was an elective Upper House which has worked well up to the present time. I will read to the House the 2nd article of the constitution, which defines the rights of the people. It began with these words:—"All power emanates from the people." I wish my honourable friend would take that sentiment for his motto, then we should find his natural good sense have its full play, and his sense of justice allowed its reign. I will now ask my honourable friend if there be no example, no model that he might follow. But it might be said, Oh! that is too good a form of constitution for you, that is adapted for Belgians, we are not worthy of so much liberty as they. If my honourable friend's researches in history have borne him no better fruit than he exhibited the other night, I think they have been of little use to him. The progress of opinion in all free countries has been in one direction—that of enlarging the basis of government. My honourable friend's progress seems to be backwards, if I may say so. (A laugh.) My honourable friend has taunted me with inconsistency; I do not deny the fact, but my inconsistency has been in forsaking error to follow the path of truth; my views are changed I believe for the better, while my honourable friend's metamorphosed in search of wisdom from the eagle to Minerva's favourite bird. (A laugh.) I must say that my honourable friend, in his quotations, has argued most unfairly; he has given a prominence to certain arguments which seemed to help his views, which the authors themselves never intended them to bear. He had, for instance, cited largely from De Tocqueville sentences derogatory of the constitution of the United States, and in the selection of his quotations he had artfully distracted the attention of the Council from the points which De Toqueville really approved, and fixed it upon other topics, upon which all were agreed. For instance, he had quoted several long passages in favor of the proposition that universal suffrage was a very undesirable thing. I am prepared to grant that proposition. I do not know any one that upholds the principle, nor have I heard that any body has asked for it; but my honourable friend raises up a bugbear out of his

own imagination, and then assails it with a battery of quotations. Again he inveighs against those extremely inconvenient changes that take place in the United States at every change of the Presidency. The changes of judicial and ministerial officers, which have opened the way to so much abuse, and are found to be surrounded with so much inconvenience to the State; against this he directs the indignation of the House, but I would say that he is only intimidating us with imaginary evils. There are no such changes contemplated by those who oppose this bill. They are quite as alive to the evils the honourable gentleman would warn them against, as he is himself. Again he alluded to the provision in the American Constitution, that there should be no organic change without the concurrence of two-thirds of the members of the Upper House, and he designated this as a wise provision, but I wish to know by what power we could control a power that we had once committed to such a body as is now contemplated. We are now about to concede a certain degree of control to an Upper House, and I will remark it is a matter of the most serious consideration as to the check we should retain over the power of this House. I am quite prepared to admit that an organic change should take place but by the vote of a large majority; but which ever way this Council may determine the Upper House shall be formed, the force of public opinion must exercise a controlling power if violence is to be resorted to. The honourable member has also favoured us with some allusions to the Slave Trade; he had referred to that dark blot on the escutcheon of the United States; his eye seemed to have a natural facility for picking out the spots on the sun, and he wished them to infer, that the form of constitution of that country had brought into existence the Slave Trade, and because the slave trade existed under the Senate of that country, and was upheld by that Senate, he deprecated the establishment of an elective Upper House here. Now, if this argument be good for anything, let him follow it out. Has my honourable friend forgotten that the slave trade was established in England, under England's greatest Queen, except the present Queen; does he remember that it was established in her reign as a government monopoly? and does he regard that fact as an argument against monarchy? It is true that blot has been removed; under an extended elective principle the interests of freedom have triumphed; and Britain, at the sacrifice of millions of treasure, has wiped this reproach from her annals. (Hear, hear.) The argument which my honourable friend seeks to draw against American institutions from the existence of slavery might just as fairly be deduced from the allowance of slavery at some previous period in the history of England against monarchy. Again, my honourable friend attacks the mischievous principle of an elective executive government, but I quite agree with the honorable member, and I am not aware that any opponents of the bill wish for an elective executive government, and I think it most unfair that such bugbears should be raised on purpose to stigmatise the opponents of this measure. They do not demand it. Why should it be attributed to them? But it is only an evidence that my honourable friend has ceased to represent the opinions and the wishes of the mass of the constituency—it must be taken that he really does not know what they did wish for. They had not gone too forward in their demands, but the honorable member had lagged behind the spirit of the age. Again, my honorable friend quoted a most eloquent passage which we all know almost by heart, about the tyranny of a bare majority; in this respect I quite go along with him, and I would again assert my conviction, that only on the approval of a considerable majority would I consent to any radical and organic change in such a measure as the constitution of the government. I am not prepared for elective officers of the government, and judges, and in this my honourable friend makes the greatest mistake; there is the greatest difference between an elected

Upper House and an elected Executive Government. As an additional argument, he referred to some riots that took place at Baltimore, where some printers were ill-used, and this he held up as an argument against free institutions. But let my honourable friend go back into the history of his own country. Let him regard the judicial murders that were committed during the reign of the James's and the Charles's, or to come to a more recent period of our history, let him remember the riots of Westminster, Edinburgh, Bristol, and of Birmingham; or, he was sorry to say, let him look now to the condition of Ireland, where murder stalks at mid-day in the land; where landlords are shot in the presence of hundreds of spectators, the law is paralysed, and the murderer escapes. Would it be fair to argue that the political state of England is rotten on account of such instances? I assert that it would be quite as equitable as to pick out some miserable riots in Baltimore, and make them a peg on which to hang abuse of American institutions. (Cheers.) Indeed, I need not have gone so far for examples of the unfairness of such a course of argument; under our own Government a case happened only a little while ago; in this city two soldiers, unarmed, unresisting, were struck down with deadly weapons and slaughtered in the streets, and the wretches that perpetrated the murder (for murder he would call it) had never expiated their crime with their lives, because the identity of the assassin could not be established. But because that murder has never been punished, can it be pretended that the Government was powerless or the law badly administered?

The SOLICITOR-GENERAL: The learned Judge, in his charge to the jury in the case referred to by the learned member, laid it down that it was not murder.

Mr. DARVALL resumed: It was in his judgment a shocking murder, and so the Attorney General put it to the jury, but justice failed to overtake the offender, from no fault in the law, the judge, or the jury, but through some want of identification. There was no doubt the crime was committed, but would it be fair, on such a fact as this, to urge an argument like that which my honourable friend had founded on the riots at Baltimore? Another argument my honourable friend urged with great force was the vulgarity of the American House of Assembly, and he indulged in a solemn warning against suffering their body to descend so low in the scale of manners and intelligence. But I imagine that this argument, if it has any force at all, would apply more forcibly to the Lower House, which the honourable member himself proposes to have elected. It cannot apply to the Senate, for the writer that he quotes bears testimony to the dignity and efficiency of that body. Indeed all writers concur in stating that the American Senate is equal to any legislative body whatever. It is the result of a double election, and such a double election as it is very easy to have recourse to here, and I should like to be informed what difficulty exists in this country that does not exist in America, to render it an impossibility for New South Wales to have an equally good Senate with America? As a proof of the character of that House, I will read the House an extract from a recent book of travels, entitled Mackay's Western World. The author is a highly educated gentleman, whose opinions may be taken with great confidence. He says:—

> The *coup dœil* of the Senate is striking. In all that enters into our conception of a deliberative assembly, it is as far before the House of Lords as the House of Commons is before the House of Representatives.
>
> They are, generally speaking, an intellectual body of men—gentlemanly in their mutual intercourse, and courteous in their deportment towards each other.
>
> The Senate takes a just pride in its own good character, and the Americans are justly proud of the Senate.
>
> The Senate is the truly conservative feature of the constitution. It is the balance wheel, by whose action the whole federal system is kept from resolving itself into its original atoms. It is to it that the country looks for salvation, when, for a season, the democracy may have run mad. It has more than once preserved the integrity of the Union, by its calm and resolute intervention between the country and destruction.

Such was the case when it steadily placed itself between the other House of Congress and the precipice to which it was rushing, when, by an overwhelming majority, that House adopted the warlike Oregon resolutions. Calm and dignified, regardless of menace, and unmindful of everything but its duty, it rejected them at its leisure, and so modified them that their adoption in their altered form, became as necessary to the maintenance of peace, as, in their original shape, they would have been the certain prelude to war.

A bellicose house and a warlike administration were thus bearded and successfully defied by the Conservative Chamber; and the United Kingdom and the United States, and indeed the whole world, remained at peace. As soon as it was suspected that the Senate would reject the resolutions of the House, the cry of "Look to the Senate!" was raised throughout the land, with a view, if possible, to create such a pressure from without as would compel it to accede to them. "Look to the Senate!" was written on every wall in Washington, and as you walked the streets the menace stared you, from the brick pavements, in the face. But instead of a threat, "Look to the Senate!" at last became a cry of hope, the friends of peace taking it up as a cry ominous of good. It was well for all parties that they did not look to the Senate in vain. It was well for the United States—for the next greatest calamity to an unsuccessful war with England that could befal them, would be a successful one.

To one in the habit of regarding the distribution of power between the different branches of the legislation in this country, the great influence of the Senate in the American system is a matter of some surprise. We are accustomed to look upon a resolute House of Commons as an overmatch for its colleagues in legislation. It is not often that the House of Lords resists its voice; it never ultimately succeeds when it does so. But the Senate feels itself to be in all respects, the co-equal of the other House of Congress and frequently beards it so as to defeat its all unanimous purposes. The solution of this difference is to be found in the different constitution of the two bodies. The strength of the House of Commons is without; its foundation lies broad and deep in public opinion; it represents the people, and is irresistible. The Lords, on the other hand, represent but their own order, whose interests are supposed to be in antagonism with those of the masses. It is enough that they resist the House of Commons in a favourite measure, to raise a cry, and direct the whole force of public opinion against them. Occupying but a narrow basis, they cannot long resist, and the House of Commons is omnipotent.

Not so the House of Representatives. It has its match in the Senate, which springs from the same source, and has a footing as broad and as deep as itself. When the two Houses at Washington disagree, the people only see the two classes of their own representatives in conflict. A victory by the one or the other is a triumph neither for nor against the people, it is only the success of the one set of delegates against the other. The contest does not, as too often with us, assume the odious form of class against class, when the peers are coerced into acquiescence, that the people may not be roused to frenzy by defeat. The Senate is as strong out of doors as its rival. It is otherwise with the House of Lords.

The author also alluded to some ridiculous specimen of legislation which he had witnessed in the House of Lords, when but two or three members of that body were in attendance, and he contrasted it with the conduct of the American Senate, who always attend fully, and frequently adjourn if only two or three members are absent. In the face of such a testimony to the value of an elective House, can the honourable member suggest nothing but a nominee Upper House; can our brethren of America succeed so well, where we, it is alleged, must fail? I am astonished at my honourable friend that he should seek to force such an institution upon an unwilling people. It can only prove a continual sore, and fret until it becomes intolerable, when amid convulsions and confusion of the worst kind, it will be done away with. Then the paltry attempt to justify it, on the plea that if it did not answer the expectations formed of it, it might be changed. What a pitiful argument was this. It could only proceed from men utterly ignorant of what were the real wants of the people, who sought to make a temporary shift. In fact, the elective Senate was the true Conservative body; instead of yielding, to every breath of public opinion like the House of Lords, they took their stand on their popular basis, and were enabled to stem the tide of democracy, which seems so desirable a course in the eyes of my honourable friend. In fact, conceding what is not true, but for sake of argument, allowing that it is possible to build up a nominee House of the best materials, yet in comparison with a House formed on such a basis as the Senate of America, it would prove a house of cards, which would be blown away at the first collision with public opinion. The honourable gentleman would learn that the

people of this country had not been born, saddled and bridled for other people to ride whithersoever they pleased. (Hear, hear.) In another part of the same work from which I last quoted, a work which I will say was written under no appearance of excitement, but in a very calm and dispassionate manner, the author seems to regard the Constitution of England as not conferring on the people such free institutions as are their undoubted right, and as are enjoyed by their brethren in America; but looking at the different modes by which they have arrived at their relative degrees of freedom, he clearly points out the danger of England attempting, by sudden means, to reach such a pitch of freedom as that enjoyed by America. But that argument does not apply here, where this ancient and artificial state does not exist. But it is unnecessary for me to pile up authorities; there is one authority that finds an echo, I believe, in every heart—it is the conviction that legislation and taxation ought to rest upon representation.

Mr. JAMES MACARTHUR would wish his honourable friend to explain, before he sat down, in what manner he would form an Upper House in conformity with the Senate of the United States?

Mr. DARVALL: I am not prepared to do this at present, for very manifest reasons; but I will say that I consider the principle is so good that it is desirable that it should be tried here. The opinions which I have just read are entitled to greater weight than any arguments which I can offer. I perfectly concur with the necessity of having distinctions in every country; but I am of opinion that none but those who have distinguished themselves by extraordinary actions, or those whom public opinion point out as possessing unusual merit, should be rewarded by the dignities in the gift of the Sovereign. In any new country I should be sorry to see any honour rendered hereditary. I should be sorry to see a state of things existing, in which the honour deservedly conferred on a father might be turned into ridicule by being transmitted to an unworthy son. (Hear, hear.) If honours are to be conferred, as I sincerely hope will be the case on those who deserve, at the hands of the Sovereign, I should prefer seeing them conferred only for the life-time of the individual. But distinction and legislative privileges are to be regarded as altogether different things. The latter, which is now sought for, would give to the favoured personages the privilege of making laws for their fellow-citizens, with the power of transferring that power to their children. Now, while conceding that merit should be rewarded, I see no necessity or reason whatever why it should be rewarded by a seat in the Legislative Assembly. (Hear, hear.) Under no circumstances should a man be placed where he would be liable to be looked upon by his fellow-citizens as an object of suspicion—and such would be the result of creating a nominee Assembly. It is desirable that merit should be liberally rewarded, and on any one deserving of reward, I should like to see the highest honours in the gift of the sovereign conferred; but I should not wish to see any such honour or distinction a mere colonial one, like our colonial currency, not to pass current beyond the Heads of Botany Bay. (Hear, hear, and laughter.) Let not the distinction, whatever it may be, to be received at the hands of the Queen, be a mere license to carry about in this colony an honour which would be regarded as spurious in any other country. (Cheers and laughter.) The proposal to create a nobility should not, in fact, have anything whatever to do with an Upper House. The attempt to connect them was ridiculous. There existed, as a matter of simple necessity, a right to transfer property from father to son, and from man to man; but Heaven forbid that in this country we should ever have the right of transferring legislative privileges established or sanctioned. (Cheers.) My honourable friend, in the climax of his zeal to vindicate hereditary honours, urged that it would be a disgrace to the country not to have them established, and asked who would

live in a country where a nominee House of Legislature did not exist. (Laughter.) Now, after an attentive consideration of the present position and future prospects of the colony, I feel that it is possible for the country to go on for all time to come without such an Upper House. (Hear, hear.) If the people of Great Britain had an opportunity of reconstructing their constitution, there is every reason to think that they would get rid of the House of Lords, as at present constituted. If the nominee principle were in every part of the world to be consigned to the grave, I feel that although, on the one hand, there would be a little mourning, on the other side there would be a very large amount of joy. (Cheers and laughter.) I for one would never obey any laws which I did not help in making. I would never have anything to do with a Legislature composed of men who were responsible to no authority. (Hear, hear, hear.) The fear of the laws is calculated to keep bad men from committing crime; the fear of the people keeps bad legislators in check; but what, I would ask, what is there to keep a nominee Legislature in check? (Hear, and cheers.) It is to be feared that the violence of an outraged people would ultimately check the proceedings of such an assembly by its destruction. (Hear, hear.) They had very strange notions of the people of this country, who thought with the honourable member for Sydney that they would regard it as the highest bliss to live under the sway of a nominee House. (Laughter and cheers.) Those persons might go further, and suggest that it would be better to have a despotic autocrat than a limited sovereign. No doubt the atmosphere of a court, composed of such an autocrat and a nobility enjoying such privileges as those proposed, would be acceptable to my honourable and learned friend, but to very few else. (Hear, hear, and cheers.) After asking who would live in a country which did not possess a hereditary nobility, my honourable friend next asks what right has Sydney to be represented? (Ironical laughter.) Now this latter doctrine was not so much to be wondered at, when it was considered that it was logically sequential on the former assertion. I would, however, ask what is the object of representation at all? Who made Legislatures? Who gave to legislatures the powers which they exercise? Are not all Legislatures supposed to represent the people? I do not mean to say that mere numbers should alone be taken into account, but when my honourable friend goes so far as to say that Sydney does not require to be represented, I am surprised that his perverted line of reasoning did not lead him to go further and say that it should not be represented because it contained so many people. (Hear, and laughter.) It was said by him that Sydney was composed of merchants, shopkeepers, and traders, with a few manufacturers; it was also alleged that it was the seat of Government. From these two circumstances it was argued that the population of the city was sure to make itself sufficiently heard in the Legislature of the country. It was also said that this city, being the seat of Government, the people had the power of intimidating the Governor. If so, remove the seat of Government to some more favoured constituency, in the event of any difficulty arising between the people and the Executive, but don't disfranchise one-third of the population of the colony. (Hear, hear.) These are the arguments adduced by his honourable friend. (Hear, hear, and No, no.)

Mr. WENTWORTH: Not exactly.

Mr. DARVALL: I appeal to the House to say whether or not what I advance is correct; whether my honourable friend did not contend that population was of little moment compared with class interests. I would ask if the honourable member had kept in view the "greatest happiness of the greatest number." Now, if that doctrine is to be considered sound, it follows that representation should be in fair proportion to population wherever the capacity for self-government is admitted. While I do not go so far as to say that particular classes and interests should not be represented, I would ask, is it reasonable

or not to say, that the largest constituency in the colony should be disfranchised, because it is the seat of Government? My honourable friend's fallacies are, in fact, without end. (Hear, hear, and disapprobation.) I am happy to have given an honourable member an opportunity of expressing his weariness. (No, no, from the Government benches.) However, I feel I am performing a public duty from which no consideration shall deter me. (Hear, hear.) My honourable friend has asserted that it is a matter of royal prerogative to appoint members of Council. Now, putting aside the desire which all colonists should feel to limit as much as possible the prerogative of the Crown (hear, hear,) and the fact that in England that prerogative is now limited to a few trifling matters, this argument of my honourable friend is utterly unfounded. Whence, I would ask, is such a precedent drawn? To say that the Crown has the power of appointing the members of the legislature, is openly to say that taxation and legislation might proceed without representation. (No, no, from the Government members.) The Crown nominees and the elected members would have concurrent powers of legislation and taxation. What community would willingly yield acquiescence to the laws of any other body than their representatives? (Hear, hear.) I contend that my honourable friend was wrong when he said that it was a matter of royal prerogative to make legislators. The danger of admitting such a principle is only another reason why the colony should have nothing to do with nominees. I find on reference to the language of some of the ministers of the Crown, that no such principle was even suggested. It has been declared more than once, and among other noblemen, by Lord John Russel, that the Crown possesses no such prerogative. (Hear, hear.) Now, are the colonists bound voluntarily to invite an evil which Parliament has not sought to force upon them? (Hear, hear.) The next proposition of a dangerous nature which my honourable friend has advanced was, that the colony was bound by a contract to accept of a nominee House. Now how did the matter stand. (Hear, hear, from the Government benches.) I will admit that we have proposed to accept a constitution similar to that of Canada. I do not see, however, how a bargain can be said to have been made when no terms have been finally agreed upon, nor any part performance on either side. What has been done for the country that they should be bound by such a propoposition? (Hear, hear.) I would like to hear my honourable friend explain to the House by what principle of law or common sense we are bound by any compact in this matter. (Hear, hear.) As the matter at present stood, the thing could be withheld. (Hear, hear.) And what, I would ask, had the Imperial Government surrendered, or the colony gained? (Hear, hear.) The argument tended to destroy the value of experience. A number of gentlemen had, a few years ago, proposed to accept a form of constitution which they now felt to be dangerous. It was as much their duty to consider the matter now, as it was then. It was monstrous to talk about being bound to accept a bill before it was even read a second time. Such arguments might, perhaps, be used to gag those in this House who are opposed to the measure, but how are they to satisfy the country on the question? How can we dare to impose on the colonists such a form of government when we know that a better can be obtained? (Hear, hear.) Compact indeed! I will say that if any such exists, it is disgraceful to require that the country is thus to be sold. (Cheers.) If personal discredit be necessary, it would be better to submit to it, and to the charge of inconsistency, than to accept such a constitution. (Hear, hear.) I may quite agree that the question hereafter be, whether to have a republican or monarchical form of government. (Hear, hear, and no, no.) In either case what ought to be the basis of the government? That obedience, respect, and support, which is indispensable to every govern-

ment, and which can never be secured except by a purely representative legislature, by which alone good government and continued loyalty to the sovereign will be secured, and not by a nominee legislature, although it has been said that the country would never be happy without one. (Laughter.) I do not think, moreover, that the loyalty of the Colonists will be suspected even if they should say that they will have no such principle. (Hear, hear.) But if the people were forced to submit to the hybrid constitution which it is sought to impose upon them, it is to be feared they will not long remain submissive to such injustice. (Hear, hear.) I deny that the power to make laws exists any where else than with the people. As bearing on this matter, I will refer to the opinions of a colonial minister of great experience—Earl Grey; and even if Earl Grey's opinion will not be conclusive as to the formation of a second Chamber here—which, it is admitted, is experimental—(hear, hear)—still it is valuable as regards the working of nominee houses in general, as his experience has been practical and extensive. In quoting Earl Grey's words, I would remind you, that that nobleman has rarely changed his colonial theory, and that, therefore, his condemnation of nominee houses is of greater significance. After reading the following extract, I feel that it would be idle for us to insist on the prerogative of the Crown. I trust that the opinions therein expressed will have the effect of changing the mind of my honourable and learned friend on the matter referred to. (Laughter, and hear, hear.) Earl Grey says—

> The attempts hitherto made to create in the colonies a substitute for the House of Lords, have been attended with very moderate success. Legislative Councils, composed of members appointed by the Crown, have in general had little real influence over public opinion, while they have been attended with the great disadvantage of rendering the Assembly less efficient, by withdrawing from the scene where their services must be the most valuable, some of the persons best qualified, by the enjoyment of a certain degree of leisure, by their character and ability, to be useful members of the popular branch of the Legislature.

I trust that my honourable friend, the Colonial Secretary, will ponder upon the extract, and that he will ascertain whether or not its doctrines are in accordance with those of the present ministers, seeing that it is the duty of the nominees on all occasions to support the views of the Home Government, (Laughter.) Passing from Earl Grey's opinion, I will refer to another, and, if possible, an opinion of greater importance than the former. The extract which I read is taken from the Report of a Committee of the Privy Council, appointed to consider the Constitution for the Cape of Good Hope. It is the expression of opinion of some of the wisest and best men of the day, and, as would be seen, is not more favourable to nominee houses than the former :—

> It is on all hands admitted, that it is highly desirable that there should be a second branch of the Legislature, less easily swayed by the popular feeling of the moment, than the Representative Assembly, and capable of acting as a check and counterpoise to that body, in order to guard against hasty legislation, without requiring the too frequent interference of the Governor or of the Crown. But in order to perform these functions with effect, it is necessary that the Legislative Council should be a body of real weight and influence, commanding the respect and confidence of the public.

Now we must all irresistibly come to the conclusion, that a Nominee Council is not the one which in England is considered likely to possess the confidence and respect of the public. (Hear, hear.) I do not wish to be understood by these remarks, that the Committee recommended an Elective Upper House, because they are in reality in doubt as to whether a second House is at all desirable. (Hear, hear.) But if a second Chamber be established, they are then of opinion that it should be elective. (Hear, hear, hear.) The Report again says :—

> In stating their reasons for advising that a Representative Legislature should be established in the colony of the Cape of Good Hope, the very able and experienced servants of the Crown who were consulted by the Governor have unanimously expressed the strongest opinion, that the existing Legislative Council does not command the confidence of the inhabitants of the colony, and has little influence on public opinion. But the

composition of the existing Legislative Council is practically the same with that which is recommended for the body which, under the same designation, is proposed to be joined with a Representative Assembly in the work of legislation; it consists of official members, and of members not holding any office in the public service, who owe their seats to the nomination of the Crown. We cannot believe that the character of this body could be essentially altered by increasing the proportion of unofficial to official members, or by making the life-tenure of their seats to depend, not on a usage which is practically almost invariably followed, but on the law; nor have we any reason to believe that it would be in the power of the Governors of the colony in time to come, to make a more careful and judicious selection of members to be appointed to the Council than that which has been made by their predecessors. On the contrary, we are persuaded that, after the establishment of a Representative Assembly, that body will have so much more real authority than a Council nominated by the Crown, that seats in the former will be a greater object of ambition than those in the latter, and it will thus become impossible to obtain the services in the Legislative Council of gentlemen of so much weight and influence with their fellow-citizens as those who have been heretofore appointed.

The inference, we think, is irresistible, that a body which even while it exercised the whole power of legislation has little hold over public opinion, will cease to have any real weight or influence when it comes to be overshadowed by so substantial a power as that of an Assembly elected by the people. Hence, we concur with the Chief Justice of the colony in believing, that if it is desired to give to the Legislative Council strength to act in any degree as a balance to the Assembly, the elective principle must enter into its composition.

Now, the only logical conclusion we can draw from the extracts just read, is that the nominee principle is found to be inefficient. In this House, we all know that the nominee element possesses very little power or importance; out of the House it enjoys less. The nominee benches have, at different times, been filled by men of the greatest ability and the highest integrity; but remove them from private life into this assembly, and place them in a position where they may be liable to be cajoled by the Governor, and they at once lose all public confidence. (Hear, hear.) I will not at this hour trouble the House with any remarks on the elective franchise, especially as other honourable members will have an opportunity of speaking on the subject. I freely accept the challenge to appeal to the people on this great question. It is my desire to adhere to the principles of the British Constitution; but I will not sanction the establishment in this country of a defective principle, which in England has been found too deeply rooted to be eradicated. (Hear, hear.) When vindicating the representative principle, I feel that I am vindicating the principle which has maintained the British Constitution in peace and security, when all the Governments of the Continent of Europe were shaken. (Cheers.) What was it preserved that Constitution when the King fled and when the Lords abdicated their functions, when they left to other hands the duty which they felt unwilling to perform? (Cheers.) But for the representative principle, the British Constitution would have been long since in ruins. In imitating that Constitution, it behoves us not to follow shadows, by which we should only be deluded, but to cling to the substance; if we require something new, we must beware how we depart from the representative principle, if the obedience of the people is to be insured: for Englishmen are to be influenced by respect, and not to be governed by fear. (Cheers.) Every man should feel that he submits to laws made by representatives, who are not to be removed by a revolution, but by electing a better man on a future occasion. (Hear, hear.) There is no analogy between the House of Lords and a nominee Chamber. Admitting that a second Chamber is desirable, it would be very easy to arrive at a representative Upper Chamber. Look at Belgium. There the only difference between the Upper and Lower Houses is that the members of the former are all elected by larger constituencies, and for a greater number of years. I believe the qualifications of voters is the payment of a certain amount of taxation. What could be more simple than this? Let a general election take place; at the same time that the people return their representatives, let them elect a body of deputies, whose function it would be to elect the members of an Upper Senate. Here we should have perfect

simplicity; we should have a body of men elected to perform a particular duty, and consequently unbiassed by factious feeling or prejudices. By this process of double election, an Upper House would be created; and I would ask, where was the difficulty in the way of such a plan? It should be remembered that our old Saxon institutions were replete with this principle of double election. It is only reasonable to suppose that the deputies elected would perform their duty faithfully and well. But if this scheme be not approved of, there is nothing to prevent the members of the Upper House from being elected by the members of the other body, or by the electors generally. (Hear, hear.) Here, however, we are met by the fanciful objection, that then the one assembly would only be a reflection of the other, whereas the natural tendency would be antagonism. I deny that men known to profess violent politics would be likely to obtain seats in the Upper House by election. I am very willing to see an Upper House created for the purpose of checking hasty or inconsiderate legislation, but I should be sorry to see imaginary difficulties cause them to give the go-by to all that is worth retaining in the Constitution. No British community, we may feel assured, will ever permit one class to be invested with the odious power of making laws without responsibility to the people whom those laws are to bind. I thank the House for the patience with which they have listened to me. I feel that the cause I have advocated does not receive justice at my hands: but if men would only take counsel with their own consciences—with their common sense—and with the history of their own country—that cause would have little to dread. (Hear, hear.) If a nominee House were demanded by the people, as good citizens, they would all be bound to acquiesce. But until then, I feel it to be my duty to resist the measure at every stage. Even if a fresh election is not to take place, still I hope that time will be given for a full consideration of the question by the colonists. At all events, time should be afforded to elicit the opinions of a clear majority of the people in reference to the measure before the House; I shall therefore move that the Bill be read again that day six months.

Mr. MARSH: Mr. Speaker, I have the less difficulty in attempting to answer the speech of my honourable and learned friend who has just sat down (Mr. Darvall), because I know he will be so ably answered by my honourable and learned friend the member for Sydney, and I shall leave a great many of his fallacies to be answered by him, for I am sure he will take great pleasure in doing so. And, Sir, there is another reason also why I feel the less difficulty in replying to the speech of the honourable and learned member for Cumberland, namely, because to a certain extent he has answered himself. My honourable and learned friend has searched all the world over for constitutions, and he has chiefly recommended us to copy the great American luminary, but in that luminary I think my honourable and learned friend the member for Sydney has shown so many spots that we are not likely to adopt it here. He has then gone to the Cape—to the Cape Boers for a constitution! and last of all, being very hard up indeed, he has gone to Belgium! Who, Sir, has not heard of Belgium? Who has not heard of its people? Are we to go there for a constitution? To perhaps the most profligate, the most degraded, and the newest country in Europe? Shall we send our sons and our daughters to Belgium to learn morality? Or our soldiers to learn military tactics, or more properly speaking, the art of running away? for it is well known that Belgian soldiers have long been famous for that accomplishment. (Laughter.) Sir, the history of Belgium, from the beginning to the end, is a most disgraceful history; whilst their neighbours, the Dutch, were fighting gloriously for seventy years, and carrying on a war of extermination for their religion and their freedom, what were the Belgians doing? Succumbing shamefully to the power of Spain, and showing that from first to last they have been the basest people

that have existed in Europe to the present day. Certainly the Belgian Government is now a tolerably good one, but that has nothing to do with the matter. It depends a great deal on the King, who is an excellent man, and it has become finally settled because the people are industrious and not so apt to be following after revolutions as some of their more volatile neighbours. Sir, let us not go to Belgium for a constitution. But opposite the coast of Belgium there is an island—an island favoured and good in every way; there is a people, "great, glorious, and free;" there is a constitution which has lasted for ages, and proved itself the best in the world, and let us go there for a constitution. (Cheers.) We came here to be English, and English we will be, in spite of those Yankee notions now agitated and maintained in certain quarters. (Cheers and laughter.) In Hungary, and in other places, there are many good fields for immigration; and I believe, even at this moment, that sheep-farming would pay better at Odessa than it does here. No one can deny that the valleys of the Missouri and the Mississippi are more fertile than those of the Hunter and the Hawkesbury. But we came here because we were determined not to live under a despotism on the one hand, or the tyranny of a mob on the other. We have chosen this country, because here we can enjoy our British freedom. Let those who do not like it, leave it. (Laughter.) California is within a few weeks' sail, and there they can enjoy all the advantages of the American institutions they praise so highly. But, Sir, why does every ship that comes from California bring back to this colony two or three hundred passengers? The reason is that they do not like to live under those institutions. They prefer to return to a country in which they can enjoy the freedom of a Briton. And when I use that term let me not be misunderstood. I do not mean to confine it even to the whole United Kingdom, but I apply it to the Anglo-Saxon subjects of the Queen throughout the whole empire, for I cannot believe that soil or climate can have any deteriorating influence on that race of freemen—

> Unmanly thought! What season can control?
> What fancied zone can circumscribe the soul?
> Which, conscious of the source from which it springs,
> By reason's light, or resolution's wings,
> Spite of her frail companion, dauntless goes
> O'er Lybia's deserts, and through Zembla's snows.

(Cheers.) Why, Sir, should we not have the same institutions as those of our father land? If we have not got them, we can make them. When we came here we had not the vine and the olive, the orange and the fig-tree, but we planted them, and they grew, and brought forth fruit abundantly. And can we not then introduce the same institutions as those of our father land? It is a general notion to suppose that there is a great difference between an old country and a new one. But this difference is not so great as might be at first sight supposed. A former Governor of Canada, going from Canada to England, observes that everywhere he went there appeared to be something new. He had thought he was going to an old country, but he found that he was in, what was to him a new country. Here was a new railway, there a new town, and wherever he went, he goes on to say, he found that all was new until he came to the colonial office, and there he found old ideas, old men, and old women. (Laughter.) That observation might be called unjust, for even then the colonial office was much changed from what it had been; but at all events, now, it has taken upon it that newness which we see pervading England everywhere. Any of my honourable friends who may go to England will see vast changes. They will be whirled in a railway over swamps that have been reclaimed and rendered fertile; they will see new towns that have risen up in every place. Nor is the moral atmosphere of the country less changed than the physical. Not many years ago the vices of drunkenness, gambling, and debauchery, were tolerated among the greatest men of the day—were even practised by such men as Charles James Fox and Richard Brinsley Sheridan. But now the case is

far different. The political state of the country is no less changed. Only a quarter of a century ago, a very large portion of the people of the United Kingdom were debarred from all rights, honours, and emoluments, because they would not forsake the faith of their fathers—not because they were bad men, but because they were good. Now they can exercise those rights, and seek those honours and emoluments equally with their fellow subjects. Nor were the changes brought about by the Reform Bill less than those brought about by Catholic Emancipation. Scotland, before that time, was one rotten borough, and her people, among the most educated and intelligent in the world, and who are capable of pushing their own interest in every direction, were, in fact, almost wholly unrepresented. As regards the great question of the day—the constitution of the Upper House—it appears to me that whatever we do, the Upper House can only be considered as a drag, something to prevent hasty legislation —something to intervene between the Government and the Lower House. But I do not consider that it should be something which should stop legislation altogether. The House of Lords, with all its prestige, cannot do that; and whether we have our Upper House elected or not, nothing of that sort can be accomplished here. That House of Lords is truly a great institution—great in its history, and great in its present standing. Whether we look back into the long past centuries, when the flower of chivalry led the sturdy yeomanry of England to the defence of their country, or to seek for honour and fame on the battle field—or when the Barons asserted the Rights of Man on the green sward of Runnymede, and for ages really maintained the liberties of England—(cheers)—or if we look at it at the present time—we must in any case confess its grandeur. He, Sir, can only truly judge of what it is, who has passed from the stormy and powerful debate, the convincing oratory, and the stern practical wisdom of the Commons, to the calm dignity and graceful and accomplished eloquence of the Lords—he who may have listened to the voice of such men as the late Earl Grey, ever foremost in the furtherance of the great object to which he had devoted his life, till the morning sun glistened on the tapestry of the ancient walls—he, Sir, I say, he alone can judge of what that House is now, with all the prestige of its heraldry, and the wonderous host of talent produced by the new creations. (Cheers.) Or if we look forward to its influence on the destinies of England in an unknown future—to a time when the sons of the great, or even the sons of the lowest in the land, may take their seats in that House, and may reap those honors deservedly won, either by great legislative capacity in the Lower House, or by bravery and skill on the field of battle and of glory—look at it which way we will, it is an assembly, august indeed. We cannot make our Upper House what the House of Lords is. But if we make it elective, we shall make it what the House of Lords is not. If we make it elective by the class of people who elect the Lower House, there will be no distinction between it and a democracy. (Cheers.) If we make it elective by another and a higher class, we shall make it an oligarchy. (Cheers). In either case it would come to a dead lock, some way or other; and in either case it would rob the Lower House of its best members, which would be fatal to good government, for in a good Lower House we shall always find our greatest security. Now, Sir, as to the distribution of the electoral districts. If all people were equally wise in politics—if all studied aright the beautiful fable of the belly and the members—if the laborer knew, as he ought to know, that the accumulation of capital is beneficial to him as well as to the capitalist, inasmuch as the interest of that capital, when created, must be spent, and chiefly in the products of labour—if all people were equally wise and good, then we might distribute the elective franchise equally, and give it to all according to their numbers. At present we can do no such thing. We must be content to

rule by antagonism, if I may be allowed the expression—to balance the power of different classes and different interests, and not rate people as if they were cattle, to be numbered by their heads, or as a tribe of savages; but as constituting a society and a social system which has been the work of ages, and which I hope will last for ever. This being the case, we must take care that every class is equally represented, and properly represented if represented at all. It is equally necessary that they should be substantially represented by practical men, or it is worse than useless. But let us see what sort of men are chosen when masses of people are associated together for the purpose of electing representatives. Let us go through the great towns, and see the sort of persons they select. Let us begin with London. It is well observed by the *Times*, that in hardly any instance has it brought forth any real talent or any person of eminence—any person above the station of a mob orator or a paving-board politician. It is remarkable that the inhabitants of great towns generally choose not only persons unfit to represent them, but often persons of bad character. (Laughter.) On one occasion it was said of a member for the great Borough of Finsbury, when he was heading the poll, and in allusion to a certain charge against him, that he was getting on like a house on fire. This surely is lamentable. But let us go on to Birmingham, and see whom the people there elect. Now, perhaps, the real intelligence of Birmingham is above that of every other place in the world, when we consider the beautiful things they invent, and the extraordinary skill displayed in their manufacture. Sir Robert Peel has told us that of that class of persons there are upwards of twenty men who began life as day laborers and ended with £100,000, and this not by the slippery path of trade, but by honest industry and successful application. Out of this class sprang our Stephensons' and our Faradays', to span the Menai Straits by a tubular bridge, and by combining magnetism and electricity, to use the lightning flash as easily as the powers of a child. But these people, with all their vast intelligence, are sorry politicians. It has been said, and is so to the present day, that no man could be selected for that town unless he took what is called a Brummagem view of the currency question, which, if it means anything, means that sixpence is to be made to pass for a shilling, and the result would be that half the debts in the world, the National Debt included, would be wiped away. And it is a scheme which might afford endless amusement, because, if sixpence could be made to do the work of a shilling, threepence might be made to do the same, so that "the view might grow small by degrees and beautifully less," but never nothing. It would afford amusement, and perhaps instruction, to the pupils of the Birmingham school, until they might become in their riper years full currency doctors. From Birmingham let us proceed northward to Nottingham. There the late member was not accused of setting his own house on fire, but he was accused of robbing the mail. Now we do not know for certain that he did not rob the mail, but he, (Feargus O'Connor,) did afterwards rob the poor Chartists most unmercifully by his land scheme; and after committing many political vagaries he is now in a mad-house, where, perhaps, he had better always have been before the ugly story about the mail, or before the poor Chartists were defrauded. From Nottingham let us go further north to the manufacturing districts of Yorkshire. Perhaps the intelligence of these people is as great as that of the people of Birmingham; and they are certainly their superiors in morality. They make the most beautiful machinery that can be conceived, and they have succeeded in every possible way. And though Yorkshiremen are generally considered very 'cute, yet, perhaps, no people have ever been so cajoled, so bamboozled. They have been led astray by Tory mountebanks, Radical mountebanks, Anti-poor-law mountebanks, Anti-papistical mountebanks. Every sort of cajolery has been

exerted upon them, and most successfully. From thence let us go to Liverpool, and there we find an extraordinary case. They had two very good members, and they turned them out, and what for? Because they would not vote against the Pope! (Laughter.) If we go on to Edinburgh it is just the same, and they have only lately redeemed their fame by again electing the eloquent historian and accomplished orator, Macaulay. And if we pass over the Channel to Paris, to say nothing of the wretches elected during the first Revolution! what did they do at the last? The man placed at the head of the Government (Lamartine) had tried his hand at history and poetry with little success, and he now came forward to try it at politics with still less. And the last person who has been elected for the city of Paris was the extravagant Socialist writer of an obscene novel. But, Sir, to come nearer home, if Sydney wants more members, let the people set their own house in order. (Laughter.) Let them do something with the Corporation. Let them show that they can do something there, and then, perhaps, when they can prove they are able to govern themselves, we shall give them a little greater share in governing other portions of the country. Sir, there is one point which has scarcely been touched upon: I mean the Civil List proposed to be granted instead of the Schedules. It certainly is a very large Civil List, not to say any thing of the £28,000 a year for Public Worship, which is a question in itself. But it seems to me that it would have been wiser to have allowed the New Legislative Assembly, to be elected under this Bill, to have passed this Civil List. I am much afraid the same war will be waged in that Assembly against this Civil List that has been here waged against the Schedules of the Imperial Parliament. My own notion certainly is, that the Governor and the Judges should be entirely independent of an annual vote, and that their pensions should be independent also; but I am not prepared to say that I will go any greater length in the way of rendering the salaries of public officers independent of the votes of the Assembly. I do not see, for instance, why the Attorney General or the Master in Equity should have fixed salaries, particularly as they have not those fixed salaries at home. And with regard to pensions, I have again to warn this House, as I have once done before, against extravagance. Extravagance at any time is a great evil. It may not happen that our funds will always be in such a flourishing condition as they are at present. Perhaps our produce may not always obtain as high rates as it does now in the English market; and if those rates should fall, then our revenue must suffer. The sum appropriated by this Civil List is a very large sum indeed; and I feel that I cannot forbear to warn this House against what I conceive to be an extravagant appropriation of our funds. The report of the Constitution Committee says that they have no wish to sow the seeds of a democracy. But let them beware, Sir, that by a Civil List like this they do not sow these seeds. An extravagant expenditure of the public finances, by inducing the necessity of increased taxation, tends perhaps more than anything else to excite the feelings of the people. It gives to those demagogues, who are ever ready to take the opportunity of grievances real or supposed, a powerful and just cause of agitation. And when once excited the passions of a democracy are not easily allayed. It was the extravagance, with regard to the public money, which prevailed in the palaces of the Kings and courtiers of France, that raised up the demon of the first French revolution. The minor grievances of the Pension List in England had the greatest share in the agitation which led to the passing of the Reform Bill. And I warn the House not to proceed in the same path of extravagant expenditure, lest they also raise the whirlwind of democracy. (Hear, hear.) Sir, I crave the attention of the House whilst I propose a plan by which the services of those of my honourable friends on the Government benches, who might lose their places under a responsi-

ble government, may be secured to do good to the country, instead of allowing them to pass their lives as pensioned idlers. It is obvious, that when the new Council comes to be elected, few, probably none, of the members of the present Government may be elected to seats in it; and if they are to be pensioned off at their full salaries, the probability is that they would not try to be elected. Now I wish to keep their services, but at the same time to establish a system of responsible Government. There are two plans which might be proposed to this end. One plan is the French plan—which I do not however approve of—that is, that the members of the Government should have seats and voices, but not votes, in the Legislative Assembly. This system has certainly worked well in France, and has produced some great men. But the plan I propose is somewhat different. It is, that the members of the present Government should keep their places and their pay, and that it should be in the power of the Governor to select out of the Legislative Assembly such members as would advise with him and carry on the Government business in the House. Call them a Privy Council, or what you like, but let them be unpaid. The real labour of preparing the Government measures could then be done by the paid officers, while the business of passing them through the Legislature could be done by the unpaid privy councillors, selected as I have said. I am quite satisfied we shall not be able, for some time to come, to get a good responsible Government in any other way As the Governor has said, in one of his despatches, the difficulty is to find people of leisure in this country who would devote their whole time to the management of the Government on so uncertain a tenure as that of immediate responsibility to the popular assembly. But under the plan I propose, the duties of the persons selected to carry on the Government business would be so light, and almost entirely confined to the Session, that I have no doubt there are many who would do it, and who are eminently adapted for it. Sir, there are those who think this measure had better be put off for some years longer—who think that we had better wait till the medley of strange population, now flocking to our shores, has settled down quietly. There may be those who, like Frankenstein, are afraid of a picture of their own creation. But, Sir, I have no such misgivings. I have boundless faith in the power of our race to rule themselves, wheresoever they may be, or under whatever circumstances. (Cheers.) To us it has been given to subdue and replenish the earth, to rescue from the hands of the oppressors, and to civilize the dusky nations of the earth, and to fill the wilds of the West and South with the fair and manly race of the Northern Isles. It would seem as if we were one and all bound up in one great conspiracy for this great work. The humblest mechanic plays his part as well as the conqueror of a province; and the poorest amongst us, who, by honest industry, improves his condition, may be proud to take his seat by the man who passes a useful life in social and political reforms. Perhaps it is not too much to trace the fall of nations and the ruin of empires to their having lost sight of the great principles of freedom and self-government. The States of Greece, placed on the lovely shore of the inland sea, where the fancy of the poet vied with the eloquence of the statesman, and the graphic delineations of the historian—with courage that could resist the barbarian hordes of Asiatic conquerors—have passed away. The mighty rule of Rome, which extended over the fairest portion of the earth, and was founded on the public and private virtues of her citizens—virtues which we even now admire, though blessed with the higher good of Christianity, and a more complete civilization — has passed away. They have both passed away; because the popular assemblies of Athens and of Rome gave up the power of self-government, misled by the noisy tongues of demagogues, or dazzled by the splendour of usurpers. Sir, it is not, I imagine, to be supposed that this is a final measure, but rather that we should go on continually improving; and I hope, as a

sincere reformer of all proved abuses, to see the day when, from the increase of education and intelligence, the electoral districts may be distributed more according to numbers. (Cheers.) But, Sir, it is a penalty we pay for the inestimable privileges of freedom, that they create agitation—agitation which fans its flame, and prevents it from degenerating. If the voice of freedom, and, perhaps, of discord, could not sometimes be heard, instead of the healthy stream of the rushing torrent, the stagnant lake would reflect nothing but the image of idleness and solitude. (Cheers.)

Mr. MARTIN moved the adjournment of the House.—Carried.

Mr. MARTIN: I beg to move now, as an amendment on the motion of my honourable friend, the member for Sydney, the following resolutions:—

1. That in order to enable the Upper House of Legislature to exercise an efficient check upon the Lower, it is necessary that such Upper House should possess, above all things, that weight and consideration which popular election only can give it; and without which, no amount of character, intelligence, or ability, in the individuals composing it, can enable it, in times of great political excitement, when its intervention will most be required, to exercise in any sense, or to any extent, the functions of a truly conservative institution.

2. That in order to prevent the Upper from being a mere duplicate of the Lower House, it should be elected by larger constituencies, with a different franchise; and that, as it is desirable that there should be a representation of interests as well as of numbers, such larger constituencies should consist exclusively of the freeholders of the country.

3. That to give stability to the Upper House, and to make a seat in it an object of ambition to those most competent to guide the public councils, its members should continue in office for twice the period allotted to the members of the Lower House.

4. That the foregoing resolutions be referred to the Committee of the whole House for its guidance when taking the before-mentioned Bill into consideration.

The SPEAKER: I would suggest to the honourable member, that it would be more convenient that his resolutions should be moved after the first amendment—that of the honourable and learned member for Cumberland—has been disposed of.

Mr. MARTIN: It is a matter of very little moment to me whether the amendment which I have proposed be moved now or after the amendment of the honourable and learned member. The object which I had in view in placing a notice of motion on the paper, was one which I believed would facilitate this discussion, by enabling the House to decide at once upon the main principle of the Bill. Honourable members must be aware, that it would have been quite competent for me to have moved these resolutions without any notice whatever; or, when the house was in Committee, to have proposed the introduction of clauses into the Bill which would have carried into effect the principle embodied in my resolutions. But my object was to elicit, at as early a period as possible in the progress of the Bill, an expression of the opinion of honourable members, and if possible, a final decision of the House with reference to the leading principle involved in the new Constitution—namely, whether the Upper House should consist of an elected or a nominated body. I thought that the most proper period for such a discussion would be on the second reading of the Bill, and my object in throwing the resolutions into the form in which I have submitted them was to prevent the necessity of a second debate upon this one point, and to avoid encumbering the business of the House, when in Committee on the Bill, with the discussion of a principle like this. I also desired to take advantage of the very full House which is now assembled. Very shortly, the country members will, doubtless, return to their various avocations, and I wished the principle embodied in my resolutions to be adopted or rejected by a decisive majority of the House, so that the question might, so far as the Council is concerned, be at once definitively disposed of. With this view I have purposely so framed my resolutions that they abstain entirely from matters of detail, and refer only to the one great and important question, whether or not we shall create an elected or a nominated Upper House? That question I hope the Council will finally

decide at the close of this debate. I feel that, in approaching this subject, I am placed in a position of very considerable embarrassment; because, though I agree with almost every argument which has been urged by my honourable and learned friend the member for Sydney (Mr. Wentworth), I differ from him in some of his conclusions; at the same time, while I agree with some of the conclusions at which the honourable and learned member for Cumberland (Mr. Darvall) has arrived, I feel compelled to dissent from almost all the arguments and premises on which these conclusions are founded. I feel that this is a peculiar position to be placed in; but I trust that before I sit down I shall be able to explain it in such a way that it will be understood by the House. I hope that I am prepared to approach this question with a proper degree of diffidence, and with a full sense of its importance. I believe that no person with any adequate comprehension of the subject can approach it without feeling that it is one of extreme difficulty, and that though every honourable member has a right to hold and express his opinions upon it with freedom, they are all bound to exercise the greatest possible candour in dealing with the opinions of others different from their own. I believe that no question which has ever been brought before this Council has been half so important as this. Doubtless there have been, and there will be in years to come, many questions of high natural concernment brought under the consideration of the Council; but I do not believe that in all time it will have any measure so fraught with the future destinies of the country submitted to it for decision as that which is now occupying our attention. I believe that this is the first time in the history of colonization—at all events in the history of British colonization—that the right to frame a Constitution for itself has been conceded to any colony by the parent state. It is the first time that any colonial Legislature has met for the purpose of framing such a constitution. The greatness of the occasion cannot, therefore, be overestimated. The subject of framing constitutions is one which has occupied the attention of statesmen, philosophers, historians, and lawgivers in all ages. On this subject the master-minds of former days have left for our guidance the result of their experience and their researches. This is a great advantage to us; for in addition to the valuable lessons which history lays before us, we have the profound reflections of the many great philosophers who have discussed the principles of government to instruct us in our deliberations. For myself I will say that I have endeavoured, to the utmost of my ability, to avail myself of this advantage. I have endeavoured to make myself acquainted with the works of the great writers upon government, and by a careful examination of their arguments and their conclusions, to find some assistance in the attempt to discover that form of constitution which will be most likely to secure the permanent welfare of the country. Whether the conclusions at which I have arrived are erroneous or otherwise, I trust that the House will give me credit for a sincere desire to take that course which will best promote the public interest, and to exercise, with reference to this bill, a strictly impartial judgment. I will here at once most emphatically deny that I for one am actuated on this occasion by any desire to favor any class, or to legislate with a view to the aggrandisement of any section of the community. On this question I, at all events, am not influenced either by prejudices or partialities. I am actuated by no class feeling, nor do I believe, however much to the contrary may have been asserted out of doors, that any member of this House has the slightest desire to create a dominant class in the community. The only object which I believe the house has—the only object which it ought to have in view—is to give good government to the colony. If we want to attain this object, it is our duty to approach this discussion in a calm, fair, and candid spirit. The task which we are now called upon to perform is one which has not

been assumed by us. It has been expressly delegated to this House by the supreme authority in the empire—the authority of the Imperial Parliament. But notwithstanding this express delegation of authority, we are met on the very threshold of this discussion by a question of jurisdiction. We have been told that this House has not been elected with a view to the framing of a constitution for this colony, although the very Act of Parliament which called it into existence has conferred on it the most extensive and unprecedented powers for that express object; and although at the last general election the attention of the various constituencies was repeatedly called to that circumstance. It has been said by speakers at public meetings, and by writers in various newspapers, who have put forward their own views upon the subject with much confidence, but who do not appear to know by what authority the House is acting, that this is a question which can only be legally and constitutionally settled by a convention. Now I would ask the persons who take such ground as this—who arrogate to themselves the right to dictate to this House, what it shall and what it shall not discuss, whether they know what they are doing? Do they know that the calling of a convention is the resolution of society into its elements? Without the entire abrogation of all government, they could hold no such convention as is proposed. Under the government of the United States conventions are provided for—in times of revolution in other countries conventions have been held, but no such thing as a convention is known to the British Constitution. The British Constitution recognises an uncontrolled and permanent authority in the Imperial Parliament, and in the various legislative bodies which it has created, and throughout the wide limits of the European empire, no right is conceded to any tumultuous gathering of self-constituted reformers, to assume to themselves any legislative powers. The duty of settling the form of our constitution has not been entrusted by parliament to any convention of the people. It has been entrusted to this House, and I hope that that duty will be honestly and fearlessly discharged, and that no attention whatever will be paid to the attempted interference with our functions. I trust that in the discharge of this duty we will show manliness sufficient to resist every species of dictation. For my own part I shall treat all such dictation with the most supreme contempt, because I know of nothing more unconstitutional or more absurd. We have been told that we are bound to pay respect to the enlightened expression of public opinion, but for that expression of opinion I for one do not look to such meetings or writings as those to which I have alluded. On me at all events they will exercise no influence. I do not say this, because I have any desire to check discussion out of doors, or with any intention to provoke hostility. I wish as much as any man to obtain the good opinion of my fellow citizens, and least of all do I desire to see this Council brought into collision with large masses of the people. But I feel that I should be unworthy of a seat in this House if I did not most emphatically deny the right of any public meeting, or any number of public meetings, to usurp its functions. I deny as emphatically the right of this House in any way to resign those functions, or any part of them, to other hands; and I repeat that, legally and constitutionally, under the authority of Parliament, in this Council, and in this Council alone, can this measure be determined. We have been told by the honourable and learned member for Cumberland (Mr. Darvall), that if this measure be not defeated by honourable members in the House, it will be defeated at all events by the people out of the House. I must say that, in my opinion, that was not language which ought to have been addressed to this Council by one of its members, respecting any of its proceedings. The power of the people out of doors ought not to be held in terrorem over the heads of honourable members. I do not know what notion the honourable and learned member entertains of the powers of public meetings and self-

styled conventions, but I for one do not recognize the right of any public meeting to sit in revision upon the acts of this Council. We have been sent here invested with all the powers of legislation, and I know of no right possessed by any portion of the public to amend, reject, or sanction any of our acts. Here, and here only, I repeat, does there rest the power to decide the question of the constitution; and any assertion to the contrary, no matter by what numbers it may be sanctioned, can inspire no other feeling than contempt. And where, let me ask, could the power to frame a constitution for the colony have been more appropriately placed? Without any desire or intention to indulge in self laudation, I will say that I do not think it would be easy to pick out fifty-four gentlemen in the colony more competent to discuss the real merits of the question than those I am now addressing. And here I cannot but remark how extremely curious it is that those very individuals, who so loudly deny the right of this House to frame a constitution, have usurped that right for themselves. I have stated already that the task which this House is now discharging has been imposed upon it by an Act of Parliament; but those persons, against all law, without any right, without any authority whatever, have assumed authority to frame a constitution which they declare that this House has no authority to form. In this most important political question, these noisy politicians, elected by no one, representing no one, have nominated themselves into a body to prepare a constitution in which the principle of nomineeism is to have no place, and have now the presumption to attempt to dictate a course which, right or wrong, according to the honourable and learned member for Cumberland, must eventually be adopted. I repeat that I treat with the most supreme contempt this attempt at dictation—this most absurd and ridiculous usurpation of a power which, under the constitution of the colony, no body of people but that Council can possess. Much has been said of the imposing and enthusiastic demonstration which has recently taken place. But I would remind the House that there is nothing easier than to get up large meetings in large cities—nothing easier than to procure a large attendance of street idlers on any occasion when a little amusement is expected—nothing easier than to get up enthusiastic cheering for any speaker who may choose to find fault with all that is solid and valuable in government, or to indulge in any amount of vindictive and malicious and scurrilous abuse of individuals—nothing easier than to get up loud plaudits for men who revile those whose motives they misrepresent, and whose arguments they cannot understand. This is a matter of constant occurrence both here and in the mother country. I am willing to attach as much importance to the late demonstration as it deserves, but I cannot recognize the right of the persons who took a part in that demonstration to characterize their individual opinions as the general opinion of the people of New South Wales. I will even go further. I deny the right of those persons to put forth their opinions as the opinions of the people of Sydney alone. I do not believe that the opinions expressed at that meeting were the opinions of the people of Sydney. I deny that the two thousand persons who are said to have assembled on that occasion, in any way represented any section of the community. I do not believe that even a majority of the persons present at that meeting gave their assent to the various resolutions that were adopted, or cared in the least whether they were carried or rejected. The greater portion of them went there to be amused, and took no interest whatever in the proceedings. The resolutions arrived at are not, in my opinion, entitled to be regarded otherwise than as the resolutions of the half-dozen self-constituted agitators by whom the meeting was got up. For the honourable and learned member for Cumberland to hold up those resolutions as the exponents of public opinion, appears to me therefore to be pre-eminently ridiculous. If, however, that meeting had in reality expressed the opinions of the citizens of Sydney, that would be no reason why it should influence

the House, for Sydney is not New South Wales. Those who have paid much attention to European politics know well how great an influence the capital of any country is capable of exerting. In all the changes of government which have taken place in France, the mobs of Paris have controlled the rest of the community. From the facility with which multitudes may be collected in densely populated cities, and the ease with which noisy and ignorant demagogues may sway them, the example of those cities in great political crises is almost invariably the worst that can be followed. The moral influence of large masses collected together, even though those masses be made up of materials the most worthless and contemptible—carried to the remotest corners upon the wings of the Press, with all their deformities obscured by distance, gives to the example of a capital a great controlling power. But whatever may have taken place in older countries; however truly it may be said that Paris is France, I hope and trust it may never be said with truth of this colony, that Sydney is New South Wales. The honourable and learned member for Cumberland has taken occasion to complain, in the course of his address, of the censure which has been cast upon him by my honourable and learned friend the member for Sydney, for the part which he took at the late public meeting, and has taunted him with his ignorance of the practice of members of Parliament in such matters. Now I fully admit the right of members of this legislature, on ordinary occasions, to take a part in public proceedings. I know that nothing is more common than to find members of Parliament taking such a part. But I deny that it is the practice of the leading members of Parliament to attend public meetings called for the purpose of considering measures then before the legislature—to take a part, as the honourable and learned member has done, in the discussion before a public meeting, of a measure just on the point of being decided by the House. I dispute, altogether, the propriety of the honourable and learned member expressing his opinions on the present bill before a public meeting, when by waiting, a day or two at the farthest, he would have had an opportunity of expressing those opinions before the members of this House. I deny the right of any honourable member who may be in a minority in this House, or who may feel that his opinions are not likely to be acceptable here, to strive to shelter himself under the shadow of applause out of doors—to endeavour to enforce attention to his views by first procuring the sanction of them by a public meeting—to go to such a meeting and appeal to it for assistance to enable him to defeat a measure under the deliberation of this house—to seek, in fact, to overawe this house, containing the representatives not of Sydney only but of the colony at large, by the exhibition of a large crowd of people liable to be led any way by the merest accident of the moment. This is the dangerous course which was taken in France at the commencement of the great revolution, and we all know with what disastrous results. Members of the assembly and of the convention, who found that they could not carry their measures in the legislative body, rushed at once to their clubs, and there sought for sympathy and support. Thus, by the side of the constituted legislature a rival and voluntary legislature sprang up; and thus was it, that in the course of time the Jacobin Club became powerful enough to rule the country. Now I do not mean to compare the late meeting at the theatre to the meetings of the Jacobins in all respects. But it in some points resembles them. Its object was to override the deliberations of this legislature, and to claim for a mere casual gathering the supreme power in the community. The effect of such proceedings, if frequently adopted, would be as in France—to bring the legislature into contempt, and to create a new power self-constituted — ever changing, and completely irresponsible. This council is an institution which it is of the utmost consequence should be looked up to with respect, but let those meetings be countenanced by persons of respectability, let

them be called not for the purpose of remonstrance, of petition, or of advice, but of dictation and intimidation, and then this house must soon fall into contempt; and when such a calamity falls upon any legislative body, no matter what may be its intelligence or public spirit, its usefulness is gone. But, admitting the propriety of the course taken by the honourable and learned member (Mr. Darvall), admitting the right of a few self-elected individuals — I do not believe their number exceeds three or four—to frame a constitution for the colony—to put forth their opinion, as the voice of the public, do we find anything in their proceedings, which by their gravity, their ability, or their wisdom, should induce this House to pause. I have read their manifestoes and their speeches, but I can find in them no such evidence of statesmanship as to induce me to pay any respect whatever to their opinions. On the contrary, I find displayed at their great meeting, the same inconstancy—the same virulence—the same want of thought—the same desire to check impartial discussion—which characterize every mob, It was all very well for the honorable and learned member for Cumberland, when addressing that meeting, to say that "he congratulated the colony on the improvement which he saw that day manifested by the vast assemblage of those, without whose voices, no alterations in the constitution and laws of the country could ever be carried into effect." These observations are reported to have been received with cheers; and no doubt the two thousand who were assembled, cheered this allusion to their importance immensely. But if those people who so cheered the honorable and learned gentleman, had asked themselves soberly, what authority they had to make a constitution, or to disallow or sanction laws, they would rather have laughed at him than cheered him. Th honorable and learned member then went on to say:— "Let them not tarnish by any display of ill feeling, the fair fame of their achievement. He said achievement, because carry the measures which it proposed, that meeting unquestionably would. (Enthusiastic cheers.)" Let the House mark the expression which the report states was received with enthusiastic cheers. What it is that this meeting has achieved I really do not know. The honorable and learned gentleman assured the meeting that it would carry its point. Now I do not believe that this meeting will carry its point, for I cannot conceive that this House will be swayed by any determination which may be arrived at by any unreflecting multitude, such as that meeting was composed of. Nor do I believe that the proceedings of that meeting will have any greater weight with the imperial authorities, but, on the contrary, I feel persuaded that the decision of this great measure will be left with this House, as at once the most competent and constitutional authority to which it can be referred. The honorable and learned member then asks? "Had any one of all those then assembled any personal end in view, or was any individual actuated by any other motive than the good of his country." Now, I do not believe that any one who was then present, except the small knot of demagogues who originated the movement, went there with any other object in the world than to be amused. As to any serious thought about the framing of a Constitution, or promoting the good of the country in any way, I do not believe that any one present entertained any such idea. The honorable and learned gentleman then, in a spirit of extreme candour, alluded to the opinions previously expressed by him, in opposition to the views which he was then advocating, and asked with great propriety, "What was the use of experience but to correct the errors of youth." This is not all. "It was the work of manhood to correct the errors of childhood." So that the honorable and learned member, whose conversion, dated from a very recent period, would have us regard the opinions expressed by him three or four years ago, as juvenile indiscretions, or (what is still better), as the unmature ideas of childhood. Again, the honorable and learned member having apparently exhausted all his arguments,

informed that intelligent and influential meeting, that :—" In their efforts to obtain the blessings of a sound and good principle of government, he felt that that most significant meeting would carry great weight with the Council in Macquarie-street, where individual pleading would be of little avail, and the least result would be, that they would obtain more time for deliberation." Now, I can assure the honorable gentleman, that although more time will be conceded to them for deliberation than they have asked for themselves, that concession has not been proposed to be made in consequence of any expression of opinion emanating from that meeting. The only reason for the delay of three months which my honorable and learned friend has stated his intention to propose, is to prevent those noisy declaimers reiterating their assertions, that there is any desire on the part of the Council to push on this measure with unseemly haste; and not because my honorable friend imagines for one moment that much light will be thrown upon the principles of constitutional government by anything which they may say or do in the interval. The honorable and learned gentleman next proceeded to discuss the relative merits of republican and monarchical institutions, but when he observed that, "he, however, feared that it would be impossible to establish in this country a republican government," he was met with cries of question. I am afraid, after all, that the honourable gentleman is not considered quite so much of a republican as that meeting would desire. He has, however, even within these walls, given utterance to sentiments which throw much doubt upon his attachment to monarchical institutions. In the course of his address last night he called upon us to frame our bill, with a view to the probability of this colony some day or other becoming a republic. He urged us to take what he termed a fair view of the requirements of the country—to look forward to a period, perhaps very distant, when this colony would be separated from the mother country. I trust that that period is very distant—I trust that the view described by the honourable gentleman is a far view indeed. The honourable gentleman asked us to consider whether, if we were an independent community, the form of government which we would be likely to choose would be monarchial or republican. I hope that the house will not speculate upon the necessity of making any such election. I hope that these considerations, however well founded the anticipation of the future independence of this country may be, which I doubt they are; I hope I say, that those considerations will not influence the discussions of this house now, but that honourable members will limit their views to those questions, which it becomes them as members of the British Empire to consider. It will be quite time for the people of a future age to discuss the question of monarchial or republican forms of government. Do not let us anticipate those questions, but let us endeavour to act in accordance with the principles of the British constitution. The honourable and learned gentleman next told the meeting that, "in order to act rightly they should appeal not alone to their own judgment and passions, but that they should take precedents from history, and acting fearlessly on the convictions so formed they should decide." Now I would like to know as matter of curiosity, how many of the two thousand people present at that meeting had ever looked into history for precedents—or for any other purpose—I would like to know how many even of the self-elected committee itself had done so, although certainly they may know a little more of the matter than the great bulk of the meeting. As to the sage advice that they should not appeal to their passions—the conduct of the meeting showed how faithfully that advice had been followed. The honourable gentleman next proceeded to suggest to the meeting a course of action which he said "would meet their present difficulty. That course was, to petition the Governor-General to dissolve the Legislative Council." This was received with "tremendous cheering and cries of out

with Wentworth." But it appears that the honourable gentleman did not wish Wentworth to be out. He thought his friends were going too far, and therefore he immediately added, "If the council were dissolved twenty times he considered Mr. Wentworth the man to be there still." The report shows how this course of action was received by this highly dispassionate and respectable meeting. I am not surprised, however, that the honourable gentleman should have adopted this course—nor that, with that anxiety to please all parties which distinguishes him, he should next proceed to compliment the Governor-General. But that meets with great disapprobation. Such is the dispassionate and dignified conduct of those two thousand statesmen, to whose hands a few insignificant demagogues of Sydney would confide the framing of a constitution for this great colony. No mention of the past services of my honourable and learned friend (Mr. Wentworth) would for one moment be listened to, even from the honourable gentleman; but the mere mention of his name was drowned in tumultuous groans and hisses, and cries of "out with Wentworth." The honourable gentleman next favoured the meeting with the opinion of some unknown correspondent, who had stigmatized the bill under discussion as "unconstitutional and disreputable." Now, I should like to know how this correspondent had arrived at such a conclusion, and why we are to have the *ipse dixit* of this unknown person set up in opposition to the careful and deliberate report of a select committee of this house. The whole of the proceedings at this meeting only afforded another instance of the wretched inconstancy and ingratitude of all popular assemblies. In conclusion, the honourable gentleman assumed the tone of a cabinet minister, although I am not aware that he is as yet entrusted with any office in the government, and told the meeting that "he felt no doubt that a proper representation to His Excellency, showing the propriety of dissolving the council, would be attended to." I will undertake to give the honourable gentleman and his friends an assurance equally well founded, and that is—that His Excellency, the Governor-General will do nothing of the sort. I will not trouble the house by going through the speeches of the other gentlemen who addressed the meeting, but there is one passage in the address of the next speaker to which I will take the liberty to advert. That gentleman is reported to have said, that "he had the highest respect for their representative, Mr. Wentworth." This was received with "groans," and some further observations respecting my honourable and learned friend were met with hisses, groans, and cries of "down with Wentworth." The speaker then reminded the meeting, that "it should be remembered that it was to him they owed the right of assembling there that day. Nothing was to be gained by ingratitude," which immediately elecited cries of "question." Such was the dispassionate impartiality of those self-appointed members of the convention. Ingratitude is the peculiar characteristic of every mob, whether that mob be composed of the respectable inhabitants or of the lowest classes of the community. No matter what services a man may have rendered to the public—no matter how much the cause of public freedom may be indebted to his exertions—no sooner does he differ in opinion from the ignorant and deluded masses, than all his services are at once forgotten, and he is stigmatized as the blackest of tyrants or the worst of turncoats. I repeat, that I can see nothing in this gathering to distinguish it from a mob. I look upon it as a mob, and I hope and believe a large majority of the House will join with me in so considering it, and that they, and all reflecting persons out of doors, will agree with me in the conviction, that the empty declaration, and the wild hooting which it exhibited, are a sufficient guarantee that it in no way represented the intelligence of the people of this country. There is a passage in one of the speeches delivered at the meeting, which refers to myself, and which I may as well advert to. The speaker stated, "that at an early meeting of the Committee, when there were

six members present besides the Chairman, it was decided that the constituency of Cook and Westmoreland should not have an additional member, there being one (Mr. Martin) for the proposition, and five against it. This was the solemnly resolved decision of the Committee. But observe what followed. At the very next meeting they granted to the constituents in question, in the teeth of their own decision, an additional member." After denouncing what he was pleased to term "the present unjust and wicked distribution of the representation," he then proceeded to inform the meeting, that "he had found a cue to the wonderful change in the opinions of the Committee as to whether Cook and Westmoreland should have another member,—the present member for which constituency was, doubtless, repaid by this means for his readiness in proposing that the City of Sydney should have only an additional member." Now, I will briefly explain to the House how the decision was arrived at, and what was the real version of this alteration in the opinion of the Committee. When the matter was first considered, the Committee did not then determine upon the number of members of which the new assembly was to consist; but proceeded by a comparison of the number of inhabitants and electors in each constituency, to ascertain by those tests to what constituency additional members might be given. Going over the matter in this way, the Committee did not think Cook and Westmoreland entitled to an additional member. At a subsequent meeting it was determined that the assembly should consist of fifty-four members; and as there were then eighteen new seats to distribute—a number which was not contemplated before—they then found, applying the tests before mentioned, that the constituency which I have the honor to represent was entitled to another member, and they accordingly allowed it. This is the whole history of the bribe which is stated to have been given to me. I have mentioned the matter, not because it is of any moment, but to show the utter recklessness of these people in imputing motives, and their total want of candour in dealing with public questions. The same demagogue then, amidst loud cheering, exclaims, "Whatever decision we might come to to-day, we must meet again and again, and insist upon a constitution being formed with, or without, the concurrence of the Legislative Council." Now I would be glad to know how this gentleman intended to form a constitution without the concurrence of this House, unless, indeed, he is prepared, like Cromwell, to come up here with his fellow patriots, and turn us out of doors. I am convinced that the Imperial Parliament, which he referred to as likely to espouse their cause, will never recognize that meeting as having any authority whatever in reference to this question. The Parliament of England will have sufficient discrimination to judge between the calm and deliberate acts of this House, and the absurd conclusions of such a casual, incapable, and unreflecting mob as that. It will easily perceive the thoroughly insignificant nature of the present agitation. In fact, it is only by continual puffing and advertizing on the part of some half dozen members of a self-elected Committee, that the agitation is kept alive at all. This redoubtable body, it appears, have set themselves to the task of framing a constitution. Let them by all means proceed with it. I am quite certain that a majority of this House will pay no attention whatever to their plans, but will decide this question without any reference to them. We are told, indeed, that we have no right to set ourselves up in opposition to the opinions of the people. But what is meant by the word "people." Why there is no word in the English language more generally misunderstood. In the estimation of the present agitators, "the people" includes only the lower and uneducated classes—those whose ignorance renders them, at all times, the ready dupes of any worthless demagogue. But I do not recognize these classes as the "people." That term is associated, in my mind, with something far more dignified, and far

more comprehensive. In that term I include all the higher classes as well as the lower—the labourer, the trader, the mechanic, the professional man, the merchant—all the wealth and intelligence, as well as all the poverty and ignorance of the community—and the voice of that people I take not from the large mass of stupidity which degrades, but the far smaller portion of intellect which ennobles it. When I find the people, in the sense in which I understand the term, deliberating, expressing a strong and decided opinion, then, and then only, shall I feel myself bound to regard it. But I will never regard the opinion of any mere miserable section of the community, however wise, whose honesty, intelligence, and judgment, my own intelligence forbids me to respect. Now, having said thus much with reference to the meeting, I will address myself to the main question before the house. The first point for consideration in the construction of our new Constitution is, whether we shall have one house of legislation, or two. I should not have considered it necessary, however, to discuss this question at all, were it not that a petition, praying the Council to establish only one house, was presented a few evenings since. As this petition may be the precursor of other petitions to the same effect, I trust the house will forgive me if I devote a few moments to the consideration of this question. Had it not been for this petition I should scarcely have believed that two opinions could exist with reference to this matter. The whole experience of mankind tends to prove that two houses of legislature are desirable. Whether we refer to the experience of antiquity, or of modern times, we find that those governments which consisted of a double legislature have been the most stable, the most solid, the most enduring; while those which possessed only a single house of legislature have been ever subject to continual vacillation. The governments of Athens, of Sparta, and of Rome, have ever been regarded as the most successful of ancient times. In all of them the system of a double legislature was established. Sparta and Rome had their Senates, and Athens its Areopagus; and to these, above all other nations of antiquity, must we look for models of wise and stable government. Coming down to more recent times, we find examples of a contrary character in the numerous Italian republics which sprang up in the middle ages. In the whole of these republics the government consisted of a single legislature, and nothing in the history of government is more miserable than their career. One by one they lost their liberty—their free institutions were swept away — and their places were supplied, without exception, by irresponsible despotisms of various kinds. In still more recent times, we have the example of France at the outbreak of the old revolution. Among her public men at that period were to be found some of the first statesmen of their time—men of illustrious reputation—of great experience; great capacity; great acquirements; but they fell into the fatal mistake of establishing a single legislature—a mistake which, in spite of the noble energy and the commanding eloquence of the young deputies of the Gironde—in spite of all the intellect of a great and civilized nation, resulted in the reign of terror—a reign to be subverted at length by a military despotism. But I need not go to foreign countries for examples. I can find one more significant than them all in the history of our own. I can refer to the example of the long Parliament of England—the greatest legislative body that ever sat at any time, or in any country. It is to the labours of that Parliament that we and the people of America owe the foundations of our liberty. From every country where free institutions flourish at this day, a deep debt of gratitude is due to that great assembly. Yet that Parliament, with all its patriotism—with all its wisdom—voted itself perpetual. Now, if such a body were found capable of such an extreme abuse of power, even though checked by another body possessed constitutionally of equal authority, what guarantee for freedom and

stability can we hope to find under any constitution in which the principle of a single legislature is established? Let us now turn to the history of the United States. Throughout the whole of them the powers of legislature are vested in two houses. In their national legislature the same principle is carried out. This great principle therefore pervades the Union. In practice it has been found the great safeguard of the country. On many occasions of great national peril, the Senate of the United States, in the face of the wildest democracy in the world, has proved itself to be the mainstay of the constitution—the one great authority to which the friends of peace and order must look in every storm. But I will take another and a nobler instance—the Senate of our own country—the House of Lords—a Senate which (the opinion of Mr. Mackay notwithstanding) I will venture to call the greatest and the wisest the world has ever seen. Great in intelligence, great in dignity, great in practical wisdom, great in patriotism and love of public liberty—to that Senate we owe a large share of all the greatness of our nation. On this principle of a double legislature, therefore, do I desire to base our constitution. That principle has received the sanction of the greatest authorities, and among them that of Burke, Montesquieu, Story, and many others entitled to equal respect. On every ground, therefore, of experience, reason, and authority, we cannot but arrive at the conclusion that a double legislature is the worst form of government that can be adopted. This brings me to a consideration of the objects for which an Upper House of legislature should be established, The self-elected committee to which I have had occasion to refer so often, have put forth a statement to the effect, that such a House is required merely to act as a mediator between the Executive Government and the representatives of the people. Now, in all the researches which I have been able to make, I can find no authority for this position. Those profound statesmen who framed the American constitution established their Senate on no such principle as that. They considered that in republican, though in a less degree than in other governments, legislators are liable to forget their obligations to their constituents, and that therefore a second branch of the legislature, dividing power with the first, but distinct from it, would interpose a salutary check, and render sinister combinations difficult, if not impossible. They knew the nature of popular assemblies, and that the immediate dependence of their members upon their constituents render them peculiarly open to be influenced by every change of popular opinion, and that there is a propensity in all numerous assemblies to yield to sudden impulses, and be led by party feeling, and under the influence of factious leaders into intemperate resolutions. In all such large assemblies it is easy for mere agitators to obtain a paramount control. Consequently, they thought it advisable to establish a less numerous and more dignified body; less liable than the other to dangerous influences, either from within or without. Again, in bodies composed of large numbers, and holding office but for a short period, there is every probability that the majority will be made up of men possessing a comparatively small amount of legislative talent, and hence arises a necessity for a body of superior endowments, with a larger tenure of power to review every act of legislation. These, and the various other equally cogent reasons, which led to the formation of the American Senate, will be found detailed at length in the pages of Story, but it will not be found anywhere among them that the Senate was deemed necessary as a mediator between the President and the House of Representatives. I come now to the formation of the Lower House, and the first question which arises for determination is, the number of members of which that House ought to consist. This point has not been touched upon by any of the previous speakers, but as it may be made a subject of comment during the remainder of the debate, I will take leave to say a few words in reference to it now: The principle by which I think we ought to be guided in this matter is

this, namely, that the Lower House should be sufficiently numerous to prevent improper combinations being easily formed, but not so numerous as to throw impediments in the way of calm and rational discussion. It is impossible to fix upon any arbitrary number that can be positively said to suit these two essential conditions. In America the number first fixed upon was sixty-five. But this is no guide for us, as the determination of such a question must in all cases depend upon local circumstances and conditions. Here the best guide is experience. The present House of fifty-four members has been found, in the respects to which I have alluded, to work well, and the Committee I think have acted wisely in retaining that number. There are many persons I know who doubt whether so large a number of competent persons can be found in this colony, willing to undertake the duties of legislation; but I do not share in their doubts. In the first instance, perhaps there may be some difficulty of this description, but the advance of the country in importance is so rapid, and so great an increase of wealth, and its consequent leisure and intelligence may reasonably be looked forward to, that those difficulties in my opinion must speedily vanish. The next question is, the duration of the Lower House. It is proposed by the Committee to retain the present term of five years. No doubt if we are to follow American precedents, or yield to the advice of those who are such strong admirers of American institutions in all their integrity, we should feel ourselves bound to limit the duration of the Lower House to a single year; but, as has been well said by Mr. Justice Story, there can be no good reason why the annual return of the seasons, or any other arbitrary period, should determine the existence of the legislature. The guiding principle for us should be to fix the duration of our House of Assembly at a period sufficiently long to enable it to understand its functions, but not long enough to remove it from a due sense of responsibility. In former times English Parliaments were triennial. By statute the period of three years was extended to seven. Since the passing of the Septennial Act, however, attempts have been made from time to time to procure its repeal, but hitherto without success. Either by accident or design, the exact mean between these two periods of three and seven years, has been fixed upon for the continuance of this Council, unless previously dissolved. This term of five years has been found to work well, and there is, therefore, no good reason why we should change it. The next and most important question of all, with reference to the Lower House is, — by whom are the representatives to be elected? And this involves two questions, namely:—where are we to fix the limit of the suffrage, and how are we to group the voters? If we are to place any reliance upon the opinions of the Radicals and Chartists, and admirers of the American Constitution, we should adopt the principle of equal electoral districts and universal suffrage. This view indeed is not confined to the Radicals and the Chartists. I find that it is adopted by the honourable and learned member for Cumberland, who, in his speech last night, laid down the doctrine, that "every man who breathes the air has a right to share in legislation, either personally or by representative."

Mr. DARVALL: I beg leave to correct the honourable member, I never stated anything of the sort.

Mr. MARTIN: I do not think that I am in error; but if the honourable member says positively, that he made no such statement, then I must be mistaken.

Mr. DARVALL: I will submit to the House, whether or not I used such language. If I did I will be very glad to be set right on the point.

Mr. MARTIN: I will submit to correction if I am wrong, but I certainly took a note of the words, and I quoted them now, because I was proceeding to call the attention of the House to a subsequent statement of the honourable and learned member, to the effect, that he did not desire universal suffrage — a statement which I considered rather re-

markable after the expression of such a doctrine as, that every man who breaths the air is entitled to a vote. The honourable and learned gentleman certainly did say this—"Why should any man give rights in which he is not to share." Now, if this is not advocating universal suffrage, I am at a loss to know what is. Those who are in favour of universal suffrage have one great difficulty to get over before they can expect their ideas to be received with any favour by persons of real intelligence. They must establish the right to have a direct voice in the choice of representatives to be one of the original inherent rights of man. Unless they can make this out clearly and indisputably they must fail to establish their case, and the franchise must be regulated upon some principle of expediency by those in whose hands the chief power may happen to be placed. Now, what are the natural rights of man? He has a right to personal liberty—he has a right to personal security—he has a right to the enjoyment of his property—he has a right to do as he likes, so long as by so doing he does not trespass on the rights, or inferfere with the liberty of others. Governments are established to protect and secure those rights, and for no other purpose. If human nature were perfect—if all men would spontaneously abstain from interfering with each other's rights—government would then be unnecessary. But the fallibility and perversity of human nature are such, that men will not respect each others rights unless they are coerced by some superior power. Government, therefore, is a matter of necessity. And it follows from this that all that has to be considered in the formation of a government is,—in what way the natural rights of man can be best protected. Whatever government is best calculated to protect those rights; that is unquestionably the best form of government—no matter whether it be based on universal suffrage, or limited suffrage, or no suffrage at all. The rights of suffrage are a means, and not an end; and they have been so regarded by every eminent man who has entered upon the consideration of this question. The right to elect representatives is no original right of man, because it is a thing unknown to man, except in civil society. It arose from the necessity of imposing checks upon those entrusted with the preservation of man's rights, and it can be carried no further than the exigency of the case requires. There is no record in history to show us how society was first organized. How the fabric of government was first raised is a matter of pure speculation. It cannot be supposed that any number of persons met together, and formed themselves into a community at once. It is more reasonable to imagine that the first regular government had its origin in a usurpation—in a despotism wherein a single individual, taking advantage of some superiority displayed by him in war or commotion of some kind, seized upon the supreme authority. There can be little reason to doubt that such was the origin of government. Experience, however, would soon teach the people under such a rule, that although one despot might be wise and beneficent, his successor might be the reverse—that the same government, which in the hands of one man might be the best, in the hands of another might become the worst. Thus constitutional checks of some kind would come to be sought for, and obtained, one by one, not as rights, but as necessities for the preservation of rights. Under the feudal system, which pervaded Europe after the downfall of the Roman Empire, each separate community was governed by a number of petty chieftains. One chieftain gradually managed to raise himself to authority over the rest, and under the title of King exercised irresponsible power over the people. This was the case in England as well as elsewhere. Arbitrary exactions of one kind or another led to the interpositon of checks, first by the chiefs and warriors—next by the common people. After centuries of oppression representative institutions arose, not because the people had any right to representation, but because without representation they felt they could enjoy no rights at all. So far,

then, as it is necessary to protect the rights of man, so far should the principle of representation be extended, but no farther; for it should ever be recollected that the rights of man need to be protected more from the people than from the sovereign—and that by giving uncontrolled power to the masses, you give them the means, not of protecting their rights, but of violating all rights, including their own. It is our duty, therefore, in the formation of a government, to select that constitution which will be the most likely to secure the best administration—which will be most likely to place the powers of legislation in the hands of the wisest, the most upright, and the most impartial men in the community. We should examine into the history of the past—we should look to the experiences of the mother country, and the experiences of other lands, and by applying those experiences to our own condition, endeavour to ascertain what suffrage will be best calculated to place our government, at all times, in the hands of our best men. That it will be universal suffrage, or anything approaching to universal suffrage, we can have no warrant for believing. But whatever it may be, let us never forget that that suffrage is the best calculated to carry out the ends of government which will not only best protect the people from the injustice of their rulers, but also do that which is, perhaps, the most important function of government —protect the people from themselves. These, it should be borne in mind, are not my individual opinions—they are the deliberate opinions of men universally regarded as the highest authorities on the subject. These are the words of one—the most illustrious of them all:—

> Far am I from denying in theory, full as far is my heart from withholding in practice (if I were of power to give or to withhold), the *real* rights of men. In denying their false claims of right, I do not mean to injure those which are real, and are such as their pretended rights would totally destroy. If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence, and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to do justice, as between their fellows, whether their fellows are in politic function or in ordinary occupation. They have a right to the fruits of their industry, and to the means of making their industry fruitful. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favour. In this partnership all men have equal rights, but not to equal things. He that has but five shillings in the partnership has as good a right to it as he that has five hundred pounds has to his larger proportion. But he has not a right to an equal dividend in the product of the joint stock; and as to the share of power, authority, and direction which each individual ought to have in the management of the State, that I must deny to be amongst the direct original rights of man in civil society, for I have in my contemplation the civil, social man, and no other. It is a thing to be settled by convention.
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> If civil society be the offspring of convention, that convention must be its law—that convention must limit and modify all the descriptions of constitution which are formed under it. Every sort of legislature, judicial, or executory power, are its creatures. They can have no being in any other state of things; and how can any man claim, under the conventions of civil society, rights which do not so much as suppose its existence—rights which are absolutely repugnant to it? One of the first motives to civil society, and which becomes one of its fundamental rules, is, that no man should be judge in his own cause. By this each person has at once divested himself of the first fundamental right of uncovenanted man—that is, to judge for himself, and to assert his own cause. He abdicates all right to be his own governor. He inclusively, in a great measure, abandons the right of self-defence, the first law of nature. Men cannot enjoy the rights of an uncivil and of a civil state together. That he may obtain justice, he gives up his right of determining what it is in points the most essential to him. That he may secure some liberty, he makes a surrender in trust of the whole of it. Government is not made in virtue of natural rights, which may and do exist in total independence of it, and exist in much greater clearness, and in a much greater degree of abstract perfection; but their abstract perfection is their practical defect. By having a right to everything, they want everything. Government is a contrivance of human wisdom to provide for human *wants*. Men have a right that these wants should be provided for by this wisdom. Among these wants is to be reckoned the want, out of civil society, of a sufficient re-restraint upon their passions. Society requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in

the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done *by a power out of themselves*, and not, in the exercise of its function, subject to that will and to those passions which it is its office to bridle and subdue. In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, they cannot be settled upon any abstract rule; and nothing is so foolish as to discuss them upon that principle.

These are the opinions of one who, to use his own memorable language, had been no tool of power; no flatterer of greatness—of one, almost the whole of whose public exertion had been a struggle for the liberty of others—of one, in whose breast no anger, durable or vehement, had ever been kindled, but by what he considered as tyranny—of one who desired honors, distinctions, and emoluments but little, and who expected them not at all—of one, who, I will take the liberty of adding, was the great vindicator of Indian wrongs, and the great advocate of American freedom. These are the opinions of one who was the great defender of the rights of the colonies—of one who, though we are told by a friend who knew him well, and valued him highly—more, I believe, in joke than in earnest, that

> ———he narrowed his mind,
> And to party gave up what was meant for mankind;

yet at the close of a long life, after five-and-twenty years of public service, did not hesitate to sever himself from all his party ties—to sacrifice the intimacy of his dearest personal friends—to isolate himself from those whose society he most deeply valued, because he felt himself bound to advocate a line of policy which, however unpopular at that day, he felt was deeply interwoven with the freedom and the happiness of mankind. In reply to the accusations which were poured in upon him for his supposed abandonment of the cause of popular rights, he wrote his memorable appeal from the new Whigs to the old ones. Time has now enabled him to appeal to a still greater tribunal—to the tribunal of posterity. That tribunal has pronounced in his favour, and among men of all parties, and in all countries, where the English language is spoken, his memory is reverentially cherished as the most illustrious of all our statesmen. It is unnecessary that I should name him. He must be recognised at once by all who hear me. On an occasion like the present, I do not feel myself bound to submit implicitly to the judgment of any man. But if I must bow down before authority, it shall not be before any ignorant and noisy rabble, however numerous, but before some such noble and commanding genius as this. I have cited to the House the opinions of a great statesman, living under a monarchy; I will now quote the opinions of an almost equally great authority, living under a republic:—

> To whom ought the right of suffrage, in a free government, to be confided, or, in other words, who ought to be permitted to vote in the choice of the representatives of the people? Ought the right of suffrage to be absolutely universal? Ought it it to be qualified and restrained? Ought it to belong to many or few? If there ought to be restraints and qualifications, what are the true boundaries and limits of such restraints and qualifications? These questions are sufficiently perplexing and disquieting in theory; and in the practice of different states, and even of free states, ancient as well as modern, they have assumed almost infinite varieties of form and illustration. Perhaps they do not admit of any general, much less of any universal answer, so as to furnish an unexceptionable and certain rule for all ages and all nations. The manners, habits, institutions, characters, and pursuits of different nations; the local position of the territory, in regard to other nations; the actual organizations and classes of society; the influences of peculiar religious, civil, or political institutions; the dangers as well as the difficulties of the times; the degrees of knowledge or ignorance pervading the mass of society; the national temperament, and even the climate and products of the soil; the cold and thoughtful gravity of the North; and the warm and mercurial excitability of tropical or southern regions; all these may, and probably will, introduce modifications of principle as well as of opinion, in regard to the right of suffrage, which it is not easy either to justify or to overthrow. The most strenuous advocate for universal suffrage has never yet contended that the right should be absolutely universal. No one has ever been sufficiently visionary to hold that all persons of every age, degree, and character, should be entitled to vote in all elections of all public officers. Idiots, infants, minors, and persons insane or utterly imbecile, have been, without scruple, denied the

right, as not having the sound judgment and discretion fit for its exercise. In many countries, persons guilty of crimes have also been denied the right, as a personal punishment, or as a security to society. In most countries females, whether married or single, have been purposely excluded from voting, as interfering with sound policy and the harmony of social life. In the few cases in which they have been permitted to vote, experience has not justified the conclusion that it has been attended with any correspondent advantages, either to the public or to themselves. And yet it would be extremely difficult, upon any mere theoretical reasoning, to establish any satisfactory principle upon which the one half of every society has thus been systematically excluded by the other half from all right of participating in Government, which would not, at the same time apply to and justify many other exclusions. If it be said that all men have a natural, equal, and inalienable right to vote, because they are all born free and equal, that they all have common rights and interests entitled to protection, and therefore have an equal right to decide, either personally or by their chosen representatives, upon the laws and regulations which shall control, measure, and sustain those rights and interests; that they cannot be compelled to surrender, except by their free consent, what, by the bounty and order of Providence, belongs to them in common with all their race;—what is there in these considerations which is not equally applicable to females as free, intelligent, moral, responsible beings, entitled to equal rights and interests and protection, and having a vital stake in all the regulations and laws of society? And if an exception, from the nature of the case, could be felt in regard to persons who are idiots, infants, and insane, how can this apply to persons who are of more mature growth, and are yet deemed minors by the municipal law? who has an original right to fix the time and period of pupilage, or minority? Whence was derived the right of the ancient Greeks and Romans to declare that women should be deemed never to be of age, but should be subject to perpetual guardianship? Upon what principle of natural law did the Romans, in after times, fix the majority of females, as well as of males, at twenty-five years? Who has a right to say, that in England it shall, for some purposes, be at fourteen, for others at seventeen, and for all, at twenty-one years; while in France a person arrives, for all purposes, at majority, only at thirty years; in Naples at eighteen; in Holland at twenty-five? Who shall say, that one man is not as well qualified as a voter at eighteen years of age, as another is at twenty-five, or a third at forty; and far better than most men are at eighty? And if any society is invested with authority to settle the matter of the age and sex of voters, according to its own view of its policy, or convenience, or justice, who shall say, that it has not equal authority, for like reasons, to settle any other matter regarding the rights, qualifications, and duties of voters? The truth seems to be, that the right of voting, like many other rights, is one which, whether it has a fixed foundation in natural law or not, has always been treated in the practice of nations as a strictly civil right, derived from, and regulated by, each society, according to its own circumstances and interests. It is difficult, even in the abstract, to conceive how it could have otherwise been treated. The terms and conditions upon which any society is formed and organized must essentially depend upon the will of those who are associated, or at least of those who constitute a majority actually controlling the rest. Originally, no man could have any right but to act for himself, and the power to choose a chief magistrate or other officer; to exercise dominion or authority over others as well as himself, could arise only upon a joint consent of the others to such appointment, and their consent might be qualified exactly according to their own interests, or power, or policy. The choice of representatives to act in a legislative capacity is not only a refinement of much later stages of actual association and civilization, but could scarcely occur until the society had assumed to itself the right to introduce such institutions, and to confer such privileges as it deemed conducive to the public good, and to prohibit the existence of any other. In point of fact, it is well known that representative legislative bodies, at least in the form now used, are the peculiar invention of modern times, and were unknown to antiquity. If, then, every well-organised society has the right to consult for the common good of the whole, and if, upon the principles of natural law, this right is conceded by the very union of society, it seems difficult to assign any limit to this right, which is compatible with the due attainment of the end proposed. If, therefore, any society shall deem the commom good and interests of the whole society best promoted, under the particular circumstances in which it is placed, by a restriction of the right of suffrage, it is not easy to state any solid ground of objection to its exercise of such an authority. At least, if any society has a clear right to deprive females, constituting one-half of the whole population, of the right of suffrage, (which, with scarcely an exception, has been uniformly maintained) it will require some astuteness to find upon what ground this exclusion can be vindicated, which does not justify, or at least excuse, many other exclusions. Government (to use the pithy language of Mr. Burke) has been deemed a practical thing, made for the happiness of mankind, and not to furnish out a spectacle of uniformity to gratify the schemes of visionary politicians.

These are the opinions of, perhaps, the greatest judge, not only in the United States, but the greatest judge who has presided in any court known to the present generation. It should, moreover, be borne in mind, that these opinions were delivered (originally as lectures, I believe) before an American audience, and were intended for circulation through-

out the United States. They form a portion of Mr. Justice Story's Commentaries on the American Constitution, which has ever been the great constitutional text-book of the Union. If such opinions can be promulgated there by a great judicial functionary, with the universal approbation of the enlightened portion of his countrymen, with how much greater reason and propriety may they be promulgated in a dependency of the British Empire. How important, then, are these opinions when taken in connection with the opinions of Burke. It will be found, on examining the American constitution, that its framers did not resort to the principle of universal suffrage. They left the franchise of each state just as they found it, and conferred upon the electors under that existing franchise, the right of voting for representatives for the Lower House of Congress. This franchise differs widely in different states. In some states the payment of a certain amount of taxes constitutes a qualification. In others, all the inhabitants of a certain standing are entitled to vote. In Virginia, the freeholders only. Thus it will be seen that the founders of the American constitution established no uniform plan. Where then, let me ask, are the arguments and precedents in favor of universal suffrage to be found? When people talk so loudly of what they term the inalienable rights of man—when they assert that taxation and representation should be co-extensive, we are entitled to ask for their arguments and their authorities. But the advocates of universal suffrage do not deal in arguments and authorities; they deal only in assertions. Their assertions may obtain the applause of those who cannot or will not measure their value, but they can have no weight with this House. I believe that this Council possesses constitutionally the right to fix the franchise where it may think proper. The whole question of the franchise is a mere matter of expediency, and of that expediency this House is the appointed judge It may be that, after the most mature consideration, after all our ingenuity, has been exhausted in the endeavour to fix the franchise at those limits which will best secure a wise and solid government, we may fail in the attempt, but we, and we only, are the persons authorized to make the experiment. We are now called upon to adopt a franchise, and that franchise we should adopt, not in accordance with the wild and extravagant theories of the ill-informed and unreflecting demagogues of the hour, but with a view to the great ends for which any franchise whatever is given; and among the most important of those ends must be ranked the necessity of imposing a strong check upon the arbitrary will of the multitude. The honorable and learned member for Cumberland has told us that by the common law, taxation and representation should go together. I was surprised to hear that statement. What is the common law? A collection of principles and precedents dating from the beginning of what is termed legal memory, interpreted and applied by the general rules of reason and common sense. Parliament is a part of the common law. The House of Lords springs as much from the common law as the House of Commons. The crown derives its authority from the same source. They are all equally common law institutions. But all of them are inconsistent with the principle of universal suffrage. At no period of our history has such a principle been applied to any part of the constitution. How then can it be said that the common law recognizes universal suffrage? In all its changes the House of Commons has had no such principle identified with it. With respect to the distribution of the representation, to which, in principle, all that has been said about the right of suffrage equally applies, let us enquire in what manner it has been settled in England by the Reform Bill. Let us see whether by that measure—carried, as it was, after so much agitation and so much discussion, after the display of so much energy and so much ability by the ablest of England's statesmen—the principle of universal suffrage and equal electoral districts has been recog-

nized. For this purpose I will cite a few of the anomalies existing in the representation of the mother country. I am reading from an article in the *Westminster Review*, written for the purpose of showing the unequal way in which the representation of the country has been allotted. This article deals mainly with this inequality, but I am citing it as applying equally in principle to the suffrage; for the right to universal suffrage, and the right to equal electoral districts stand upon the same basis. They are corollaries of each other—

> Of the 56 boroughs totally disfranchised, the population of the largest, Downton, was 3961. Of the 30 boroughs which it reduced to a single representative, the population of the smallest, Petersfield, was 1423. The smallest new borough which was to return a single member was Whitby, with a population of 10,399. The largest old borough retaining a single member was Westbury, with a population of 7,324; the largest new borough in the same class being Salford, with a population of 50,810. Thetford retained its two members, with 146 electors; the Tower Hamlets gained only two for its 25,000.

Now what weight, I would ask, can be attached to the argument that Sydney, independent of the Hamlets, should have six members, when it is here shown that a constituency in the mother country, with only 146 electors, is represented in the same ratio as one with 25,000. Now, although the would-be reformers are anxious to have it believed that this state of things is attended with grievous results, I know of no particular hardship arising from it. I know of no tyranny or injustice which it originates or protects. I know of no grievance, public or private, which it in any way makes it difficult to redress. Why, then, should we be asked here to frame a constitution in which the representation should be placed on a different basis. If it be found that under this seemingly unequal system of representation, no rights of the people, no rights of the Government are endangered, I think the Council will agree with me in believing that the inequalities of the British constitution are far superior to the equalities of other states. Let us for a moment compare the House of Commons, an assembly elected on this unequal plan, with another body, the House of Representatives in America, elected strictly on the principle of equality, and how different do we find the characters of the two, how immensely inferior in every way, the latter to the former. Can any Legislative body stand lower in public estimation than the Lower House of Congress? Have not its incapacity, its vulgarity, its corruption, become a bye-word throughout the universe? And yet it is a body elected by the intelligent people of a great nation, on the principle of equal electoral districts. To preserve this equality, the electoral system undergoes a revision every ten years; and if, in the intervening period, any district has increased in population, the number of its representatives is increased in proportion. And yet what is the result? Why, that in that assembly there is scarcely to be found a man of respectable education or position in society. The entire body have become the opprobrium of their country, and a disgrace to the very name of representation. Had it not been for the countervailing influence of the Senate, they would have long since shattered the constitution of their country to atoms. Now when we find these two systems in two countries of the same blood, the same language, the same literature, leading to such widely different results, can it be a matter of doubt in this House which example we ought to follow? The House of Commons, even in the days of triennial parliaments and rotten boroughs, always found within its walls a large majority of educated, intelligent, and influential men. From the days of the great rebellion, down to the present time, that assembly has maintained the character of being the most distinguished of representative institutions. It is so still. And it will continue to preserve that high character so long as it remains based upon the true principles of the British constitution. When the principle of election comes to be the same in England as in the United States, the glory and dignity of the House of Commons will be gone for ever. Yet ignorant agitators clamour here for the

American constitution as a model, and denounce those who, like myself, ask that the example of the House of Commons, rather than the example of the Lower House of the American Congress, may be followed. Those eminent men who settled the principle of representation in England at the passing of the Reform Bill, were aware that interests as well as numbers ought to be represented. Finding society composed of a variety of classes, having different interests, and pursuing different avocations, they saw that it was necessary to prevent any one class trampling on another, and they accordingly gave to each a fair share in the representation. Thus, what appears to be an inequality, has brought about a really equal and just representation of every section of the community in the House of Commons. In this colony we find, as in all other civilized countries, and in all ages, two great leading interests existing—the trading and manufacturing on the one hand, and the producing on the other. All sections of the community may be classed under the one or the other of these heads. The men engaged in trade form a class which, in addition to many evils, confer also many benefits on the community. They are not, however, the section to which the greatest attention should be paid. The class on whom the prosperity of every country depends are the producers. Whether they be squatters or agriculturists, that class is of infinitely more value than the commercial. Let the producing interest be destroyed, and the entire fabric of society must crumble into ruins. It is the fashion to estimate the value of our producing classes by the extent of our exports. But the amount of our exports, princely as it is, forms but a small portion of the produce of our soil. It is almost insignificant compared with the enormous quantity consumed as food, and in various other ways, throughout the country. People are not aware of the extent to which they are dependent upon the producing classes, because they have no returns showing the value of our own produce used by ourselves. I am no advocate for class distinctions. I am not accustomed to seek to encourage class interests in the community; but looking at the immense value to this country of the producing classes in our rural districts, I feel it my duty to warn this House and the country of the danger of allowing the trading classes to obtain a preponderating influence in the Legislature. These classes, as everybody knows, live for the most part in the towns—the majority of them in Sydney. They are, therefore, possessed of far greater facilities for combination than people in the country. This circumstance, combined with their greater command of money as bank directors, and persons supported by banks, enables them to make a vigorous demonstration whenever their interests are affected. They can always be got together with the greatest ease for strong and united action, and there is never any want of demagogues to infuse excitement into any of their public demonstrations. So far as protecting their own interests, or attacking the interests of others is concerned, they have therefore very peculiar advantages. If we were to give Sydney no share whatever in the representation, its population would still exercise a great influence over the affairs of the country. Look for instance to the effect which the mere report in the newspapers, of 2000 people having assembled, at a public meeting in the Victoria Theatre, would have throughout the rural districts. With reference to the influence exercised by the inhabitants of towns and cities over the people in the country, I will cite an almost republican authority to show that I am not singular in the views which I have been expressing. This is the language of Sir James Mackintosh, himself a leading reformer:—

> The labouring classes are in every country a perpetual majority. The diffusion of education will, doubtless, raise their minds, and throw open prizes for the ambition of a few, which will spread both activity and content among the rest; but in the present state of the population and territory of European countries, the majority of men must earn their subsistence by daily labour. Notwithstanding local differences, persons in this situation have a general resemblance of character, and sameness of interest. Their interest,

or what they think their interest, may be at variance with the real or supposed interests of the higher orders. If they are considered as forming, in this respect, one class of society, a share in the representation may be allotted to them—sufficient to protect their interest, compatably with the equal protection of the interests of all other classes, and regulated by a due regard to all the qualities which are required in a well composed Legislative Assembly. But if representation be proportioned to numbers alone, every other interest in society is placed at the disposal of the multitude. No other class can be effectually represented; no other class can have a political security for justice; no other can have any weight in the deliberations of the legislature. No talents, no attainments, but such as recommend men to the favour of the multitude, can have any admission into it. A representation so constituted would produce the same practical effects as if every man, whose income was above a certain amount, were excluded from the right of voting. It is of little moment to the proprietors whether they be disfranchised or doomed, in every election, to form a hopeless minority. Nor is this all. A representation founded on numbers only would be productive of gross inequality in that very class to which all others are sacrificed. The difference between the people of the country and those of towns is attended with consequences which no contrivance of law can obviate. Towns are the nursery of political feeling. The frequency of meeting, the warmth of discussion, the variety of pursuit, the rivalship of interest, the opportunities of information, even the fluctuations and extremes of fortune, direct the minds of their inhabitants to public concerns, and render them the seats of republican governments, or the preservers of liberty in monarchies. But if this difference be considerable among educated men, it seems immeasurable when we contemplate its effects on the more numerous classes. Among them no strong public sentiment can be kept up without numerous meetings. It is chiefly when they are animated by a view of their own strength and numbers—when they are stimulated by an eloquence suited to their character, and when the passions of each are strengthened by the like emotions of the multitude which surround him, that the thoughts of such men are directed to subjects so far from their common callings as the concerns of the commonwealth. All these aids are necessarily wanting to the dispersed inhabitants of the country, whose frequent meetings are rendered impossible by distance and poverty—who have few opportunities of being excited by discussion or declamation, and very imperfect means of correspondence or concert with those at a distance. An agricultural people is generally submissive to the laws, and observant of the ordinary duties of life, but stationary and stagnant, without the enterprise which is the source of improvement, and the public spirit which perserves liberty. If the whole political power of the state, therefore, were thrown into the hands of the lowest classes, it would be really excercised only by the towns; about two-elevenths of the people of England, inhabit towns which have a population of 10,000 souls or upwards. A body so large, strengthened by union, discipline, and spirit, would, without difficulty, domineer over the lifeless and scattered peasants. In towns, the lower part of the middle classes are sometimes tame, while the lowest class are always susceptible of animation. But the small free-holders, and considerable farmers, acquire an independence from their position which makes them very capable of public spirit, while the classes below them are incapable of being permanently rendered active elements in any political combination—the dead weight of their formal suffrages would only oppress the independent votes of their superiors. All active talent would in such a case fly to the towns, where alone its power could be felt. The choice of the country would be dictated by the cry of the towns wherever it was thought worth while to take it from the quiet influence of the resident proprietors. Perhaps the only contrivance which can in any considerable degree remedy the political inferiority of the inhabitants of the country to those of towns has been adopted in the English Constitution, which, while it secures an ascendant of landholders in the Legislature, places the disposal of its most honoured and envied seats in the hands of the lowest classes among the agricultural population, who are capable of employing the right of suffrage with spirit and effect. They who think representation chiefly valuable because whole nations cannot meet to deliberate in one place, have formed a very low notion of this great improvement. It is not a contrivance for conveniently collecting, or blindly executing all the pernicious and unjust resolutions of ignorant multitudes. To correct the faults of democratical government is a still more important object of representation than to extend the sphere to which that government may be applied. It balances the power of the multitude by the influence of other classes; it substitutes skilful lawgivers for those who are utterly incapable of any legislative function; and it continues the trust long enough to guard the Legislature from the temporary delusions of the people. By a system of universal suffrage and annual elections, all these temperaments would be destroyed. The effect of a crowded population, in increasing the intensity and activity of the political passions, is extremely accelerated in cities of the first class. The population of London and its environs is nearly equal to that of all other towns in England of or above ten thousand souls. According to the principle of universal suffrage, it would contain about two hundred and fifty thousand electors, and send fifty-five members to Parliament. This electoral army would be occupied for the whole year in election or canvass, or in the endless animosities in which both would be fertile. A hundred candidates for their suffrages would be daily employed in inflaming their passions. No time for deliberation—no interval of repose, in which inflamed passions might subside, could exist. The representatives would naturally be

the most daring, and for their purposes the ablest of their body. They must lead or overawe the Legislature. Every transient delusion or momentary phrenzy, of which a multitude is susceptible, must rush with unresisted violence into the representative body. Such a representation would differ in no beneficial respect from the wildest democracy. It would be a democracy clothed in a specious disguise, and armed with more effective instruments of oppression, but not wiser or more just than the democracies of old, which Hobbes called "an aristocracy of orators, sometimes interrupted by the monarchy of a single orator."

These are the opinions of one of our great reformers, not led away by his passions, but guided by his reason; and earnestly do I beg of the Council to contrast them with the opinions so recklessly expressed by the self-elected committee, styling itself constitutional, which is now presuming to dictate to this House and to the country. It will be unnecessary for me to trouble the House with any observations on the working of the constitution of the United States. My honourable and learned friend, the member for Sydney, has fully occupied that ground. He has shown, in a masterly manner, that the democratic element in that constitution has proved a total failure. Nothing but the conservative power of the Senate daily growing weaker has preserved the Union so long. The merest accident may at any moment dissolve the confederation. This brings me to the consideration of the distribution of the eighteen additional members; and, as one of the Constitution Committee, I will here state that every portion of the plan of distribution recommended by the committee, and proposed in the Bill, meets with my entire concurrence. I believe that six members are quite sufficient for Sydney and the hamlets. Seeing the great political advantages which this city possesses—advantages of which the remote parts of the colony are destitute—considering too that Sydney is the seat of government—that a large number of the representatives of county constituencies are residents of Sydney—that during a considerable part of the year the county members reside in it, I for one have made up my mind not to consent to the concession of any greater number of members to the metropolis than I have mentioned. With regard to the distribution of the other additional members, nothing is more absurd than to say that the squatting interest has received more than its fair proportion. That class is the greatest producing class in the country, and I perfectly agree with my honorable and learned friend, the member for Sydney, in the opinion which he has expressed, that the gold is not to be compared with it. The produce of the one must year by year diminish, while the produce of the other must year by year increase. The value of the squatting interest must be estimated not alone by the quantity of wool annually produced, but also by the food consumed by the inhabitants of the colony. No calculation has ever been made of this latter item, but in the event of a scarcity, the inhabitants of towns would soon find cause to feel its great value. Hitherto I have agreed in all respects with my honorable and learned friend, the member for Sydney. I come now to that part of the question in which I differ from him. With reference to the constitution of the Upper Chamber, I will state my reasons for disagreeing from my honorable and learned friend, and those who formed the majority of the committee. The committee, in their report, have dwelt upon an alleged compact between the Council and the Home Government, with respect to the framing of a constitution for New South Wales, similar in its outlines to that of Canada. They say:—"As regards the constitution of the Legislative Council, your committee consider, that not only by the terms of their declaration and remonstrance of the 5th December, 1851, but by the letter of agreement to those terms, of Sir John Pakington, of the 15th December, 1852, the House is pledged to a constitution similar in its outline to that of Canada." Now, I deny both the fact and the inference. I deny, in the first place, that any such compact has ever been made; and in the next I deny, if it has been made, that it ought to be adhered to. I admit that an understanding existed to

the effect, that if certain concessions were made, we would accept a specified constitution. But I deny that those concessions have been made. The crown has not yet fulfilled its part of the compact, and therefore, by no principle of justice or morality are we bound to perform ours. But I deny that the Council was at all justified in making such a compact. Because, if the Council should, on consideration, find the constitution agreed to by that compact a bad one, it would betray its duty by adopting it. Such a compact cannot be regarded in the mere light of a mercantile bargain, in which men buy and sell. I deny the right of any man, or body of men, to barter away the rights and liberties of their country. I maintain, that if any honorable member conscientiously believes that he is bound by that assumed compact, although fully persuaded it is not a proper one—that it is not a compact calculated to confer good on this community, it is his duty to resign his seat. If any honorable member feels himself in such a position that he is bound to support any such compact against his better judgment, he ought at once to vacate that position. I am not in favor of the proposed hereditary legislature, but I by no means join in the senseless outcry raised against those by whom the clauses proposing such a creation have been introduced into the bill. On the contrary, I give all the members of the committee credit for desiring only to establish a good and efficient Upper Chamber—an Upper Chamber which will best answer every purpose for which such an institution is designed. That, I am sure, was the sole object which the committee had in view in sanctioning the proposal. But if this be doubted, it is sufficient to know that the committee have, in this particular, followed great and respected precedents—that their plan is sanctioned by the illustrious names of Pitt, and Burke, and Wilberforce—with whose cordial concurrence and support the Quebec Act, referred to by my honourable and learned friend the member for Sydney, was passed by the Imperial Parliament. To those great authorities the utmost respect is due; and they who differ from those eminent statesmen, are bound to approach the question with less of the headlong recklessness evinced by the clap-trap orators of the Victoria Theatre. But although the Quebec Act was thus sanctioned, and thus supported—although it was carried by large majorities—majorities of two to one in both the House of Lords and the House of Commons—the hereditary clauses were never acted on, and have remained a dead letter in the statute book to this day. This I look upon as a very significant fact. I take into consideration, moreover, the fact, that although this hereditary scheme received the sanction of the great men whom I have mentioned, it met in all its stages with the determined opposition of statesmen of equal eminence: Mr. Fox being among their number. That great constitutional authority opposed the bill in its second reading—he opposed it on going into Committee—he divided upon it when in Committee, and put forth all his strength to defeat it. Viewed, therefore, in whatever light it may be, the Quebec Act is not a measure which can be safely regarded as a precedent for New South Wales. Deeply valuing Conservative Institutions as I do, I would propose, instead of an hereditary body, that the Upper Chamber should be chosen by the large freeholders of the country—men who possess so great an interest in it, that it will be next to impossible for demagogues to impose upon them. I believe that this plan would call into existence a thoroughly Conservative Institution, and one which would carry with it general confidence and esteem. It may be all very well, as a matter of antiquarian research, to endeavour to trace back the House of Lords to its origin, and ascertain when and how its hereditary legislative power began, but it is obviously impossible to introduce such a body here. The prestige—the influence of that body cannot be transplanted. Its power and authority can never be obtained by a newly created similar institution. Burke has said, that

he would not advise any colony to attempt to institute a body like the House of Lords. The House of Lords has proved itself to be of inestimable value in England, but its existence at the present day is in a great measure to be attributed to the disinclination of the people to change any institution which has long existed, and has upon the whole, well performed its functions. But I believe, that if that House were once abolished, it would not be now created anew. I do not believe, that if a portion of the British peerage were to establish themselves in this colony, they would have much weight--for an Upper House to possess weight in any community, it must be not only wise, learned, and dignified, but it must also possess the confidence and respect of the people, and have root in their habits, their prejudices, and their affections. But by making an Upper House consist of the representatives of those who are large landed proprietors, we would enable that House to command the confidence of the country. It should also be borne in mind, that the constituents of the Upper House would be among the most influential electors of the Lower House, and that circumstance would powerfully contribute to promote unity of action between the two. It is true, that many of our large landed proprietors are not very fit by education, to exercise the best judgment in the choice of senators, but with the possession of property there springs up a Conservative tendency, which removes the possessors of that property from the influence of demagogues. I think, therefore, that my proposal for an Upper House is better than that of my honourable and learned friend, the member for Sydney. Under my honourable friend's bill it is stated, that the hereditary clauses cannot come into operation for some time—perhaps not for fifty-years, and in the mean time, the Upper House is to consist of nominees. For my part, I cannot see on what ground the nominee principle can be defended. I can very well remember what a blessing was thought to have been conferred upon the colony, when the nominee members were amalgamated with twice the number of elected ones—and a power was thus given at any time to swamp the nominee element in the legislature. And yet it is now purposed by this measure to separate the nominees from the elected members, and give them equal power with the representatives of the people. I do not count this a Conservative step. It is a retrograde movement in every way. I do not believe that such a proposal will give general satisfaction. I do not believe that the leading men of the colony will consent to be placed in a nominated House, such as is proposed. In these days we should form our institutions, not for any class, but for the benefit of all the varied interests of the country; and I believe this system of nomination would give no other government than the government of a clique. We cannot safely vest the power of creating legislators in the hands of any man. We may be told, that it is impossible to suppose that the members of the present government could make an improper selection. We ought not to be asked to confide such extraordinary power, because the proposed depositaries of it are wise and upright men. It is by that argument that every despotism is attempted to be justified. It is true, there is a clause in the proposed measure, which will give the power of coercing this nominated Upper Chamber. But by coercing you degrade. A body that exists only to be coerced, must of necessity be despised. In England the threat of a wholesale creation is enough to coerce the House of Lords, should they place themselves in strong and unreasonable opposition to the views of the House of Commons, backed up by the force of public opinion. The Peers of England have a just pride in their hereditary rank, and the social distinction which that rank confers. They have a pride in the privileges of an order, which has lasted for a thousand years, and with which so much glory and greatness are interwoven. A threat, therefore, to adopt a course which will cheapen, and thus degrade the honors of the peerage, must of necessity be efficacious. But the case

is widely different with a house of untitled crown nominees appointed for life. They would have no rank, no privilege, no historic *prestige* to preserve. No threat of adding to their number could operate on them. Additional nominees must therefore be appointed on every collision between the two Houses, until in the long run the house of nominees would be inevitably swept away. But it is not because I am opposed to this portion of the Bill, that I do not see the great advantages which would spring from the creation of titles in this colony, to which those who deserve distinction may aspire. I do not agree with those levelling democrats who think those distinctions foolish, and who speak of them as the relics of a by-gone age. The desire of distinction is natural to the human mind. Distinctions, however intrinsically worthless they may appear, have in every country been eagerly sought after. They have ever been one of the chief inducements to the pursuit of excellence, and the desire to earn this honorary reward has, in our parent country, been the mainspring of the noblest military achievements, and the most brilliant intellectual triumphs. It is, therefore, in my opinion, very desirable that these distinctions should be introduced into this colony, in order to encourage a spirit of honorable emulation. We are rapidly increasing in wealth, and it is most important that our institutions should be such as to cherish tastes of a higher and more intelectual kind than have hitherto prevailed here. We shall soon have a numerous class of people in this colony, with large means, ample leisure, and superior education, untramelled by those money-making occupations to which the attention of all our colonists are now turned, and for them such distinctions will hold out incentives to high personal character and intellectual elevation. These distinctions, vain as they may seem to some, have exercised a power over the mind in every age and in every country. In democratic America, popularly decried and ridiculed as they are, there is a greater desire for them than in the most aristocratic states. It is, in my opinion, deeply to be deplored, that the Imperial Government did not long before the present day perceive the wisdom of introducing titled orders into the colonies. Such a course would have bound the colonies to the parent state by strong and graceful ties. It is all very well for the trading philosophers of the present day to smile at what they term those imaginary honors; but while they smile they bow before them. Human nature is too strong for speculative theories. Nature has fixed the desire for these distinctions ineradicably in the mind, and that desire is as strongly manifested in the feather which adorns the head of the savage, as in the coronet of the earl. The distinctions given by these insignia are different—they are sought for on different grounds—with different aims—but the desire to possess them is of the same origin. I trust, therefore, that the House will pay little attention to the objections and the ridicule with which the proposal to introduce these distinctions has been met. The formation of a class possessing such distinctions would be of the greatest benefit in creating a valuable standard of manners, taste, and refinement, which, unfortunately, does not at present exist to any great extent in any of the colonies. I therefore, agree altogether with my honourable and learned friend, the member for Sydney, in recognizing the benefit that must arise from bestowing rank and honours on colonists worthy of them, but I differ from him in wishing in any way to connect the hereditary principle with the legislature of the country. I will now proceed to another part of the measure, to which no reference has been made during the debate. I mean the civil list, and the proposal, that on the establishment of responsible government, certain members of the present government, who may be compelled to give up their offices, shall be allowed pensions equal to the full amount of their salaries. With regard to the civil list, I am not one of those who think that we have done very wisely in providing it for her Majesty. Nor do I think that we are

in any way bound to make any such provision. If we are entitled, as a matter of right, to the concessions that have been made to us, then it is but just and proper that we should have the full control of all our revenues, from whatever source collected, without check or condition of any kind. I think too, that by this time the British Government must have had sufficient experience of this legislature, to be aware that there is no likelihood of this House, or any House that may succeed it, refusing to provide the funds necessary for all the purposes of government. But I quite agree with that part of the measure which provides pensions for the retiring officers of the government equal to their full salaries. I think it is the more particularly important that this provision should be made at a time when we are on the point of having responsible government conceded to us. We will do well, in making provision for the exercise of this system at the outset, to adopt that large liberality which has always distinguished the government of England, and given it that power and stability which makes it honoured all over the world, instead of imitating the narrow-minded parsimony which characterises some republican governments. I have had the misfortune on many occasions to differ from those gentlemen who have hitherto conducted the government of this colony. I have some times thought, and do still think, that the interests of the country have suffered in their hands, but it is not this that shall prevent me from doing those gentlemen, who may shortly be called upon to give up their offices, strict and liberal justice. It is by this just and liberal spirit that we alone can obtain that respect with which the government of the mother country is regarded. It is not the extent of the taxation of that country; it is not the amount of its wealth—for other countries have perhaps larger revenues; but what gives Great Britain her proud position among the countries of the world, is the credit that the name everywhere carries with it. It is the conviction, that whatever she has promised, that will she perform—that go from the farthest east to the remotest west—the engagement of the most subordinate officer of the British Government in any country will be faithfully and honourably carried out. This is the bright, the high and lofty character which has made England pre-eminent among the nations of the earth. To imitate this great example should be our desire,—if we would earn for ourselves a like position, and deserve like respect. This is the example, which now, in establishing free self-government among us, we should take for our guide and our model. Such, sir, are the views which I entertain, such the principles on which I intend to act. I desire to blend, if possible, the opposite elements of liberty and restraint in one consistent whole—to secure at once, and permanently, for the people of this country that *imperium et libertatem* which constituted the memorable feature of perhaps the greatest reign on record. No man can foresee the mighty consequences which may result from the decision at which this Council may arrive on this great question. Unborn myriads may have to curse or bless the labours of this House, accordingly as we transmit to them the seeds of anarchy or the seeds of order. Heirs of the British constitution ourselves, it should be our pride as well as our duty to hand down our noble inheritance intact, undimmed, undiminished, undegraded, in all its full and unclouded splendour to our posterity. But while preserving its spirit, let us not be too tenacious of its forms. Let us not, while aiming at conservatism, fall into the wildest democracy. Let our checks and balances be real and powerful, but elastic. So shall we lay the foundation of a nation, not only speaking the language and imbued with the literature, but in every way worthy of that great people who first taught the lesson of freedom to mankind.

The honourable member, who was repeatedly cheered throughout his address, sat down amid repeated cheers from all sides of the House, and was personally greeted by a large number of members.

The ATTORNEY-GENERAL, in rising to address the House after the splendid speech which has just been addressed to the House—a speech as able as any which has ever been heard in the Council—a speech distinguished not less by its historical than its legal research, and the sentiments and principles of which throughout do equal honour to the heart as to the head of the honourable gentleman—a speech which is a credit to this House as a popular and deliberative body, and which I hope will have its effects, not only on honourable members but on the country at large—I cannot but feel the great disadvantage under which I labour. After the honourable member's eloquence, I feel that I ought to plead for the patient courtesy of the House while it listens to my dullness. (Cheers.) I could have wished that some honourable member, who was more opposed to the views of the last speaker, had risen to follow him, as it would have been more in the usual order of debate, for I am bound to say, that in most of the arguments of the honourable member I entirely agree, whilst the points on which I differ from him are very few; and I am glad to hear the honourable member admit, in the course of his address, that in a complicated question of this nature the best intentioned men may differ; and I for one most heartily concede to the honourable member, in the points on which I differ from him, the fullest credit for honesty and sincerity of purpose. (Cheers.) Before I go into the main question, however, I would refer to a remark made by the honourable and learned member for Cumberland, yesterday afternoon, in that lengthy address in which he spoke so much and said so little. (Cheers and laughter.) The honourable and learned member said that the officers of the Government in the House ought not to take any part in this debate; and the same sentiment was expressed at the public meeting the other day by one of the new allies of the honourable and learned gentleman. (Laughter.) But however much it might suit the honourable gentleman and his friends out of doors to dictate to any members of this House the course they ought to pursue, I for one will act on my own judgment in the performance of my duty. (Cheers.) And on an occasion so important as the present, I feel that I should fail in that duty if I did not express my opinions on the question before the House. (Cheers.) The measure which is under discussion may be divided into two parts. The first and most important applied to that portion of it which referred to those fundamental principles and provisions on which the constitution must be based; the other referred more to the details of the measure for working out that constitution. The construction of two houses instead of one was one of these fundamental principles—the greatest and most important contained in the measure. The distribution of members elected to serve in the Lower House, though highly important, is not a fundamental principle of the bill, and I shall not therefore refer to it. And as an officer of the Government I might be thought to have some personal interest in the provisions respecting the schedule and civil list, I shall not say one word about them. (Cheers.) In fact, in my mind, these are the least important parts of the Bill. While they might be swept away altogether, or, if adopted, will leave no traces in the stream of time, the fundamental principle alluded to will remain for ever, for the good or for the evil, the happiness or the misery, of the people of this great country. And when I think of this, I ask am I to be told by any honorable member, either in or out of this House, that I am, in these momentous circumstances, not to have the common right of passengers and crew, of calling out "Breakers ahead!" (laughter) when danger is near? I consider I should be guilty of dereliction of duty if I did not warn the House against the breakers that I can so easily foresee. (Hear, hear.) Nor is the duty which I feel imperative upon me to take part in this discussion a new light that has broken in upon me. When another question, almost as important as this, was before the House (I allude to the ques-

tion of transportation) although every other member of the government declined to take part in the discussion upon it, I felt it my duty to express my opinions. No doubt my hon. colleagues in the government thought the course pursued by them on that occasion was the right one, but I have never since felt that the part I took in that question was wrong. I took that course because, in my conscience, I believed it to be my duty to do so, though the opinions I expressed were not very likely to be very palatable to the minister of the day. I can not, therefore, be charged with having been actuated on that occasion by any desire to forward my own interest. And if we are to believe whatwe have heard of the opinions of the gentlemen who are now at the head of the government of England, in respect to this question of a constitution, namely, that they were opposed to an Upper House of nominees, the views to which I am now about to give expression would certainly be opposed to them. The opinions of Mr. Gladstone, and the Duke of Newcastle, if they were embodied in the Cape of Good Hope constitution, are certainly not shared in by me, and therefore in this instance also, in adopting the course I do, I am not merely looking to my own personal interest. I will now go to the question, and I will say that, in considering the measure I have gone to all the sources of information that were within my reach. I have searched much into the history of ancient and modern governments, and in going through that search I must confess my feelings, leanings, and inclinations, were very much in favor of the elective principle. But when I came to dive into the great principles of the British Constitution, and when I reflected on the certain results which the history of all governments furnished ; I found that I could not agree with the last honorable speaker in the plan of an elective Upper Chamber, which he propounded. The honorable member has urged with unanswerable force the advantages of a double legislature. On this point all parties seem agreed. We have had no petitions presented against this principle of the measure, and we have heard no opposition to it in the House. When the legislature of a country is composed of a single House, it is always in a state of great danger. At the period of the French Revolution, when all that was conservative in the state was broken up, this experiment was tried. During the government of '91, a single house was established, and though all the great and distinguished philosophers—the shining lights of the day—sat in it, in one single year it was swept away. Others succeeded, but with no better fate. There is no security, no permanency in any such legislature ; and at the present day it is no longer thought of in any country. With the celebrated men who sat in the Council which raised up the admirable fabric of the American Constitution, many suggestions were made for the establishment of a single House, but none of the States, with the single exception of Pensylvania, vested all the legislative power in a single body, and even that State soon found out her error, and corrected it. However, some celebrated writers (among whom are Monsieur Turgot and Dr. Price,) still advocated a single House, and distributed their writings plentifully through the country. To answer these writings, Mr. John Adams, Vice-President, and afterwards President of the Republic, published a work in three volumes, to convince the country of the shallowness and the peril of the opinions thus circulated. Some speeches lately made, and articles in certain newspapers, were calculated to excite the same feelings, the same instrumentality to work on those feelings as prevailed in America then. (Oh ! oh ! from Mr. Darvall.) The honourable member for Cumberland says oh ! but if he had taken the trouble to study Mr. Adams's book, I think the House would have been spared much of the speech he made yesterday. Mr. Adams conclusively pointed out the shoals and quicksands on which governments had split, and having examined every constitution from the earliest ancient Republics, and contrasted and compared

their principles with that of America, explained all the vices and follies which had led to their decay. It is to be deduced from all history and all experience, that nothing is more true than that the rights and liberties of the people will never be safe without the existence of *a strong executive*, and of two other *independent* powers. (Hear, hear, from Mr. Darvall.) This is the principle sought to be introduced by this bill, a balance which will preserve the dignity, and ensure the safety of the whole state and the whole government. I find in an old book, the writings of Polybius, translated into English—for I presume it would be not more acceptable to the House than it would have been to the public meeting, which was so often spoken of, to quote from the original Greek—I find that the same ideas were entertained by the Greek statesmen and philosophers, as had actuated the Americans in settling their present form of government. The following, which occurs in the first chapter of the sixth book, and *extract the first*, is a curiosity in its way, and is the probable origin of subsequent notions of sound government:—

Among those, then, who have treated of these matters in the way of science, the greater part distinguished civil government into three several kinds, royalty, aristocracy, and democracy. But it may be very reasonably demanded of these writers, whether they speak of these as the only kinds, or simply as the best. In either case, indeed, they must be charged with error. For first, that kind of government is undoubtedly to be esteemed the best which is composed of all the three now mentioned. The proof of this is evident from experience and from fact, as well as reason. Such, for example, was the system first invented by Lycurgus, and established by him in Sparta.

This classic author afterwards proceeds to particularise the vices and peculiaraties of the form of government established by Lycurgus, which are well sketched in the following passage:—

This legislator, then, having considered with himself that, according to the necessity and established course of all things, the several accidents and changes that have now been mentioned were inevitable, formed this conclusion:—That every simple and single kind of government was insecure, on account of its proneness to degenerate into that more vicious kind, which was most nearly allied to it by nature. For as rust is the in-bred bane of iron, and worms of wood; and as these substances, even though they should escape all external violence, at last fall a prey to the evils that are, as it were, congenial with them; in the same manner, likewise, every single kind of government breeds within itself some certain vice, which is attached by nature to its very form, and which soon causes its destruction. Thus royalty degenerates into tyranny; aristocracy into oligarchy; and democracy into savage violence. Nor is it possible, as we have already shown, that in the course of time these conversions must be thus produced. Lycurgus, therefore, forseeing this necessity, instead of adopting either of the single forms of government, collected what was excellent in them all; and so joined together the principles that were peculiar to each several form, that no one of them might be extended beyond proper bounds, and slide into the evil to which it was inclined by nature; but that each separate power, being still counteracted by the rest, might be retained in due position, and the whole government be preserved in equal balance; as a vessel, when impelled to either side by the wind, is kept steady by a contrary force. Thus the people, to whom a certain share was allotted in the government, restrained the excesses and abuse of royalty. The people, on the other hand, was maintained in a due submission to the Kings, by their apprehensions of the power of the Senate. For the members of the Senate, being all selected from the best among the citizens, were always ready to support the cause of justice; and, by throwing their own weight into the scale, when either side was in danger of being oppressed by the other, to give such strength to the weaker party, as the Constitution of the State required. By these means the Lacedæmonians preserved their liberty entire, for a much longer time than any other people. And thus it was that Lycurgus, having been taught by reason to foresee a certain train of causes and events, was able to give a lasting strength to his establishment. The Romans, on the other hand, though they arrived indeed at the same perfection in the Constitution of their State, were not led to it by foresight or by reason. But, during the course of many contests and disorders in which they were engaged, having been careful always to adopt, upon every change, such improvements as the occasion itself suggested to them, they at last obtained the same end, likewise, as that which Lycurgus had proposed; and completed the most beautiful frame of government of all that are in our times known.

This very book was quoted by John Adams, and suggested the frame of American Government, as it is constituted at the present day, and in that government the whole aim is to establish such a balance of power to prevent it from falling to pieces. It has been well stated by my honourable and learned friend, the member for Sydney, that it

was the Senate that preserved the balance of that constitution. But it was curious to observe that, although the creation of our House of Lords and of the American Senate flowed from the opposite extremes, in reality they were identical in their nature. For the Senate of the United States was *not elected* by the people in the American or in the constitutional sense of the word; it was appointed by *the sovereign states*, in their capacity as *sovereigns*, just as an appointment by a king or queen. ("Oh! Oh!" from Mr. Darvall.) Honourable members say "Oh, Oh," but I can prove to the satisfaction of any man, whose mind is open to conviction, that what I state is borne out by authority. In the apportionment that was made at the time of the Union in America, the larger states were not entitled to a greater influence in the Senate than the smaller ones; we find that the State of Delaware has just the same power as the State of New York. Thus the members of this House are on a footing of perfect equality, like a Congress of sovereigns or ambassadors, or like an assembly of peers. I will quote in support of this a short extract from Judge Story's Commentaries on the Constitution; and, as lawyers generally do, I will quote the volume and the page. The following passage will be found in volume 2, pages 174—176 :—

> In Congress the single State of Delaware prevented an embargo at the time when all the other States thought it absolutely necessary for the support of the army. In short, the Senate will have the power by its negative of defeating all laws. If this plan prevails, seven States will control the whole; and yet these seven States are, in point of population and strength, less than one-third of the Union, so that two-thirds are compelled to yield to one third. * * * * * Whatever basis is assumed for one branch of the Legislature, the antagonist basis should be assumed for the other. If the House is to be proportional to the relative size and wealth, and population of the States, the Senate should be fixed upon an absolute equality, *as the representative of State sovereignty.*

I will also quote from the same learned author the manner in which the claim of sovereignty to these States was justified. This quotation occurred in the account of the revolution, and will be found in the first volume and the 191st page :—

> In the first place, antecedent to the Declaration of Independence, none of the colonies were, or pretended to be, *sovereign States*, in the sense in which "sovereign" is applied to the States. The term "sovereign" or "sovereignty" is used in different senses, which often leads to a confusion of ideas, and sometimes to very mischievous and unfounded conclusions. By sovereignty in its largest sense is meant supreme, absolute, uncontrollable power, the *jus summi imperii*, the absolute right to govern. * * * * * And it is wholly immaterial what is the form of the Government, or by whose hands this absolute authority is exercised. It may be exercised by the people at large, as in a pure democracy; or by a select few, as in an absolute aristocracy; or by a single person, as in an absolute monarchy. * * * * *

I consider this high authority shows that these appointments were made by the States in their sovereign capacity, and not as a collective body of the people; and this was the distinctive feature between the Senate and the other Legislatures. I therefore say again, that though the House of Lords and the American Senate apparently sprung from the opposite extremes, they are in both cases the true preservers of the balance, the keystones of the constitutional arch. (Cheers.) I am sorry, in alluding now to that portion of the observations of the honorable member who spoke last, to have to differ with him totally as to the means of carrying out the same object. I do not believe that an elective Upper House would effect that balance which the constitution requires. In the United States, the elective principle was necessary, because no appointing power existed, and they, not being willing to entrust the power to an elective President, are compelled first to create a sovereign power by which the Senate can be appointed. Experience has proved the wisdom of the great men who contrived this noble constitution. I say this noble constitution, for I am not of those who condemn wholesale the principles of that great confederacy—a confederacy which is the greatest of modern times, and whose constitution approaches more nearly to the British constitution than any that has ever been devised. (Hear, hear.) It is the greatest experiment that has been made in modern days; it is great because it

approaches the British Constitution more nearly than any other form of government has ever approached it. It is the offspring of our constitution, and has attained that greatness which no other modern nation has been able either to attain or preserve. (Hear, hear, and cheers.) But the great men who made this constitution did not appeal to public meetings. (Cries of hear, hear.) They sat for months, nay for years, with closed doors. (Loud cheers.) They examined every precedent of antiquity; they did not appeal for the approval of the popular voice. (Hear, hear, from Mr. Wentworth.) But when they had agreed upon a scheme of constitution which they considered the best which human ingenuity could devise, they promulgated that constitution by authority, and it was accepted. (Loud cheers.) My hon. and learned friend opposite (Mr. Darvall) states that the constitution of the United States is nearly the same now as it was before the revolution—that they had an elective second chamber.

Mr. DARVALL: I said the colonies were unanimous in their demand for elective chambers.

The ATTORNEY-GENERAL: I am sorry I have not this day's *Herald* at hand. Possibly the reporters might have misrepresented my hon. and learned friend; but I question much whether it is not more likely that my hon. friend, not having any fixed principles in his head, they had got out of it. (Laughter.) I was under the impression, until now, that the reporters had correctly reported him on this point. But there was a part of his speech at the public meeting which I do trust the reporters have misrepresented; although it is a singular fact that the *Herald* and *Empire* agreed entirely. That part was, where the hon. and learned gentleman was reported to have expressed his indifference as to whether he lived under a republican President or under her Majesty the Queen. Yesterday, indeed, he had explained that he only referred to futurity; but I was indeed, shocked to see such expressions coming from a gentleman who had so recently nearly obtained the appointment of a Judge of the Supreme Court in Victoria. (Hear, hear.) It shocked all my feelings of loyalty, and all my notions of propriety; and I should be glad to hear the hon. and learned gentleman had done himself the justice to say that he had made a slip of the tongue. It is due to the house and to his friends, that this explanation should be made, and that he should declare that such were not his principles. For if they were, I believe they would come within the meaning of that oath which is taken by all magistrates and persons in authority, "to discover and make known all traitorous conspiracies against the Queen's Majesty, and to put them down." (Loud cheers.) I should be glad therefore that my hon. and learned friend had been misreported in this matter. I will now return to what I was saying. The hon. and learned member has said the hon. and learned member for Sydney was wrong in stating that there was no precedent of an elective Upper House in any British colony, and has quoted from "Clarke's Colonial Law"—

Mr. DARVALL: I beg to set my hon. friend right. I said the hon. and learned member was wrong in stating that there was no precedent of an elective house having been demanded.

Mr. WENTWORTH: What I said was that there was no precedent for an elective Upper House in any British colony.

After some explanations between the Attorney-General and Mr. Darvall,

The ATTORNEY-GENERAL resumed: I find from Clarke that the American colonial constitutions were divided into provincial, proprietary, and chartered. In *the first*, the appointment of Governor and his Council was made by the King. In *the second*, the proprietors were feudal lords, with feudal powers; and *the third* were chartered Governments, mere corporations, and the Government was actually administered in England by a general Court. The towns in the colony of Virginia were the first that sent representatives; but until this there was no representative govern-

ment at all, and representation, when obtained, was taken as a great boon. (Hear.) I will not, however, labour this point. It is a matter of history. But I assert that the elective principle in an Upper House is not congenial to the British constitution, and that it is now proposed for the first time. As a member of the committee, I went fully with my honourable and learned friend in those portions of the present bill which have been borrowed from the Quebec Act, 31 Geo. III., ch. 31. As to the introduction of titles of honour—whether the notion has been spread abroad for the purpose of exciting the multitude, I know not; but I can state that no member of the committee ever intended that they should be brought into operation at present. I never intended they should come into operation for at least twenty-five years, or even fifty years, when the colony may be fit to receive them. There can be no wish to force them on the people, and possibly they might never be brought into operation at all; but the scheme has been devised as the nearest approach to the institutions of our father-land, and with the view of sowing that good seed which may perhaps spring up in its own good time. (Cheers.) And the more I reflect upon it the more I feel convinced that it was the duty of the committee to do what they have done. The report of the honourable and learned gentleman's speech to the public meeting is now going on the wings of the Press to all parts of the world, wherein he has stated that it was indifferent to him whether he lived under a President or the Queen;—and the publications of Dr. Lang were calculated to impress the English public with the idea, that the colonists were desirous of, and ready for, the introduction of republicanism—than which, nothing can be more untrue. It is, however, high time for the committee, so far as they are concerned, to show that there is no mistake in what they desire—namely, to sow the seeds of a monarchy. They desire to place the public mind on a right basis; and as people are congregating here from all parts of the world, and chiefly from republican states, and as it is natural they should prefer the institutions under which they were born, it is the more imperative that the monarchical principle should be emphatically proclaimed, and that there should be no mistake whatever on that point. (Cheers.) I believe the colonists have no desire for a republic—they wish to stick to their monarchy (hear, hear), and I cannot conceive how monarchy can exist with an elective Upper House. An Upper House appointed by the Crown is as consonant with monarchy, as an elective House is calculated to lead to democracy and to violence and faction. I will repeat, that I never intended those clauses respecting "titles," to come into operation for a considerable time, but only to draw a marked line of distinction between monarchy and republicanism; nor do I look upon those clauses as a fundamental part of the measure. (Hear, hear, from Mr. Wentworth.) The bill would be complete with or without them, and I have no doubt it will tend to preserve to all time our glorious Constitution. But, besides, it must not be forgotten that the bill contemplates the introduction of responsible Government in the fullest sense of the word (hear, hear), and that the Government of this colony must necessarily be far more democratic than the Government of England. (Hear, hear.) We know that notwithstanding the beauty and glory of the British Constitution, it is only recently that great stains and blots upon it have been washed away. (Hear, hear, from Mr. Darvall.) The House of Commons, until lately, was not the faithful representative of the people, and it may be questioned if it be so, even since the passing of the Reform Bill. Any one who has read Macaulay's History of England must know that until recently some of the principal towns were almost entirely unrepresented; and that the representation of the people did not keep pace with the changes of time; and it is notorious that some of the members of the Lower House are returned by members of the Upper House. These are heavy drawbacks upon popular liberty in England, which cannot exist

at all here—(hear, hear)—and if this bill be carried out in its fulness, the colony will enjoy representative Government without any of these drawbacks. (Hear, hear.) Representatives will be sent from all parts of the colony, through whom grievances and complaints may be made known; every class will be represented; the wants and wishes of the whole community will be faithfully reflected in the proper *mirror*, and a general life and energy will doubtless pervade the whole Government. Such a responsible Government could scarcely appoint members of the Upper House, who had not the confidence of the people. (Hear, hear.) And the Upper House being appointed by a Government responsible to the people, would add solidity and strength to that Government. It is unfair to compare that future Government, and which it is the main object of this bill to create, with the one we have now, in which the popular voice was not so blended; and whether the Upper House members were titled or not, I believe they would, under such a Government as I have referred to, command the confidence of the country far more fully than an elective House would. (Cheers.) The honourable and learned member's speech at the public meeting was no doubt characterized by great tact, and great show, and great eloquence. He told them that they should have the whole Government of the State, that no laws should be made without their consent, and that they should not be taxed unless they were represented. Why, one would suppose, from this, that in England no laws were made without representation in both Houses, that only one House existed there. It is true the House of Commons has the purse-strings in its hands, and can alone originate money bills; but then the Lords, and the Queen, too, have something to say in the passing of those bills, as well as the representatives of the people; and to tell the people that there should be no taxation but by their representatives is absurd. Why any student of law, any man the least acquainted with constitutional history, would be astonished at the solemn face with which my honourable friend has gravely told us that. (Cheers and laughter.) I now beg to remind the House that it has been laid down by the best American writers, as well as our own, that the legislative power is the most encroaching of all—the most ambitious, and the most unruly. It is to guard against that spirit of encroachment that the Senate of the United States was appointed as it was; and I would ask the House to consider well this point. It might be all very well while the breezes blew gently, whether from the Duke of Newcastle, or from the Port of Newcastle, it might be all very well to carry a great deal of sail, but it was not for calms, but for storms and tempests that the wary mariner trimmed his bark. (Hear, hear.) So, if we had an elective house, I believe it might be all very well in quiet times, but in storms and perils we should soon find out that we carried too much sail for our ballast. (Cheers.) Now this bill extended the franchise very considerably more than it was extended in England. It placed it on the broadest basis. In England representation has never been disassociated from property; but here it is proposed to be extended to lodgers and others, and the result will be vastly to increase the power of the Lower House. (Hear, hear.) Now both Storey and Chancellor Kent, the most eminent of American jurists, complained that the great vice of American legislation was over law-making—making of laws on the spur of the moment, just as the passion or the interest of the moment might suggest. And this we ourselves already complain of; and with a second Elective Chamber there would be no effectual check to hasty law-making. The same impulses would influence it, as the House of Assembly, whatever kind of election may be resorted to, for the same feelings pervade all the classes in the Colony; for, unfortunately, the distinctive marks brought about in other places by education and knowledge, are not (as yet, at least) observable among any large body of the people. One great desideratum in the members of an Upper House was, that they should

possess knowledge and experience. This was one of the chief characteristics of the House of Lords, where retired, and chief Judges, and men of mature acquirements sat and voted, who had made it their business during their lives to prepare themselves for those duties. (Cheers.) It is necessary that the members of an Upper House should understand the laws, and the policy of the state, in order to guide it safely in every respect. It is obviously wise to prevent too great a mutability in our laws; for nothing can produce greater want of public confidence than instability in legislation; and if both Houses depend on election there must be a constant change of men, and of course a constant change of measures, which will have the effect of diminishing the security of property, and damping the ardor of industry and enterprise. I contend that stability in our laws and political institutions, ought to be insured as far as human sagacity can guarantee it. (Cheers.) Now is this to be better obtained by nomination or election? Surely under a responsible government, and a Governor's advisers liable to impeachment for corruption, this would be more safely attained by nomination. A Governor, with his Executive Council, responsible to the people, would be much more likely to select properly qualified individuals out of the whole country, than the large farmers of a country would be. If the Upper House be elected by the large farmers, as the honourable gentleman opposite proposed, the country must be divided into districts, in order to the exercise of this power, and there must consequently be district elections. Where there were these elections there would be a canvass for votes, and where there was such a canvass, there would, as in all other popular elections, be corruption. The man who spent the most money, and made the most promises, would be the most likely to succeed, without reference to his qualifications (Cheers); and it was the most crafty and unprincipled knave who would promise most largely. The farmers, honest themselves, and believing everybody else to be so, would be the victims of imposition. (Hear, hear.) The senators of the United States are those who have distinguished themselves in the several legislatures of that country. Here, also, after the first few years, the persons appointed by the Government to seats in the Upper House would be those who had distinguished themselves in the Lower one. Thus, ultimately, they would have the best men from among the representatives themselves. (Hear, hear.) But some of the very best men were those who would not be induced to go through a contested election, and run the risk of being disgraced by some contemptible candidate, who could canvass better, achieving a victory over him. (Hear, hear.) I hope I shall not act improperly in mentioning a name, but there is one gentleman who distinguished himself as an excellent Judge on the Bench, both here and at Madras, who might be expected to settle among them—he meant Sir William Burton. This gentleman will be peculiarly fitted for a seat in the Upper House, and yet would never submit to the risk of being abused and beaten by going before a constituency. (Hear, hear.) It was not for the mere present that we are legislating. It is a matter of very little consequence whether this House lasts some years longer or not. It is better, indeed, that it should so last than that we should sow seeds which would bring forth bad fruit. (Cheers.) We are legislating for a community which, to use the language of the honorable member opposite (Mr. Wentworth), is being "precipitated into a great nation," and we must legislate with reference not only to its present, but to its future condition. And if it be known that members of the higher classes, competent by education and position, can look forward to the honours of a seat in an Upper House, without the ordeal of a popular election, I cannot but think that this would be an inducement to those classes to come here. (Cheers.) This, however, has been so well put by the honorable and learned member for Sydney, that I will not go over the same ground lest I should weaken the arguments of that gentle-

man. I will refer again to that noble confederacy, the United States. If the honourable and learned member for Cumberland had looked more closely into the constitution of that country, he would have seen that the Upper House was not created off hand and left without check. Many safeguards had been found necessary. There were councils of revision to guard against bad legislation. It was found that these Upper Houses could not be trusted without the interposition of such a power. (Hear, hear.) There was formerly the same safeguard in connection with the federal government, although it is true it had been withdrawn lately from a fear that the judges, by whom chiefly this power was exercised, might lose the weight and influence properly attaching to their offices, by being drawn into politics; and there is, instead, an understanding that these officers, as well as various heads of the departments, should be consulted by the head of the Government, although the confirmation or rejection of a measure was nominally his own act. Under the British Government we have no such restrictions. Every Englishman knows that no laws can be passed imposing torture, and the whole spirit of the constitution is so strikingly a spirit of freedom, that slavery, in any shape, cannot exist, or be recognised under it. (Cheers.) But with these principles kept in view the powers of legislation are unbounded. It is not so in the United States. Every State has its constitution, and the powers of its legislature written down. When acts are passed by these legislatures; the question of the power of the legislature to pass certain laws is liable to be raised before the Judges; and if they be found repugnant to the constitution, or in excess of the legislatorial powers which it conferred, they are declared void. (Hear, hear.) If such precautions are necessary under these republican governments, they would be equally necessary here under a similar state of things. Myself and my honorable colleague (the Solicitor-General) who perform here the duties of the Court of Revision, feel most painfully the difficuties of the task, even with the laws which are passed, in reference to the present condition of the community; and it is hardly necessary to refer to samples of hasty and ill-advised measures constantly hurried into laws. Much more difficult, nay, impossible, would be the task when more numerous and more complicated enactments are rendered necessary by its progress in wealth and importance. (Hear, hear.) In the glorious model which we have before us, the House of Lords was the only check upon legislation, and the only equipoise between all the powers of the state. (Cheers.) The formation of a republic has been attempted in England, but it has proved a complete failure. I will read a short passage on this subject from De Lolme on the British Constitution.

> The royal power being thus annihilated, the English made fruitless attempts to substitute a republican government in its stead. "It was a curious spectacle," says Montesquieu, "to behold the vain efforts of the English to establish among themselves a democracy." Subjected, at first, to the power of the principal leaders in the Long Parliament, they saw that power expire only to pass without bounds into the hands of a Protector. They saw it afterwards parcelled out among the chiefs of different bodies of soldiers; and thus, shifting without end from one kind of subjection to another, they were at length convinced, that an attempt to establish liberty in a great nation, by making the people interfere in the common business of government, is, of all attempts, the most chimerical; that the authority of all, with which men are amused, is in reality no more than the authority of a few powerful individuals, who divide the republic among themselves; and they at last rested in the bosom of the only constitution which is fit for a great state and a free people; I mean that in which a chosen number deliberate, and a single hand executes: but in which, at the same time, the public satisfaction is rendered, by the general relation and arrangement of things, a necessary condition of the duration of government.

If republican institutions could have been dovetailed into the British Government the change would have been effected at that time; but all efforts failed; and after these attempts, which were ridiculed by Montesquieu, they were compelled to fall back upon limited monarchy. (Hear, hear, hear.) I will quote another passage from Judge Story, who,

as a jurist and a philosopher, was one of the first men of the age.

> The future is that, which may well awaken the most earnest solicitude, both for the virtue and the permanence of our republic. The fate of other republics, their rise, their progress, their decline, and their fall, are written but too legibly on the pages of history, if indeed they were not continually before us in the startling fragments of their ruins. They have perished; and perished by their own hands. Prosperity has enervated them, corruption has debased them, and a venal populace has consummated their destruction. Alternately the prey of military chieftains at home, and of ambitious invaders from abroad, they have been sometimes cheated out of their liberties by servile demagogues; sometimes betrayed into a surrender of them by false patriots; and sometimes they have willingly sold them for a price to the despot, who has bidden highest for his victims. They have disregarded the warning voice of their best statesmen, and have persecuted, and driven from office their truest friends. They have listened to the fawning sycophant, and the base calumniator of the wise and good. They have reverenced power more in its highest abuses and summary movements, than in its calm and constitutional energy, when it dispensed blessings with an unseen, but liberal hand. They have surrendered to faction what belonged to country. Patronage and party, the triumph of a leader, and the discontents of a day, have outweighed all solid principles and institutions of Government. Such are the melancholy lessons of the past history of republics down to our own. * * * *
> In the first place, it cannot escape our notice, how exceedingly difficult it is to settle the foundations of any government which do not admit of controversy or question. The very elements out of which it is to be built are susceptible of infinite modifications; and theory too often deludes us by the attractive simplicity of its plans, and imagination by the visionary perfection of its speculations. In theory, a government may promise the most perfect harmony of operation in all its various combinations. In practice, the whole machinery may be perpetually retarded, or thrown out of order, by accidental mal-adjustment. In theory, a government may seem deficient in unity of design and symmetry of parts; and yet, in practice, it may work with astonishing accuracy and force for the general welfare. Whatever, then, has been found to work well in experience, should be rarely hazarded upon conjectural improvements. Time, and long and steady operation are indispensable to the perfection of all social institutions. To be of any value they must become cemented with the habits, the feelings, and the pursuits of the people. Every change discomposes for a while the whole arrangements of the system. What is safe is not always expedient; what is new is often pregnant with unforeseen evils, and imaginary good.

There is in these observations a fund of wisdom, which the House would do well to pause and reflect upon. (Hear, hear.) There was a Constitution Committee *par excellence* sitting outside the House, and, instead of finding fault with this Committee, I am exceedingly pleased to find them taking this trouble upon themselves. But these gentlemen will find, as all have found who have taken the labour of constitution-making in hand, that the task is a most difficult one. (Hear, hear.) If a constitution should be framed outside of the House better than that which is devised inside, I should not consider it at all humiliating to adopt the former constitution in preference to the latter. (Hear, hear, from Mr. Wentworth.) But every man's crochet is being put forward, and there is one plan—as clumsy a contrivance as can be well imagined, put forward in the papers this morning with the apparent stamp of authority. Among so many suggestions something good might be hit upon; but the task of constitution-making is one in which many of the greatest philosophers have so signally failed as to be exposed to the ridicule of posterity. The plan of a Commonwealth put forth by Hume, the historian, has been characterized by an American commentator as "a splendid absurdity." The plan of the poet Milton was still more absurd. Locke, too, had not only devised a constitution, but had attempted to carry it out in Carolina, and a more complete failure never was known. Bearing in mind those failures, I am afraid nothing very brilliant is to be expected from the Constitution Committee. (Hear, hear, and laughter.) But this is too serious a matter to joke upon. History informs us that every constitution is an experiment. The institutions of Lycurgus, which lasted the longest of all, endured for 700 years. Those of another famous constitution-maker of old, Solon, were swept away in a century. I will remind the House that the experiment of making a constitution is not like an experiment by our friend Professor Smith, of the University, in his laboratory, of which the re-

sult can be immediately, or almost immediately seen. The result of a constitution cannot be seen until a long lapse of years, or perhaps centuries. (Cheers.) But if we desire the constitution which we have devised should be of an enduring nature, what better model can we have than the constitution of that land, "whose flag has braved a thousand years the battle and the breeze." (Cheers.) My honourable and learned friend, the member for Cumberland, who has misquoted history so largely, has spoken much of the old Saxon institutions; but if that gentleman had read the last pages of Sir J. Stephen's work on the History of France, or glanced into Miller on the British Government, he would have found that those institutions which he alluded to were, substantially, though under different names, the same as those of the present day. (Hear, hear.) The Government of Great Britain has not been made up for a day, but for all seasons, and can we hope for a better model to guide us. (Cheers.) There is one reference in the speech of the hon. and learned member to which I desire to direct the attention of the Council. Speaking of the murders at Baltimore in 1812, he observed that such outrages frequently occurred in other places, in England, in Scotland, in Ireland; and he then had gone on to say that a murder had recently taken place in Sydney under the most aggravated circumstances, and yet that no adequate punishment had followed. To that statement I do refer with pain and surprise. No greater imputation could be made against the Government or the majesty of the law. But what is the case? A drunken brawl had arisen in a public house in Sydney between some soldiers and civilians; two of the former were killed under circumstances which compelled me to regard the case as one of murder. I, in my capacity of public prosecutor, placed the parties implicated upon their trial for murder; but the honorable and learned member, as counsel for one, or more, of the prisoners, in not such a long, but a more effective speech than he had addressed to that Council on the previous evening, had satisfied his honor, the Chief Justice, that the evidence against the first prisoner who was arraigned, was not sufficient to convict him of murder; and the crime was reduced to manslaughter. Mr. Justice Dickinson and Mr. Justice Therry agreed with the Chief Justice, and a verdict of manslaughter was returned in the rest of the cases; and this as far, as it effected the argument, went to show that in this country what was ruled to be the law of the land was respected, however strong might be the excited feelings in so melancholy a case as that referred to; whilst in America the law was powerless, because the mob was its superior. (Hear, hear.) It was with much regret that I saw the name of my venerable and respected friend, Archdeacon M'Encroe, as one among the orators at the Victoria Theatre; but that reverend gentleman's sayings on that occasion, only proved that a very excellent and good priest might be a miserably bad politician. (Loud cries of hear.) And I distinctly deny that the rev. gentleman, in taking the part he had, was representing the opinions of the archbishop, or of any of the educated members of the Catholic community, (loud cries of hear,) and I regret to say that the respect which attended him in his clerical character does not follow him in his political one. That his residence in America for some years had prepossessed Archdeacon M'Encroe in favor of the American people was not surprising, but still I can hardly believe that my very rev. friend can have a prepossession for a Yankee constitution. Did not my reverend friend remember the burning in some of the United States of religious houses and monasteries, when no prosecutions ensued, or convictions were had, though the perpetrators were all well known, because no one dared to prosecute, for Judge Lynch was paramount? (Loud cries of hear.) [Having described the levelling to the ground of the Convent of Mount Benedict, the hon. and learned member proceeded to show that in a country where it was proclaimed

that every man was at liberty to worship God in the manner that he pleased, the most violent persecution, and aggression on the property of Roman Catholics, was notorious; and where the constitution declared that every man was free, the whole confederation was branded with slavery on its forehead.] To an extract from the memoir of Dr. Channing, I would request the attention of Archdeacon M'Encroe and the Council:

In the autumn of 1837, on the 7th of November, the Rev. Elijah P. Lovejoy, editor of the *Alton Observer*, in Illinois, was shot by one of a mob, while defending the building containing his press. This event, so fitly consummating the long series of outrages committed or tolerated against the Abolitionists excited a profound sensation. Even those whose caution, social connections, and business interests, had hitherto made them hostile to the anti-slavery movement, were startled, and the occasion seemed the right one, therefore, to arouse the people to a consciousness of their duties as freemen. In a conversation with a friend, Dr. Channing suggested the plan of a meeting of the citizens of Boston in Faneuil Hall, to protest against the lawless violence which had at length resulted in the destruction of life. A petition to the city Government was accordingly got up for the use of Faneuil Hall, and, having been headed by Dr. Channing, and the requisite number of signers obtained, was presented. It was immediately followed by a counter petition, numerously signed. In this dark day the taint of "Abolitionism" was so much dreaded, especially in large trading communities, that influential men readily came forward to oppose even an expression of indignant remonstrance against the violence under which the Abolitionists had suffered. Under their influence the Hall was refused, and thus an issue was made for freedom of speech and the supremacy of the law, in which Dr. Channing found himself most unexpectedly involved as a principal. On the 2nd of the following December, Dr. Channing published an appeal to the citizens of Boston, in the columns of the *Daily Advertizer*, subjoining the petition which himself and friends had presented to the Mayor and Aldermen of the city of Boston, requesting the use of Faneuil Hall.

I will not weary the House with reading the whole of the extract, but I will state that Dr. Channing wrote a splendid answer to that refusal, and aroused many of his friends to get up a meeting. A crowded and enthusiastic meeting took place, and an eloquent address was delivered by Dr. Channing, in which he says, speaking of the murder of Mr. Lovejoy—"*Nor was this a solitary act of violence; he came forward to protest against it in the name of American freedom, and to throw a shield over the menaced liberties of the State.*"

The vast multitude seemed to be of one mind, and all signs betokening a meeting in the highest degree honourable to the old "Cradle of Liberty." But the powers of evil proposed otherwise. The respectful order was but a delusive calm. One-third of the persons assembled, perhaps, were Abolitionists, or free discussionists; the one-third were curious on-lookers, eager chiefly for excitement, and swayed to and fro by every speaker; but there was also a party gathered there at once, from counting rooms and cellars, who were deadly foes to the Anti-slavery movement, and only waiting a fit chance for an outbreak.

Resolutions were proposed, but who would the Council guess, now started on to the platform? I do not believe my honourable friend, Mr. Darvall, would succeed in guessing—Why, no less a person than the Attorney-General of the State. Yes, the Attorney-General of Boston. (Loud laughter.)

He pronounced the resolutions to be "abstract propositions;" said that it would be idle and useless to call this great meeting of citizens together, merely to affirm by solemn vote what nobody would have the hardihood to deny; demanded to know how Mr. Lovejoy had merited the distinction of being thus commemorated; accused him of exciting the slaves to rise upon their masters; compared the slaves to wild beasts thirsting for blood; asked whether "that man had not died as the fool dieth;" *likened the mob of Alton to the fathers of the revolution;* and wound up by saying "to sympathise with those who have been mobbed, and whose own rashness and imprudence have incited the mob, is not the best way to put down mobs."

Thus was the excellent Dr. Channing met upon the platform by the first law officer of the state; not with apologies for the insufficiency of the law, but with the expressions of insolent triumph that the law had been defeated. (Loud cries of hear.) And without exaggeration it might be said that the Attorney-General of that state, by his conduct on that occasion, only proved that the voice of the populace overrode the law in that particular state of the union; but as far as I can ascertain, the law was equally powerless in almost all the states. (Hear, hear.) All serious convulsions are carried out by demagogues; as a boiling cauldron throws its scum to the top, so in all social con-

vulsions unworthy persons will be sure to get to the top, and betray the people for their own selfish purposes. (Hear, hear, hear.) The people left to themselves, and uncontrolled, would be hurried on to ruin by the ruffians who made them their dupes. Let the colonists of New South Wales look to the pages of history for proof of this; and if they did not regard those pages as an almanac, let them learn wisdom therefrom. In approaching this question I have no interest to serve but that which every good citizen ought to study—an earnest desire to live under the best government. (Loud cheers.) All my readings, and my study, have inspired me with the greatest veneration for the noble constitution of the United Kingdom. I believe it to be the most excellent of human institutions. It is no matter of theory or speculation, it is not a work of yesterday, that may be amended to day, and changed to-morrow; it is composed of many wheels, springs, and balances, of counteracting, and co-operating powers, all dovetailing in each other; and each of its parts seems so fitted for the test, that to unsettle is to destroy. Every change proposed in it should bear the strongest marks of necessity. It is not enough that any change should be good in design, but it should be clearly shewn, that it is safe by its agreement with all the other parts. (Cheers.) I approach that venerable fabric with the same reverential awe that I would the sepulchres of the illustrious dead in Westminster Abbey. I regard it as the best shield against oppression of every kind, and the best safeguard of rational liberty. It appears to me that the genius of liberty himself has there secured a refuge, where he might rest secure on the one side, from despotism, and on the other, from licentiousness. I warn the House to pause, before they interfere with it, and adopt in its place the theories of those, of whom it might be said, "That fools rush in where angels fear to tread." [The honourable and learned member resumed his seat amid applause.]

On the motion of Mr. COWPER, the House adjourned.

Mr. COWPER: Often as I have had occasion to address this House since it was first called into existence, never have I felt so much the necessity of its indulgence as on the present occasion. I feel how great the importance of the subject, I feel also my inability to do justice to it, and I do implore, therefore, the forbearance of the Council while I endeavour to the best of my humble powers, to enter into this question. I agree with all honourable members who have preceded me, that it is indeed a most momentous question; I agree with many of them that it is the most momentous question which has ever been brought under the notice of this House. I shall therefore endeavour to approach the discussion of it in a proper spirit, and to treat, with both candour and temperance, the opinions of those who happen to differ with me upon it. It is with deep regret that I have observed, on the part of some honourable members in this House, a disposition to adopt foregone conclusions—to misconceive, if not to misinterpret, the opinions of those who are opposed to them. It is heartless work to discuss any great question under such circumstances; and it does appear that the majority in the House, are determined to give neither to other honorable members in this House or people out of doors, any fair chance or any candid consideration. I must therefore entreat honourable members to extend to those who differ from them some little charity, for the majority of the House seem indisposed to allow any measure of reason or common sense to those who took that side of the question on which he now rose. They contend that nothing but anarchy and confusion must result from our views, and that these therefore must necessarily be our object. But I do not think that any such opinions are warranted either by justice or by the arguments of those who are opposed to us. The opinions I have adopted on this question are shared at least by a considerable number, if not a majority of those who are the present Ministers of her Majesty, and seeing this I do not think that I, and those who think with

me, ought to be taunted with holding views perfectly inconsistent with the supremacy of the British Government in this colony. The honourable and learned member for Sydney, and those who acted with him, said that the opposite party, the opponents of the Bill, asked for something different from the British constitution, and that what they asked for was not desired by the colonists generally. Now I deny this. I contend that what the opponents of this bill ask for is something more analagous to the British constitution, more kindred with and congenial to its spirit than that which the present measure contemplates. And if the colonists generally agree with the Bill, why should the views put forward by the honourable and learned member for Sydney, and his friends here, have been so strongly denounced out of doors? And I would here refer to some observations which have been made by the honourable and learned member for Sydney (Mr. Wentworth) in the course of his speech. The honourable and learned member had stated, almost at the outset of his address, that the present Council was not only possessed of the power, but was elected expressly to frame a constitution for the colony, and he laboured hard to prove that the people had encouraged them by a silent assent to frame a constitution of this nature. He went back a little further than the alteration of the constitution of 1850, and appealed to the movement which took place throughout the colony on Earl Grey's proposed constitution, which he said was repudiated by the whole colony, and which, he stated, was so repudiated, mainly because it was based on the principle of double election. But if I understood the hon. and learned member aright, the views which he took of the expression and opinion on the part of the people on that occasion were very different from those which were taken by her Majesty's Ministers. Before I sit down I hope I shall be able to convince the house that the minister of that day, when he withdrew his own views of the constitution of this colony, did not do so because he contemplated the erection of a nominated Upper House. The hon. and learned member, advancing a step further in the argument, stated that, in the last session of the Council, the proposed form of constitution which was then submitted to the house, met almost the unanimous concurrence of the house, and that the proposal of a nominated Upper House met with no opposition out of doors. I think this was hardly a fair statement of the question, and in support of this view I will refer to the report of the Select Committee on the subject last Session. This report was a very meagre document, and it was not opposed out of doors, because it was believed that the bill would have been brought before the house and be subjected to discussion, during which the country would have had the opportunity of speaking out. The adjournment of the whole matter came upon the country by surprise. I for one had no idea of it, and, in fact, on the very day on which the adjournment was moved, I had a conference with my late hon. colleague as to the steps to be taken in reference to it. Had the bill gone on, it was intended to have got up an agitation against it, but no opportunity was afforded of so doing; but this was no ground for asserting that the country agreed in the principle of the bill, and I will read a paragraph from the report of the committee of last session, which shows the House that the question then had not assumed that finality which was argued for it by the hon. and learned member for Sydney. The report stated,

> The principal difficulty your Committe have had to contend with has been to devise a scheme of a Legislative Council which, in its working, may prove an effectual check on the democratic element in the assembly, and at the same time be competent to discharge with efficiency the revising, deliberative, and conservative functions which will devolve on it. Some portion of the Committee have thought that these ends would be most effectually attained by leaving the nomination of this body wholly to the local Executive, with an understanding that no more than one-third of the Council should hold offices of emolument. Another portion of the Committee have preferred a Council wholly elective—some with a high property qualification, and limitation as to age; others, again, without any restriction in either of those particulars; and another portion

of the Committee have advocated, as a middle course between these extremes of pure nomination on the one hand, and pure election on the other, that the Governor should have the nomination for life of two-thirds of the members of the Legislative Council, out of persons who have been elective members of the last or present Council, or who may be elected to any future Assembly, the other third holding office during pleasure. The bill which relates to this subject is presented to the House with a clause embodying this principle, but with a distinct understanding that in its progress though the House this question is to be as open to the objections of members of the Committee as of any other member of the House.

I would draw attention to the wording of this paragraph, to shew that when insinuations are thrown out about weathercock politicians and inconsistency, they are not justified or borne out by the facts of the case. As a member of the committee of last session I invariably expressed myself in favor of the elective principle, but I admit that I advocated that opinion somewhat cautiously. I had then considerable diffidence on the subject, but the more I have reflected, the more I have read upon the subject, the more I have made myself acquainted with the opinions of those in England best qualified to decide on the question —the more I have become convinced that no constitution will ever give satisfaction in this colony which is not based on the elective principle. Nor can I admit that those with whom I have acted are open to the charge of trying a novel experiment in constitution making on the principles thus proposed, any more than the hon. and learned member for Sydney, in the scheme which he proposes. Why should the legislature of this colony, at this time of the day, when we are allowed to frame a constitution consonant to the opinions and acceptable to the wishes of the colonists, adopt one which is denounced every where, and which has never in any single instance, and never can work satisfactorily in any British colony. (Oh, oh, from Mr. Wentworth.) The hon. and learned member says Oh! oh! but before I sit down, I trust I shall show satisfactorily, by indisputable authority, that the proposed form of constitution, or anything approaching to it, wherever it has been tried, has been proved a failure. Nor is that part of the proposed Bill which involves the principle of hereditary titles altogether a novelty—although it is assumed to be so by the hon. and learned member. The principle, or one very nearly assimilating to it, was tried in the Quebec Act, but that constitution has not yet given satisfaction, and I have the opportunity of knowing from a person in the confidence of the present British Government, that it is the intention to alter that Act, and to make the Upper House in Canada elective. As this is the case, as these changes are found necessary in other climes, why should not we, now that we have the opportunity of making a constitution for ourselves, avoid those dangers which have produced inconvenience in other colonies, and frame for ourselves a constitution freed from those defects which in other dependencies require the intervention of the Queen to reform? The opinions of those British statesmen who have most carefully considered the subject are all opposed to a nominated Upper House. Earl Grey, whose long experience in this matter must give his opinions weight, with many other gentlemen of great political influence, have arrived at this conclusion. Earl Grey, in his book, lately published, on this subject, says—

> If an Upper Chamber should be constituted in such a manner as to have substantial weight and authority, and to be thus capable of exercising a salutary check upon the Representative Assembly, while at the same time effectual provision were made against the machine of Government being brought to a stand by the differences between these two bodies, the advantage of such a constitution of the Legislature could not well be contested. But to accomplish this is a problem not yet solved by any colonial Constitution of which I am aware.

Now this is the opinion of a man of larger experience in colonial matters than almost any other man; and it is not his opinion alone, but that of those with whom he was associated in matters of colonial government. I fear that the time is about to arrive, when, after having obtained from the home government redress for our grievances, we are about to introduce internal dissension.

If these measures are not discussed in a better spirit than has hitherto been displayed, inconveniences of no small magnitude will no doubt be created. (Hear, hear, hear.) It is a matter of great congratulation that two successive Secretaries of State should have written to us despatches in so conciliatory a tone as pervades the despatches of the present Colonial Minister and his immediate predecessor. I refer particularly to Sir John Pakington's despatch of 1st December, 1852. In that despatch it is stated that

> They, her Majesty's Ministers, have been fully impressed with a sense of the importance to be attached to that petition, not only as proceeding from a great majority of the Legislature of the Province, but as reiterating that statement of the causes of discontent felt by the community, which had been deliberately urged by their predecessors upon the attention of her Majesty's then Government; a statement, moreover, which was accompanied by your assurance that its sentiments were shared by the most loyal, respectable, and influential members of the community.
>
> But they are influenced, in addition, by considerations arising from those extraordinary discoveries of gold which have lately taken place in some of the Australian colonies, and which may be said to have imparted new and unforeseen features to their political and social condition.
>
> They are sensible that they have now to consider the prayer of the petition thus laid before her Majesty with reference to a state of affairs which has no parallel in history, and which must, in all human probability, stimulate the advance of population, wealth, and material prosperity, with a rapidity alike unparalleled.
>
> Her Majesty's Government have observed with a degree of satisfaction, which it is impossible to express too strongly, the general order and good conduct which have distinguished the multitudes attracted to the gold deposits. And they have had the additional good fortune of being able to approve of the general firmness and good judgment displayed by the local authorities, under circumstances so strange and difficult.
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> And with the evidence thus before them, they cannot but feel, that while it has become more urgently necessary than heretofore to place full powers of self-government in the hands of a people thus advanced in wealth and prosperity, that people have on the other hand given signal evidence of their fitness to regulate their own affairs, especially under legislative ins.itutions, amended in the manner which the council itself has pointed out in the concluding part of this petition.

I draw attention to the words of this despatch, because is has been broadly asserted that the people of this colony have no right to interfere with reference to a measure, prepared by this House under the authority of the Imperial Parliament. But the Council acted in its representative capacity, and surely the people whom we represent have a right to express their opinions by petition, and to meet for the purpose of doing so. (Hear, hear.) It has generally been deemed an advantage to have the assistance of petitions and of expressions of opinion from without. It is a matter deeply to be regretted, that when this measure has roused a community most difficult to be roused—when it has drawn forth a general expression of opinion in which some of the most respectable men in the community took part—that this movement, and those who took part in it, should have been made the subject of such abuse in this House. (Hear, hear.) The terms paltry ruffians, low vagabonds, and filthy community, have been used by the honourable and learned member for Sydney. (Hear, hear.) I heard this language with very deep regret, and my regret was still greater on hearing expressions almost equally abusive cheered on by honourable members opposite, both official and unofficial. (Hear, hear, and no, no.) A more respectable public meeting than the one so often alluded to has never been held in New South Wales. Persons who never were in the habit of mixing in politics came forward with the best intentions, when they found the rights of their country involved. Many who had no desire to aid in any agitation, doubtless came forward with a view to lend their countenance to this movement, and to check the proceedings of others who might be less moderate in their views. The character of this meeting was very fairly stated at the opening of the report in the *Sydney Morning Herald*—

> On the stage were assembled a large number of the most respectable and influential of the inhabitants of Sydney; amongst whom might be conspicuously remarked the leading merchants of the city, who have hitherto studiously abstained from interference in political matters.

The chairman of the meeting was a merchant of the highest standing, and all

who took an active part in its proceedings were gentlemen of unquestionable respectability. The first resolution was moved by my honourable and learned friend the member for Cumberland, who had a perfect right, I maintain, to take a part in this movement, although that right has been questioned. (Hear, hear.) I was invited to attend, but did not do so, because I was a member of the Committee, and because, having been in opposition to the present report, it might be said that I was getting up a party outside the House to support my opposition within. But I would distinctly state my intention to identify myself with the movement that has been thus initiated. One of the speakers was Mr. Alderman Wilshire, who has recently performed an act which entitled him to the very highest commendation. (Loud cheers.) There was nothing in the course of the proceedings at this meeting of which any one need be ashamed; and if in the heat of debate some expression might have been used, or if something offensive had been spoken from the pit of the theatre in which the meeting was held, that was no reason why abuse should be poured upon the whole meeting. (Hear, hear.) One of the chief points of objection against the bill is, of course, the proposed constitution of the Upper House. I also am opposed to it, because, as we cannot have the British institution in its integrity, I think the next best thing to it would be the formation of an elective upper chamber. It has been answered by the honourable and learned member for Sydney that the House is pledged by its petition to the sanction of the nominee principle. But whatever may have been the understanding of the honourable member, such was not the understanding of those who had the petition in charge. I will quote the words of Lord Monteagle to prove this—

> If there was one prayer which ran through the whole of the petitions and memorials he had presented, it was that their institutions should be assimilated to those of the mother country. They seemed—and long might they preserve the feeling!—they seemed still desirous to cherish an unbounded attachment to the mother country, an unshaken loyalty to the Crown. He did not think that mistrust and discontent would be called forth by the establishment of such a double chamber as he would recommend. He proposed that the Upper House as well as the Lower House, should be elective, the members being of a graver age, and elected for a longer period than the members of the second chamber; in that way they would obtain a real conservative but, at the same time, a popular chamber. He, therefore, called on their lordships to weigh well the importance of this question, and secure to the people of Australia the blessings of the constitution under which the mother country had flourished.

It was clearly not the opinion of this nobleman that an elective Upper House would let loose the floods of democracy which have been talked about. It is equally clear that we are not open to the taunt of having changed our views, and sought something different to that which we formerly prayed for. Earl Grey was equally strong in his expression of opinion as to the impossibility of forming an Upper House at all analogous to the House of Lords. He said—

> The noble Lord had said, "Introduce into these colonies our own institutions." This was very fine, but happily it was impossible to do so. A House of Lords existed in this kingdom, but it existed nowhere else on the face of the earth. It had grown up from the time of the Conquest, but it was an institution which they could no more create than they could create one of the magnificent oak trees which had been planted at the Conquest, and which were now crumbling into dust.

Lord Wodehouse also, on this same occasion, spoke as follows:—

> The noble Earl (Earl Grey), in support of this measure, had alleged that the Australian colonies were so fond of their present form of Constitution, that it would be quite gratuitous on the part of their Lordships to make any alteration in it, as such alteration must prove highly disagreeable to the inhabitants of those colonies. Now, what were the real facts of the case? From the papers which had been laid upon their Lordships' table it appeared that they were simply these: In the year, 1847, the noble Earl, the Secretary for the Colonies, proposed to introduce into New South Wales an entirely new Constitution, similar, or very nearly so, to the Constitution which had been given to New Zealand; and the consequence was such as might be imagined. A storm of indignation arose in the colonies, and remonstrances were sent to this country against the Government measures. They prayed that they might not be subjected to crude experiments. They objected to two chambers; but it must be borne in mind that it was not to the principle of two chambers that they objected, but simply to two chambers, one of which would be entirely

nominated by the Crown. The colonies never had the simple question, whether two elective chambers were better than one, brought before them. The only question which they had to consider was, how they could place the nominees of the Crown in such a situation that they should be the least possible obstruction to the elective members. The colonies required very naturally that the nominees should be mixed up with the representatives of the colonists, and that they should not form a separate chamber of themselves, as they would thereby be enabled to place a veto on the proceedings of the representatives of the people. The colonists did not object to the principle of a second chamber; on the contary, they distinctly prayed that their Constitution might be as nearly assimilated, as their circumstances would permit, to the constitution of this country. And were not two elective chambers, representing the wants of the people in different ways, a much nearer resemblance to the spirit of the British constitution, than this anomalous single chamber. But then their lordships, had been told, "Oh, all that is very true, but it was necessary that these colonies should have been trained to the exercise of representative institutions before you confer upon them the privilege of a double chamber." It was also objected that there were no materials in these colonies for two chambers; but if there were not materials for a second chamber, how could they find materials for nominees? How could they find persons of such influence as to be fitted, on the bare nomination of the Government, to control the votes of their elected colleagues in the same chamber? And it should be recollected, that in the United States of America representative institutions had been granted to colonies of far less importance in population and wealth than the colonies in question. By the ordnance of 1787, for establishing a government in Ohio (which had been the basis of legislation on this subject ever since), it was provided, that as soon as in any territory there should be 5000 male inhabitants of full age, there should be established a legislature consisting of two elective chambers. And if their lordships would take one of the latest examples, they would find that to the district of Oregon, by no means the most civilized portion of the United States, two chambers of legislature had been given, the first consisting of 9 elective members, and the other 18 representatives of the people. And were they to be told that there was such a moral and intellectual inferiority in a colonial population, that the backwoodsmen of Oregon could afford materials for a senate, and they were not to be found in New South Wales, which in 1848, exclusively of Port Phillip, had 170,000 inhabitants. As to the objection that such a senate would be too small for practical purposes, he need only point to the State of Delaware, where the Senate consisted of only five members, of New Hampshire, where it had twelve, as a refutation of their argument. He did not, however, agree with those who wished to establish an aristocracy in the Australian colonies; he did not think it likely that aristocratical institutions would take root there; they were the result of long habit and old association; but the necessity of a second chamber did not rest on these grounds. To prevent hasty legislation—to provide a nucleus of experienced members, and to combine together those conservative elements always found in all populations, were the legitimate objects of a second Chamber, which he thought might be attained by its members being few in number, with a higher property qualification, of greater age, and holding their office for a long period.

I will now quote authorities to show that this system has proved a failure in other colonies where it had been adopted; and why, I would ask, should they introduce here that which has failed elsewhere? If there is to be an experiment, I would rather see that plan tried which many eminent men have asserted to be sound and practicable. On the motion for leave to bring in a bill to grant a Representative Constitution to New Zealand, Mr. Adderly said—

In the first place he concurred in the observations of the honourable baronet (Sir W. Molesworth) with regard to the composition of the Upper Chamber of Legislature—that that branch should be composed of nominees of the Crown appeared to him a great blot in the measure, for honourable members knew very well how these nominees stunk in the nostrils of every colony in which the system had ever been tried. He objected to the nominee Chamber, because it was a caricature of the House of Lords—these nominees were not in the independent position which belonged to the House of Lords in this realm; they were merely tools of the Crown, carrying on through an additional department of the Legislature that which pervaded too exclusively all our colonial constitutions, namely, the Crown and nothing but the Crown.

On the motion for the second reading of this same bill, there were also the following expressions of opinion from Mr. Gladstone:—

'The Legislative Council ought to be elective. (Cheers.) Those cheers came from the Liberal side of the House—it is on that side that the elective principle finds favour. Now, let me illustrate this state of opinion here, by a reference to what is taking place in the British North American colonies. If you trace the present annals of Canada you will find that there have been, at more periods than one, several energetic movements made to get rid of nomination in the election of the Legislative Council. These movements have, however, always been defeated. And how have they been defeated? These movements have been all made by the Tory or Conservative party in the colony, and they have all been defeated by the Liberal party in the colony. And why? Not because the Liberal party were opposed to

the principle of election: quite the contrary; but because the Liberal party have, during those periods, been in a position of power, they—without opposing the principle of the change, which, on the contrary, they, I believe, commended—have acted on the familiar and well known principle—"Let well alone." When they came into power, they had an intractable Legislative Council, composed of nominees, to deal with, and how did they proceed? To use a homely phrase, which all of us understand, they swamped it, by procuring the appointment of a large number of persons of Liberal principles. Thus the majority was converted into a minority, and the minority into a majority, and the Council, by this process, was brought into harmony with the Assembly. But it is the Conservative party in Canada, the party which is opposed to rapid and incessant change, and which wishes to introduce a principle of stability and continuity into the institutions of the province, that desires to abolish the system of nomination. The same thing has occurred within the last few months in Nova Scotia, where there has been a great struggle of parties, and a division of opinions exactly similar. The liberal party has there, too, succeeded in maintaining the principle of a nominated Legislative Council against the Conservative party, which is in favour of an elective Council, but the victory has been gained by a majority of only one. Such is the division of parties on this question; but how does this system work? What light do we obtain from experience?

The further we go into the matter the more confirmation do we find of the truth of what I have stated—that the colonists have no faith in this system of nomination. When the same bill was discussed in committee, the following opinions were expressed:—

Mr. Mowatt thought that by far the most objectionable part of the bill was that which provided for the nomination of members by the Crown. Now, it was a fact incontestibly established by experience, that however valuable those men might be before their nomination, their selection by the Government at once destroyed their character. If the Government desired to have a second Chamber, they should make it elective, and dependent upon the choice of the people also, without which choice it would never possess their confidence. The Government should elevate the standard of qualification so as to make the office desirable to the most worthy inhabitants of the colonies.

Sir William Molesworth said, that the great object was to obtain a conservative element, of a character to gain and deserve the respect of the people. The only way to make the Upper House effective was having it elective by the people, and allowing its members to sit for a longer period than those of the lower. There was a strong feeling against nominees every where—in New Zealand as in Australia. Take the most popular man and make him a nominee of the Crown, and he at once ceases to be popular: he is considered a mere tool of the Government. He protested against this nominated second chamber, as being contrary to that sound principle of balance of power which he thought ought to exist in every government, formed on an analogy to the constitution of England or the United States.

Mr. S. Carter hoped the honourable Baronet (Sir W Molesworth) would divide the Committee upon this question, because he regarded it as the most important clause in the bill. It was an attempt to establish a bungling imitation of the House of Lords in a new settlement, or what was worse, to create an oligarchy of fifteen in the colony. The most effective and satisfactory way of proceeding would be to make the members of the Upper Chamber elective.

Mr. Forster said he must express his concurrence in the views which had been stated by previous speakers, with reference to the injurious effects of the nominee system. He had rather have the sole responsibility of the Governor, than that of the nominee Upper Chamber, which was generally used merely as a screen for the exercise of his authority; he believed that the clause, as it at present stood, would have a most mischevious effect in the colony, and would give great dissatisfaction.

Mr. F. Peel. It was not true that there had been no disposition in Jamaica to make the Upper Chamber elective. When, two or three years ago, the Retrenchment Bill, which passed the House of Assembly, was rejected by the Legislative Council, the former body passed a resolution, declaring that the latter did not possess the confidence of the country or of the House of Assembly, because it was nominated; and although their constitution had been in existence 200 years, they addressed the Crown, praying that it might be altered, and that the Legislative Council might be made elective; nor, in fact, did the people in our North American colonies so entirely acquiesce in a Legislative Council appointed by the Governor, or consider it so serviceable to good government as the right honourable gentleman had represented. Only last year the House of Assembly at New Brunswick passed a resolution to address the Crown to make the Upper Chamber elective, and the Governor had proposed a measure for carrying out that object, and had laid it before the Legislative Council. That body had postponed the consideration of it to the present year, but what course the Legislature of the colony had taken with respect to it this year he was not aware. Newfoundland has also last year addressed the Crown, asking for partly responsible government, and that the Legislative Council might be made elective. Every one, too, who knew the history of Canada, knew that there had been a constant struggle and antagonism between the two Chambers in that country.

Mr. Adderley maintained that every precedent in English colonial history was in favour of an elective Upper Chamber. If he refused to take the United States for the model of an English

colony, let him go back to those states when they were not only the finest colonies of England, but the finest colonies that the world had ever seen: a division of the Legislature into two Chambers had always been found necessary in New England, and in every case both Chambers were elective. He thought, when the honourable baronet had said he would not take a lesson from the United States, he was carried away by forms and names, and had lost sight of the spirit and essence of the thing; and when he referred to the case of Canada, let him bear in mind that those who were there agitating for such a change in the constitution as would render the Upper House elective were the conservatives.

Mr. Vernon Smith: The elective principle was the one advocated by almost every colony. * * * * * * Instead of a House of Lords, they were to have sixteen gentlemen nominated by the Governor of the colony for life; but it would require the fancy of the noble lord who had just sat down to discover any analogy between the two bodies; all they wanted was a double chamber for the purposes of deliberation, that was to say, that every question should be submitted twice for consideration; and if they elected that second body with a different qualification, and a different term of duration, they had all that was wanting for deliberative consideration.

Mr. Walter: He for one entertained the strongest objections to this clause, and he could not imagine a greater libel upon British institutions than the attempt which had been made to compare this nominee chamber with the British House of Lords.

We are all agreed that this Upper House should be of a conservative character; but the question is, how that character is to be given to it, and whether the desired end will not be more surely gained by the adoption of the elective principle? It has been said that the terms on which we applied, and the terms on which Sir John Pakington replied to our application, were such as to preclude us from raising the present question, and bound us down to the acceptance of a Nominee Upper House, such as had existed in Canada. But I cannot admit this. When the petition was drawn, those who drew it did not exactly know what the constitution in Canada really was, and the honourable and learned member for Sydney was groping about for information respecting it.

Mr. WENTWORTH: I deny this. I had known what the constitution of Canada was for the last twenty years.

Mr. COWPER: That might be, but he would repeat his assertion.

Mr. WENTWORTH would not dispute but that the honourable member himself might have been ignorant as to what was the constitution of Canada.

Mr. COWPER: I believe I was as correctly informed respecting the constitution as the honourable and learned member himself; but the information of which the House is in possession at the present time, with reference to this matter, had not been received at the time this petition was drawn up. I have no predilection in favour of any particular kind of constitution. All I desire is to have something that will work well, and tend to the good government and prosperity of the country. If, therefore, I could be satisfied that the scheme before the House would work well, nothing would give me greater pleasure than to withdraw my opposition to it. But for the reasons already given, I am satisfied that this could not be the case. I should be glad to see the scheme of 1843 adopted, and the nominees of that House separated from the representative members, but I do see how their interference with votes relative to taxation can be warranted. It has been suggested that they should be asked to walk out when the estimates were under discussion. This could not be very graciously done; but nevertheless I observe that a principle analogous to that of "walking out" is obtaining much favour in Europe—the principle of allowing ministers to be present, and to give their opinions, but to have no right of voting. In a recent number of the *Edinburgh Review* it has even been proposed to make an alteration of this nature in the constitution of Great Britain. In still further proof of the opinions held by British statesmen, upon the subject of colonial constitutions, I will quote the following remarks, which were made by the present Secretary of State, and Earl Grey, on the second reading of the New Zealand Bill in the House of Lords.

The Duke of Newcastle: He believed that the Bill of his noble friend (Earl Grey) adopted

the principle of an elective Upper Chamber. The present government had introduced a change in this respect, and he could not help thinking that the noble Earl at the head of the Government should, for many of the reasons which induced him to omit the nominee representatives from the local assemblies, have also omitted them from the Upper Chamber. The results of that nominee system had often brought legislation to a dead lock in the colonies, and, to use a term which had obtained great currency, the Upper Chamber had been frequently, as the only remedy, "swamped" by the Governor. Could any one, he would ask, maintain for a moment, that that was not a danger that ought to be avoided? The result of that system invariably led to remonstrances from the colony to the Government at home. The theory of a nominee Upper House arose from the old notion of Imperial Government, and from an idea that it was necessary to bind the colonies and the mother country together by some means other than those of mutual interest, —that while it may be desirable to give the colonists a representative body to attend to their interests, they must, at the same time, appoint a nominated body to attend to the interests of the mother country. Now, it appeared to him that, in following this old-fashioned notion, the Government were, in this instance, and in others since their accession to power, pursuing the shadow instead of the substance of a conservative principle. They were pursuing the shadow of a conservative principle in appointing a nominee chamber of an imperial character, while they were dropping the substance of the really conservative measure, of making the body elective, and thereby introducing into it men who had an interest in the colony, and in the preservation of all that concerned its welfare, which a nominee body seldom had, and which he believed they never could possess. But then they were told they must endeavour to assimilate the Upper Chamber to the House of Lords in this country. Talk of a House of Lords being made in the colonies out of the nominee elements of the Crown;—why it was really laughable to maintain for one instant that there would be any similarity between such a body and the House of Lords in the mother country. Their lordships must deal with these matters as they found them. They found no element in the colonies to correspond with the House of Lords; and although, perhaps, in appearance the appointment by the Crown of representatives of the Crown might look rather more like a House of Lords than a body elected by the people, yet if their Lordships came practically to examine that appearance, they would see how shadowy and unreal the whole theory was. Did any one suppose that if that assembly which he was now addressing were swept away, and a nominee Chamber appointed in its stead, that the nominee Chamber would possess the moral influence which their lordships possessed, and which he trusted they would long retain?—The thing was impossible. Let them in any way provide for the superior influence of the members of an elective Upper Chamber; let them insist upon a higher qualification, either of elected or electors; let them give them a longer tenure of their seats, or make the areas of representation more extensive; but let them not engraft upon this measure of freedom and contentment to the colony, a scheme which must end in disappointment, and be the cause of future quarrel.

Earl Grey: He came next to the question of the constitution of the general legislature, and he was prepared to say, from the experience of more than twenty years, during which he had closely attended to the affairs of the colonies, both in and out of office, that the most defective part of the colonial constitutions, in the North American colonies, was the Legislative Council. By the old form of the colonial constitutions, which had prevailed up to 1791, the Legislative Council was put, not upon the footing of a second and independent chamber of the Legislature: it was the same body which advised the Governor, consisting of a very small number of persons, for the most part holding high offices in the colonial Government. To this day, in Jamaica, the Council was styled her Majesty's Privy Council for Jamaica, and claimed no power of originating measures of legislation: not merely money bills, but bills of any kind, it was beyond its power to originate: it merely had the power of amending or rejecting bills sent from the Assembly. The tenure of their office as Legislative Councillors was always formerly during the pleasure of the Crown, but by the Act of 1791 the Councillors of Canada were appointed for life. The noble Duke had most justly remarked on the perfect absurdity of talking of a nominee Legislative Council as an imitation of that House. It had not the most distant or faint resemblance to the House of Lords. The House of Lords was an institution altogether peculiar to this country, that Parliament could no more create than they could create a full-grown oak. It had grown up as part of our institutions from the earliest times, and was like no other body in any country in the world, and no imitation of which had ever been in the slightest degree successful.

Now, I ask, whether these high parliamentary authorities do not afford a fair justification of the efforts of those who do not wish to see introduced into this colony a system of legislation which has not worked well any where else—(hear)—but who, on the contrary, desire to have a system which, whilst it will be conservative, will also be popular. (Cheers). Why, the news brought only now by the Victoria steam-ship, shows that in Jamaica the government has nearly come to a dead-lock in consequence of the dissensions between the two houses, that are constituted somewhat on the principle so strongly advocated by the supporters of the bill before the

Council. (Hear.) Whilst at the Cape, a constitution has been lately granted on the general terms now sought for by the people of New South Wales without the walls of the Legislative Council, and for whose good working at the Cape the most sanguine expectations have been expressed. (Hear.) I candidly admit that the introduction of a new constitution is to be regarded as an experiment, and one the success or failure of which may be a question to be debated in very different terms by the best intentioned men. (Hear.) Great stress has been laid upon the expediency of introducing an order of hereditary titles, because it would form a conservative element; but then the hon. and learned member for Sydney has suggested that these titles are to be matters of the future; whilst I would ask why, if these titles are to have the conservative power expected from them, are they not to come into operation at once?

Mr. WENTWORTH: The honorable member has quite misunderstood me. What I did say was this—the hereditary and elective principle proposed in the bill could not come into force for the next thirty or forty years; but it never was suggested by me that the hereditary titles could not be conferred at ance.

Mr. COWPER resumed: My hon. and learned friend, the member for Cumberland, has been twitted by the hon. member for New England with having (he being hard up for a constitution) gone to the Dutch Boers of South Africa for one. (A laugh.) But the excellent constitution lately granted to the Cape of Good Hope originated, not with the Boers, but with her Majesty's Privy Council—(hear)—an authority which I think would be a very good one for the colonists of New South Wales to refer to and abide by, if in framing their new constitution they could not agree among themselves. (Hear, hear.) With regard to the vaunted Canadian constitution, I would invite particular attention to a significant fact. In September last a member of the Canadian government had drawn the attention of the legislature to the mischievous tendencies of the present constitution, and in a speech of considerable ability, to which I earnestly recommend the careful consideration of the Council, he had explained the alterations and modifications which he signified his intention of proposing during the present year. The speech, as reported, was as follows:—

Mr. Morin begged leave to call the attention of the House to a subject of much importance—of so much importance that he did not desire the Assembly to take action on it immediately, but merely to give the resolutions he would introduce some degree of attention, and then allow them to lie over until next year. He proposed this course because it would be highly inexpedient, at the present moment, to proceed with anything like haste, for although the subject had been long agitated in this province—and although at one time it received the unanimous approbation of the inhabitants of Lower Canada—the change in the form of the provincial Government has brought about a corresponding change in public opinion It is well known, that under the old constitution, a certain number of persons, closely connected with the Executive branch of the Government, and entirely free from the influence of public opinion, formed the Legislative Council; and that, as they formed also the Executive Council of the Governor, they were stronger than the popular branch of the Legislature, and interfered materially with the action of that body. The annoyance at length became so aggravated that the people of Lower Canada looked on the Legislative Council as the root of all their ills; and they therefore desired, by petition, at different times, that the elective principle should be applied to that body. Since that time a new constitution was formed—the constitutional action of the popular branch was recognized, and the two chambers were placed on an equality in respect of power. This being the case, much less inconvenience has been experienced under the present system than under the old, because under the old system the Legislative Council was an obstacle permanently and decidedly opposed to public opinion, whereas under the existing system it is not opposed to popular opinion, and has never been so. Nevertheless, there are peculiar inconveniences, owing to the formation of that body. As there are but few persons in this country whose fortunes would enable them to take a position analogous to that of the Lords in England, the body does not possess that weight which it was intended to have. He did not mean anything which might be constructed into a want of respect for its members. Many of them enjoy, deservedly, the confidence of the people of the country, and in point of talent they stand on an equality with the members of the House of Assembly. He rendered to them that homage to which, individually and collectively, they were entitled; but he was of opinion that some change was necessary to render it an efficient working body. The means of the population of this province are

bounded; and although there are some gentlemen of great wealth holding seats in either branch of the Legislature, it necessarily follows that some indemnity should be paid to the members of the Legislative Council, in order to secure a full attendance. If that body were rendered elective, then the gentlemen composing it could very properly be indemnified. This subject had occupied his attention as well as that of the other members of the Government, and he had resolved upon submitting a series of resolutions for the purpose of rendering it elective, but, he repeated, he did not desire that the House should act with precipitation. Public opinion is not sufficiently defined to act at once in a decisive manner; and it would be better to temporize until a clear and unmistakeable expression of that opinion could be obtained. During a recent discussion the intention of the Government had been in part explained; and he would say, in reference to one idea put forward by the member for Montmorenci, that he was utterly opposed to the plan of having only one Legislative Chamber. He believed that two chambers were necessary, to prevent errors in legislation, to revise and correct the details of a measure which may have passed one House. These are two of the reasons why he was in favour of having two chambers, and he thought it must be apparent that a great many errors would be allowed to pass unnoticed through a body composed of a large number of persons, whilst a smaller body would be enabled to examine those measures with more deliberation. Being thus in favour of having two Chambers, he thought some difference ought to be made in the manner of constituting them. Therefore, if the representatives of the people in the Lower House were increased to 120 in number, for the two sections of the province, he thought that there should be sixty members of the Council. The country would thus be divided into 120 territorial divisions, and two of those divisions would unite together. He believed it would be better to elect the members of the latter body for a period of nine years, a certain proportion retiring by rotation at the end of three years. People might ask, who are to be the electors? He would reply, that the Government had not thought fit to express the opinion that there should be any difference between the electors for the two branches, as persons qualifying as electors for a member of the House of Assembly, would assert that they were also qualified to vote for a member of the Legislative Council; and thus, although there might be a difference in theory, there would be none in practice, and the attempt to distinguish between the two classes would only lead to confusion. The Government had been asked whether it was their intention to establish a property qualification for the Legislative Councillors—he would say that he did not consider it a point of great importance; but he did not think that their choice should be left entirely unlimited. There is a class of persons in the country sufficiently numerous to select from them sixty Legislative Councillors, and composing a class which has already enjoyed the confidence of the country in a high degree. He referred to those persons who now hold, or who may have held seats in the Legislative Council, or the House of Assembly, wardens of the counties, and mayors of cities. As to the manner of working out such a constitution, he did not see any difficulty whatever—the Crown should have the power of dissolving either or both of the Chambers. If there should be any difficulty between the two branches, the Crown, from its highest position, would be enabled to decide which accorded best with the state of public opinion, and dissolve the other. He also proposed that the Legislative Council so constituted should possess the power of trying high public functionaries charged with misdemeanours. He had no fear that a position of this kind would be unacceptable to the Government of England, because she is indisposed to interfere in the internal affairs of any of the colonies, and because she has already granted similar constitutions to other colonies. He concluded by moving that the House do go into Committee of the whole on these resolutions on Friday next.

I am the more solicitous to secure the attention of the house to this speech of Mr. Morin, because it was delivered in the Canadian Legislature, and proved beyond all doubt that, in the colony whose institutions the supporters of the Constitution Bill before the Council sought to copy, it was the opinion of high authorities that great changes were necessary. I contend, therefore, that this was of itself a strong reason why the Council should pause before it adopted a system here which, as regarded Canada, might have been changed by the Imperial Parliament before the present bill arrived in London. (Hear.) The hon. and learned member for Sydney has expressed his earnest wish that the constitution now to be framed for New South Wales should be a permanent one. Now I desire to live under permanent institutions as much as any man, but I feel assured that, with the rapid changes which this colony is undergoing yearly, it will be found necessary, in the course of a few years, to make many modifications in any form of constitution which may be adopted—excellent and perfect soever as it may now appear. (Hear,) Indeed, I could have ardently desired that the question of the new constitution had been postponed for another year; for now the colonists are ignorant of what may be the high state

of their prosperity and wealth, and are also unaware what changes may have taken place in the Canadian constitution. Supposing that when the present bill reaches England, and it is found that the present constitution of Canada has been upset, and a new one substituted, would it not be inconsistent, indeed childish, for this Council to recant, and to say, "Give us Canada's new constitution in place of the old one which we have so ardently prayed for?" (Cheers.) With regard to the preservation in the Constitution Bill of the principles of the Elective Act of 1851, I desire to say a few words. In his speech in Council on the 11th of April of that year, the Colonial Secretary said,

> I am prepared with irresistible evidence to show that property had entered very largely into the settlement of the electoral system embodied in the Reform Act; and, although it is true that sixty boroughs, previously returning 119 members, were entirely disfranchised, and one member taken from each of forty-seven others, it is yet abundantly evident that a regard to population had not led to this result. And it is fitting I should here say a few words in reply to an argument used by some honourable members, who have advocated the population basis. Failing altogether to discover anything in the provisions of the Reform Act, that it was intended as a final measure; and it may be remarked, in evidence of its finality, that no succeeding ministry has attempted to unsettle the system of representation affirmed by it. I am, therefore, I think, fully justified in describing it as a final measure—final at least as regarded the circumstances then under consideration—and final, as far as finality can be said to attach to any political arrangement under the elastic principle of the British constitution, which happily and wisely adapts itself to the progress and exigencies of society.

Now I not only differ from the Colonial Secretary in respect to the Electoral Act affording a just representation of the people, but I also consider that the defence of that act by the hon. gentleman and others, on the ground that it was based on the Reform Act of 1832, which, being a final measure, was one upon which it was safe to base ours, was a line of defence which could not be sustained. It was unfortunate for the arguments of those who defended the Electoral Act on the ground that the scheme of electoral divisions contained in the Reform Act was a final measure, that by the time our Electoral Act reached London, Lord John Russell had notified his intention to bring in a bill to reform the Reform Act. (Loud cries of hear.) It is clear also, that before very long such a measure of reform is sure to be brought under the consideration of the British Parliament, for on the 11th of February last, his lordship, in describing the course which the government intended to pursue in the selection and order of public business, said—

> There is one subject upon which I have no doubt I am expected to say something—I allude to the important subject of the amendment of the representation of the people in Parliament. (Cries of hear.) My noble friend at the head of the government has already stated that the amendment of representation was a part of the measures which were in his contemplation. I beg the attention of the House while I say a few words with respect to the question. In the years 1849, and 1850, and 1851, the government over which I had the honor to preside considered this question, and hoped to be able to introduce a bill on the subject. But the government over which I presided shortly after dissolved. It was then reported that I had said I would introduce a more comprehensive measure than has been hitherto contemplated. That statement was utterly unfounded. I neither stated that I would bring in a more comprehensive measure, nor that I would bring in any measure at all. What I stated was, that I was quite ready to consider the subject. Now, the question to be considered by the present government was, whether it was their duty to propose that the subject of amending the representation should be thrown aside for the present session, in order that other pressing matters might be legislated upon, or whether they should endeavour to effect a renewal of the Income-tax for the present year, without any observation or discussion whatever, in order that they might devote the whole of their time to that one subject of Parliamentary Reform? I need not say that it is impossible to appoint a time for the introduction of a Reform Bill. The subject requires considerable preparation, if it be really intended to pass a measure that shall prevent for many years to come, the necessity of again legislating upon it. Considering, therefore, the deliberation that would be necessary, considering the enquiries that would be requisite to perfect any measure that should have a permanent effect, her Majesty's government are of opinion that the subject of amending the representation ought not to be introduced in the present session of Parliament. By acting in accordance with that opinion, I believe they are consulting both the public interest and the ultimate success of the measure itself. I believe, that if we were to give up the consideration of all other measures for the sake of devoting our-

selves extensively to this subject of Reform, we should neither be consulting the interest of the public nor the completeness of the measure we are seeking to accomplish. I believe that it would be far better that we should have further information and further deliberation on this important question; that it would be advantageous to postpone settling it, even for a considerable time, rather than legislate upon it prematurely and without sufficient preparation I think, however, that immediately after the commencement of the next session of Parliament it will be the imperative duty of the government to introduce a measure upon this important subject. (Cheers).

It is thus made clear, that in whatever light the noble author of the Reform Act viewed it as a final measure in 1852, he entertained very different opinions in 1853: and I feel assured that no person who had ever calmly considered that great constitutional measure had ever regarded it as a final one. What I desire to impress upon the Council is, that in this colony there are no vested interests which can be damnified by a system of representation, whose basis is population rather than property; and in discussing the principle by which representation should be guided, I have never been wholly satisfied with any other than that of population. In the quotation made by the Colonial Secretary from the speech of Mr. Macauley on the Reform Bill, the following quotation is to be found:—"*Ours is not a government on the principle of property; it is only a government founded on some fragments of property, and no principle whatever presided over its formation. It had been said that it was never better than at present; but the House was there to enquire into what it ought to be, not what it had been; they were legislators—not antiquarians.*" I quite agree with the right hon. gentleman, and as the Council is assembled to enquire into the best system of representation for the colonists, I ask why not have that one which would be most generally approved, and which from its popularity promised to work well? There is one feature in the proposed electoral division to which I strongly object, namely, the undue preference given to the squatting interests. Out of 54 members the pastoral districts are to have 12 members, the counties 26, and Sydney, and the Hamlets, and Boroughs 10. This is the scheme proposed in the bill; for East Camden, West Camden, Cook and Westmoreland, one additional member each; for Cumberland, two additional; for Durham, Murray, and St. Vincent; Northumberland and Hunter; Philip, Brisbane and Bligh; Roxburgh and Wellington; Murrumbidgee; Lachlan and Lower Darling; Liverpool Plains and Gwydir, New England and M'Leay, Sydney, Sydney Hamlets, Parramatta, Northumberland Boroughs, Stanley Boroughs, one additional member each. So that in this addition of the 18 new elective members to the present 36, it would be seen that it is proposed to give to Sydney, Sydney Hamlets, and the populous boroughs, only five additional members, whilst four are added to the pastoral districts, and nine to the counties. I believe that the population of the colony may be fairly estimated at about 206,000; and I think that I should not be far out in assuming the following to be an approximation to the distribution:—

13 districts of the old counties, say	90,000
8 pastoral districts	31,000
City of Sydney	50,000
Sydney Hamlets	10,000
Boroughs	25,000
	206,000

Well, this population is to be represented thus:—

Population.	Members.
90,000	26
31,000	12
50,000	4
10,000	2
25,000	10
	54

Was this, I ask, a fair system of representation? (Hear.) It will be answered, that population was not the only element to be taken into consideration; but I believe that in this colony, property and population go very nearly together, and that, if the various electoral districts were carefully analysed, it would be found that, as regarded their property, every 3000 or 4000 of the colonists might be justly said to be entitled to one representative. (Hear.) With respect to the

opinions of the highest authorities in England, as to the fairest system of re-representation, I would refer to the report of the Privy Council on the Constitution of the Cape of Good Hope. They in the most enlightene l spirit said—

With regard to the number of members of which the Assembly should consist, and the principle upon which the division of the colony into electoral districts should be made, we are disposed generally to concur with Mr. Montagu, the Colonial Secretary. We consider it to be an important and valuable suggestion that the towns and the rural districts should be separately represented in the manner recommended by Mr. Montagu; we do not, however, concur with him in thinking that it would be expedient altogether to reject the principle of making some allowance for the extent as well as the population of a district, in determining its share of the representation, on the plan which is adverted to in the despatch of Lord Stanley we have already quoted, as having been in some cases adopted in North America. No doubt if that principle were carried to the extent which has been supposed by Mr. Montague, in the case he has put in illustration of its probable operation, it would lead to very inconvenient results; but we apprehend that this has never been contemplated: and, on the other hand, if the inhabitants of Cape Town, who are said to constitute one-fifth of the whole population of the colony, were on that account to return so many as a fifth of the members of the Assembly, there can be no doubt that the power of joint and combined action, which they would enjoy from their residing within so limited a space, and with such facilities for communicating with each other, would give them far more than a proportionate weight in the Legislature with the same number of inhabitants scattered over a wide extent of territory, and that the more remote and thinly populated districts would be deprived of that share of influence, which, in fairness, they ought to possess. Hence we would recommend that a rule should be adopted, by which the strict numerical porportion between the number of the population and that of the members they should be entitled to return, should be somewhat qualified in favour of the more thinly-peopled districts.

To this extract from a most valuable document, drawn up in the most liberal and enlightened spirit, I desire to direct the attention of those who propose to set aside the principle of numerical proportion altogether, and to consider the interests of property alone. The question as to the preponderance asked to be given to the squatting interests is a very serious one; and I would express my entire concurrence in the opinions which I have heard the Attorney-General himself express, that the greatest caution would be requisite to guard against abuses creeping into the Legislature, whenever the disposal of the waste lands of the colony might be given to that body. (Hear, hear.) Now, with 12 members in the Council representing the squatting interests, and 26 the landed interests, would not a question of lands be discussed with a fearful disproportion of numbers, when the towns and boroughs were represented but by 16? (Loud cries of hear, hear.) I am not disposed to refer with disrespect to a most valuable class of the colony's producers; nor am I inclined to sound an unnecessary note of alarm; yet I do feel that if ever serious dissensions enter hereafter into the discussions of the local legislature, they will arise upon this very point of the squatters' undue supremacy. (Hear.) It is not to be forgotten that when, in 1851, the Colonial Secretary urged the claims of the squatters to a large share in the representation, he urged that they were a specially taxed class, paying a large annual assessment, and so contributing very considerably to the public revenue; but this assessment has since that time been done away with, and there cannot now be any reason why four members should be added to the eight who at present represent this powerful and influential class. These four members might surely be divided among other interests; but really upon the question of interests the Committee seem to have but little sympathy. The first proposition, to give an additional member to a district on account of its gold interest was lost in the committee, although Bathurst may have been to a certain extent entitled to that boon, and would have obtained it, if class interests had not weighed with the committee. There are minor features in the bill to which I do not think it necessary to refer at this stage. I must, however, advert to the manner in which the bill has as yet been discussed in this House, and observe, with pain, that I do not conceive it has been discussed with impartiality. (Loud cries of hear). I am not at all surprised at the feeling in regard to the progress of this debate which has been manifested out of

doors. In this House, all the speakers in favour of the measure have been saluted with loud and unusual applause, whilst marked coldness, or derisive cheers, have been the lot of those who have stated their conscientious objections to principles which they believe are fraught with mischief to the colony. This conduct has given rise to a general opinion out of doors, that there is a conspiracy in this House against the liberties of the colony. (Hear, hear, hear.) And I do not shrink from expressing my fears that some of the proceedings of this Council give a colour to that opinion. (Hear, hear.) What are honourable members but representatives of the people? Have they not, then, a right, and is it not their duty, to listen fairly and dispassionately to what those whom they represented have to say? Therefore, when our opponents would not listen, but brow-beat and bully those who address them in the language of earnest, yet respectful, remonstrance, can they be surprised that they themselves are brow-beaten and bullied in return? As to the cry of checking the progress of democracy, and fearing the great influx of American republicans and other persons who are dreaded as such dangerous visitors, I can only say for myself I have no such fears. I have seen a very great influx of strangers to these shores, and I hoped to have seen a much greater one. As to the suggested misconduct of the people, has not Sir Charles Fitz Roy expressed to the Secretary of State, his unqualified admiration of the conduct of the mining population under the sudden excitement of our gold discoveries? And has it not been a matter for warm congratulation on the part of the Home Government, that New South Wales has so proudly distinguished herself in the exciting days of her golden prosperity? (Loud cheers.) In alluding to this gratifying feature of our social and moral condition, the Colonial Minister has expressed his opinion that the people of this colony are quite fit for self-government; and yet language has been uttered in this Council deploring the altered character of the colony! (Hear.) I have travelled much through the various rural districts, and I do not believe that there is the slightest fear of any social disorganization. In fact, it is really a matter of wonder and amazement to find that in a gold country, with arrivals of gold seekers from all parts of the world, so small an amount of crime has arisen. (Hear.) But if crime do increase, are not the powers of the local Government most ample? Has not this Council always evinced the utmost readiness to arm the Executive with sufficient power to keep good order? (Hear.) I foresee no danger; but if danger be feared, then it is the more incumbent to adopt a form of popular government which will be held in respect and affection by the people. (Hear, hear.) Very sorry have I been to hear in this House so many expressions of distrust of the people, for assuredly it will do this Council no good in the eyes of the authorities at home. (Hear.) It is possible that the bill before the House may be read a second time—that its supporters may persist in carrying it through without either modification or amendment; but if so, I shall deeply lament it, because I know well how such a result will be reviewed throughout the colony. The honorable and learned mover of the bill has talked about checking the growth of democracy, but I entreat this House not to sow the seeds of anarchy. (Hear, hear.) Depend upon it, when the people of this colony are made fully aware how generally the opinions they have expressed on the proposed constitution are shared in by the people of England, they will view with feelings far removed from favourable the determination to press on a measure which cramps the powers of this community, at the very moment it is the avowed desire of the Imperial Government to increase them. (Hear.) As to the assertion that the colony desires "separation" from the parent state, I believe that I speak the language of the colony, when I deny that any feeling exists for throwing off the sway of the Imperial Government, and of her Majesty's mild and benignant adminis-

tration. (Loud cheers from all parts of the House.) Long may this colony continue in connexion with the British Crown; but it is not treasonable to look through a long vista of years and foresee the time when the day of peaceful and friendly separation may arrive. (Hear, hear.) In the words of Sir Robert Peel, upon the Canadian question, it is to be hoped that when we do part we may part on good terms. (Cheers.) I hope that neither myself nor my children will live to see that day; yet bad may be the effect on the people of the colony if the discussions of this Council are continued in the same spirit as heretofore. I have said enough to show that, although in the first instance the Council have asked for a constitution similar in its outline to that of Canada, yet we are not pledged to adopt that form, nor to carry it out when, after careful deliberation, we believe it to be wrong. Looking at the various despatches of Sir John Pakington and the Duke of Newcastle, it is quite clear that every latitude on that point is given to the Council, who are bound to take that latitude and comply with the earnest desire of this community, and with the opinions expressed by leading members of Parliament, as well as by ministers of the Crown. Holding these opinions, I shall vote for the amendment of the honourable and learned member for Cumberland; and when the discussion is resumed, I trust it will be marked with less of partiality than heretofore. A better spirit will, I sincerely hope, be evinced by those who are evidently the majority; and I trust that in the end a constitution will be obtained calculated to produce

> Kind equal rule, the government of laws,
> And all-protecting freedom, which alone
> Sustains the name and dignity of man!

The honourable member resumed his seat amidst loud applause.

Mr. JAMES MACARTHUR—Sir, I concur with the hon. gentleman who last spoke, that this is a question which no member of this house can approach without a sense of responsibility amounting almost to awe. It is the most momentous and difficult question that any legislative body can be called upon to determine, and I quite agree with him that it ought to be discussed with as little as possible of bias or party spirit. But I entirely disagree with him as to the assertion (which he stated had been made without these walls, and which he countenanced by repeating it) that this house is engaged in a conspiracy against the liberties of the country. Most emphatically do I deny the imputation (hear, hear), and I challenge him to adduce any thing in support of it. (Cheers.) The hon. gentleman must know the course that had been pursued by the Constitution Committee, of which he was a member; he well knew that there was no foundation whatever for such a charge. The hon. member went on to state, that a large portion of the members of this house entered upon this discussion, under the influence of foregone conclusions. But I will ask him, whether he also has not arrived beforehand at certain fixed opinions. (Hear.) Why, it is impossible, Sir, that on such a question there should not be diversity of opinion—that there should not be two parties with conflicting views, and upon some points diametrically opposed to each other, though both may be anxious to attain the same end, namely, a good form of government for the colony. (Cheers.) I do not for one moment deny that the hon. gentlemen, whose views are opposed to mine, may have that object at heart, but I cannot persuade myself that the course they are pursuing will achieve that result. (Cheers.) The hon. gentleman seemed particularly sensitive about the word weathercock politician. Now, I really do not recollect such an expression being used, but if used, it did not necessarily refer to the hon. gentleman, who has, I believe, for some time past, been in favor of two Elective Houses. If, however, we look back a few years, there does seem to be some ground for a charge of inconsistency against him, because a former member of that house, Mr. Lowe, with whom the hon. gentleman was closely allied, had very strongly advocated the principle of a nominated Upper

House; and in one memorable instance, the hon. gentleman (Mr. Cowper) had voted with Mr. Lowe in support of that principle, which the latter continued to advocate so long as he was a colonist, and responsible to the people of the colony for his public opinions. (Cheers.) But even in this view of the case, the term weathercock could scarcely be applied to the honorable member for Durham. Every member of this house has, I think, a perfect right to modify, or even entirely to change his opinions, if he see sufficient ground for doing so; but when gentlemen take a conspicuous part in the promulgation of opinions out of doors, as well as in this House, adverse to the opinions they had, up to a recent period, avowed, and directly opposed to the course they had previously advocated, I do think they are bound to show very strong reasons for such a change. (Hear, hear, from Mr. Darvall.) I refer particularly to the honourable and learned gentleman who says hear. That honourable gentleman was a party to a memorial addressed, in 1850, to the Secretary of State, which recommended a Constitution for the Colony, to consist of a Governor appointed by the Crown, an Upper House, nominated in the same manner, and a House of Assembly representing the people. In his observations the other night, upon that memorial, he dwelt with apparent complacency upon the form of Constitution which it proposed, being suggested merely as "*a step*" in the progress of Constitutional Government; and argued that the having joined in that recommendation by no means precluded him from advocating the farther "step" of an Elective Upper House. But ingenious as was this construction, and satisfactory as it might appear to the honourable and learned gentleman, to me it seems most inconsistent; for what affinity is there between the two principles of election and nomination, as applied to the formation of an Upper House? They are in fact antagonistic. The farther "step" to which the memorial of 1850 referred was, according to my recollection, not an Elective Legislative Council, but responsible Government, for which neither the honourable and learned gentleman, nor I, thought the colony prepared at that time. (Hear, hear, from Mr. Darvall.) I am glad to find by that cheer that I am right in this view of the matter. But to come nearer to the present time, on the 28th May last, the honourable and learned gentleman made a speech in support of a vote of thanks to Sir J. Pakington, the Duke of Newcastle, and the Governor General, for the part taken by them with reference to the claim of this colony for self-government. If I am not greatly mistaken, he then retained, if he did not express, the same strong predilection for a nominated Upper House. I particularly remember one eloquent passage in his speech in support of that motion, in which he inveighed against democratic opinions and influences. How he can reconcile that passage with "*the steps*" he has lately taken, I am at a loss to divine. I hope they have not been steps into the mire—(hear, hear, and laughter) —that "*congenial mire*" to which, on the 28th May, he consigned those with whom he is acting in concert now—choosing the theatre as the arena for proclaiming his newly adopted opinions—scattering poisoned arrows among the crowd, and disseminating political principles the most disastrous to the character of the colony. (Cheers.) I agree with my honourable and learned friend, the Attorney General, in what I consider his just censure of such conduct; nor do I think the explanation, which the honourable and learned member for Cumberland has offered to day, by any means a justification. He is one of the last from whom such conduct could have been expected. From his position as a member of that House, and an English barrister, he ought to have been the last to put, even hypothetically, in such a place as the theatre, the possibility of this colony being governed by an elective President, in lieu of a constitutional Monarch. (Cheers.) Was this a fit suggestion—more especially on such an occasion, and before such an audience? With reference to the epithets which have been applied to members of this House, we can

well afford to laugh at them. I am sorry that they should have given rise to any thing in the shape of recrimination—as to angry feeling I do not believe that it exists. But the blame is theirs who cast the first stone. (Hear, hear.) No doubt the right of petition is sacred and inalienable,—so likewise that of open and public discussion, and on such occasions the nice rules of debate, which govern legislative assemblies, are not to be expected. Coarse expressions are to be looked for —but insinuations against private character, and offensive personal attacks, such as have been made, are not to be justified. If the parties wished their representations to carry weight, they should have abstained from such a course. How had the meeting treated the mention of my hon. friend, Mr. Wentworth's claims upon the colonists; and who, I would ask, had a higher claim? And yet, at that meeting, the mention of his name had been the signal for clamour, opprobious exclamations, and yells that were disgraceful to the first British city in the southern hemisphere. The hon. member for Durham has said, to-night, that this house treated the representations of the citizens with contempt. How was this made out? They asked for a month's delay—the house was ready to grant three months. Did this evince contempt or a disposition to conspire against their interests? (Cheers.) Did it not shew a desire, on the contrary, to ascertain what is really the public opinion of the colony? (Hear, hear.) It has also been asserted, that we are exceeding our legitimate functions in legislating upon this matter. But so far from this being the case, the Act of Parliament specially empowers us to deal with this question. The powers vested in this house have been repeatedly alluded to, not only in the former Council, but in the newspapers, and at the elections. In my own county, I distinctly stated the views I entertained, and referred to the memorial of 1850, in which I had, as already stated, taken part, in concert with the honorable and learned member for Cumberland, and some other members of this house, as containing a general outline of them. Those views and opinions, I hold now, and must continue to hold, because they are, as far as circumstances permit, in accordance with English constitutional principles (which, I believe, to be of all others the best suited for the government of this colony), as laid down by the highest authorities. It is true the hon. gentleman who preceded me this evening, read over a string of quotations from the speeches of members of both Houses of Parliament in support of an Elective Upper House. Amongst these were Mr. Adderley, Sir W. Molesworth, Mr. Gladstone, Lord Grey, and the Duke of Newcastle. But after all, what did these opinions go for? What practical knowledge of colonies did those who expressed them possess? It was merely a theory which they put forward; and upon the subject of colonization, some of these gentlemen are arrant theorists. Not many years since, if not at the present time, Sir William Molesworth held the most republican notions as to the government of colonies, and thought that they should be legislated for with a view to the eventual establishment of republican government. Now, I entirely dissent from this view of the question. I can see no reason why the government of this colony, at all events, should become republican; but the contrary, and such I am sure is the general sentiment of this community. (Hear.) Mr. Adderley has been referred to as having stated, that the constitutions of the early North American colonies contained provisions for two Elective Houses. In the charter governments, no doubt, there were Elective Councils, and sometimes even the office of Governor was elective. But this was in the early stages of the existence of those colonies, when they were but insignificant, and not at all to be compared with this colony. They were then in fact mere corporations, under the control of a Proprietary Court in London, whose decisions again were subject to revision by the Board of Plantations, so that their local administration might be better compared with that of the Australian Agricultural Company, than with the govern-

ment of a colony like this. (Hear, hear, and laughter.) But at a more advanced stage of their history, shortly before their separation from England, they did assume the form of government, generally speaking at least, which we are now advocating. In proof of this, I will refer to the work of Mr. Chalmers, entitled "Political Annals of the American Colonies," a book of high authority, and which should have far more weight than the opinions expressed in Parliament by modern statesmen, who had no practical experience on the subject. In the concluding chapter, having previously traced the history of the several colonies from their outset, he gives a summary of their political and social state, just prior to the war of independence. From this chapter the following passages are quoted:—

Vain is it to search ancient or modern annals for examples of provincial constitutions, so liberal or salutary as those which England gave to her colonies. She conferred on them a counterpart of that mixed form which she herself enjoyed which had engaged the attention and procured the panegyric of nations. *The Governor represented the King, and performed his functions; the Council acted as the aristocratic branch, and answered its uses; the delegates formed the democratic part of the system, and gave a kind of energy to the acts of the whole*, because they declared the assent of the governed. * *

* * * * * * * * *

The Councillors were extremely analogous to the Peers, though their office was not descendible, since it was defeasible. As Privy Councillors of the Governor, they were bound by instructions, by the laws. As the Court of *local* appeals, they were governed in their decisions by the principles of the common law, by territorial regulations, by their own customs; but an appeal lay from their judgments, because they were not supreme. *As a constituent part of the Legislature* their power was only limited by the good of their country, by the maxims of their connexion with the state, with the parent country. The principal difficulty has arisen with regard to the powers and pretensions of the delegates, though during the foregoing period both were extremely limited when compared with those they afterwards acquired, for they claimed, though they did not always exercise, all the privileges of the Commons. As an essential branch of the provincial Legislature, they possessed fully all the authority of the councillors, but they could rightfully claim no more.

And again—

Wherein is the pertinency of your claiming privileges, for no other reason but that they are exercised by the Commons of England—a sovereign power, and you are only a subordinate body, the delegates of an inconsiderable district? Demonstrate your supremacy, and we shall freely admit the validity of your pretensions: With the superaddition of the Governor, what do we all form but a local Legislature, whose laws reach not beyond our boundaries, whose powers must be limited since they are not supreme, whose authority is circumscribed by the nature of our inferiority, by the principles of our relation to a great empire, by the common laws of the state. It is easy to perceive that the delegates, in order to have answered these reasonings with tolerable accuracy and candour, must have used topics which *necessarily lead to independence*. As, however, the counsellors enjoyed a judicial authority, the delegates properly exercised the power of complaining of grievances, because their constituents possessed the same right, and might transfer their immunities to their representatives. But they could not impeach, because there existed no authority that could properly decide: they could not punish, because they could not regularly enforce their judgments should they be opposed. And as they were the general protectors of the privileges of the people, they could easily remove officers, and even the Governor himself, by those arts which popular assemblies so well know how to use, to promote the interests of freedom, or to answer the purposes of faction. The rights of the Governor, the Council, and delegates, when convened in assembly as one Legislature, were founded on similar principles; the Legislative power must have been necessarily directed by its nature and use. If it was merely local, its jurisdiction could extend no farther than the limits of the soil. If it was subordinate, its powers could not be supreme.

The latter passages, it will be observed, not only established the fact of the Council or Upper House being nominated, but it also strongly supports the view which was so well expressed by my honourable friend, the member for Cook and Westmoreland, as to our authority being merely derivative from, and subordinate to, the Imperial Legislature and the incompatibility of a power to frame a constitution existing in, or derived from, conventions of the people of the colony, with our continuing to be a dependency of the Crown. And I will here observe upon the extract from Clarke's Colonial Law, read the other night by the honourable and learned member for Cumberland, that if he had quoted more fully,—I will not say more fairly,—he would have found that the colonies which are designated "provincial" (to which class this colony belongs), in contradistinction to "chartered and proprietary"

settlements, enjoy a form of constitution, modelled as closely as circumstances permit, upon that of England—namely, a Governor appointed by the Crown; a Council, or Upper House of Parliament, nominated also by the Crown; and a House of Assembly elected by the people: in short, just such a form of government as the present measure is intended to introduce. And what says Mr. Burke on this question? The following passage, in reference to the form of government that prevailed in British America, prior to the war of Independence, is from the speech of that great statesman on "American Taxation:—

> She had, except the commercial restraint (from which we, Sir, are released), every characteristic mark of a free people in all her internal concerns. *She had the image of the British Constitution. She had the substance.* She was taxed by her own representatives. She chose most of her own magistrates. She paid them all. She had, in effect, the sole disposal of her own internal government. This whole state of commercial servitude and civil liberty, taken together, is certainly not perfect freedom; but, comparing it with the ordinary circumstances of human nature, it was a happy and liberal condition.

Here, then, are two eminent authorities, Mr. Chalmers and Mr. Burke, who, on constitutional principles, at least to those who revered the monarchical form of Government, would have more weight than a whole host of modern theorists—both in favour of the principles we are seeking to perpetuate. The honourable member for Durham has also referred to Earl Grey, as upon his side, on this question. It is a rather remarkable, and certainly does not seem a very happy conjunction between the noble lord and the honourable member. I trust, Sir, it may not be ominous of evil; but, remembering how loudly and consistently the policy of Earl Grey has ever been denounced by the honourable member, it is one of the last things I should have speculated upon. (Hear, hear.) It is true Earl Grey has a great deal of what might be termed Downing-street, or "mother-country" experience in colonial affairs. No doubt, too, he has been much plagued by the dissensions in Canada. But would he not have been as much plagued—would he not have been plagued a great deal more—if the Canadian Upper House had been elective. (Cheers.) If the elective form of constitution, which the right honourable nobleman is now supposed to prefer—supposed, I say,—for the hon. member was not very explicit on this point,—had been given to Canada, the plagues of office would long ere this have come to a close by the separation of that magnificent province from the parent state. (Oh, oh! and cheers.) This is what must have taken place, what must be the inevitable result of two elective houses in any colony of sufficient magnitude. Such a constitution must terminate in the erection of an independent state. (Oh, oh! from Mr. Darvall.) The honourable and learned member said "oh, oh!" but I repeat that such must be the result—perhaps, indeed, not immediately, but after a series of dissensions and unhappy commotion, such separation must infallibly take place. (Cheers.) I may be told that this is a mere speculative opinion. It is, however, a speculation founded upon the natural sequence of cause and effect;' but, admitting it to be merely speculative, why should we rashly try an experiment fraught with peril, while we have the experience of centuries to guide us on a track which is safe? Because some faults have been found in the working of the Council in Canada; because there it has not, under the peculiar circumstances of a society composed of two races, intolerant and jealous of each other, been found uniformly to work well, are we to cast aside all prudential considerations, to abandon past experience, and, actuated by an unthinking, inconsistent, and irrational desire for change, to adopt an untried scheme for the sake of its novelty? I am satisfied the Council will not follow so dangerous, so unwise, so un-English a course, but will take its stand upon the rock of constitutional safety, and erect institutions worthy of the great nation to which we belong. By rearing up the institutions of Great Britain, in this our infant state, let us prepare for that time, which must come, when the colony will

be called on to decide whether it will abide by the principles of the English Monarchy, or of the American Republic. (Cheers.) It is argued that the nominee House would not have the prestige which the Elective House would — why not? Why should more confidence or respect attach to a Council, consisting of members selected by the landholders of the colony, than to a Council appointed under the responsibility of the Executive. The latter was, at least, as likely to choose men capable of serving their country, and acquiring the respect and confidence of the public. Another feature which has not as yet been alluded to in the debate was, that under the new form of Government the Upper House would be nominated by responsible ministers, answerable to the country, as well for this, as for any other of their acts. (Cheers.) The House thus appointed would, therefore, in fact approach, as nearly as circumstances permitted, to the Upper House of Parliamant in England, and to the Senate of the United States. My honourable and learned friend, the Attorney General, truly stated, that the members of that Senate were appointed by the different states, in their sovereign capacity. In that capacity, each state sent two members to the Senate; and these two members were elected by the separate estates in each individual state. (Cheers.) But I would ask, if we are to have an elected Upper House, how is responsible government to be worked, without depriving the Upper House of that permanence, that stability, and dignity which it ought to possess, and which can alone make it effective for good? (Cheers.) Why with every change of ministry it must be dissolved, and be elected again. (Cheers.) I put it to the ingenuity of the honourable and learned member for Cumberland to show how this difficulty can be got over; it will puzzle even his legal acumen to escape from this dilemma. But perhaps he does not now want responsible Government. He may still entertain the opinions which I believe him to have held a short time ago, namely, that the colony is not yet fit for responsible government. (Cheers.) This was my own opinion a year or two since, but I now think that it ought not any longer to be put off. And, while on the subject, I will explain how responsible government, will, in my opinion, grow up here. I do not suppose that there will, at once, be two parties of the "ins and the outs," as in England—(hear, hear, and laughter)—one set on the treasury benches, and another set on the opposition benches. Such a state of things as this will not exist for years. It will not exist until we have in the country, and in the legislature, a number of men trained to public business, and able to form separate administrations,—divided on public questions hereafter to arise, in colonial politics. But the way in which responsible government will be introduced will be this—while the entire government will not be broken up, unless on some extraordinary occasion, no government will be able to stand which does not call into its ranks the active business talent of both houses. A firm and efficient administration must enlist the distinguished men of both bodies in its ranks. (Hear, hear.) This, I believe, will be the natural growth of this system of government; for to imagine that the Colonial Parliament could suddenly, and at once, jump into two great contending parties, is absurd. Responsibility must come gradually, and by slow steps, if we would have it for its use, and not for its abuse. (Hear, hear.) I trust, Sir, that party distinctions may not too speedily grow up here. They have not always worked for good in England; they are now the bane, and in the end will probably be the destruction of the American Republic, some of whose institutions have so captivated the hon. and learned member for Cumberland. It is not for party ascendancy we should legislate, but for the good of the country alone. (Cheers.) It is painful to witness the attempts which have been made by that hon. and learned member, and some of those with whom he is now associated, to depreciate the character of the great American statesman, Mr. Calhoun, whose treatise upon

government has been quoted by my hon. and learned friend, the member for Sydney. If the former hon. and learned gentleman had read that work with the attention it deserves, he would probably have taken a very different view of this question. As, however, in the capacity, to use the language of the law, of leading counsel for the opponents of this measure, he has challenged its supporters to produce American authorities on their side, other than Mr. Calhoun, the importance and weight of whose opinions it has been attempted to depreciate, on the ground of his having been a slaveholder and an advocate for slavery, I will, with the permission of the house, refer to a recent number of the *North American Review*, published at Boston in April last, which contains an article on Mr. Calhoun's work. This periodical is, I am informed, Sir, in extensive circulation, and of high repute, in America. The reviewer says—

> The style of this work (Calhoun's Essays on Government) is characteristic, and its literary merits are considerable. The author was too much in earnest, and too severe a reasoner, both in his speeches and his writings, to pay much attention to the mere garb of his thought. "The eloquence of Mr. Calhoun," said Mr. Webster, in a manly and feeling speech which he made in the Senate of the United States, on the day when the decease of his colleague was announced, "the eloquence of Mr. Calhoun, or the manner in which he exhibited his sentiments in public bodies, was part of his intellectual character. It grew out of the qualities of his mind. It was plain, strong, terse, condensed, concise; sometimes impassioned, still always severe. Rejecting ornament, not often seeking far for illustration, his power consisted in the plainness of his propositions, in the closeness of his logic, and in the earnestness and energy of his manner." To this felicitous description of the manner of his great rival, Mr. Webster added a just and noble tribute to the uprightness and purity of his public character. "Mr. President, he had the basis, the indisputable basis of all high character; and that was unspotted integrity and unimpeached honor. If he had aspirations, they were high, honorable, and noble. There was nothing grovelling, or low, or meanly selfish, that came near the head or heart of Mr. Calhoun. Firm in his purpose, perfectly patriotic and honest, as I am sure he was, in the principles he espoused, and in the measures that he defended, aside from the large regard for the species of distinction that conducted him to eminent station for the benefit of the republic, I do not believe he had a selfish motive, or a selfish feeling. However he may have differed from others of us in his political opinions or his political principles, those opinions and those principles will now descend to posterity under the sanction of a great name. He has lived long enough, he has done enough, and he has done it so well, so successfully, so honorably, as to connect himself for all time with the records of his country. He is now an historical character. Those of us who have known him here will find that he has left upon our minds and our hearts, a strong and lasting impression of his person, his character, and his public performances, which, while we live, will never be obliterated. We shall, hereafter, I am sure, indulge in it as a grateful recollection, that we have lived in his age, that we have been his contemporaries, that we have seen him, and heard him, and known him. We shall delight to speak of him to those who are rising up to fill our places. And when the time shall come, that we ourselves must go, one after another, to our graves, we shall carry with us a deep sense of his genius and character, his honor and integrity, his amiable deportment in private life, and the purity of his exalted patriotism."

Such is the description by the late Mr. Webster, of him who has left his Treatise upon Government, as his last legacy to his country. The reviewer, however, does not concur in all the opinions of Mr. Calhoun: particularly does he object to the preference which Mr. Calhoun evinces for the British Constitution over that of America. Many of the evils attaching to the American Constitution, as described by Calhoun, are doubtless fully admitted in the review. The striking passage cited by my hon. and learned friend, Mr. Wentworth, in reference to the operation of that "loathsome disease," "the spoils," is quoted; and the reviewer says, "the picture thus drawn by Mr. Calhoun is by no means too strong." The pernicious effects of this wholesale system of corruption are described as being felt through the whole body politic.

> Though these two parties (the whig and democrat) had other objects in view when they were first instituted, they have long since lost sight of them, and now continue to exist apparently for the sole purpose of obtaining a monopoly of the state patronage. We do not mean that they are conscious of this alteration of purpose. Most of those who quietly allow themselves to be counted as whigs and democrats, though they never do duty in that capacity, except on voting day, and not always then, have a vague apprehension, founded on the recollection of old contests, when principles and measures were really at stake, that

the Government would be more safely placed in the hands of their own party than in those of their opponents. A good deal of discontent has existed among "the rank and file," as to the conduct and management of their self-appointed commanders, the office-seekers. Those who have nothing to do but vote, have begun to be worried by the incessant solicitations of their leaders not to omit the performance of this very patriotic duty, *in which about as much liberty of choice is left to them as is given to the convict who is permitted to say whether he will be shot or hanged.* In spite of repeated assurance that "to throw away one's vote," by casting it for the man whom one really prefers, is a crime little short of treason, it frequently happens that nearly half the population do not vote at all, and many others are tempted to exclaim, with honest Mercutio, "a plague on both your houses." (Cheers.)

So much for the liberty of suffrage in that land of freedom which the honourable and learned member for Cumberland admires so greatly. I beg to remind him that I am now quoting a *Boston Review*, and not the speeches or writings of a *slave-owner*. I must apologize to the House for wearying it with extracts; but having been challenged to produce American authorities, I would crave indulgence. The reviewer goes on to describe the party divisions which exist in this model Government—the SPOILS being the grand object. Under these sinister and debasing influences, even the Senate is prostrated, and fails to assert its power, by declining, as it ought, to ratify, by its sanction, the appointments made by the incoming President as the price of his election. The interposition of such a veto by the Senate might have the salutary effect of checking this wholesale system of public plunder, and restoring the practice of the Government to that standard which the framers of the American Constitution intended. But even the high individual character of its members is insufficient to enable the Senate to rise superior to the debasing spirit of partizanship, and to stem the tide of general corruption.

> The welfare of party is thus established as the sole rule of conduct; and highminded men become disgusted, and refuse even to enter the arena where so miserable a conflict is waged. Politics have already become a dishonoured profession in our land, and the most intelligent and virtuous citizens refuse to expose themselves to its contamination. The most eminent and deserving find that the vigour of their character, and the splendour of their abilities, are the only insuperable obstacles to their success in the general scramble for power. They must be passed over, because their merits have been great and their lives conspicuous, in order that some candidate may be found whose career has been so obscure that nothing can be said against him. We do not fear that this language will seem too strong. There is hardly a citizen of the republic who does not now sincerely grieve that the three great statesmen (Clay, Webster, Calhoun,) whom the country has recently lost, were not rewarded, in turn, with the highest honours in her gift. The loss was not theirs, but ours. Widely as they differed from each other in their political views and tendencies, all parties will now admit, not merely that each of them had fairly earned the Presidency, but that the administration of one and all of them would have been an honour to the country, and would have cast new lustre upon our republican institutions. All will admit, also, that the present organization of parties in the Union was the only insuperable obstacle to their rise to power.

I have now, Sir, I submit, fairly met the challenge to produce some other American authority than that of a slaveholder. And while on the subject of authority, I would allude to an extraordinary mistake made by the honourable and learned member for Cumberland in his speech the other evening. In alluding to the Quebec Act, which he said was so distasteful to the colonists of America, the honourable and learned member had confounded the Act of 1774 with the Act of 1791. (Cheers.) Now the Act of 1774 repealed the Habeas Corpus Act, substituted the civil law of France for that of England, established a nominee Council, not for life, but dismissible at any time by the Governor; and, in fact, was of so despotic and unconstitutional a nature that it was met by the strongest opposition in both Houses of Parliament. If the honourable and learned member had paused to reflect, he must have remembered that in 1791 the American provinces were no longer colonies, but independent states. (Mr. Wentworth: and had been for 13 years.) (Mr. Darvall: I said the American Colonies had petitioned the Imperial Legislature for a repeal of the Quebec Act, and against nominated Councils.) Mr. Macarthur resumed: As the honour-

able and learned member seems still unconvinced, I refer him to the 18th volume of the Parliamentary History; he will there find, that in May, 1775, within a few days of the debates on Lord Camden's Bill to repeal the Quebec Act of the preceeding session, on the ground of its unconstitutional and despotic character, petitions were presented to Parliament from the General Assembly of New York, complaining, amongst other grievances, of the Quebec Act, and praying for redress, as stated in the passage which the honourable and learned member quoted from Hildreth's History of the United States. It is obvious that he has fallen into what I must term a gross historical blunder, in confounding these two Acts of 1774 and 1791 with each other. I am astonished that gentlemen can argue a question such as this, without having made themselves acquainted with those historical facts which bear upon it. (Cheers.) We have been told by the honourable member for Durham (Mr. Cowper), that the Committee appointed to prepare the Constitution Bill, actually did not know what the existing Constitution of Canada was, although they asked for a Constitution similar in its outlines. My honourable and learned friend (Mr. Wentworth) put in his emplatic disclaimer when the assertion was made. I now beg to do the same:—Sir, to be ignorant of a great Colonial Constitutional precedent, such as that in question, in a discussion like this, is unbecoming a member of this House. (Cheers.) The honourable and learned member for Cumberland, in his admiration of the American Senate, (an admiration in which I participate, though not to the extent of preferring it to the House of Lords, like the honourable gentleman,) observed that the House of Lords was an obstructive body, and that if the people of England had to frame a constitution now, they would not establish any such institution.

Mr. DARVALL corrected the honourable member as to what he did say.

Mr. MACARTHUR: I really see no substantial difference in what the honourable gentleman now says. If he means that England would be satisfied with any constitution in which the House of Lords did not form a part, I differ from him entirely. But the honourable and learned member has said more. He said that in 1688, as well as in 1832, the Lords had abdicated their functions, because they found they were of no avail against the popular, or representative portion of the Legislature. But this was not the case. On the contrary, after consideration and due discussion, they threw their weight into the popular scale. The honourable and learned member is fond, I believe, of reading Macauley, and I will just remind him of the account which that historian gives of this matter. In the summary of the proceedings of the House of Lords in 1688, he says:—

> When the question was put, whether King James had abdicated the Government, only three Lords said not content. On the question whether the throne was vacant, a division was demanded. The contents were 62; the non-contents 47.

On this point there was some demur, because of the well known principle of the English Constitution, that the throne should not be vacant. The historian goes on:—

> It was immediately proposed and carried, without a division, that the Prince and Princess of Orange should be declared King and Queen of England.

Where then was the abdication of functions on this occasion? I will now turn to what Mr. Hallam says on this subject:—

> In this conference, however, if the Whigs had every advantage on the solid ground of expediency, or rather political necessity, the Tories were as much superior in the mere argument, either as it regarded the common sense of words, or the principles of our constitutional law. Even should we admit that an hereditary king is competent to abdicate the throne in the name of all his posterity, this could only be intended of a voluntary and formal cession, not such a constructive abandonment of his right, by misconduct, as the Commons had imagined. The word "forfeiture" might better have answered this purpose; but it had seemed too great a violence on principles which it was more convenient to undermine than assault. Nor would even forfeiture bear out by analogy the exclusion of an heir, whose right was not liable to be set aside at the ancestor's pleasure. It was only by recurring to a kind of paramount, and what I may call hyper-constitutional law, a mixture of force and regard to the national good,

which is the best sanction of what is done in revolutions, that the vote of the Commons could be defended. They proceeded not by the stated rules of the English Government, but the general rights of mankind. They looked not so much to Magna Charta as the original compact of society, and rejected Coke and Hale for Hooker and Harrington.

The reference at the conclusion is to that general right, under the original compact of society, which in 1688, to some extent, overrode the ordinary principles of the Constitution. But this was a revolution, and our present position, in this colony, can bear no analogy whatever to such a state of things. The power we possess, to amend our form of government, is derivative, and not original. To assume an original right, as argued by some of the enlightened statesmen out of doors, is tantamount to a declaration of independence. (Hear, hear.) Mr. Hallam afterwards explains the provisions and principles of "the declaration of rights," which he says was "presented to the Prince of Orange by the Marquis of Halifax, as *Speaker of the House of Lords, in the presence of both Houses* on the 18th of February—*both having joined in it;*" and it "was some months afterwards confirmed by a regular Act of the Legislation in the 'Bill of Rights.'"

The government of England was always a monarchy limited by law, though it always, or at least since the admission of the commons into the legislature, partook of the three simple forms, yet the character of a monarchy was evidently prevalent over the other parts of the Constitution. But since the revolution of 1688, and particularly from thence to the death of George II., it seems equally just to say that the predominating character has been aristocratical.

To lessen this preponderance of the aristocratic element, and redress the balance, was the object of the Reform Bill of Lord John Russell. The conduct of the House of Peers, with reference to that measure, was not such as to subject it to the charge urged against it by the honorable and learned member. Fears had, indeed, been entertained that it would be necessary to swamp the House of Lords. But the majority of that august body, with true patriotism, prevented the necessity. A very interesting account of this is given by Lord Brougham in a little *brochure* to which I would refer the honourable and learned member. The House of Lords had not then abdicated its functions, either in 1832 or in 1688, and the honorable and learned gentleman was about as happy in his allusion to those eventful periods of English history, as in his reference to the constitution of Canada. I beg to call his attention to one passage more from his favorite author, Macaulay, because it is illustrative of the feeling entertained by the British Parliament, as well as by that eminent writer, in regard to members abdicating their proper sphere of action, and joining with the multitude, out of doors, for the purpose of obtaining an influence, by intimidation, which they could not obtain by legitimate means.

Crowds assembled in the Palace Yard, and held threatening language. Lord Lovelace, who was suspected of having encouraged these assemblages, informed the Peers that he was charged with a petition, requesting them instantly to declare the Prince and Princess of Orange King and Queen. He was asked by whom the petition was signed. "There are no hands to it yet," he answered; but when I bring it here next there shall be hands enough." His manner alarmed and disgusted his own party. The leading Whigs were, in truth, even more anxious than the Tories that the declarations of the convention should be perfectly free, and that it should not be in the power of any adherent of James to alledge that either house had acted under force. A petition, similar to that which had been entrusted to Lovelace, was brought into the House of Commons, but was contemptuously rejected. Maynard was foremost in protesting against the attempt of the rabble in the streets to overawe the estates of the realm. *Nothing in the history of our Revolution is more deserving of admiration and of imitation than the manner in which the two parties in the convention, at the very moment at which their disputes ran highest, joined like one man to resist the dictation of the mob of the capital.* (*Loud cheers.*)

Sir, I feel assured that this house, in the deliberate exercise of the high functions which devolve upon it, will not be swayed by such external influences, but that the members will use their own sound discretion, and while they pay due attention to proper representations from without, will never degrade themselves to the position of delegates (hear, hear);

that they will never become mere agents to carry out the crude schemes of self-appointed and irresponsible constitution mongers. Good suggestions might spring from without, and those should be carefully weighed and considered; but such suggestions must be dealt with solely according to their own merits. My hon. and learned friend, the Attorney-General, quoted a very remarkable passage the other night from Polybius, shewing the advantage of a limited government, in which the three elements of Monarchy, Aristocracy, and Democracy, were combined in just equipoise. I will now refer briefly to the same writer in illustration of the danger of a deeply rooted, sordid love of gain, becoming the prevailing character of a community, and obtaining undue influence in the public councils, as was the case in Crete, where, according to Polybius, this spirit was "*so deeply implanted in the manners of the people, that they alone, of all mankind, think nothing sordid or dishonorable, that is joined with gain.*" "In this island," he goes on,

"All the public offices are constituted in a manner democratical—the laws of this community are bad, the manners of the people corrupt and vicious, and the whole government contemptible."

From the authorities cited, the house must be sensible of the evils engendered by this spirit in America. Under its debasing influence, true patriotism, high and generous sentiments, right motives, are almost driven from public life, and the most eminent citizens, under the ban of a political ostracism, are precluded from using those powers which God and nature have given them, in the service of their country. (Loud cheers.) In America, too, as in Crete, the institutions are democratic. I trust debasing influences such as these will never be suffered to become paramount here, though I cannot but notice with apprehension the tendency in that direction, especially of late. I hope, Sir, that I am not uncharitable in attributing to such influences—I mean a democratic spirit, conjoined with a sordid love of gain—much of the opposition which this great measure of constitutional freedom is now encountering from the demagogues of the passing hour. (Hear, hear, and oh, oh.) Nevertheless, this clamour must not be taken for the expression of the public opinion of this colony. To those noisy clamourers who are now seeking to mislead the multitude, and who vociferate that they are "the people" of this colony, may well be applied the metaphorical description, by Burke, of the agitators of his day—"Because half a dozen grasshoppers, under a fern, make the field ring with their importunate chirp, whilst thousands of quiet cattle reposed beneath the shadows of the British oak, (meaning figuratively the British Constitution,) chew the cud, and are silent, do not imagine that those who make the noise are the only inhabitants of the field—that of course they are many in number—or that after all they are other than the little, shrivelled, meagre, hopping (though loud and troublesome) insects of the hour." I must, once more, refer to Polybius to show that it was the Patrician Senate of Rome which, by the wisdom of its counsels, and its lofty patriotism, prevailed over the Carthagenians, in which latter nation, on the other hand, the love of gain, and the fickle fluctuating turbulence of democracy exercised undue sway in all public matters. I feel, Sir, that I am drawing largely on the patience of honourable members; but considering the extreme importance of placing the subject in its true light before the country, I am desirous to cite a few brief passages from "Essays on the Philosophy of Government," by the late M. de Sismondi. This distinguished author has achieved a world-wide reputation. He possessed the most profound and extensive knowledge of European history. He had studied the institutions, laws, social relations, customs, and opinions of different nations, but more especially of Switzerland, his native country, of England, France, and Italy—and I may particularize his great historical work on the Italian Republics. His knowledge of those countries, of their commerce, manufactures, and agriculture, was derived from personal observation and practical experience, so that he possessed

a fund of information not easily attainable by men of letters. His mind was imbued with an intense desire to promote the happiness of mankind. Born in a republic, he was the historian of republics. Living during the French revolution, exposed to its vicissitudes, and personally known to many of the most distinguished men of that eventful period, he gathered wisdom from what was occurring around him, as well as from the records of the past. M. de Sismondi was a native of Geneva, where at one period of my life it was my good fortune to become acquainted with him, and to hear him illustrate in conversation the principles of Government, which were his favourite study. Of democracy, M. de Sismondi writes as follows :—

The ancients had much more experience than we have in free governments, and in all republican forms. Those who appeal to their authority in support of what they call principles, great principles, must be astonished if they should ever open not only Aristophanes, but Plato, or Aristotle, to see them declare themselves so strongly against pure democracies. All the Greek philosophers who had seen them in action had remarked the constant increase of the dominion of the retrograde over the progressive principle, of the low tone of the greater number over the virtue and knowledge of the smaller. They had seen the habitual oppression of the minority by the majority, the harshness of masters towards their subjects when the city commanded the country; or when democracy was supreme, popular favouritism not less formidable than that of courts, and the rapidity of revolutions produced by the violent but fugitive enthusiasm of the multitude. We shall not stop to discuss their testimony, but we cannot help asking, with astonishment, the partizans of universal suffrage not where is their experience, but where is their theory? They reject what is old: they would change the face of the earth: and they not only do not bring forward a legislator, but not even a philosopher, a wise man, a great writer, who has admitted and developed what they call their principles. For ourselves, when we look round, there is no want of examples, even in our own times, to show us the retrograde spirit of the masses.

* * * *

In the centre of Switzerland, the three little cantons of Uri, Schwitz, and Underwalden are pure democracies; it is really a will of their own, which the citizens of these little cantons express; but this will is constantly retrograde. In spite of their confederates, in spite of the clamour of Europe, they have continued the use of torture in their tribunals; and these men, so proud, and so jealous of their liberty, are the most eager to sell themselves to despots, to enable them to keep other nations in chains; every year, in short, and at every diet, they solicit their confederates to proscribe the liberty of the press. We must not suppose, however, that there are not in Uri, Schwitz, and Unterwalden, men whose enlightened intellect, whose more elevated character, recoils from torture, trading in men, and the censorship of the press; no doubt they would form public opinion if time were given them; but, before every discussion, universal suffrage decides by a majority in favour of the gross ignorance of the great number against the virtuous intelligence of some few.

The following passage confirms the principle laid down by Calhoun and De Tocqueville, which was referred to by my honourable and learned friend, the member for Sydney, and again brought under the notice of the House in the able address of my honourable friend, the member for Cook and Westmoreland.

With respect to popular elections, we must not speak of the right of every citizen, of every individual, to be represented, but of the right of every individual to be well governed; of the interest of the community, that in every case the best possible choice should be made; of the right also of every individual to be respected, to have entrusted to him by the community some participation in political power, which may serve him, as if it were a defensive arm, without exposing him to too much danger from his inexperience or his imprudence. In fact, political institutions are only good in as far as they attain this end. It is not, however, only poor and obscure citizens who require to be furnished with defensive powers to protect their rights—all classes, every fraction of society, should possess them. Those publicists who have founded universal suffrage on the sovereignty of the people, forget that there is no pre-existing contract by which the minority are bound by the will of the majority. This rule for deliberations has been introduced into the laws as expedient, by virtue of precise stipulations in different constitutions; it may easily be changed into a frightful tyranny, and examples of this are not wanting in countries which consider themselves free.

* * * *

The principle of double election which the honourable and learned member for Cumberland said prevailed throughout the Anglo-Saxon institutions, an assertion which I was astonished to hear from him, and which is not borne out by any authority that I am aware of, is that treated of by Sismondi in reference to its operation in France—

By looking at the system of elections which has been adopted in France, we may discover how

incapable even the most profound thinkers have been of forming a judgment beforehand as to the effect of the sanctions which they introduced into the constitution. After the revolution, the French legislators wished at first to make all the nation concur in the nomination of its representatives; it gave to primary assemblies the nomination of electors, who, collected in electoral assemblies, were to choose the members of the Legislature. They thought that by thus doing they preserved the whole sovereignty of the nation. The citizens, much better informed, soon perceived that the deputies named by them in this way were strangers to them, had neither respect nor gratitude for them; that their wishes had no influence on the will of the Legislature; that their share of the sovereignty, which at the most could only be estimated at a six millionth part for each citizen of an age to judge, was really reduced to nothing. They did not come to those primary assemblies, and the elections fell into the hands of a small number of intriguers.

Why, Sir, this is the very same principle of double election which drew forth, but a few years since, the opposition of the whole colony, and caused an universal demand that a really English system should be substituted for the specious counterfeit which had proved so signal a failure in France. (Hear, hear.) If such a system should be introduced it would lead to the worst consequences, and be a bane to the country by conferring power without responsibility. Yet those who advocate an elective Upper House, purpose, in defiance of the unanimous condemnation of double election by the country, again to have recourse to that exploded and mischievous principle; merely substituting for the people and the District Councils, as proposed by Earl Grey in 1848, the people and the Governor-General, as now proposed by the constitution committee, out of doors. (Cheers.) I would next beg to call the particular attention of the honourable member for Durham (Mr. Cowper), who spoke in condemnation of the English principle of representation, as carried out in the Reform Act, to the following passage, which may enlighten him on this subject, and convince him of the fallacy of his supposition that Lord John Russell (who evidently contemplates nothing beyond some amendments of detail,) meditates the destruction of that fundamental and distinguishing principle which we have followed out in our electoral divisions in this colony, and which it is proposed to perpetuate by the Constitutional Bill now under discussion. That principle consists in the distribution of representation according to classes and interests, and not according to mere numerical proportion; or, in other words, it consists in representative Government, by the *constitutional*, and not by the *numerical*, majority. M. de Sismondi, it will be observed, notices this as peculiarly an English principle, and speaks of it with marked approbation—

> When the English still more recently were occupied in reforming their electoral system, the simple, equal, regular system of the classification in France was put in comparison on both sides the Channel with the ancient English system, both before and after the Reform Bill, as being more rational, more perfect. It is by use only that it has begun to be perceived that the multiform system of the English, in spite of its rights being subject to litigation—in spite of the flagrant irregularity between one citizen and another, between one town and another—connects the national representation with all classes of the nation; and that the French system, in spite of its simplicity and equality, left the population, and especially national intelligence, out of the representation, and ended by exciting universal censure.

An unfair attempt has been made to shake the arguments and to weaken some part of the authorities of my honourable and learned friend the member for Sydney, upon this important point, by the unfounded assertion that these authorities apply only to universal suffrage, and not to the principle of representation, according to classes and interests, in preference to representation on the basis of mere numbers. This truly English and enlightened principle is one of the distinguishing features of the measure we advocate—a measure so creditable to my honourable and learned friend, and which, whatever may be its immediate fate—whatever may be the abuse of it at public meetings, where angry passions are so easily excited (hear, hear)—whatever may be the view taken of it by those who care not how they trample upon the true interests of the community, so that they exalt themselves, will redound to his

honour, and exercise a salutary influence on the destinies of his country. (Cheers, and oh, oh, oh!) Those who cry "oh!" if they mean that such feelings do not now exist, know but little of the construction of the human mind (hear, hear). Despising past experience, buoying themselves up on fallacious notions of the superior intelligence and wisdom of the present age, they blind themselves to the truth. Notwithstanding the greater diffusion of education and general intelligence, human nature is still the same, and human beings will always be subject to the same influences, the same passions, the same impulses, which history records for our warning or our guidance (hear, hear). God forbid that the public councils of this country should be tainted by class interests, or selfish motives—though individuals, using "lowliness as young ambition's ladder," may seek to climb to eminence, in order that (to follow up the metaphor of my hon. and learned friend, the Attorney General), they may catch the first breath of the courtly breeze from Newcastle or from Lyttelton (hear). Many members of this house, and a vast majority of those who have a settled interest in the country—those especially whom I am proud to call my countrymen—those, in short, who regard this country with feelings of affection, and look to it as the permanent home of their families, participate in the sentiments which I now express. The House should pause and weigh well the inevitable consequence of suffering mere transient clamour to influence its decision (hear, hear). The honourable member for Durham (Mr. Cowper) has alluded to the opinions of Earl Grey. Now I have not had the advantage of reading the noble lord's book, but, if I mistake not, one great object of it was to throw the blame of the failure of his administration of colonial affairs off his own shoulders. Nor was this unnatural, or in any respect discreditable. Much as I may differ from the noble lord in his opinions of this country, or colonial government, I can never forget, that some years ago, when an attempt was made, within the precincts of the House of Commons, to render me instrumental in attaching disgrace to the name of Australian—an attempt which I spurned then, as I trust I ever shall spurn such attempts, from whatever quarter — I found a prompt and generous ally in Earl Grey (hear, hear). The honourable member for Durham has asserted, that the pastoral interest is not a permanent one. Now, if the pastoral interest is not permanent, I should like to know which is? Is it the agricultural interest, now languishing from the want of labour? Is it the commercial interest? Is it the gold interest? We are told that it is a great grievance, that the people at the gold fields do not possess the elective franchise; but I would ask, why do they not become resident householders? (Hear.) Are we to depart from established principle, merely to satisfy people scrambling for gold? Surely that cannot be called a permanent interest. I can quite understand that other interests will be created, and that the gold discovery may be the means of attracting population, which hereafter may be concentrated in mining enterprise—either quartz crushing, or working the rich deposits of copper, lead, and iron, existing in various places; but so far as regards the surface digging for gold, I do not believe that it has been, or ever can be, beneficial to the morality, or to the real prosperity of the country; for that prosperity is not to be attained by the accumulation of gold in the coffers of speculators, who, when they have amassed enough, will, to use a fashionable phrase, "cut the painter," and take the gold away to be spent in other lands. Look at its results as exemplified in our domestic manufactures. I have endeavoured, Sir, to obtain information on this point, and I find that our master tradesmen have been compelled, in a great measure, to give up making the articles of their trade, and to obtain necessary supplies —such as shoes, harness, and various other things of daily ware, which we ought to make at home—by importation

from abroad; the enormous rise in wages rendering it impossible to make them up here without loss. Hence, apprenticeships must become fewer, and many outlets for native industry must be stopped, which in the end will bring about the wretched state of things which has characterized Brazil, and from which she is only now emerging. These are the inevitable effects of gold discoveries, as is shown by Robertson and Southey, in their histories of America and Brazil. Now, if we refuse to avail ourselves of the lessons and experience of the past, of what use is education? Of what use are printing presses and books? We are the seniors of the world; but unless we use the accumulated knowledge of past ages, and apply to our own case the practical conclusions of philosophers and statesmen, instead of merely theorising, of what avail is our seniority and superior knowledge? This is especially applicable to political science, in which every ignorant pretender assumes a right to dabble—a propensity pourtrayed by Burke, with his wonted felicity, in the following passage :—

> This British Constitution has not been struck out at a heat by a set of presumptious men,
> * * * *
> 'Tis not the party product of a day,
> But the well-ripen'd fruit of wise delay.

It is the result of the thoughts of many minds, in many ages. It is no simple, no superficial thing, nor to be estimated by superficial understandings. An ignorant man, who is not fool enough to meddle with his clock, is however sufficiently confident to think he can safely take to pieces and put together, at his pleasure, a moral machine of another guise, importance, and complexity, composed of far other wheels and springs, and balances, and counteracting and co-operating powers. Men little think how immorally they act in rashly meddling with what they do not understand. Their delusive good intention is no sort of excuse for their presumption. They who truly mean well must be fearful of acting ill. The British Constitution may have its advantages pointed out to wise and reflecting minds; but it is of too high an order of excellence to be adapted to those that are common. It takes too many views, it makes too many combinations, to be so much as comprehended by shallow and superficial understandings. Profound thinkers well know it in its reason and spirit. The less inquiring recognise it in their feelings and their experience. They will thank God they have a standard, which, in the most essential point of this great concern, will put them on a par with the most wise and knowing. If we do not take to our aid the foregone studies of men reputed intelligent and learned, we shall be always beginners. But men must learn somewhere; and the new teachers mean no more than what they effect, as far as they succeed,—that is to deprive men of the benefit of the collected wisdom of mankind, and to make them blind disciples of their own particular presumption. Talk to these deluded creatures (all the disciples, and most of the masters,) who are taught to think themselves so newly fitted up and furnished, and you will find nothing in their houses but the refuse of Knaves' Acre; nothing but the rotten stuff, worn out in the service of delusion and sedition in all ages, and which being newly furnished up, patched, and varnished, serves well enough for those who, being unacquainted with the conflict which has always been maintained between the sense and nonsense of mankind, know nothing of the former existence and the ancient refutation of the same follies. It is nearly 2000 years ago since it has been observed that these devices of ambition, avarice, and turbulence, were antiquated. They are, indeed, the most ancient of all common-places; common-places, sometimes of good and necessary causes, more frequently of the worst, but which decide upon neither.—'Eadem semper causa, libido et avaritia, et mutandarum rerum amor Ceterum libertas et speciosa nomina prætexuntur; nec quisquam alienum servitium, et dominationem sibi concupivit, ut non eadem ista vocabula usurparet.' Rational and experienced men tolerably well know, and have always known, how to distinguish between true and false liberty; and between the genuine adherence and the false pretence to what is true; but none, except those who are profoundly studied, can comprehend the elaborate contrivance of a fabric fitted to unite private and public liberty with public force, with order, with peace, with justice, and, above all, with the institutions formed for bestowing permanence and stability, through ages, upon this invaluable whole.

I have now, Sir, at the risk of fatiguing the House, gone at too much length, I fear, into authorities, to which, it seems to me desirable to invite the attention of the public, because they support and illustrate the principles of Consitutional Government which we consider best for the country, and point out the dangerous tendencies of the principles we oppose. I have to thank honourable members for the kindness and forbearance they have extended towards me. A few concluding remarks are all that I have more to offer. Sir, the constitution we are seeking to establish, does, I believe,

as nearly resemble the British constitution, as the circumstances of the country will admit. It contemplates the establishment of three estates—the Governor representing the Sovereign, a House of Assembly elected by the people, and an Upper House discharging functions similar to those of the House of Peers. I fully admit it is impossible at once to form a House which would have the prestige of the House of Lords. I am well aware that there exist few circumstances in this colony analogous to those which has given rise to, and peculiarly belong to, that great assembly. But if we cannot at once raise the Oak in its full strength and Majesty, we may plant the Acorn. (Hear, hear.) One day it may even rival the parent tree. It is said, indeed, that the Oak will not flourish; but this is mere assertion; and even were it true, have we not indigenous trees which may equally serve as emblems of our firmness and stability? Let us do what, in our conscience, we believe to be right, and the result cannot fail to be satisfactory. (Cheers.) Much has been said in depreciation of what it is the fashion to call, the hereditary clauses of the bill; but, as regards the present time, these clauses do not necessarily apply, and for all immediate and practical objects, the measure would be as good without them. To the principle that the Upper House should be nominated for life, I adhere strongly. But with reference to the hereditary clauses, we all acknowledge —all true Englishmen at least—that the Queen is the fountain of honour: and if her Majesty choose to confer honours on any inhabitants of this colony, who shall gainsay it? Why should we debar ourselves from such honours? Why place our country on a lower footing than the other portions of the empire? Why should we degrade ourselves and our children, and be content to occupy an inferior position? All the Bill says, is, that whenever the number of titled persons shall exceed fifty—that is the number named, but this is mere matter of detail—they shall elect twenty of their number to sit in the Upper House; but the seat is not to be hereditary, though the rank is. And, besides, the Executive will always have the power of nominating an unlimited number of members of the Upper House for life. The scheme appears to me to be a very happy adaptation of the hereditary principle to the circumstances of the colony, whilst it avoids the creation of an hereditary right to legislation, which only appertains to the Peers of England, and not to those of Scotland or Ireland, who are elected members of the House of Lords. Another fallacy, used to run down and stigmatise the Bill, is, that it is intended to create an hereditary caste. But this is another perversion. What is there in the Peerage of England which resembled a caste? Let us hear Macauley upon this subject—

> A peculiarity equally important, though less noticed, was the relation in which the nobility stood here to the commonalty. There was a strong hereditary aristocracy, but it was of all hereditary aristocracies the least insolent and exclusive. It had none of the invidious character of a caste. It was constantly receiving members from the people, and constantly sending down members to mingle with the people. Any gentleman might become a peer. The younger son of a peer was but a gentleman. Grandsons of peers yielded precedence to newly-made knights. The dignity of knighthood was not beyond the reach of any man who could, by diligence and thrift, realise a good estate, or who could attract notice by his valour in a battle or siege. It was regarded as no disparagement for the daughter of a duke, nay, a royal duke, to espouse a distinguished commoner. Thus, Sir John Howard married the daughter of Thomas Mowbray, Duke of Norfolk. Sir Richard Pole married the Countess of Salisbury, daughter of George, Duke of Clarence. Good blood was indeed held in high respect; but between good blood and the privilege of peerage there was, most fortunately for our country, no necessary connection. Pedigrees as long, and scutcheons as old, were to be found out of the House of Lords as in it. There were new men who bore the highest titles. There were untitled men well known to be descended from knights who had broken the Saxon ranks at Hastings, and scaled the walls of Jerusalem. There were Bohuns, Mowbrays, De Veres, nay, kinsmen of the House of Plantagenet, with no higher addition than that of esquire, and with no civil privileges beyond those enjoyed by every farmer and shopkeeper. There was therefore no line like that which in some other countries divided the patrician from the plebeian. The yeoman was not inclined to murmur at dignities

to which his own children might rise. The grandee was not inclined to insult a class into which his own children must descend.

Now these were the characteristics of the British nobility: and all that we can do is, to endeavour to imitate its best features. It must be borne in mind, too, that there are in the Bill causes of disqualification not necessary now to enumerate, which apply not only to the nominees for life, but to the patentees holding life seats with hereditary titles. I would venture to throw out a suggestion, that the like causes of disqualification ought to void the title as well as the seat. This is a mere suggestion which may possibly be acted on. I am of course aware that this is a matter which belongs to the prerogative of the Crown, and on which we cannot legislate. I may here notice, as an illustration of my argument, that there is in the peerage of England, at this time, a distinguished individual, Lord Truro, whose father once occupied the comparatively humble position of clerk of the peace in New South Wales. (Hear, hear.) Lord Truro, too, as in the instances cited by Macaulay, is now allied by marriage to the Royal Family, having married a daughter of Lady Augusta Murray. Rank, according to the English system, is not invidious, because it is not exclusive. The grandson of a Duke may be a commoner. It is not held derogatory to him to engage in commercial or other pursuits. He is a gentleman, and nothing more. Now this, Sir, is what we wish to see reproduced here —a real aristocracy, uniting rank with merit. As to the ridicule that has been attempted to be cast on some portion of the committee, by representing them as anxious to be created Dukes and Marquises, it recoils on those who stooped to such weapons, while conscious, as they must be, that no member of the committee was actuated by any such object. Those, Sir, who know me best, smile, as well they may, at the idea of my coveting titular distinction; while, as regards the chairman of the committee, my honourable friend needs no title to hand his name down with honour to posterity; for in the annals of Australia, in the foremost rank, will be found the name of Wentworth. (Loud cheers.) It has been my fortune, on more than one occasion, to be opposed to my honourable friend; but ours, Sir, has been an honourable warfare. It has not descended to the pitiful level of personality. My honourable friend would not demean himself by such low, grovelling notions. Those who represent him as being now actuated by acrimonious feelings towards the opponents of his bill, or by views of personal aggrandisement, either mistake, or wilfully pervert the truth. Sir, my honourable friend is incapable of such conduct. In framing a constitution for our common country, he has at heart the promotion and security of its best interests. To attain this, he has devoted to the task, with that zeal and ardour which characterise him, his talents, his best energies, every generous impulse of his nature, united and controlled by a deeply seated and fervid love of country. (Cheers.) It was the force of this feeling which led him to beat down opposition by the lightning of his eloquence, or to seek to crush it in the grasp of his strong sense. (Cheers.) In their calmer moments, when they shall cease to be excited by mistaken views of passing events, when no longer the dupes of speculative theorists, or unscrupulous demagogues, the people of this city will wonder at their temporary blindness, and with one voice award to their distinguished representative his true desert. (Hear, hear.) It is because, in common with him, I believe the measure we now propose to be the nearest possible approach, in its main principles, to the mixed form of the British constitution; and because I believe it will be a barrier against republicanism and democracy—that I support it, and oppose to the utmost the untried project of two elective houses, which does appear to me to be fraught with peril. Let us never forget that within the last few years, when the Continent of Europe was rocked to its foundations by the prevailing genius of democracy—when the floodgates of anar-

chy were unclosed, and the landmarks of civilization in danger of being overwhelmed by the devastating torrent, England presented a picture the very reverse. There was then no need for cannon, for bristling bayonets, or the stern array of armed battalions. (Loud cheers.) Then the civil authority, armed with the simple baton of the constable, maintained security and peace. (Renewed cheering.) England's noblest son—now alas no more—the warrior, the statesman, the true hearted citizen, the greatest man (looking at his whole career) of an age fertile in greatness—as he calmly surveyed the peaceful triumph of the law, rejoiced that his veteran arm was not required, and felt a higher pride in the institutions and character of his country. (Loud cheers.) And are we to forego the advantage of this glorious model—this matchless form of government—for an *ignis fatuus*, a Will-o'-the wisp? Shall we quit the safe and beaten path of constitutional precedent, to follow in the train of those who covet power for their own ends, or who would risk all in the visionary hope of theoretical perfection? If so, we shall find, when it is too late, that we are seeking what cannot be attained, at the hazard of all that is most valuable in life. (Cheers.) For there is something beyond even liberty itself. Liberty is only to be prized, when it secures those greater blessings which constitute the true happiness of man. If it be suffered to run wild, and to degenerate into licence, the object is lost, anarchy ensues, and the strong arm of power can alone arrest the evil, and restore the equipoise of society. (Hear, hear.) It has been stated to-night, by the honourable and learned member for Cumberland, in explanation of a recent allusion to a democratic form of government, that that allusion was only hypothetical. I am glad to find it so. But in my opinion, Sir, this is neither a sufficient excuse nor a legitimate basis for argument in a British province. (Hear, hear.) This colony is part and parcel of the Empire, and he who, at a public meeting, puts forth such a doctrine as the possibility of our becoming a Republic, even hypothetically, is doing a mighty mischief. I may personally respect the individual who advances such opinion, but as a British subject I decline to argue with him. (Loud cheers.) Ours is the glorious monarchy of England, and we will maintain it to the death. (Renewed cheers.) I know well the feeling of the people of this colony. I know the character of my countrymen. I am satisfied that even fifty years hence, or at any imaginable future time, they will retain those feelings and that character, and refuse to bow down to the worst, the most degrading of all tyrannies—the tyranny of the multitude. Sir, I have confidence in the fortunes of this great country. I entertain a firm reliance that it is reserved to Australia, under the auspicious shelter of that constitutional form of government, with which will be connected a name not unknown to history (Cheers, and "Oh, oh!"), to rear a power on this shore of the Pacific, which shall extend, throughout the numerous islands that stud its broad expanse, a benign influence; which shall curb the encroaching spirit of democracy, and display, in all their attractions, the claims of English society, and arts, and literature, with our own beautiful language in its full richness and purity. (Cheers.) Thus will this Australian province be amongst the proudest adjuncts of the sovereignty of England, and one of the brightest jewels of her crown. She will be looked upon with admiration by the nations of the earth, and history will point to her prosperous career as combining the blessings of good order and undisturbed tranquillity, with that of true, moderate, and rational liberty. (Loud cheers.) It is the more necessary that we should implant and instil into the minds of our children, and our children's children, the true constitutional maxims of our fatherland, as they will have to carry on this contest—I pray that it may be a bloodless one—between reason and the principles of the British constitution on the one side, and democracy and the principles of the American republic on the other. (Loud cheers.) But we shall be tri-

umphant in this encounter, for "Reason and England will prevail against Democracy and America." The honourable gentleman resumed his seat amidst loud applause.

Mr. CAMPBELL: I will beg the indulgence of the House in rising to address it on this most important measure, feeling that I do not possess those high abilities and powers of oratory that have distinguished the speeches of those who have addressed the House on this question. I will speak my sentiments on this matter with bluntness, and will endeavour not to tire the House with lengthy remarks. I feel that the discussion of this question will affect the future liberties of the country, and that the dearest privileges of a future people are bound up in it. It is on this ground that, looking at the measure now before the House, I consider that the opening thus given to a full extension of the suffrage, demand my co-operation and approval. And however stigmatized the people of Sydney may have been by the promoters of this measure, I feel sure that they do not deserve the epithets applied to them. They possess the same right of freedom of discussion as is demanded by members of this House. The measure introduced by my honourable and learned colleague will have the effect of uniting the colonists in one federal bond, so that they can claim their rights as subjects of a British monarch. The honourable member will receive the honour of this result, while he will, at the same time, receive the dishonour for the manner in which he has vituperated those who differ from him during the course of this debate. And, however the honourable member for Camden may praise that honourable and learned gentleman, lasting dishonor will attach to his name for the use of such epithets as "dirty paltry ruffians."

The SPEAKER: I suggest that the epithets complained of have not been applied indiscriminately to the people generally, but only to a certain section of the community to whom it was believed that the remarks would apply.

Mr. CAMPBELL continued: These abusive words have been referred to by the honourable and learned member for Cumberland, and the honourable and learned member for Sydney did not rise to contradict them. Yet, certainly, if the obvious interpretation of these phrases be the true one, it became the dignity of his honourable colleague to rise up and explain them. It is not right that the people of Sydney should be called the dregs of society, ruffians, and vagabonds.

The SPEAKER: It may prevent unnecessary discussion, if the honourable and learned member for Sydney will explain to the house the use he intended of the epithets referred to.

Mr. WENTWORTH: I will accede to this suggestion, though I did not think it worth my while to answer the question before. The particular expression that I did make use of was, that this was a filthy lucre-loving country. (Hear, hear.) Of course I did not mean by this, that the country itself was filthy (loud laughter), but the people were filthy and lucre-loving.

Mr. CAMPBELLL resumed: Now, as far as I have read, I see nothing to draw down on the people of this colony the extreme taunts of this House. What do we see on referring to this Bill? Why, that some of the clauses are repugnant to the principles of the British Constitution. In one of these clauses the ministers of religion are restricted from entering this House (hear, hear), and in another the Judges of the land are not allowed to sit in the Legislature. (Hear, hear.) Thus these two clauses are contrary to the spirit of the British Constitution. (Cries of "no no.") The citizens are not justly taxed with the odium that has been cast upon them; their forbearance and bearing at the public meeting was that of orderly people. I will now support the second reading, on the principle that it will extend the franchise of the people, and I hope before I die to see every honest man in the colony possess this inalienable right. In the discussions that have taken place recently in the House of Commons,

Sir James Graham and the Duke of Newcastle told the people that the time had now come when their suffrages could with justice be extended. I shall support the second reading of the Bill, but still there is much in it to excite the jealousy of the people outside. Especially is that monstrous proposal which requires the votes of two-thirds of the Legislature to make any alteration in the form of government; and I hope that, in the course of the Bill through Committee, this clause will be omitted. The clause for prohibiting ministers of religion from the Council, is particularly reprehensible. However other honourable members may think on the matter, I contend that it was doing dishonour to the religion we profess. Why it may be that this House may come to be sunk so low that the ministers of religion will be sent in to reform the corrupt body. (Cries of oh, oh, and laughter.) It is also preposterous to prohibit the Judges from sitting in the House.

Dr. DOUGLASS: Where do you find this in England?

Mr. CAMPBELL: In the second House; the Judges sit there by virtue of their appointments.

Mr. NICHOLS: No, they don't.

Mr. CAMPBELL continued: There are other defects in this Bill. The squatting interest, which before was represented by only eight members, is now to have thirteen. Additional members are to be given to the districts represented by the framers of this measure. The constituency of Camden is to have henceforward four members instead of two; Bathurst is to have four instead of seven; and the county of Cumberland thirteen instead of eight. The town of Parramatta will have two members instead of one. The Hamlets will have an additional member; and Sydney—my native city—(a laugh)—only four members altogether! Honourable members may laugh, but had I sufficien ability and eloquence I would, in defendt ing my country from the libels cast upon her, make honourable gentlemen laugh the wrong side of their cheeks. (Loud laughter.) I trust that when the Bill goes into Committee such alterations will be made as will render it more palatable to the people. I hope that under this Act the people will acquire great liberty and power. For, if this proposed Constitution be carried out, and we have a Lower House fairly representing the the people I care not how the Upper House is constituted—(hear, hear)—if we could not by this means resist oppression and control corruption, it is the people's fault. (Loud cheers.) The democratic principle must prevail wherever the British Constitution is carried out; and I will defy any lover of his kind to think meanly of even the humblest of his fellow-creatures. It would be a wretched thing for us to imitate that avaricious that selfish man, who destroyed his brother, and then said, "Am I my brother's keeper?" If the good of the greatest number is not made our object, of what value are our political institutions? This debate has already lasted several nights. At one time the honorable member for Cook and Westmoreland rose and opposed the honorable and learned member for Cumberland, and cut him completely to pieces (loud laughter), speaking for three hours in favour of the British Constitution, and ending with proposing that the Upper House should be elective. (Loud laughter.) As a lawyer should do, the honorable member made out a distinction where there was no difference (a laugh), and attempted to show that the producers and consumers had two different interests. I cannot but believe that what is the interest of one is the interest of all. (Hear, hear.) It may be found that the offer of the suffrage made in this measure is only intended as a snare to entice the assent of the people to its acceptance. I would recommend, that instead of fighting over the old bones of the senate, (laughter), we should at once unite to get this house free of the Crown nominees. In this way we should be advancing our own interests and the interests of the country. (The honorable gentleman then proceeded to dissect the Electoral Act of 1851, and showed, that

in the proposed addition of new members, only those parts of the country that were in the favour of the Executive Government had been considered worthy of an additional member, and in some cases the boon had been granted out of compliment to the sitting members —as Durham, for instance—and then for Brisbane, where that great battle was fought which freed this country from the curse of convictism; they proposed no additional member at all for Brisbane, where Dr. Lang had brought the 468 emigrants, and for which he had never been paid a farthing by the Government, by that Government which at first opposed the great measure that Brisbane had so ably assisted to forward, and which Government at last came forward and said, when they found the will of the people too strong for them, that they were in favour of.) I am convinced that, if the unanimous wish of the people be that the Governor should dissolve the Council, we ought not to resist—the Council ought to be ashamed of itself, if it attempts to pass this measure contrary to the desire of the people—we ought manfully to go before our constituents, and bide the issue. As to myself, I have no hesitation in giving my opinion upon the whole matter before the house, I shall not hesitate in doing it, but before doing so, I shall refer to a remark which has been made upon the contemptible aspect of the House of Lords, at the passing of the Reform Bill. I can conceive nothing grander than the conduct of some of the members of that body—at the solicitation of the King of England, and to save the dignity of the Crown, rather than sacrifice their own ideas, they walked out of the House. I will now observe, that it behoves the people of this colony not to step too far in their demands, and that whilst contending for an elective Lower House they should not meddle with the Upper—whilst I, a democrat, as the House may call me (laughter), stand here contending for universal sufferage, I feel that the people should allow the Upper House to be nominated by the aristocracy; they should not interfere, for it has been proved by experience, that the liberties of the people have never been tampered with by such a creation. While I contend for universal suffrage as the birthright of every Englishman, I would equally contend that the nomination of an Upper House should be left in the hands of those to whom it properly belongs. It belongs to the aristocracy, whether that aristocracy be one of birth, of talent, or of wealth. The members of this Upper House should represent their order, as the tribunes of the people represented theirs. (Hear, hear.) History showed that this independence of the House of Lords, so far from having any oppressive tendency, has been the means, on many occasions, of preventing the people from being tyrannized over. (Hear, hear.) This Upper House should, I think, be elected independently both of the Crown and the people. If the members are mere nominees, it is impossible that they can be independent; but all difficulty may be got over by introducing the elective principle, and allowing the members of the aristocracy to elect their representatives. This, too, may get over the difficulties and disputes between the advocates of the elective and nominee principles. With these sentiments I have no hesitation in going once more before my constituents, should I be called upon to do so by the dissolution of the House; and if, from prejudice or any other cause, I should be excluded from the representation, I readily retire into private life, from which I have only emerged from a strong feeling of public necessity. (Cheers.) The sentiments to which I have given utterance have been used by many highly gifted men. I have read an extract, from a newspaper, which will show that aristocratic connection is not a bar to the advocacy of popular and constitutional rights—

At Huddersfield election, Lord Goderich, a young nobleman, whose sympathies are with the people, was returned by a large majority. In the course of his speech on the day of nomination, he said he "would promote progress and reform, because he believed they would thus best maintain all that was valuable in the constitution. Much had been said to the men of Huddersfield concerning the extreme nature of his opinions. He had endeavoured to judge for himself. He had

so endeavoured to study men and the country in which he lived as to arrive at the wisest conclusion. And in so doing he had at least laid aside, so far as he was able, the prejudices which might be supposed to belong to his class. Certain persons have alleged against me something worse than my being only 25 years of age—it is this, that I have had too much sympathy with the working classes, and because of my position I can have no sympathy with you. If I am to choose between the two accusations, I would rather have the wildest imaginable sympathy with you, and be supposed to be a fanatic overturning society for your benefit, than I would be accused of being a man without sympathy for my fellow countrymen."

I feel equally strong as to the excellence of the British Constitution, with an eminent French professor, M. Delille, who has concluded a recent lecture in these terms—

After considering the customs and manners of other countries, I turn to England with a rejoicing look and confident heart: it contains in its established institutions, its domestic habits, and its long tried comforts, the greatest amount of happiness which, in this world, it is our portion to enjoy; and had I the eloquence equal to the intense power and intense sincerity of the conviction which is excited in me, and the feelings which such sentiments create, it would be to convey to the youth of England that their attachment to their country cannot be too great, for as it grows with them, and unites in the maturity of manhood, with soundness of judgment, it will secure and maintain for the future that noble distinction which for ages has characterized the British empire in the glorious annals of European civilization. (Cheers.)

Dr. DOUGLASS moved the adjournment of the debate. Carried.

Dr. DOUGLASS: I may safely say that never have I risen to address this House under a deeper sense of the magnitude of the question in which the House is involved, or of the eloquence of the speeches which has already been addressed to the House upon it. I feel, so far as the merits of the question are concerned, that I might leave the matter as it rests, on the arguments and authorities contained in those speeches. I feel, after the addresses of my honourable and learned friend the member for Sydney, the honourable member for Cook and Westmoreland, and the honorable and learned member the Attorney-General, that there is little, if anything, to be said by other speakers in support of this measure. It is, however, thought advisable that each representative, particularly those representing large constituencies, should express their opinions on this question: and I have, therefore, risen to state my views; and I must add I am the more tempted to address the House because the opinions expressed in the speech of the hon. and learned member for Cumberland (Mr. Darvall), in reference to the superiority of American political institutions, are, I believe, if carried out, calculated to sap the foundations of society at large, and to that I would chiefly address myself. The honourable member, in the views he has expressed on this question, began with America; his speech was all America, and nothing but America, going through the history of America from the arrival of the May Flower at New Plymouth, until the establishment of the Senate and House of Representatives. It was a long and tedious journey, and occupied an immense period of time. Since, however, the honourable member has led the way, it will not be amiss for us to follow him and see how far he has realized his own opinions. He has described the origin of the settlement in America as being the result of the arbitrary power of the Crown in Great Britain; but he forgot to show that these first settlers themselves were far more arbitrary than any of the monarchs of Great Britain, or any institution established under them. The rock on which they first set foot at New Plymouth, was much sneered at by the wits in Boston, who called it the "Blarney Stone" of America. This stone exists to the present day, and, amongst other purposes, has served that of the honourable and learned gentlemen. The honourable and learned member (Mr. Darvall) stated that these first settlers were driven from their homes by the oppression and tyranny of the English Government, and had resorted to this land in order that they might enjoy a fuller measure of liberty, civil and religious, than was allowed to them in their own country. In order to feel confident that these early settlers deserved the credit awarded to them by the honourable and

learned member, I must consider how far they used the same authority, the abuse of which had driven them from the land of their birth. Now it was in the year 1620 (he quoted from a work entitled, The English in America) that these first respectable settlers landed at New Plymouth, and afterwards retained possession of it. The first thing they did after landing was to frame certain rules, by which it was provided that no person who was not of them, that is to say, not of their religion, should abide among them. This was their democracy—(a laugh)—their ultra republicanism (a laugh). Thus it was shown that these people, who were republicans in politics, were also fanatics in religion. The author of the work he had alluded to described their proceedings as follows :—

An English dissenter of the name of Blackstone, whom they found living at Boston, and claiming it by virtue of his discovery and possession, was soon made to feel the difference between republican and royal compulsion, and on quitting the community remarked, in the bitterness of disappointed feeling, "that he had left England because he did not like the Lord Bishops, but that he should now leave them, for he could not stand the Lords Brethren."

Blackstone found that he had left England because the Lord Bishops oppressed him, and he went to America to find that the Lords Brethren did the same thing. The author went on to describe the rules laid down by this republican and puritanic body, and he said—

They, therefore, at this early date, 18th May, 1631, enacted, "in order that the body of the Commons might be preserved of good and honest men," that no person should be admitted to the freedom of the Company but such as were members of some of the churches established by law. So effectually did this check the introduction of Episcopalians, that during the whole continuance of the Charter not a single congregation was collected in all Massachusetts.

This bold attempt at exclusive sovereignty is thus lamented by Leechford. "None may now be a freeman of that company unless he be a Church member among them. None have voice in elections of governor, deputy, and assistants; none are to be magistrates, officers, or jurymen, grand or petit, but freemen. The ministers give their votes in all elections of magistrates. Now the most of the persons at New England are not admitted of their Church, and therefore are not freemen; and when they come to be tried there, be it for life or limb, name or estate, or whatsoever, they must be tried and judged too by those of the Church, who are in a sort their adversaries." How equal "that hath been or may be, some by experience do know, others may judge." Another law was passed in the year 1767, having in view the same object—"That none should be received to inhabit within jurisdiction but such as should be allowed by some of the magistrates," and it was fully understood that differing from the Churches established in the country was as great a disqualification as any political opinions. In defence of this order, it is advanced that the apostolic rule of rejecting such as brought not the true doctrine with them was as applicable to the Commonwealth as the Church, and that even the profane were less to be dreaded than the able advocates of erroneous tenets. Complaints they could not prevent, nor could the right to petition the Crown be openly impugned but by creating a new offence, that of accusing the brethren; no one could petition without being guilty of this crime. They therefore forbore to press a man to trial for memorialising the King in Council, but they charged him with slandering the brethren, and held him liable to fine, imprisonment, or corporal punishment, or all three, for this petty treason.

This was the beginning of the liberties of America—of that America whose rise and progress in the constitutional principles of freedom have been so boasted of by the honourable and learned member for Cumberland (Mr. Darvall). But these oppressions were not of individual character; they extended to every one who dared to infringe on the rules or on the prejudices of the early settlers. We find in the same book, that a man of the name of Waterman had determined, in accordance with the customs of his country, to put up his Maypole. He did so, and the consequence was he was seized, put in the stocks, and transported to England for the offence. (Laughter.) In addition to this the writer goes on to state—

The Governor, affecting to espouse the cause of an Indian, who disputed his right to the possession of a canoe, arrested him, burned down his establishment, and confiscated his estate, to pay for the expense of conveying him to England. In London he was joined by two other victims of their cruelty and oppression, Sir Christopher Gardner and Philip Ratcliffe, who united with him in petitioning the King for redress. The former had been sent out by Sir Ferdinando Georges, as his agent, for the protection of a large territory he had purchased adjoining that of the colony of Massachusetts. Whatever his religion may have been, one thing was certain—

he was not a Puritan As a stranger, wholly unconnected with the colony, it was not a question for their consideration whether he was a Romanist or a Churchman; but they assumed the fact that he was a Papist, and ordered him to be arrested."

And continuing—

The other complainant was Philip Ratcliffe. He had been a servant of Craddock, the first Charter Governor, and falling ill in his employ, on his recovery demanded wages from the agent of his master for the time he had been disabled. Disappointed in his expectations, he made some disparaging remarks about a people whose conduct so little comported with their professions. For this offence he was fined forty pounds, severely whipped, shorn of his ears, and banished forthwith out of the jurisdiction.

This was the commencement of that political and religious liberty which has been so highly vaunted of by the honourable and learned member, Mr. Darvall.

Mr. DARVALL: What I said was in effect, that it was not likely that those who had been driven from their own homes by prosecution and oppression, should in the first instance behave very liberally to those who differed from them.

Dr. DOUGLASS: The honourable and learned member at all events spoke of the excellencies of the American Constitution from the commencement. At the period of which I speak, a man committed an offence (the murder of an Indian), for which he was ordered to be hanged; but as he happened to be the only cordwainer of the place, it was found that he could not be spared, but for the ends of justice it was deemed necessary that somebody should be hung in his stead, and accordingly an old bed-ridden pauper, of no use to any one, was hung up in his place. This was the policy, the justice, of the early settlers in this land of liberty. (Laughter and cheers.) In relation to this circumstance the following verses in Hudibras referred:

> That sinners may supply the place
> Of suffering saints, is a plain case:
> Justice gives sentence many times
> On one man for another's crimes!
> Our brethren of New England use
> Choice malefactors to excuse,
> And hang the guiltless in their stead—
> Of whom the Churches have less need—
> As lately 't happen'd. In a town
> There lived a cobbler, and but one,
> That out of doctrine could cut, use,
> And mend men's lives as well as shoes.
> This precious brother having slain,
> In times of peace, an Indian,
> The mighty Tottypottymoy
> Sent to our Elders an Envoy,
> Who called upon the saints to render
> Into his hands, or hang, th' offender.
> But they maturely having weigh'd
> They had no more but him o' the trade,
> Resolv'd to spare him;—yet to do
> The Indian, Hogam Mogam, too
> Impartial justice, in his stead did
> Hang an old weaver who was bed-rid.

This is one of the little anecdotes of which, when this country begins to think of the prestige of American freedom, the people will do well to ponder over. Nor do I think, when we come to consider what has been the growth of that liberty, we shall find that there is much to desire or much to imitate. The present Constitution of America is the expansion of the first constitution proposed, and which has been hedged in and surrounded with every possible safeguard against popular intrusions. Witness that novel and singular power of the judiciary against any sudden or violent change in the constitution—which power was created by the greatest democrats, from fear of the consequences of the form of Government and political institutions which they themselves had founded. It is the very reverse of that expansive power which is the inherent quality of the British Constitution; but yet it is praised by the honorable and learned member. The honorable and learned member (Mr. Darvall) has compared the senate of the United States to the House of Lords, and has said it is superior to the latter body. It is necessary, in the comparison, to see what the Congress of the United States really is, and how it is estimated in America; and I find, in an article in the *Westminister Review*, April, 1853, a description of the Lower House of Congress. It sets out that the members of Congress shall be of the Christian religion, that they shall be sworn on the Gospel of God, with some other forms. The article then goes on—

> There is yet a remnant of good men in Congress, but they are hopelessly overpowered; the

virtue may remain, but their courage is withered. They have no effective influence, not even the slightest pretence of it. The greater number laugh in derision at the idea that honesty and patriotism should have any sway in Congress. Every measure of a general nature, designed for the public benefit, is scouted; and the member who ventures to speak on such subjects, or to urge such legislation, unless he is known to have some special private end in view, is regarded as super-servicable, over-righteous, and eminently verdant. They pity, if they do not despise, all such as attempt to acquit themselves of the duties of their station, and their oath of office. There runs not in Congress, then, the slightest perceivable current of legislative morality, or wisdom, or public virtue. The members have substantially repealed their oath of office, and resolved Congress into a grand agency of the various political parties, which manage the elections, and aim at the control of the offices, the power of the country, the treasury, and the national domain.

He goes on to detail circumstances which entirely harmonise with such a character for corruption as he thus attributes to Congress. Scarcely a member but will take a bribe for his vote. These "congressional brokers" may be numbered by "scores or hundreds." They fill a great variety of grades, "from those who offer to procure special legislation for one, two, or three hundred thousand dollars, to the humbler police of this hungry pack, whose office it may be to keep members in their seat at the hour of voting, or to keep them away, or to lead them to the gaming table to win their money." The favours of the Congress are "struggled for on the floor of the Capitol." Congress is as bad as our own chancery. "Claims of undisputed justice, some of them as old as the Revolution, are besieging the justice of Congress for nearly half a century." A debt due to certain citizens of the United States by France, was acknowledged by Louis Philipe, who paid the money into the treasury of the United States, where it remains, through the refusal of the Congress to order it to be paid to its rightful owners." Some of these owners have passed their lives in fruitless application," "their widows and orphans have grown old in poverty and suffering," urging their claims. There is more work, it would appear, for Mrs. Julia Tyler and the American ladies than the emancipation of Uncle Tom. We suspect that the author is a disappointed printer, with some rejected estimates in his hand, so strongly does he condemn the way in which the public printing is executed. Moreover, "thrice too much is paid for it, and the whole is a job reeking with corruption."

This was merely the Congress of the Lower House. But I will now refer to the Congress of the Senate, and the honorable and learned member will scarcely say that he has been misrepresented in the public press, in the warm and glowing eulogium which he has passed on the Senate of the United States. But I will read the character of that Senate from one of the greatest and most popular statesmen America ever possessed; the announcement of whose death was, through the length and breadth of the land, considered a popular bereavement; and for whom, wherever the announcement of his decease was made, there was scarcely a dry eye in any place. Let us see what he said of this body. We find that Mr. Webster, not speaking to a popular meeting, not writing a newspaper diatribe, but addressing the Senate itself, made the following observations. I ask the particular attention of the house to this passage, as I do not wish to have American Republican institutions forced down the throats of Australian colonists. He said,

As far as I remember, Sir, after the early part of Mr. Jefferson's administration, hardly an instance occurred for thirty years; if there were any instances, they were few. But at the commencement of the present administration, the precedent of these previous cases was seized on, and a system, a regular plan of Government, a well-considered scheme for the maintenance of power, by the patronage of office; and this patronage, to be created by general removal, was adopted, and has been carried into full operation. Indeed, before General Jackson's inauguration, the party put the system into practice. In the last session of Mr. Adams' administration, the friends of General Jackson constituted a majority in the Senate; and nominations, made by him to fill vacancies, which had occurred in the ordinary way, were postponed, by this majority, beyond the 3rd of March, for the purpose, openly avowed, of giving the nomination to General Jackson. A nomination for a Judge of the Supreme Court, and many others of less magnitude, were then disposed of. And what did we witness, Sir, when the administration actually commenced in the full exercise of its authority? One universal sweep, one undistinguished blow, levelled against all who were not of the successful party. No worth, public or private, no service, civil or military, was of power to resist the relentless prejudices of proscription. Soldiers of the late war: soldiers of the revolutionary war, the very contemporaries of the liberties of the country, all lost their situations. No office was too high, and none too low; for office was the spoil—and all the spoils, it is said, belong to the victors! If a man, holding an office necessary for his daily support, had presented himself covered with the scars of wounds received in every battle, from Bunker-hill to Yorktown, these would not have protected him against their reckless rapacity. Nay, Sir, if Warren himself had been among the living,

and had possessed any office under Government, high or low, he would not have been suffered to hold it a single hour, unless he could show that he had strictly complied with the party statutes, and had put a well marked party collar round his own neck. Look, Sir, to the case of the late venerable Major Melvill. He was a spirit of 1776, one of the very first to venture in the cause of liberty. He was of the Tea party—one of the very first to expose himself to British power. And his whole life was consonant with this its beginning. Always ardent in the cause of liberty; always a zealous friend to his country; always acting with the party which he supposed cherished the genuine republican spirit most fervently; always estimable and respectable in private life—he seemed armed against this miserable petty tyranny of party, as far as a man could be. But he felt its blow, and he fell. He held an office in the Custom-house, and had holden it for a long course of years; and he was deprived of it, as if unworthy to serve the country which he loved, and for whose liberties, in the vigour of his early manhood, he had thrust himself into the very jaws of its enemies. There was no mistake in the matter. His character, his standing, his revolutionary services, were all well known, but they were known to no purpose; they weighed not one feather against party pretensions. It cost no pains to remove him; it cost no compunction to wring his aged heart with this retribution from his country, for his services, his zeal, and his fidelity. Sir, you will bear witness that, when his successor was nominated to the Senate, and the Senate was told who it was that had been removed to make way for that nomination, members were struck with horror. They had not conceived the administration to be capable of such a thing; and yet they said, what can we do? The man is removed; we cannot recall him: we can only act on the nomination before us. Sir, you and I thought otherwise; and I rejoice that we did think otherwise. We thought it our duty to resist the nomination to a vacancy thus created. We thought it our duty to oppose this proscription when and where, and as we constitutionally could. We besought the Senate to go with us, and to take a stand before the country on this great question. We invoked them to try the deliberate sense of the people; to trust themselves before the tribunal of public opinion; to resist at first, to resist at last, to resist always, the introduction of this unsocial, this mischievous, this dangerous, this belligerent principle, into the practice of the Government. Mr. President, as far as I know, there is no civilized country on earth in which, on a change of rulers, there is such an inquisition for spoil as we have witnessed in this free republic. The inaugural address of 1829 spoke of a searching operation of Government. The most searching operation, Sir, of the present administration has been its search for office and place. Whenever, Sir, did any English minister, whig or tory, take such an inquest? When did he ever go down to low water mark, to make an ousting of tidewaiters? When did he ever take away the daily bread of weighers, and gaugers, and measurers? Or when did he go into the villages to disturb the post offices, the mail contracts, and everything else in the remotest degree connected with Government? Sir, a British minister who should do this, and should afterwards show his head in a British House of Commons, would be received by an universal hiss.

When the honourable and learned member compared the Senate of the United States with the House of Lords, and sought, from this comparison, to raise inferences to the disadvantage of the latter, he stood back from the bar, and raised his arms, as if he expected to draw down cheers from both sides of the House. None, however, were heard except the chirp of one solitary cricket, who seemed to delight in the prospect of the flood of democracy being let loose on his little northern rivulet. (Laughter.) The honorable and learned gentleman was equally unhappy in his reliance upon the institutions of Belgium; and if he had read more closely the authorities to which he had referred, he could not have failed to discover this error. He would have found, that instead of justifying the elective principle, as applied to both branches of the Legislature, the Constitution of the kingdom in question would leave a very different impression—

The Senate and the Chamber of Deputies of Belgium are both elected. The country is divided into electoral districts containing 40,000 persons; each such district returns one member to the Chamber of Deputies, and two of them one member of the Senate. The Deputies are elected for four years, one-third retiring every two years. The Senators are elected for eight years, one-half retiring every four years. The franchise which qualifies an elector is the same both for the Chamber and the Senate, viz., the payment of a direct tax of £1 15s. 6d. a year, which is derived mostly from land; and the operation of it is, that the urban representatives are returned by a body of electors numbering not quite 31 in every 1000 persons, and the rural members by only 14 in every 1000 persons, or by an average of about 21 in every 1000 of the whole population. No property qualification beyond that necessary for an elector is requisite for a Deputy, but a Senator is required to have paid in direct taxes upwards of £83 a year, so that a very small number of persons can qualify for the Senate.

The King can dissolve both the Senate and the Chamber at any time, either collectively or separately.

By the Bill before the House it is proposed to give nearly every person a

voice. (Oh, oh.) The provision for household suffrage, and the other qualifications, by which, according to this Bill the franchise is conferred are, I will maintain, as near an approach to universal suffrage as is practicable, without an actual resort to that measure in its entirety. (Hear, hear.) The King too, in the Belgium Constitution it will be observed, has power to dissolve one or both of the chambers at his pleasure; and I would ask honourable members what form of Government is that in which such a power is given to the head of the State? Is it monarchical? In another part of his speech, the honourable and learned gentleman contended that the present feeling of the British colonists was so strongly in favour of elective institutions, that in any case where they had the power to create a new form of Legislature they would invariably pronounce in favour of these institutions. Now it happens that the very newspaper which contained a report of the honourable gentleman's speech—a speech which he would no doubt cause his children to get off by heart, (laughter,) contained a report of the people of South Australia,—a British colony—having agreed to the establishment of a *nominated* Upper House. (Hear, hear.) But there is one part of the honourable gentleman's address, which I regard with far different feelings, and conceiving that there must have been some error in the reported versions of those remarks, I allude to them with a hope that the honorable gentleman will correct this mistake, and set himself right with this House and the country. I allude to those remarks in which the honourable member, in contrasting the state of the law and the general obedience to it, in the United States and this country, has maintained that murder of the most horrible kind has been allowed to pass unpunished here, and that although some of the guilty parties were convicted of manslaughter, and sentenced to various periods of punishment, the justice of the case was not met, as they, or some of them, ought to have been hanged. Now, in what position is the honourable and learned gentleman, as the advocate of some of these parties, with reference to whom he made this assertion?

Mr. DARVALL: Did the honourable member mean to say that he had ever complained that men found guilty of manslaughter had not been hanged? Such a complaint would have been absurd, and he certainly had never made it.

Mr. CAMPBELL rose to order. The honourable and learned gentleman, as an advocate for these parties, had simply done what was considered his duty in endeavouring to make that which was wrong appear right. (Laughter.) The allusion to his position in this respect is, I consider, both irregular and unjust.

The SPEAKER: It is competent for any honourable member to deal with the arguments of another during the course of the debate, and if in so doing there is any misrepresentation, the gentleman misrepresented has a right to explain.

Dr. DOUGLASS: The opinion has gone abroad, and has made much impression, that the honourable and learned gentleman, who was the advocate for those parties, thought they ought to have been hanged. Instead, therefore, of getting into a rage, the honourable and learned member ought to have been glad to have an opportunity of setting himself right.

Mr. DARVALL: I have never said, nor has any report represented me as having said, what is alleged. What I did say was, a cruel murder had been committed, and that whoever had actually committed it deserved hanging, but no one suffered the extreme penalty of the law on account of it. Will the honorable member point out the passage?

Dr. DOUGLASS: I will read the passage. "Men had been struck down and killed in an affray in such a manner, that the act was clearly 'murder'; and yet the murderers had escaped. He saw the Attorney-General who conducted the case looking up, but the fact was so." The hon. member for Cumberland, in the course of his speech, had alluded to the hereditary clauses of the Bill. No one is more opposed to the scheme of hereditary lawgivers than myself. It is most

unfortunate that it has ever been introduced into the Bill, for if it had not been so introduced there never would have been all this disturbance about it. It arose from an idea of Mr. Pitt, in framing the Canada Act, with the view of assimilating the constitution of that province as nearly as possible to that of Great Britain; and accordingly, a clause was introduced to that effect in the 31st Geo. III. c. 31.; but the power has never been exercised. It has been justly observed that these honours might be very proper, and of great utility in countries where they have existed by long custom, but they are not fit to be introduced where they have no original existence; where there is no particular reason for introducing them, arising from the nature of the country, its extent, its state of improvement, or its peculiar customs; and where, instead of attracting respect, they might create envy. Lords, it is said, might be given to the colonies, but there was no such thing as *creating* that reserve and respect for them, on which their dignity and weight, in the view of both the popular and monarchical part of the constitution, must depend, and which can alone give them that power of control and support which are the objects of their institution. I cannot but think that the hon. and learned member for Sydney, in drawing this report, must have overlooked the objectional parts and consequences of these hereditary clauses. They are unnecessary to carry out the principle. True nobility is independent of mere hereditary rank. There is no need of an hereditary title to hand down to posterity the fame of the honourable and learned member himself. I know Time has a wallet at his back, in which he puts alms for oblivion. But the unceasing exertions of my honourable friend will not be classed amongst those good deeds past, devoured as soon as made, forgot as soon as done. In future ages, when in this great land is established an empire of the south corresponding in greatness with the parent empire of the north, the student, with glistening eyes, will read the record in history of my honourable friend's acts, and will be moved with admiration and envy—admiration of the man, and envy of those who, living in the same age, had an opportunity of contemplating his career. A similar meed of fame will be awarded in history to him who, during a time of great trial, when the country was passing through a crisis of unprecedented difficulty, had had the chief responsibility of advising the Government. These are the true hereditary honours for which we must all strive. The honourable gentleman has spoken of the nominees in this House as a class of gentlemen who would find it difficult to procure their election if they appealed to a constituency. The honourable gentleman forgets that he has himself been a nominee, and has nevertheless been elected by two constituencies. He forgets, also, the examples of Mr. Lamb, and of the honourable and gallant member for Gloucester, Captain King, R.N., and of the present member of Parliament for Kidderminster. (Hear, hear.) If previous selections have been thus happy, it is probable that the future selections will be equally so; and that men will be chosen for a seat in the Upper Chamber who could appeal successfully to a constituency. (Hear, hear.) The honourable gentleman has alluded to the nominees of Canada; but it would be better to go to Canada itself for authority upon this point; and I will set the honourable member right by a quotation from the report of Lord Aylmer.

> It would be difficult, perhaps, to find in any British colony a legislative body more independent of the Crown than the Legislative Council of Lower Canada; and so far am I from possessing, as the King's representative, any influence there, that I will not conceal that I have on more than one occasion regretted the course adopted by the Council.
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> Any organic change in the Legislative Council must be well considered, before it is granted, in two distinct and separate bearings: first, as it affects the connexion with this country; and secondly, as it affects the interests of the colonists themselves. The avowed object of the Assembly, in advocating this change, is to procure an identity of views in the two branches, which would be effected by their being elected by the same persons, or, which is the same thing, by the same influences. Were this to take place,

it would be a duplicate of the House, registering its acts, but exercising no beneficial legislation upon them. A difference of opinion then, whenever it occurred, would not be between the two Houses, but between them and the Governor, and it is easy to conceive how untenable his position would soon become. At present, although possessing a veto, and forming a constituent, he can hardly be said to be a deliberative branch of the Legislature; but by this change, either such duties must necessarily devolve upon him, and occasion the exercise of incompatible power, or in every instance where he differed in opinion, he would be compelled to resort to a rejection of the measure.

The honorable and learned gentleman has also spoken of Jamaica. Now, I will quote an article from the *Economist* of June 18, to show the condition of the Legislative Assembly in that country, and how such assemblies are apt to lose sight of the public good for the gratification of mere personal feeling, if there be no check upon their proceedings.

But some years since the House of Assembly proposed to do something towards equalising revenue and expenditure, and for this purpose enacted a bill for a reduction of official salaries, varying from 10 per cent. on the smaller to 33 per cent. on the higher amounts. This bill was rejected by the Legislative Council. It has been sent up to them repeatedly, and repeatedly rejected. At length the House of Assembly, baffled in their attempt to pass their bill as a substantive measure, have so curtailed, and so appropriated their supplies for the year as to effect the same object by a side wind—*i. e.*, they have voted supplies *minus* the amount of the desired diminution of salaries. The Legislative Council have refused to be thus reduced to a nullity, and have rejected the mutilated taxes thus assigned. Many of the taxes and import duties have thus ceased; goods are being imported freely, and a great portion of the revenue is thus sacrificed to a dispute between the two branches of the Government.

Such is the case on behalf of the Assembly, and at first sight it seems but reasonable that the representatives of an impoverished island should not be checked in their desire for retrenchment; that the attempt to equalise revenue and expenditure is a laudable one; and that public officers should be willing to bear their share in the common poverty. But this, as we shall now show, is a very imperfect and deceptive view of the whole case. Two or three facts will suffice to give a totally different aspect to the transaction. In the *first* place, the proposed reduction would involve a flagrant and and unprecedented breach of public faith. Most of the official salaries which it is intended to curtail were fixed by permanent acts of the Legislature, and at no distant date. The present holders of them accepted them on the understanding of their permanence, and in one instance, at least, a larger income than the one conferred was relinquished by the individual appointed. Nearly half the whole reduction, too, would have fallen upon about twelve persons—all high judical functionaries, whose offices it in peculiarly important to have filled by the ablest men who can be chosen, and where, therefore, as illiberal parsimony is peculiarly misplaced. *Secondly*, the proposed retrenchment is known to have originated out of a feeling of hostility to the Home Government, and a desire to retaliate upon their nominees for what was deemed the injurious and unkind legislation of the mother country. The idea of stopping the supplies (it appears beyond a doubt from Sir C. Grey's despatches,) was suggested to the colonists by a party in the mother country, whose object was to embarrass the Ministry then in power, and, if possible, compel them to abandon their free trade policy, or, at least, to pause in its application to the produce of the sugar islands. The purpose of the House of Assembly was, at first, to deter us from adopting the system of unrestricted commerce, and at last to punish us for having adopted it. *Thirdly*, the *animus* which moved the Assembly is sufficiently indicated by the significant fact, that they had expressly *exempted* from the proposed reduction the *salaries of their own Speaker, Clerk, and Sergeant-at-Arms. Fourthly*, that a genuine equalisation of revenue and expenditure was not the real aim of the Assembly, was shown by the consideration that the whole amount of the proposed saving was only £14,000 upon a total of £375,000; and that far more effectual means of restoring the finances than a meagre and shabby measure of confiscation against a few individuals, were urged upon them and rejected by them. For it should be known that the powers of the House of Assembly in Jamaica are, in some points, far more extensive than those of the Imperial House of Commons, and those of the Governor are far more limited than those of our Cabinet. The Assembly is in a great degree an Executive as well as a Legislative body, It has unbounded control over the finances. It, not the Government, initiates proposals of expenditure and taxation; it, not the Government, collects the revenue; it, not the Government, audits the public accounts. The Government has no power of correcting jobs. Every member of Assembly proposes any vote which he considers advisable; nor is there any person responsible, like our Chancellor of the Exchequer, for preparing an estimate of the probable receipts and expenditure of the colony, and taking care that the latter shall be covered by the former. "It is too commonly the practice for each member of the Assembly to push forward every grant for objects interesting to himself or his constituents, without much regard to the amount or comparative urgency of other claims upon the public purse: so that the appropriaton of the revenue comes to be determined rather by a kind of scramble amongst the members of the Legislature than by a careful consideration of what the public interest requires." Thus the Assembly has entire power over the finances, and therefore is entirely responsible for

them. Well, at the very time when it was urging on the Governor and Council its paltry measure of reduction, the Receiver-General (one of its own members) died, leaving a large deficiency in the Treasury, and the Governor could not induce or compel the Assembly to take prompt steps for examining into his accounts, or recovering the deficiency from his securities. The taxes, too, were very irregularly collected, the largest arrears being due, it was alleged, from those best able to pay them. Yet the Governor had no power to rectify this abuse himself, and he could only represent it to the Assembly, who neglected and resented his interference. He showed them that there had been no falling off in the revenue which might not be accounted for either by injudicious reduction of duties, or by the lax, imperfect, and negligent collection of the taxes. The Assembly, however, turned a deaf ear to all these representations, and concentrated their whole zeal on their own ineffective scheme of aggressive and retaliating retrenchment. The Governor therefore, backed by the authorities at home, firmly, and—as we think, and as we are satisfied our readers will agree with us—justly refused to allow the Assembly to atone for a neglect of their own duties by an injustice committed against others; or to permit himself and his Council to be put aside and reduced to absolute impotence by sanctioning a measure which in another and more avowed form they had three times deliberately rejected.

The consequence must inevitably fall upon the Assembly and its constituents themselves; and these consequences may be very serious. The salaries which it is proposed to reduce, being secured by legislative enactments for a fixed term of years, will, if not paid, still remain a recoverable debt on the finances of the island; and while duties and taxes are suspended, a large revenue will be sacrificed. The police force will have to be reduced or disbanded, and many of the most essential functions of Government must be suspended. Men of property will be the chief sufferers. The folly of the Assembly is the more unpardonable, inasmuch as they have the example of Guiana before their eyes, where a few years since exactly the same game was played, for the same purpose, and with utter and mischievous failure. In a fit of irritation, arising out of their commercial distress, which they attributed to the legislation of the mother-country, the members of the Combined Court of British Guiana refused to vote the supplies without accompanying the measure by a reduction of 25 per cent. in the guaranteed salaries of many public officers. The Governor very properly refused to sanction such a measure, and a large part of the revenue lapsed in consequence. The collection of the principal taxes was suspended for eleven months. The Governor was instructed still to withhold his assent from an unjust and illegal proposal, but to announce that any *prospective* retrenchment in civil salaries would be favourably entertained. He was informed that he must strictly confine himself to his legal powers, and must make no attempt to raise funds by irregular methods; "and that those public services for which he was refused the means of providing must be discontinued, even if this involved disbanding the police and shutting up the hospitals, and an interruption of the regular administration of justice; and that if the usual colonial allowances were not paid to the officers of Her Majesty's troops serving in the colony, the troops would be withdrawn." This firm and consistent attitude had its effect. Within a year the planters came to a more sensible view of their position; and the dispute was satisfactorily arranged, after the sacrifice of £150,000 of revenue, and the contraction of a debt of £40,000.

The dispute in Jamaica must terminate in a similar manner; for it is utterly impossible that the Home Government can give its consent to a clear violation of public faith—at once uncalled-for, impolitic, and ineffective. But there can be no security against the recurrence of similar conflicts, except in an entire revision of the constitution of the colony, which shall assimilate it to that of Canada, where responsible government prevails, and where the representative body stands in the same relation to the executive as in the mother country. In what manner this desirable and needed change can be effected—whether it must be left to the local legislature, or can be enforced by the authority of Great Britain, we are not prepared to say; but we think it impossible that a constitution so full of anomalies, and so productive of mischief, can be tolerated much longer. Jamaica seems now to be the only West Indian island which shows no sign of vigour or revival; and the interests of the planters themselves should make them anxious for the introduction of a better system, on more than one account. Lord Grey observes —"Under the law as it stands, the Negroes must soon acquire a predominant power in the assembly. Looking then at what the constitution of Jamaica is, and to the state of things which is likely to arise, when the assembly, possessing, as it does, such large powers by law, shall represent those who also possess an overwhelming superiority of physical force, and who will not, I fear, be guided by much knowledge or judgment, or have a very kindly feeling towards the absentee proprietors, I am at a loss to understand how the latter can have been so blind to their own interests as not to avail themselves of the power and influence they still possess in the local legislature, for the purpose of co-operating with the Crown to introduce the many reforms which are wanted, and the neglect of which, during these precious years, may be productive of so much danger."

I am not desirous to trespass further on the House. I think I have fully answered and refuted all the arguments and statements of the honorable and learned gentleman: but I may be permitted to say, that whilst I give the greatest credit, and estimate at the highest point the commericial enterprises, and many of the social institutions

—particularly the strenuous efforts in the invaluable cause of national education made by the American States, and which deserve all praise, it is owing to the introduction of their political principles and institutions into this Colony that I would offer my most decided opposition. If, in my remarks relative to the speech of the honorable and learned member for Cumberland, I have said anything which is not borne out by fact, the honorable member will have an opportunity of affording any explanation. I now come to look into the matter of the Bill, which may be divided into two parts: that relative to the first, and that relative to the second chamber. I am well aware that the people must govern in all cases: without the consent of the people no Government could go on. But so far as regards the Lower House, this Bill places the people on the most favourable footing. It gives them a suffrage which is next to universal; the suffrage will include every interest, except perhaps that of the gold miners: but how is it possible to give the franchise to a class of people who have no local habitation. (Hear, hear.) A people who are in a transition state? Hereafter, when they settle down, the franchise may be extended to them, but at present it is impossible. But the honorable members for Durham and for Sydney find fault with the distribution of the franchise under this Bill, and want it to be made more general. Now I acknowledge that the distribution in a few particular instances is unjust, but speaking generally, I believe it is not. When in Committee I moved that Sydney should have six members, but only on condition that each ward should be made a separate electoral district, and I will tell the House why. I found that two of the wards would have the power of swamping the rest. (Oh, oh.) It is a fact, and if honorable members will look to the electoral roll they will find that one of the wards had 2000 electors, whilst another has only 750. (Oh, oh,) and therefore I am desirous that the wards should be separate electoral districts. I confess I am imbued with conservative opinions, and I wish to see the principles of population and property combined in the distribution of the franchise. (The honorable member here quoted from a recent review, showing the relative weight of urban and agrarian representation under the Reform Bill:) Those are shallow politicians indeed who fancy that the various interests are opposed to one another. In fact they are all dovetailed together—the squatting interest is identical with that of the towns. I would ask the honorable member for Sydney (Mr. Campbell), who is so bitter against the squatters, supposing all the sheep in New South Wales were driven into South Australia, were would the export trade of Sydney be? (Hear.) I now come to the question of the second Chamber. Out of the House great stress has been laid upon the second Chamber, and it is merely a question, in my mind, between an elective and a nominated Chamber; for I do not believe that the hereditary principle can be maintained. But it is most extraordinary that those who are so clamorous for an elective Chamber do not see that a nominated Chamber will be much more favourable to democracy. (Hear, and oh, oh.) If the plan of the honourable member for Cook and Westmoreland be adopted, what is to be done in case of a collision between the two elective Houses? There will be no possibility of bringing about an arrangement. But in a House nominated by the Crown there will always be a power to prevent a dead lock, by the nomination of additional members. (Hear.) It may be objected that this is too great a power to give to the Crown; but who in fact would excercise that authority under a system of responsible government? Why the Minister of the Crown in the Lower House! The Governor nominally, but really the responsible minister in the Lower House, who, as a representative of the people, would be the leader of that House. This principle being understood, I cannot conceive on what ground an elective Upper House is preferred, against which there would be no redress. Moreover, I consider it is wrong in principle to set class against class, which must be the effect of the

establishment of two Houses elected by different suffrages. I have now trespassed longer upon the attention of the House than I intended. But there is one point to which I would call the attention of the House. It refers to the head of the future Executive of this country; a point which has not yet been mentioned by any previous speaker. Her present most gracious Majesty, who is without doubt the most constitutional monarch that ever sat on the British Throne, has a numerous family, whom she is rearing in all the paths of honour and political liberty. I hope there are amongst those who hear me, many who shall see one of those cherished sons of England placed here as chief magistrate, basing his position on the time-honoured institutions of the land he came from, hemmed in and supported by an attached and loving people, whose rights, liberties, and privileges, are unassailed and unassailable. In those days every man shall eat in safety what he plants, and sing the merry song of Peace to all his neighbours. God shall be truly known, and all throughout the land shall read the perfect ways of honour; and by those, claim their greatness, and not by blood. (Cheers.)

Mr. GEORGE MACLEAY: The honorable member for Northumberland has dwelt very fully on the early history of North America. I will not touch, Sir, upon that extensive ground, but endeavour to confine my remarks to that episode in the history of New South Wales which is now under consideration. Plunging then *in medias res*, I must express my surprise at the tone of indignation assumed by the honorable members for Durham and Sydney (Messrs. Cowper and Campbell). when speaking of the opinions put forth in this house, with reference to the language used at the late meeting at the Victoria Theatre. Really, Sir, the fable of the wolf and the lamb presented itself to my mind when I heard these lamentations of wrong done to the orators of that memorable assembly. (Cheers and laughter.) But, Sir, while those extraordinary sentiments, reported to have fallen from the honorable and learned member for Cumberland, and the atrocious expressions used by others at that meeting, are still ringing in our ears, I will ask if this House is to stand by with bated breath, and refrain from calling things by their right names? (Hear, hear.) If honorable members had so refrained, they would have been wanting in respect to their constituents, and in their duty to their country and their Queen. (Loud and prolonged cheers.) I am fully aware, Sir, that that meeting, as has been stated, was attended by many most respectable men—gentlemen for whom I have a high esteem; but they only illustrate the observation of my honourable friend the Attorney-General, when he said "that a man may be most estimable in his legitimate capacity and yet make a very sorry politician." (Hear, hear.) It is with great regret, Sir, that I see these gentlemen, whose motives are above suspicion, mix themselves up with others who, it is clear, have very different ulterior views from those whom they have cajoled into joining them. (Hear.) They have been, I sincerely believe, entrapped unwittingly into this alliance with chartism, Langism, or whatever the leaders of the movement choose to call it; but they must not be surprised at the mortifying result, for "those who touch pitch must be defiled." (Hear, hear.) The flimsy veil which covered the designs of the arch-conspirators has now, however, been withdrawn, and with its withdrawal it is to be hoped that the gentlemen, whom I am alluding to, will withdraw also. (Loud cheers.) If not, they may rest assured, that they will not be exempt themselves from those terms of contempt which have been applied to them as signing leaders. (Hear.) The absence from that meeting of my honourable friend, the member for Sydney, (Mr. Campbell,) is a significant fact. I beg to congratulate my honorourable friend on that absence. I will say of him as Lady Fairfax said of her husband when his name was called over, "He had too much wit to be there." (Cheers and laughter.) I congratulate my honourable friend on the change which appears to be

coming over him—upon his casting off the white wash of democracy, which has so ill suited him, and appearing once more in his true and proper colours. I am so pleased, Sir, at this transformation, that I can quite forgive my honourable friend his attacks upon the squatters. These attacks have, at no time, been very formidable, and, on this occasion, have been confined to a stricture upon the share it is proposed to give them in the new scheme of representation. I will not follow, Sir, the honourable member into this matter, which, I think, had far better be left for consideration in committee; but will merely observe that though I am not prepared to say, that I will not vote for one more member for the city of Sydney than it is proposed at present to give, I most assuredly will not consent that such additional member shall be taken from the four new representatives assigned to the squatting districts. (Hear, hear.) The honourable member for Durham (Mr. Cowper) has also expressed a great deal of virtuous indignation on the apportionment of the representation; but he might have spared the House its utterance, for he, as a member of the Committee, knows very well that it is a mere sketch, to which no man in the committee is pledged, and which every member of the committee is prepared to see modified. On this comparatively unimportant matter, I certainly have heard the honourable member for Durham express himself before, and therefore have not felt much interest in what has now fallen from him on the subject; but on the leading points of the Bill, I admit I have had much curiosity to learn what the honourable member's views really are, for in committee the honourable gentleman exhibited a reticence on these matters, which no entreaties of the chairman could overcome. This curiosity, Sir, was enhanced by the mystery assumed by the honourable member also out of doors; for though expected to make his appearance on the boards of the Victoria, he only lent the self-called Constitutional Committee his name, favouring them neither with his countenance or his tongue. (Hear, hear, and laughter.) I have spoken, Sir, of the honourable gentleman's views, but I find that they are his views by adoption only, for they are avowedly merely the echo of the sentiments expressed by those members of the two Houses of Parliament, whose speeches the honourable member has so copiously cited; yet he might have remembered that one of the most eminent of his authorities, the present Secretary of State for the Colonies, has emphatically declared that he offered his opinions upon this great colonial question with diffidence and reluctance, because he felt that the legislature of the colony was far more competent to give an opinion upon it than legislators at a distance. (Loud cheers.) Yet not advancing any original opinion of his own, the honourable member for Durham asks this House to be guided by the reluctantly-expressed opinions of those very distant legislators! (Hear, hear.) The most extraordinary authority, however, which is relied upon by the honourable member, is Earl Grey (Derisive cheers), a nobleman who, having signally failed in his administration of colonial affairs, sits down in his forced retirement to write a book, which is to enlighten the world as to the merits of his colonial policy. (Loud laughter.) When the noble Earl was in office, the honourable member always professed himself a vehement opponent of his measures; but now he stands forward as a convert to his Lordship's opinions, and asks this Council to join him in his admiration of the minister whose acts he has so long denounced. (Hear, hear.) I should like to know, Sir, from the honourable member, if, on the question of transportation, he has also become a convert to Lord Grey's policy? (Loud cries of "hear!") "Misery," it is alleged, "makes us acquainted with strange bedfellows;" so also it may be said that a bad cause makes us acquainted with strange authorities. (Hear, hear.) If the honourable gentleman had read in full the speeches of those statesmen upon which he so confidently relies—if, indeed, any impartial person were so to read

them, I think the conclusion must be arrived at, that, though they nearly all speak in favour of an elected rather than a nominated Upper Chamber, this form of constitution is advocated not so much from a conviction that it would be the best, but because it is believed that the colonists themselves think that it would be the best; that, in fact, his advocacy is the result of a feeling of concession—a desire to yield to the wishes of the colonists. (Hear. hear.) I think Sir, that there can be little doubt that the views of these honourable gentlemen have been influenced by the very strong feelings of disapprobation which have been expressed throughout the colony, at the amalgamation of the representative and nominee elements in one and the same house. (Loud cries of "hear, hear.") These feelings of disapproval have been manifested in a very marked manner throughout the length and breadth of the land; and I am not surprised at it. But, Sir, does it follow that because we object to the introduction of a principle where it ought not to be found, we should therefore be opposed to its application in its own proper sphere? Certainly not. And I feel satisfied that a large majority of those who now disapprove of the nominee principle in the present Council, are yet desirous of seeing it when its presence would be legitimate. From the passage quoted by the honourable and learned member for Cumberland from Earl Grey's work, having reference to the New Constitution for the Cape, it is evident that his Lordship has not been able to see this difference; and I am satisfied that he is equally in error when, dwelling on the unpopularity of nomineeism under their present constitution, he says that no gentleman of standing in that colony will be willing to accept a seat in a nominee Upper House. I feel convinced, Sir, that no such reluctance will be found to exist in the class referred to, either at the Cape or in New South Wales. It is further laid down by some of the speakers, from whom the honourable member for Durham has borrowed so largely, that no colony can have a House of Lords, inasmuch as no colony possesses the material for the creation of so dignified a body. But what do they propose in its place? Why, an Upper House, to be composed of members elected by freeholders of a higher qualification than those who are to vote for the Assembly—a body, in fact, which would bear the same relation to the members of the Assembly that the knights of the shire in England do to the burgesses. Now, Sir, English wisdom has taught them in England to place these two classes in one and the same House, inasmuch as their interests are found to be identical. And surely a little consideration might have shown these statesmen that the same complete sympathy may be looked for between the analogous classes here; yet they all, Earl Grey included, speak of the necessity for the existence of an Upper House—and this not as has been said by others, for the sake of revision only, for ample provision for this purpose may be secured in one House, like the present, simply by making it imperative to read every Bill six or twelve times over instead of reading it thrice, but as a check, as a cushion, as it were, to prevent the immediate contact of the monarchical with the democratic element of the community. It being admitted, Sir, by these authorities, that the Upper House should thus act as a check upon the Lower, surely it ought to have occurred to them that the Executive, which is directly interested in obtaining a fair equipoise to the democratic power, would be more likely to select a proper body for that purpose, than that democratic power itself, whose interests, we are told, lie the other way. These British statesmen might, moreover, have considered that such a House would have influence, not according to the mode of their election, but in proportion to their intrinsic merits, their talents for business, and their general respectability. (Hear, hear.) But perhaps, Sir, it is not so much of a want of consideration as of misconception that we have to complain on the part of leading men at home; and when I call to mind the infamous works lately pub-

lished in England about the colony, and the language occasionally used in the colony itself—by those, too, who wish it nothing but well, I am not surprised that it should be misunderstood. I must admit, Sir, that, even within the walls of this House, language has sometimes been used a great deal too strong—and though very energetic expressions may have been deemed, or really may have been necessary to procure effect at so great a distance, yet the consequence of their use has been, that, by many in England, Australia is regarded as an embryo America. This misconception working upon the spirit of concession, which at present characterizes the home government, has no doubt, Sir, led in a great measure to that expression of opinion which has been made use of by the honourable member for Durham; and for my part, I cannot h lp feeling that the concessions which the present Ministry are thus disposed to make, will, by a strange reaction, bring about the very effect which they themselves deprecate. (Cries of hear, hear.) This misconception, Lord Grey shares in more largely than any of the others: he cannot comprehend how we, as Englishmen, when we cross the ocean, manage to carry with us our political principles, our pride, and our prejudices; he seems rather to regard us as a new race—a race whose moral sensibilities and political principles are not yet fully developed, and therefore good material for his peculiar ingenuity to operate upon. (Hear, hear.) Now, Sir, can anything be more detestable than this official empiricism? Political liberty is not a matter of theory—it is a question of facts, like questions of natural philosophy, to be tested only by reasoning founded on experience; and I will ask, what is the result of experience as to the constitutional schemes to which, through his Lordship's agency, we have already been subjected. Take that under which we at present sit. The honourable member for Cook and Westmoreland has described the terrible evils which resulted from a similar form of government in another country; and he did this so fully that it is unnecessary for me to go over the same grounds—it is sufficient to advert to the fact, that we, ourselves, in this country, had reason to feel at one time that we were treading on the thin crust of a volcano; and that we were only saved from breaking through it by assistance which we had no right to look for, by causes, in fact, merely accidental. Nor need I, Sir, trouble the House with any allusions to His Lordship's second scheme—that of District Councils—involving the pernicious principle of double election. Our experience of that precious plan was, that it was at once scouted by the whole community.) (Loud cries of hear, hear.) So much, Sir, for the past and present—now for the schemes held out in prospect; and first, the proposition that the Upper House should be elected by the same class of electors who are to return the members of the Lower. It is clear that such an Upper House would be a mere reflex of the other, the sympathy between them would be complete, it would not act as a check, and therefore would be mere surplusage; moreover, before the influence of the two Houses united, no government could stand. Next let us take the proposal of the honourable member for Cook and Westmoreland, a plan which seems to tally with that shadowed out by Lord Grey and the other statesmen to whom I have referred—to have the Upper Chamber elected by a higher class of freeholders—large landed proprietors. I believe, Sir, as I have already said, that the interests of this class would be found to be the same as those holding the lower qualification, and, therefore, that their political feeling would be identical; but take the honourable member's own view, namely, that they would entertain very different sentiments on public matters. If disputes were now to arise, the very knowledge that there would be no means of correcting the evil, would lead to more marked antagonism—class would be arranged against class. The Lower House might stop the supplies, indeed, but the consequences of such a step would be felt less by the landed proprietors than by any other class of the com-

munity. No legitimate political artillery could be brought to bear upon them. The government must stand by powerless during the struggle, which must end (for I can see no other remedy) in a revolution (Hear, hear.) And now, Sir, for the several schemes so kindly offered for our choice by the honourable and learned member for Cumberland, for like the Abbé Sieyes, he comes down with his pocket full of constitutions. He first proffers for our adoption the constitution of Belgium, but the honourable member for Northumberland has this evening thrown a new light upon this much vaunted constitution, so that I apprehend it will not be further pressed upon our attention; if, however, my honourable and learned friend should insist upon our taking this form of government in its integrity, it appears to me that we shall be rather puzzled to base a qualification for the members of our Upper Chamber, as in that country, on the amount of taxation paid. In this colony, where there is no direct taxation, but the public revenue is derived from the duties on tobacco and spirits, such a qualification for a member of the Upper Chamber could only be tested by the amount such member might consume in the course of the year of these dutiable articles; and the records of a House composed of such members might be expected to resemble the entries mentioned in Knickerbocker's description of the New York Council, such as "Met again to-day and smoked." (Laughter.) The honourable member's scheme, No. 2, is to elect with the representatives for the Lower House, by each constituency, a delegate or deputy, to whom is to be confided the duty of selecting the choice and best men in New South Wales to form the Upper House. Now, Sir, if this plan were adopted, I presume each constituency, for its own sake, would send its best and ablest man as its representative to the Lower House, and its second best, at least so I should imagine, would be named as its delegate, so that the choice man for the Upper House would be, after all, but the third in quality. But, I will ask, is it certain, or even likely, that these delegates would select senators who would rank so high as third-rate men? What, for instance, might be expected from the delegates from the Lower Darling or Maranoa districts? Why, that they would name, as their choice men, the Sydney agents in whose books they stood the deepest. But, Sir, if we are to have recourse to delegation, let us, instead of committing this great trust to delegates, who would be irresponsible, place it in the hands of the Governor and the Executive Council, who, under the new order of things, will be directly responsible to the people's representatives. (Loud cheers.) The third plan proposed by the honourable and learned member is, that the Upper House should be elected from the Lower. In that case either the best, or the middling, or the worst, would be chosen. If the best men should be elected, the Lower House would be emasculated. If the middling or the worst, then the Upper House would be confessedly inferior to the Lower, and all its utility of course be lost. In fact, Sir, all these plans, proposed by the opponents of the Bill now before the House, will be found, on examination, to be utterly impracticable; and the only way I see to extricate ourselves from these difficulties—and I admit, Sir, that in this matter we are surrounded by difficulties,—to cut the Gordian knot, is to have recourse to a nominated Upper House, the members of which, being appointed for life, will be independent both of the Crown and of democratic influence. The principal objection to this scheme, in my eyes, is that the members, even though named for life, might be suspected to be influenced, to a certain extent, by a feeling of gratitude towards the power from which they derived their authority—it is to guard against this suspicion that the hereditary and elective principle has been proposed in those clauses of my honourable and learned friend's Bill, against which so much cavil has been raised. On these clauses, Sir, I will not dwell; they having been very fully explained by the honourable members who have preceeded me, I will merely observe, that if it be considered desirable, and I consider

it most desirable, that this perfect independence on the part of members of the Upper House should be obtained, it is clear that those in whom the hereditary right of electing the members from among themselves is vested, must be distinguished by some particular name or title; and I will here take the liberty of saying, that though I most fully approved in committee of these now much abused clauses, it never entered into my head that I was likely to come within the category of those they might call into existence. As to the abuse, the violent outcry that has been raised out of doors against titular distinction, I agree, Sir, fully with the honourable member for Cook and Westmoreland, that nothing can be more vulgar and unphilosophical than such a clamour. The love of distinction is inherent in mankind; implanted in us for the wisest purposes. It has existed from the first, and will exist to the end of the world, in Republics as well as Monarchies. (Hear, hear.) Let us, Sir, look at France, where, after all that has been said in favor of "egalite," the desire for distinction and love of title are as fresh as ever, and are now as marked as they were in the old regime or the first empire. (Hear, hear.) Even in the model republic, titular distinction is greedily coveted, and by those too who have not a shadow of claim to it. The difference between England and America in this respect is this, that while in England the humbler classes, when a title is conferred upon one of the people as his sovereign's recognition of his merit, are prompt to do him honor; in America the lower orders denounce the idea of their superior being distinguished by titles, although they themselves are but too ready to assume them. Thus, when recording their suffrages for a President, every tinker or tailor votes for plain Mr. Polk or Mr. Fillmore, while he enters his own name as a General or Colonel at the least. (Hear, hear, and laughter.) And so in Sydney, the very tradesmen who now profess so much indignation at the idea of any title being conferred upon the members of the Upper House of Legislature, would be exceedingly wrath if their customers were not to address them as "Esquires," a distinction to which they have as much legal right as they have to that of "grand-duke." (Loud laughter.) And here, Sir, I must express my regret at a remark which fell from the honourable and learned member for Cumberland, when he too joined in the cry against titular distinctions; he Sir, summed up his denunciation by, saying, that whatever view might be taken of their expediency in this Colony, at any rate there will be no men fit to receive them. The honorable member's, shield it is true, is as blank as my own; it has been his misfortune, as it has been mine, never to have met with an opportunity of distinguishing himself in the service of his sovereign or his country; but, Sir, does this give him the right to make such a remark? I say, Sir, that there are men on both sides of this House, who have had this high privilege, denied to the honourable member, and whose investiture with title, as proposed by the Constitution Bill, would be regarged as an honor rendered where it was justly due. (Hear, hear.) I say, Sir, that there are men in this Colony whose gallant services are recorded in their country's annals, as well as men whose scientific acquirements, both in the field and the closet, have procured them an European celebrity, the recognition of whose merits by their sovereign would be a matter of gratification to the whole colony. (Cheers from both sides of the House.) The question, Sir, before this House has, in the course of its discussion, assumed a more enlarged character than it at first possessed. The question now really is, whether we are to pursue a line of policy which will ensure the permanence of the connection between the colony and the glorious mother country, or whether we shall adopt a course which must end in making this country a second America. (Hear, hear.) Now, Sir, I have read much of manners and men in America, I have conversed a good deal with men of observation who have travelled in that country, and from all that I have gleaned, from what I have read and heard, I am satisfied that there is

perfect truth in the saying repeated by Lord Carlisle in a lecture delivered by him in Birmingham on the United States, and which he had from a distinguished American statesman—Mr. Daniel Webster I believe—to the effect "That if there be less misery in America than in other countries, so there is also less happiness." (Cheers). This comparative absence of misery in America is to be attributed no doubt to its possessing ample room for all, and to its teeming soil. (Hear, hear.) Now surely the same blessed exemption exists in Australia; here there is ample room for all comers, as ample as that which America affords, a soil as rich, a climate far superior; and I do think, if instead of moiling perpetually after wealth, or dabbling in the soul-contracting pursuit of petty politics like the Americans, the people here would adopt an English constitution, and follow good old English domestic habits, there would not only be an unusual absence of social misery, but a larger share of social happiness than exists in any other part of the known world. (Cheers.) Let us then, Sir, go for our model, not to America, but to the noble country from whence we derive our origin. But why do I speak of America? It really does not appear to me that the parties who are now playing this noisy part out of doors would be satisfied with the institutions of that country. They wish, Sir, to produce a state of things that would drive even the Americans from our shores in disgust. They are arriving at the removal of all those drags and checks which the constitution of that Republic provided, and the taking away of which would cause society to rush down hill with a velocity which would shock the most democratic American. Instead of introducing a state of things like that which exists in the United States, these persons seek to bring us into a condition analogous to that which prevails in the so-called Governments of Mexico and Buenos Ayres, where, on the average, a revolution takes place every three years. (Cheers.) This, Sir, as Englishmen and loving England, as Australians and loving Australia, it is our solemn duty to prevent; and I heartily trust, however loud may be the clamour out of doors against us, that this House will faithfully perform this duty. I well know, Sir, that my feeble advocacy can be of very little advantage to the good cause; but it is a satisfaction to feel that further assistance is not needed, inasmuch as the arguments that have already been adduced by my honourable friends, who have preceded me, are incontestable. These arguments, Sir, have been advanced in speeches which have not only furnished the fullest information on the all-important subject under discussion, but have been marked by an amount of eloquence and general ability which cannot fail to raise the character of this House in the estimation of all thinking persons, both here and in England. The truth then, Sir, and the argument, being both on our side, I feel satisfied that in the end success will be found there also. (Loud cheers.)

The COLONIAL SECRETARY: I rise for the purpose of expressing my opinions upon the very great and important question before the House, and I do so notwithstanding the advice which has been given to me by my hon. and learned friend the member for Cumberland (Mr. Darvall.) I prefer rather to follow the example of my honourable and learned friend, the Attorney General, and to come forward and give, as far as my ability will allow, free from all prejudice and from all control, a fair and manly statement of my views. (Cheers.) Having too, taken a large part in the discussions on almost every subject of importance which has occurred in this Council, I do believe I should not be doing my duty if I were to remain silent on an occasion like this. I hope, however, that I shall approach this discussion with all due moderation; and it will be my endeavour not to enter at all on those controversial and personal matters which have excited so much warmth, both in the House and out of doors, but to confine myself strictly to the great principles of the measure which I believe are necessary for the basis of a government which will be conducive to the welfare of the country. (Cheers.) If

the Bill before the House had not appeared to me to be a liberal measure, while it was at the same time a conservative one, I should not have been found in the rank of its supporters; but I hope, before I sit down, to be able to prove that it is both liberal and conservative in its tendencies. (Cheers.) I do not mean to say that I approve of the Bill in its entirety, nor is it to be expected that any measure could be drawn which would, in all its clauses, all its provisions, all its details, command universal assent; and I for one am prepared, and I believe the House is prepared with me, to give all that attention to the public voice, in the consideration of this measure, which the public voice is fairly entitled to receive. (Cheers.) The discussion of this Bill, and the great principles and provisions it embodies, have not, I think, been brought so fully before the House as they ought to have been. In fact, the discussion has been very partial and limited. It has been confined almost entirely to those points on which agitation and difference of opinion prevail out of doors, whilst there are many other important points which ought not to have escaped attention. I think, too, that out of doors, many of the most important provisions of the Bill have been overlooked, in the discussion of the three principal points which had occupied public attention; first, as to the mode of constituting an Upper House; second, the distribution of members in the representation of the country; and thirdly, the salaries and pensions to be allowed to the officers of the Government. As far as I can judge, from the course the debate has taken, with the exception of these three points, the House is unanimous in its approval of the measure. Now, what are the great leading provisions of the Bill? In the first place, it proposes to give full power to the Legislature of the colony, to make laws for all domestic or local purposes, without let or hindrance from any authority whatever. (Cheers.) If conceded, as I have no doubt it will be, the Council will possess an unrestricted power of legislation, without the assent of the Queen, on all matters which immediately concern themselves; and I think the thanks of the country are due to the honourable and learned framer of the Bill for the way in which he has carried the principle out in the measure now before the House. It will be remembered by the House, that in a despatch in answer to a demand from the Legislature of the colony, for the concession of this power, Earl Grey has expressed his willingness to concede to it, if any satisfactory method could be found of distinguishing clearly between matters of local and of Imperial legislation. Earl Grey found, what every one must admit, that this was a matter of much difficulty and intricacy; but I believe this difficulty has been overcome, that the object desired has been successfully and admirably accomplished by my honourable and learned friend in the measure before the House, and all opposition to the accomplishment of this object will therefore be obviated. The bills to be reserved for the consideration of the Crown are few in number. The first class consists of—1. Bills touching the allegiance of the inhabitants of this colony to her Majesty's Crown. 2. Bills touching the naturalization of aliens. 3. Bills relating to treaties between the Crown and any foreign power. 4. Bills relating to political intercourse and communications between the colony and any officer of a foreign power or dependency. 5. Bills relating to the employment, command, and discipline of her Majesty's sea and land forces within this Colony, and whatever relates to the defence of the colony from foreign aggression, including the command of the municipal militia and marine. 6. Bills relating to the crime of high treason. There are also some few other reservations, in respect to the rights of prerogative, with which it would not have been proper to interfere, although it is probable they will seldom affect the Colony. Such are the first great principles upon which the measure is founded, and they are well worthy of special notice. The next important principle of the Bill is the extension of the franchise, and this also is one which should not be passed over. By this extension a great advantage will

be afforded, seeing that it will give to many educated and deserving persons the right to vote, a new and important feature in the measure, which I believe will be received with favour by the community. The next point is the most important in the whole Bill, being, as it is, the very keystone of the constitution. It secures to the representatives the full and uncontrolled management of all the revenues of the colony, whether territorial or otherwise, including royalties of every kind. (Cheers.) The ramifications into which this power must extend penetrate through the whole constitution. It is a power which must give the Legislature the complete controul of the government. (Great cheers.) It is the way in which responsible government must be introduced, and under such a power responsible government can alone exist. It is useless to say, as some honourable members in the House, and some people out of the house do, that the time for responsible government has not yet come, and that the colony is not yet fitted for it; but, however, I do not for one moment disguise the fact from myself, that as soon as this power is granted, responsible government must take place; and my honourable colleagues in the government are as well assured of this as I am myself. If, therefore, I give my support to this Bill my conduct in the matter must be considered disinterested, for if this power be conceded, it will in all probability be the signal of my separation from official life in this colony. There may, no doubt, be some inconvenience at first, for official experience, like all other, requires an apprenticeship, but I believe the longer this power is delayed the more difficult it will be to exercise it, and the more difficult also will it be to find competent persons to enter on office. (Cheers.) The next power conferred by the Bill is also very important; it is that the Legislature of the country alone shall have the power of making laws for the letting or sale of Crown lands. I for one have no fault to find with the present law for the sale of Crown lands, which I believe works well, and I have had a very large experience of its operation. There is only one exception to this beneficial working, which is in relation to the upset price. In saying this, however, I would not advise or wish that all lands should be sold at the minimum price, for even among the pastoral land, I think there are some worth more, and some better not sold at all. But I agree that there are other tracts of land that are not worth more than 5s. an acre. It has been said that in the upset price of land I have wished to favour the squatting interest, but this accusation cannot be maintained. (Cheers.) The effect of this reduction will be entirely the other way. If the squatters wish to keep possession of their runs, the best way to enable them to do so is to fix an impossible price for the land: for if the price be reduced it will be open for any one to come in and force the squatter to purchase or to give up his run. (Hear, hear.) This is a most important consideration, and the exercise of this power, which this Bill now proposes for the first time to grant, may probably hereafter, as suggested by the honourable member for Cumberland, furnish the subject of much political discussion. The next provision of the Bill is the investiture in the Governor of the whole of the patronage of the colony—a right which has long been sought, and which I believe will be considered a boon by the colonists. (Cheers.) Another point, which has not been alluded to at all in the debate, is the securing to the Judges of the land perfect independence of the Crown, in the same manner as that independence has existed in England for years past, and which has made the bench of England the admiration of the world. I think, also, that the provision of retiring pensions for these functionaries, at an early period, when perhaps their powers, either mental or physical, begin to decline, is well calculated to insure the efficiency of the Bench in this colony. Another matter, which has been the subject of much remark out of doors, is the granting of a Civil List to Her Majesty, providing for the salaries of the high

officers of the Government. But I believe this will be found a very necessary and proper provision. It would be both ridiculous and improper that the salaries of the chief officers of the Government should be submitted annually for revision and discussion. But while these principal salaries are secured, a new principle is introduced, under which the departments of these offices will be submitted each session to the consideration of the House. This is rendered necessary from the great extension of the business of the country in many of its branches; and it is a most inconvenient plan to allow that business to fall into arrear, or to bring up a supplementary estimate for extra departmental assistance. But even if there were not these strong reasons for the granting of such a Civil List, we could not avoid it, as this is one of the conditions on which the land revenues are to be surrendered to us. (Cheers.) We are pledged to grant this Civil List, and we are bound in honour to fulfil this pledge; and indeed, unless it be fulfilled, I believe the surrender of these revenues will not be made. Another great point contained in the Bill, which it is necessary I should notice, and which has excited some opposition, is in reference to the reservation of the constitutional power. A great deal has been said by many writers and statesmen as to the safeguards by which it is necessar to surround the constitution of a state; but the principle laid down in this Bill has been most ably defended in this respect by its honourable and learned framer. It is also borne out by the precedents of other countries; and I am one of those who think that constitutions established after mature consideration should not be easily upset. I therefore concur with the provisions in the present Bill, that all alterations of the constitution should be passed by a majority of two-thirds of both Houses. It is true that there is no such provision as this in the British constitution; but, as has been well explained by the honorable and learned member for Sydney, this is because the constitution of England is an inherent right, and no such provision could be made by Parliament, while the right of framing a constitution for ourselves here is only a derivative right. (Cheers.) It is therefore desirable, for the interests of the country, for the stability of its peace and welfare, that the constitution should be surrounded by such safe-guards. (The honourable Colonial Secretary here quoted from the constitution of California, to show that similar but more stringent safeguards were adopted there.) It will be seen, therefore, that in the United States the sanction of two-thirds of both Houses is required before any change can be made. Although I have instanced California, I believe the same rule applies in most of the other states; and therefore the Committee did not arrive at this conclusion without sufficient precedent. The next point I desire to bring under the notice of the House, is the form of constitution recommended in the Bill. It is for the first time proposed to introduce a constitution consisting of two Houses, and I believe on this point there is no division of opinion. It is generally acknowledged that two Houses are desirable, in order to check hasty legislation: for although at present the precaution is taken of referring all Bills to the law officers of the Crown before the Governor General's assent is given; yet I appeal to my honourable and learned friends whether they do not feel that this duty is a very unsatisfactory one; and to the House, whether that duty could not be much more satisfactorily and more constitutionally performed by an Upper House of Legislature? (Hear, hear.) In adopting that form of constitution, moreover, we should be adopting one strictly analogous to the British Constitution and the British Parliament. Now, it is remarkable from how early an age this double form of legislation has existed. I know that the House has been troubled with many extracts already; but as this is a very important occasion, it is more desirable to refer to authorities whose weight is acknowledged, than to rest content with new opinions of individual members. In Milford's History of Greece, I find the following passage:—

The Greeks distinguished, at least in theory,

six simple forms—four legal and admitted, two not of acknowleged legality, but generally supported by violence. The legal were monarchy, oligarchy, aristocracy, and democracy: the illegal, tyranny, and assumed or tyrannical oligarchy. But absolute monarchy, as we have already observed, was unknown among the Greeks as a legal constitution. The title of king, therefore, implied with them, as with us, not a right of absolute power, but a legal superiority of dignity and authority in one person above all the others in the state, and for their benefit. The peculiar and most indispensible rights of royalty were religious supremacy and military command. In the early ages kings almost commonly exercised judicial authority. But legislation seems never to have been regularly within their single prerogative. After the general abolition of monarchy in Greece, if a citizen of a commonwealth, through whatsoever means, acquired monarchical power, his government was entitled tyranny, and himself tyrant, names which seem not to have been originally terms of reproach: though such monarchy was generally very deservedly reprobated. A distinction of families into those of higher and lower rank appears to have obtained very early throughout Greece: and nowhere more than at Athens; the Eupatrids, or nobly born, like the Patricians of Rome, formed a distinct order of the State, with great privileges. With the downfall of monarchy, however, hereditary nobility seems to have declined everywhere; and though family was considered, yet wealth became the principle criterion of rank. But daily experience among the Greeks proving that military force may always command civil authority, the two were in all their republics united in the same persons, every citizen being bound to military service. Equally then, the necessity of the commonwealth, and the choice of the individual, would decide that the rich should serve on horseback; and thus was created in the principal republics a rank of citizens determined by their ability to serve in war on horseback at their own expense. Such was the origin of knighthood in Rome, and since in the feudal kingdoms of Europe. In many Grecian states, however, the noble, or the rich, or both together, held exclusively the principal authority, and the government was then denominated Oligarchy, meaning a government in which the supreme power is vested in a Few. Where the Few, as they became emphatically called, remained content with the prerogatives of the ancient hereditary kings, leaving rights to the people, so established as to secure an impartial administration of equal law, it was deemed a just and constitutional oligarchy. But where contests arose, as it often happened, between the Few and the Many, (which became the distinguishing appellation of the lower people) and the Few obtained the superiority not without violence, and perhaps a bloody struggle, they would not always, and sometimes could not safely, be moderate in the exercise of power. Thus arose Tyrannical Oligarchy. Aristocracy, signifying Government by the better people, was a phrase of more dubious import, inasmuch as the question would always remain, Who are the better people? The Few, whether legally or by violence, or not at all established in power, commonly assumed the titles to themselves, and gave that Aristocracy to any Government in which they, or persons of their sort, held the principal power. Among the moderns generally the term of Aristocracy has been used as equivalent to Constitutional Oligarchy; an application of it apparently first proposed by Aristotle, on account of the discredit which the frequency of tyrannical assumption of power by the few, brought upon the name of Oligarchy. But both before and after that philosopher, the term Aristocracy was more received among the Greeks, as the proper appellation of those Governments in which the supreme authority was committed by the people themselves, to persons elected for their merit, Oligarchy remaining always the ordinary Grecian term for Governments, in which the noble or the rich presided, as a separate order of the state. Democracy signified government by the people at large; all the freemen of the state in assembly forming the Legal Sovereign, absolute and uncontrollable. But as Democracy was, beyond all other governments, subject to irregular, improvident, and tyrannical conduct, where, unchecked by some balancing power intrusted to a few, it became distinguished by the opprobrious title of Ochlocracy, mob-rule. The states of Greece, whose government was in any degree settled, had mostly some mixture of two or more of these forms. A simple monarchy indeed would be despotism and tyranny; a simple oligarchy but the tyranny of an association, instead of the tyranny of an individual, and a simple democracy scarcely above anarchy; yet these evils we frequently find existing among the Grecian cities. From the various mixtures, however, of these simple forms, decided whether by accidental custom or by the various prevalence of various interests, arose new distinctions, and sometimes new names. The mixture of oligarchy and democracy, in which the oligarchal power was superior, yet the democratical sufficed to secure freedom and equal right to the people, might, according to Aristotle, be properly distinguished from simple oligarchy by the more honourable title of aristocracy. That mixture where the democratical power prevailed, yet was in some degree balanced by authority lodged in steadier hands, is distinguished by the same great author by the name of Polity; and, according to Polybius, a due blending of the three powers, monarchical, aristocratical, and democratical, was necessary to constitute what might properly be termed a kingdom. It may here, perhaps, be a digression neither in itself absolutely improper, nor entirely useless for illustration of the subject before us, to observe that the British Constitution is a composition of all the legal simple forms acknowledged by the Greeks, monarchy, oligarchy, aristocracy, and democracy. Monarchy with us perfectly accords with the Grecian idea of kingly government. The Lords of the oligarchy part of the constitution; and the House of Commons, properly the aristocratical, being composed of persons elected by the people to legislative au-

thority for merit, real or supposed. The democratic principle, equal law, or, in the great term Isonomy, singularly pervades the whole; the privilege of the peer extending in no degree to his family, and the descendants even of the blood royal being people subject to the same laws, and the same judicature with the meanest citizen. Rights of election, trial by jury, and provincial offices, together with the right of addressing and petitioning either the Executive or any branch of the Legislature, form a large democratical power, more widely bounded, notwithstanding some defects, than in any other Government that ever existed.

The union of liberty with order, then, is the last stage of civilization, and the perfection of civil society. It is in proportion as these two qualities are combined that the merit and value of different Governments are to be estimated; the larger portion they have of both, the more adapted are they to diffuse happiness among their subjects. Thus in Athens, when liberty was the chief object of the constitution, order was no better observed than in the absolute Government of France, and the democracy there were often to the full as tyrannical as Richelieu. On the other hand, Venice, which professed to be a free Government, kept admirable order, but to obtain this point it sacrificed liberty, and was, in its way, perfectly arbitrary. Thus, whichever way the balance is overthrown, the interests of the community suffer, and freedom itself is impaired —for a free man ought to be able both to do all that is not forbidden by the laws, and to be enabled by those laws to do all that it is not absolutely necessary for the welfare of society he should be restrained from doing; nor does it matter whether the Government is called despotism, or monarchy, or republic—wherever arbitrary power exists, there is tyranny. For this reason it was that Mr. Fox said, in the height of the French Revolution, "I dislike absolute monarchy, I dislike absolute aristocracy, I dislike absolute democracy." All these kinds of government leave the passions of man their full sway, and are consequently marked with injustice and oppression towards individual members of the community.

The most celebrated governments of ancient and modern times, which have succeeded best in combining liberty with order, are Sparta, Rome, and England. Of those I have no hesitation in saying England, since 1688, is the most perfect. Indeed, it is evident to any one who reads the history of Sparta and Rome, that their institutions were intended for small communities, confined to the neighbourhood of a single city, and that the very force and strength which their form of government produced, tended, by increasing the commonwealth, to destroy the laws and manners which gave them birth. Not so with England; she does not reject wealth; she does not reject commerce; she does not even reject extended empire from the plan of her constitution; she rejects nothing but continental greatness and an overgrown military establishment.

The foregoing extracts plainly show that the constitution of England is founded upon ancient experience. Now, assuming that it is acknowledged that two Houses are desirable, I will proceed to offer a few observations to the House on what I conceive should be the constitution of the upper branch of legislature. Before I do so I will quote from the standard work of Lord John Russell on the constitution of England; but, perhaps, it will be well that I should first call attention to one or two points. The first question is, what is the object of all government? It is evidently to secure the utmost enjoyment of liberty to every individual, consistent with the maintenance of public order and public interests; and, in order to do this, it is necessary to guard both against the despotism of the ruling power and against the hostility of class. (Hear, hear.) This last is a most important point, and I hope it will be borne in mind in respect of those observations which will be made on the system of representation both here and in every free country. The following extracts from Lord John Russell I will now read to the House:—

A complete definition of liberty is, perhaps, impossible. Nor is liberty all of one kind. A nation may have one kind, and be quite deprived of another. The greatest advantages, however, which a community can procure to itself, by uniting under one Government, may, perhaps, be comprehended under the titles of Civil Liberty, Personal Liberty, and Political Liberty.

By civil liberty I mean the power of doing that, and that only, which is not forbidden by the laws. This definition comprehends the security of person and of property.

By personal liberty I mean the power of doing that which in itself is harmless, as speaking or writing, and of which the abuse is only criminal. Eligibility to office may also be comprehended under this head.

By political liberty I mean the acknowledged and legal right of the people to control their government, or to take a share in it.

Each of these kinds of liberty should be allowed to exist in as great a proportion as possible. They were all comprehended by Cromwell's representative under the names of "peace and security, the rights and privileges of the people."

In Parliament, composed of kings, lords, and commons, resides the supreme government of this nation; the two Houses of Parliament con-

stitute the great council of the King ; and upon whatever subject it is his prerogative to act, it is their privilege, and even their duty, to advise. Acts of executive government, however, belong to the King ; and should Parliament not interfere, his orders are sufficient ; in legislation nothing is valid, unless by the concurrence of all three.

The three branches of the legislature formed what has been called the balance of the constitution ; it would have been more just to have compared them, to what is called in mechanics, combination of forces ; for the combined impressions received from the three Houses decide the direction of the whole.

The House of Commons, as it has before been observed, was intended to represent the people at large ; and up to the time of the Revolution, they had been found to do so sufficiently well. Even the pensioned Parliament of Charles the Second had, in its last days, spoken fairly the sense of the people. At this time, therefore, the House of Commons may be considered as a just representative of the nation.

Now, it ought to be the endeavour to copy these institutions, and I feel assured that every member of the committee has kept this object in view. (Hear, hear.) Before I proceed further I will read a passage from Lord John, relative to the functions of the House of Lords, which I believe it is most necessary to understand in framing an Upper Chamber.

The next element of the legislature was the House of Lords. The Peerage serves two great purposes in our constitution. First, it is a great and splendid reward for national services, whether by sea or land, in the King's Council, or on the Judges' Bench ; it placed a stamp upon excellent merit, and constitutes the posterity of the ennobled person a perpetual image of his achievements and their recompense. Secondly, the House of Peers collectively form a Council for weighing, with greater caution and deliberation, the resolutions of the House of Commons. If this more popular assembly is sometimes led away, as it is natural it should, by sudden impressions or temporary clamour, this hereditary senate may interpose its grave and thoughtful opinions to suspend the effect of an intemperate vote. In the possession of such an assembly, indeed, consists the difference between a constitution of pure democracy, and one of mutual control. North America, therefore, which is strictly a government of mutual control, is not without its Senate, as well as its House of Representatives.

Now I acknowledge that on this subject I have been much anticipated by what has fallen from other honourable members ; but I must say I fully concur in the remarks of the honourable member for Northumberland, as to the constitution of an Upper House. It must be perfectly clear that, when the power of the purse strings is in the Lower House, no ministry can be appointed which does not command a majority of this House (hear, hear) ; and, assuming that representation is fixed upon a just and equitable principle, the Lower will be a reflex of public opinion. It is therefore evident that, under a system of responsible Government, there can be no reasonable objection to give the Governor and his Executive Council the power of nominating to the Upper House ; for it is impossible to conceive that a responsible ministry would select individuals for the Upper House who were obnoxious to the public, and who did not possess their confidence. (Hear, hear, from Mr. Wentworth.) And if this be true, is it not a far more constitutional mode than that of electing the Upper House ? The Upper House will not be indeed directly, but it will be indirectly, appointed by the people. (Hear.) But, being once appointed, it is desirable, if it is to perform functions similar to those of the House of Lords, that it should become independent, both of the Crown and of the people ; and the only way in which it could become independent, will be to give members their appointment for life. (Hear, hear.) It will then become a large and important body, controlling both the people and the executive, and I have no doubt it would exercise its functions to the satisfaction of both. And I believe the post would be an object of ambition to the better class of colonists. There would be attached to a seat in the Upper House the designation of " honorable," as is the practice in other colonies ; and I do not agree with those who say that no wish exists on the part of the colonists for personal distinctions. On the contrary, they are sought after with avidity—(hear, hear) ; and I need only instance the strong desire which exists, and which is daily manifested by the colonists, to obtain even appointments to the commission of the peace. (Hear. hear.) No doubt the same feeling would

actuate them in desiring to obtain seats in the Upper House. Now, I do feel that all this shows, notwithstanding the great array of authorities which have been adduced from persons now in high station against it, that the proposed bill is more analogous to the British Constitution, and more suited to the circumstances of the colony, and that there is a better safeguard in it, than can be found in any other proposal. (Hear, hear.) And I have no doubt, when the people of the colony have heard the reasons in favour of the bill, they will be satisfied with it, and the Upper House thus constituted will not be distasteful to them. Now, there are two models before us. The New Zealand Constitutional Act and the Cape Constitution, which differ materially. In the New Zealand Act the same principles prevail as in the bill before the House. In the Cape Constitution, the Upper House is made elective. I will venture to explain to the House the particular features of that Constitution. In the second section it is enacted, that the Chief Justice and fifteen members shall constitute the Legislative Council. But although there is a distinct qualification for members of the Legislative Council, they are to be elected by the same franchise; and what will be the result? Looking at the division of the colony into two separate districts, I do not hesitate to say that the towns will entirely swamp the country interests, (hear, hear,) and the result will be, that the Upper House will be more democratic still than the lower. (Hear, hear.) I predict that this must be the result; and how, therefore, can the Upper House in that colony be a safeguard against hasty legislation by the Lower House? It will be a mere duplicate, a mere reflex of it, and can never act in a constitutional manner; the object of its existence will be missed. The qualification established for the Upper House is, that a candidate should be a registered voter, thirty years of age, and be possessed of unencumbered freehold property to the value of £2,000; or if mortgaged, then that he should be possessed of property, real and personal, to the extent of £4,000 above his legal debts. Now this would make the Upper House exclusively one of landholders; and it does not appear to me that, in this colony at all events, any such House would give satisfaction. (Hear, hear.) Why should not merchants and professional men, who are qualified—why should not bankers, whose monetary experience would be of the greatest value, be eligible for the Upper House? Nothing can be more unwise than this exclusive system; nothing, I will venture to say, more unacceptable to the colony. The House is aware what differences of opinion exist out of doors on the subject of an elective house. No sooner is any one asked what his notions are, than he is thrown upon his back. The proposition of the hon. member for Cook and Westmoreland has not been received with any degree of favour, either in the house or out of it. Besides, there is another objection to this elective house. Its independence will be entirely obliterated by the power of the Governor to dissolve it. (Hear, hear.) It cannot be independent of the Crown; and what I want to see is a house equally independent of the Crown and of the people. Such a house will be the only one analogous to the British House of Peers, and the only one which can perform its functions to the satisfaction of the country. (Hear, hear.) On the subject of the distribution of the electoral districts, I think it desirable to read a few more extracts from Lord John Russell, who must be regarded as the best constitutional authority on the subject—who has, in his discussion on the Reform Bill, proved his anxiety, on the one hand, for the maintenance of perfect freedom, and, on the other, for the maintenance of constitutional principles.

First—All parts of the country, and all classes of the people, ought to have a share in elections. If this is not the case, the excluded part or class of the nation will become of no importance in the eyes of the rest; its favour will never be courted in the country, and its interests will never be vigilantly guarded in the legislature. Consequently, in proportion to the general freedom of the community will be the discontent excited in the deprived class, by the sentence of nullity and inactivity pronounced upon them. Every system of uniform suffrage, except universal, contains this

blot. And universal suffrage, in pretending to avoid it, gives the whole power to the highest and lowest, to money and to multitude, and thus disfranchises the middle class, the most disinterested, the most independent, and the most unprejudiced of all. It is not necessary, however, although every class ought to have an influence in elections, that every member of every class should have a vote.

I will now briefly advert to the observations which have been made by the honourable member for Durham (Mr. Cowper) yesterday, who quoted from the speech delivered by me in 1851 on the Electoral Acts. The honourable member stated, that so far from the principles of the Reform Act being considered final, its very authors had since proposed amendments in it; and he quoted from my speech to show that I had said no such changes were contemplated. The truth is, however, that great changes have been brought about in England since the establishments of railroads, and many re-arrangements of matters of detail have become necessary; but Lord John Russell has distinctly stated that he has no intention to change the principle of the Bill, nor to alter the balance of representation. (Hear, hear.) [The honourable gentleman here quoted from Lord John Russell's speech on the proposed Reform Bill last year.] In the speech which has been referred to by the honourable member for Durham, he has shown that in the representation of Bridgenorth and the Tower Hamlets, both of which are placed upon an equal footing, the proportion of the population is as 200 of the latter to one of the former. In the Electoral Act of 1851, there is no such enormous discrepancy as this; the greatest disproportion not being more than three to one. (Hear, hear.) It has been broadly asserted that the pastoral districts have received, by the Act of 1851, too large a share in the representation. I can only say that, in giving my concurrence to this measure, I have been actuated by an anxious desire that each class should be fairly represented (hear, hear): and if any one can show logically and conclusively that any one class has a preponderating influence given to them, I shall be quite ready to lend my most zealous assistance in procuring a reform. But how stands the fact? By this Act the towns have 11 members and the counties 17 members, while the pastoral districts send but 8 representatives to the House. There are therefore 28 to 8 against the latter class of representatives, a difference quite sufficient, I should imagine, to guard against their exercising any undue influence. The idea that the pastoral interests are more fully represented than the towns and counties has, I believe, chiefly arisen from the fact that the most influential member of this House, the honourable and learned member for Sydney, was formerly largely connected with that interest.

Mr. WENTWORTH: That objection has been got rid of.

The COLONIAL SECRETARY resumed: By the measure before the House it is proposed to supply the vacancies created in this House by the exclusion of the eighteen nominees, and by the addition of eighteen members apportioned in exact accordance with the principles of the existing Electoral Act. This will increase the number of representatives for the towns to sixteen; of the number of representatives for the counties to twenty-six; and the number of representatives of the pastoral districts to twelve. The proportion, therefore, in the representation of the pastoral districts to that of the towns and counties will be twelve to forty-two, or in the ratio of three and a-half to one. (Hear, hear.) This appears conclusive; but I am not wedded to the existing scheme. If it be found necessary, members may be added to increase the representation of Sydney. I have already expressed that opinion in committee, and I will repeat it in the House. There is no particular magic in the number of fifty-four, and this number may be easily increased if it be deemed advisable, for the purpose of equalising the representation. In expressing these opinions I desire to have it distinctly understood that this is not a government measure. (Hear, hear.) Every officer of the government is at perfect liberty to speak and vote according to his own unbiassed

judgment. No measure of such importance must be carried by any influence of this description. (Hear, hear.) I am aware that such a measure cannot be carried unless it is acceptable to the people at large; and I am glad, therefore, that it is proposed to allow time for free and ample discussion. I feel sure the more the matter is sifted and considered, the more the general propositions of the committee will be approved. (Hear, hear.) It is clear that the proposition for the establishment of hereditary titles is distasteful. And as this portion of the report, can be carried out without legislating upon it at all, there can be no need to press it in the face of any such opposition. It is in the power of Her Majesty to confer titles upon any colonist, and the colonist who may be thus distinguished, will at the same time be eligible to a seat in the Upper House, if he be acceptable to the existing administration. (Hear, hear.) I trust that this measure will not be allowed to lie over for another session. To myself, indeed, this would be a matter of indifference, but its passing would be the means of conferring upon the colony so many important boons, which have been long struggled for by my honourable and learned friend, and those who have acted with him, that I do not think these boons should be longer delayed. The honourable gentleman has now cast open to us the garden of the Hesperides, and offered us the golden apple; shall we at this eleventh hour refuse to accept it. (Hear, hear) Great differences of opinion have arisen with reference to this measure. I hope that, by discussion, all these differences of opinion will be reconciled; and I feel sure that the time will come when all will join in appreciating the services of the honourable and learned member for Sydney, and in awarding a due meed of praise to his coadjutors of the committee. I have not, from motives of delicacy, touched upon one point, which is in a great degree personal to myself. I allude to the subject of pensions. In a great measure like this, for the benefit of the country, some sacrifices must be made; and if these sacrifices are of a pecuniary nature, so far as myself and my colleagues are concerned, we shall be quite willing to trust wholly to this House and to the public, feeling assured that our services will be duly considered, and that full justice will be rendered to them. (Hear, hear.) This Bill will confer upon the colony a greater measure of liberty than has been ever before conceded to any dependency of the Crown. The colonists have already had secured to them the full liberty of the press, complete religious equality, and an unimpeachable administration of justice. By this bill they will have full political liberty, with only such safeguards as are absolutely necessary while the colony remains a British dependency. In aiding the supporters of this measure I have but one single purpose in view—an anxious desire to see the colony advance in social and political greatness, and possess institutions worthy, in their freedom and stability, of the glorious parent land from whence it sprung. (Loud cheers.)

Mr. BLIGH: I will not, at this advanced stage of the debate, detain the House by a lengthened speech. I must express my regret, however, that certain honourable members, in speaking of the meeting at which I expressed opinions which I should not hesitate to express in this House, have thought proper to apply such abusive epithets. A more respectable and influential meeting was never held in this city, and for its orderly character it has never been surpassed. If, during the discussion, or by the excitation of some of the auditors, anything distasteful was uttered, it was scarcely worth while on this account to level such sweeping condemnations at the whole meeting. These expressions were not participated in by the meeting as a whole. (Hear, hear.) The honourable and learned member for Sydney, knowing how distasteful the measure with which he was identified was to the citizens generally, ought not to have been surprised at the expressions of strong feeling in discussing it. None were more sensible than himself of the great obligations which the colony owed to the honourable and learned gentleman, and

this feeling was participated in by numbers who assisted at the meeting; but when they disagree from the honourable gentleman on a subject of this vital importance, they must have leave to express their opinions. Gentlemen of the highest respectability, who were not in the habit of interfering in any way with political questions, came forward on this occasion, moved not only by its great importance, but by a desire to convince the House that this was not a movement by the mere rabble, but one in which all classes of the community were represented. (Hear, hear.) It is a matter of deep regret that a petition thus got up, and bearing 3000 signatures, should have been treated in this House with contempt. (Hear, hear.) The honourable member for Cook and Westmoreland has disputed the right of the people to assemble and canvass this measure. If such be the tone and spirit of that House — as it would seem to be from the cheers with which this argument was received—the House will soon cease to possess the confidence of the colony, and will, consequently, lose its influence. If the people are treated with derision and contempt when they approach this House, constitutionally, by petition, they will cease to apply to the House at all, and it is probable, even now, that it will be thought advisable, under the circumstances, to apply elsewhere. (Hear, hear.) The honourable and learned member for Cumberland has been greatly attacked, because he was formerly in favor of the nominee principle. That gentleman has shown far better sense than those who assault him now in arriving at a conclusion that nomineeism cannot be supported in the face of popular feeling. (Hear, hear.) If the honourable mover of this bill dreads the current of democracy, about which he had spoken so much, he has certainly taken the very course most likely to strengthen those currents. (Hear, hear.) Had he consulted the popular feeling in preparing his measure, he might have had all the credit which the honourable and learned member for Cumberland now deservedly had for opposing it. The great objection to a nominee House is, that it will be wholly irresponsible in its character, and, notwithstanding the lengthy speaking, and the voluminous quotations which we have heard on this subject, my views respecting it remain unchanged. I am still unconvinced that the system of nomination will give the Upper House a really conservative character. In fact, the honourable member for Cook and Westmoreland has himself shown conclusively that this cannot be the case. It is clear, when we have responsible government this House will acquire something of an independent character; but the first Upper House will be nominated, not by the responsible ministry, but by the irresponsible executive, which existed prior to the appointment of this ministry, and these appointments to the Upper House would be for life. It has been asked whether some honourable members are charged with conspiring to destroy popular rights? I do not mean to make any accusations of conspiracy; but when I see a disposition to favour one class, and to extend the representation at the expense of other classes—when I see a desire to protect the vested rights of this class, even against any interference under a responsible government—and when I remember that the interests of this class are generally regarded as opposed to those of the great mass of the people, I cannot but feel some suspicions. (Hear, hear.) There are many objections which might be urged against the details of this measure; but as the present discussion is with reference only to its general principles, I shall content myself for the present with this record of my objections against those principles (hear, hear).

The SOLICITOR-GENERAL moved an adjournment of the debate.

The SOLICITOR-GENERAL: I rise with much hesitation, and with no little diffidence, to address the House on this very momentous occasion. When I consider how deeply the question we have now to decide involves the future

destinies of the country, and reflect on the responsibility of my own position, in being called upon to take his part in the decision of that question, I confess myself impressed with a feeling akin to awe; and the diffidence caused by this feeling is increased by my having heard the eloquent and masterly speeches which have been already made by other honourable members, in the course of the debate. Gladly, under these circumstances, would I have spared the House, if my duty had permitted, an address from me—gladly would I have saved myself from the comparisons which must be made. But as I have been in the habit of taking a part in the debates in the House, on questions of minor importance, I feel that to give a silent vote on this, the incomparably most important question which has ever come under the attention of the legislature of the colony, would be to lay myself open to the suspicion that my views and opinions on this great question are not clear and distinct. (Cheers.) I may too, perhaps, be allowed to indulge the hope that some additional light may be thrown upon the question by my observations, however small that addition may be (Cheers.) I feel the difficulties which beset the question. I feel that its solution does not lie on the surface, and that it may even elude the grasp of the wisest, who search for it most faithfully and most profoundly. The question before us is a speculative one, as all questions of political science must be. It is a question that no man, however learned, can possibly determine; it is one, I freely admit, upon which men equal in ability, and in honesty of purpose, may differ as widely as the poles. It is a question which can be solved only by the future. It is equally impossible to know what colour futurity can give to our present determination; it is equally uncertain what influence our present determination may have on that futurity. (Cheers.) I am conscious that the opinions I now hold, and which I am prepared to express, may be wrong—may, in the future, be proved to be wrong, and therefore I approach the subject in no presumptious spirit; but I am not the less impressed with the firm and deliberate conviction that those opinions are right. (Cheers.) I do not intend to follow the example of previous speakers, and to inflict many quotations on the House. I believe the House has had enough of extracts—not that I deny the value of those which have been quoted, or the right of honourable members to bring prominently forward before the public opinions which might generally be received as wiser than their own, and which they themselves esteem to be so. But these opinions have been sufficiently cited, and, with the exception of one single autority on a point not hitherto alluded to in the debate, I shall refrain from extracts altogether. I have already said that this question is a speculative one; and that, in regard to it, it is impossible to foretel what the future may determine. But in endeavouring to determine aright for the good of the colony in days to come, we must not fly wildly into the regions of theory, but must be guided by the lights we have. We have a right to be guided, in legislating for the future, by the history of the past; and, changing as human events are—mutable as all human systems have more or less proved, we ought, above all, as far as our limited philosophy allows us, to lay the foundations of our system deep in those principles of human nature which is the same in all their leading features, from the first Adam to the present generation. (Cheers.) We should look to this immutable element with which we have to deal, and endeavour to make the most we can of the virtues of mankind, and even to turn its vices to purposes of utility. (Cheers.) I will first allude to the pledges, by which it is said by some that the Council are bound. And here I will state that I, at least, am bound by none,—that I have not pledged myself to receive the constitution of Canada. Had that form of constitution been really submitted to the House at the time when the grievance resolutions were adopted, I should have opposed the acceptance of any constitution, without the matter

having first been subjected to the fullest discussion, as on this occasion. But the question was not discussed at all; the House was carried away by a sense of what it thought to be the grievances of the colony, and assented to the petition without any discussion as to the proposed constitution, and I voted against the whole of the resoluions. As I have therefore been no party to the proposition to accept the constitution of Canada, I am entirely free from that pledge. And I further admit, to the fullest extent, the arguments of those who urge that even assuming that any pledge has been made, yet if the convictions of the House, or of honorable members, have since changed, and they think the constitution of Canada is not fitted to this colony, it is not only their right, but it is their bounden duty to give their vote as their conscience at present prompts them to do, for the promotion of the interests of their country. (Cheers.) Another thing, from which I believe I may say I am entirely free, is the charge against some honourable members, of favoring class interests. It was with deep regret that I heard, during the debate, observations made which gave foundation to this charge, and perhaps might have the effect of setting class against class. There is no desire on my part to give supremacy to any order in the community; and I may say, if I know myself, that there is no such thing as class-feeling in my mind. With reference to the great objects of the bill we have now met to discuss, I admit no superiority in one class over another—none in the producer over the merchant or manufacturer—none in the squatter over the tradesman. (Cheers.) In the order of Providence, all these classes, in their several positions, are equally necessary for building up the great fabric of society; all of them are mutually dependent—mutually useful to each other. But for the same reason for which I would deny an undue influence to any class, I would not give to the popular element that preponderance of power which would disturb the just equipoise of the State. In fact, I do not know whether the extent or value of particular interests, or the numerical proportions of particular classes, ought to be allowed to affect this question in any considerable degree. The producer and the manufacturer, the squatter and the tradesman, are equally fit to take part in the duties of government; and it is for the advantage of society that each should have such influence and power as may best serve to keep the balance of the State true. Therefore, any legislation conferring special favor to particular classes by my fellow subjects I wholly and heartily repudiate. Under these feelings it was with regret that I heard the observations of one honourable and learned member, who, in advocating class-influence, has impaired the lustre of his address, and has thus opened to his opponents weak points of attack in a fortress which would otherwise have been impregnable. (Cheers.) I fully admit also the right, which has almost seemed to be questioned, of the public to express their opinions on all questions of legislation affecting them; and, further, that great deference ought to be paid to public opinion. But then the question arises, what is public opinion? (Cheers.) It is not that ephemeral opinion which is the growth of an hour, or a day, or a week, but it is the silent growth of years, the combined consolidated sense of the people: in short, public opinion, as I regard it, may in general be called the voice of public reason. (Loud cheers.) The people had a right to meet and discuss a measure like this; nay, it is greatly to be desired that they should do so. But I will say, if those who attend such meetings assume to be the masters of the Council, then I will resist them. (Cheers.) If they appoint conventions which they have no legal or constitutional power to appoint, to frame a constitution according to their own peculiar views and interests, and seek to dictate its adoption to this House, or even assume an equal and co-ordinate authority, they exceed their constitutional privileges, and must be firmly resisted; but if they met only to express their opinions, and to petition to have their

views carried out, then I will acknowledge to the fullest extent their right and power to do so. (Cheers.) But supposing those who style themselves the people should be unanimous in their opinions as to what the constitution should be, should that necessarily bind this Council? (Cheers.) The "people" are only one estate; and it is for the Council to decide on the opinions so expressed, not in reference merely to the wishes of the people, but according to what we believe will be best for the welfare of the whole community, having reference always to the constitution of the monarchy under which we live. I shall say but very little as to the attendance of members of this House at such meetings; but I will say, if the precedent be followed it will lead to most dangerous results. What has been the course pursued in thismatter? A change of constitution was proposed in this Council, on which the power to make such change had been conferred by the Imperial Legislature. A committee of the House was appointed by ballot to frame one. Those members who did not approve of that which was adopted, finding they were in a minority, fled from the Council, and appealed to another and lower authority to assist them in overawing the majority of the House. What must the result be? To injure the character of this House, to deaden its weight and influence in the country, and in the end absolutely to destroy its independence. As if with the design of creating distrust of, and animosity against, the Council, it has been insinuated, not charged, that the Council is engaged in a conspiracy against the people. It is not charged, I repeat, but insinuated, Iago-like, against us that we are in a conspiracy, because, forsooth, the great bulk of the members of the House coincide in opinion on a political question on which it is our duty to form a judgment. To be in a majority is to conspire it seems against some imagined majesty of the people! Even the cheers with which certain speeches have been received in this House are hinted at as overt acts of treason! I admit that I am myself a conspirator, if to join with others to work out, to the best of my ability, the welfare of this country is conspiracy. But let no one dare charge me with conspiring against the public good or the people's just rights. I am here to do my best for the country, and I have a right to do so according to my conscience, without fear and without favour. (Cheers) The main questions for our consideration are, whether there shall be a Legislature of one or two Houses; and if the latter, what shall be the character of the Upper House? But, before considering these questions, there are two points to which I desire briefly to refer. The first of these is the question of the Civil List. I am not about to touch upon any matter personal to myself or my office, but I will merely allude to the objections which have been taken to the alleged extraordinary amount of this reservation. Now, the term Civil List is perhaps an unfortunate one, and its true nature is very generally misunderstood. To show what is the nature of the Civil List in England, I will read a short passage from Stephen's Commentaries, the only authority with which I mean to trouble the House during my address—

This is an annual sum granted by Parliament at the commencement of each reign, for the expense of the Royal household and establishment, as distinguished from the general exigencies of the State, and is the provision before stated to be made for the Crown, out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. This arrangement has prevailed from the time of the Revolution downwards, though the amount fixed for the Civil List has been subject in different reigns to considerable variation. At the commencement of the present reign a Civil List was settled on her Majesty for life, to the amount of £385,000 per annum, payable quarterly, out of the Consolidated Fund, of which the sum of £60,000 is assigned for her Majesty's privy purse; in return for which grant it was provided, that the hereditary revenues of the Crown (with the exception of the hereditary duties of excise on beer, ale, and cyder, which were to be discontinued during the present reign,) should, during the present Queen's life, be carried to, and form part of, the Consolidated Fund.

In this country the civil list may perhaps include something more, when a settlement is being made upon a sur-

render to the Legislature of a branch of revenue which has hitherto been vested solely in the Crown, or legislated for only by the Imperial British Parliament. Still there are many things included in the Schedule to this Act which do not belong to a civil list. Of this character (for example) are the reservations for public worship, and the salaries and pensions of the Judges. In England these latter are provided for by Act of Parliament, and are in fact permanent appropriations of the revenue, but do not form part of the civil list; and as regards the sum reserved for public worship, I would remind the House that it is placed, in certain proportions, at the disposal of the various religious bodies—given, in fact, to the masses of society, and in no way available for the support of the Executive Government, or practically subject to its control. We might with equal justice charge upon the civil list the permanent grant of £5000 a-year to the University, and our other votes for educational purposes. (Hear, hear.) The salaries of the Judges, being fixed and permanent, and their pensions also, should be provided for by statute. Indeed, all the items of expenditure to which I allude are unquestionably necessary, and should be put upon a permanent footing, but they do not belong properly to the civil list; and if they were excluded from the consideration of it, the real amount, it would be seen, was very small. (Hear, hear.) The second point, on which I will touch very lightly, is the question of electoral divisions. As to the main principle there is no dispute. None in this House have gone the length of contending that population should be the sole basis of representation, while all admit that it should form one of the chief elements. The question in dispute is, therefore, only one of degree, and one consequently which can be more properly disposed of when the Bill gets into committee than in the debate upon its second reading. (Hear, hear.) I will not trouble the House by going into the question as to whether the Legislature should consist of one or two chambers, since it is conceded on all hands that there should be two. I will proceed, therefore, to express the opinions which I have arrived at, after the best consideration which I have been able to give the question, as to what should be the constitution of the Upper House. I concur with the understood majority of this House in the opinion that the members of the Upper Chamber ought not to hold their seats by virtue of popular election; and consider that the hereditary principle is inadmissible. The members ought, I conceive, to be nominated for life; their number should be unlimited; and the appointments should be made by the Governor and Executive Council, that Executive Council being composed of the responsible ministers for the time being. (Hear, hear.) This would be, I think, in as strict analogy to the British Constitution as the circumstances admit of. We have heard a great variety of suggestions, both in the House and out of the House, as to what should be the constitution of an Upper Chamber. Within the House we have five classes of suggestions. First, it is proposed that the members should hold their seats by hereditary right; secondly, it is suggested that they should be nominees, either for life, or for some specific term of years; thirdly, it is proposed that they should be elected by the freeholders; fourthly, that they should be elected by the ordinary class of electors; and fifthly, there has been dimly shadowed forth a plan bearing some supposed analogy to the constitution of the American Senate. Out of doors the suggestions were so numerous that their name is Legion. Not only every paper, but nearly every column, contained some new device. One honorable member—he who insinuated the charge of conspiracy against those who differed from him—had himself spoken of this elective plan as an "experiment." I like not the idea of experimentalizing on such a matter; but I would urge upon the country, that if an experiment is, indeed, to be tried, we should try that in which it may be possible to retrace our steps; not that which must be irrevocable without a revolution

the common right of electing the Lower House, the exclusive right of electing the Upper House, which I need scarcely point out would be apt to lead to the most serious jealousies and most deplorable antagonism (hear, hear)—particularly as that antagonism would not probably exist on the majority of topics, but precisely on those which specially affect the interests of each class. (Cheers.) In all the fallacies of general legislation, it is only too probable that both the Houses would be identical; whilst the most dangerous differences would occur upon questions of class, such for instance, as those which are likely to arise between freeholders and Crown leaseholders; and as the Houses would be co-ordinate and independent, without any safety-valve, the danger would be in the obstinate resistance of the Upper House to the will of the more numerous class represented by the Lower House. (Hear, hear.) I come now to the next proposition, which is that the Upper House should be elected by the same franchise as the Lower. I am unwilling to repeat the arguments which have been addressed to show that these two Houses can only be duplicates of each other. I feel that it would be impertinent in me to trouble the House with a repetition of arguments, on a matter which is so self-evident. But there is one observation which I would make. Almost all the arguments which go to show the necessity for separate Chambers, equally prove the necessity for their being elected or appointed by different powers. (Hear, hear, hear.) For if they were both elected by the same franchise, there can be no doubt that on all popular questions they would be unanimous. Possibly, as a mere revising body, the Upper House might be of some use as an occasional check upon hasty legislation; but on all great popular questions it would be simply and purely a reflex of the Lower House, and the government would become a pure and simple democracy. (Hear, hear.) In point of fact, it would be nothing more than an assertion of the divine right of the numerical majority to govern without check or control; a doctrine to which I will never subscribe. The Senate of the United States has been held up as a model for imitation, and has been contrasted with the House of Lords; but if the matter is to be determined by contrast, I think a comparison of the American Senate with the elective Upper House, which is here proposed, would exhibit a contrast quite as marked and more unfavourable to the former. The Senate of the United States is entitled to all laudation, as being the most conservative body that circumstances would admit of. I believe it to be an admirable institution. Its foundations are deeply laid in the virtues as well as in the vices of human nature. The Senate is elected by the States; being chosen in the majority of the States by separate votes of the two Houses of legislature, and in some States by a concurrent vote of both houses, and so far as is possible it is conservative. Indeed, the great men who laid the foundation of that institution well knew the foibles of men as well as their virtues; and they calculated well, when they foresaw that, from its very composition, the Senate, composed as it would be of the representatives of Sovereign States, would be inclined to carry its authority with a high hand, and to form a bulwark against the tyranny of democracy. They knew that the greatest men — men of the highest character, ability, and probity—would, for the sake of each electing State, be selected. Moreover, they knew the effect of position upon human character—they knew that the pride of place—that each member's reflection that he was in his own person an embodiment of the will and power of a Sovereign State, and the guardian of its dignity and rights — would give them a lordly tone, and make them abundantly conservative. This is, I suppose, what the founders of the American Senate calculated on. (Cheers.) But in what respect would the proposed elective house resemble that Senate? I can conceive no one point of resemblance. It is proposed that the members should have a higher property qualification; and should hold their seats for a some-

what longer term than the members of the Lower House; but the House well knows what these conditions amounted to in such a country as this. The House well knows that the possession of a little less, or a little more money—or the possession of place for a little less or a little more time, will have no real effect. (Cheers.) One of the arguments advanced in support of such an elective house by one honourable member is, that there should be no taxation or legislation without representation. That honourable member, I am sure, must see his mistake. I should have supposed, if I had not known my honourable and learned friend too well, that he really believed the concurrence of two of the legislative estates, to be sufficient for the enactment of any law, or the imposition of any tax. I know that such a notion has been adopted by one person, of whom I will not say whether he is a member of this House, or whether he is a supporter of the elective principle for the Upper Chamber, and I feel that the argument is one calculated to catch and mislead the ignorant and unreflecting; and on that ground that it calls for a degree of notice which it does not of itself deserve. Is it not sufficient, to save the principle that there shall be no taxation without representation, that one House should be representative? Can a single sixpence be expended, or a single law, great or small, be passed, without the consent of the Lower House? Why, in England the principle of representation applies only to the Lower House; yet no one objects to the House of Lords having a voice in the imposition of taxes. Another honourable member has advanced other arguments—if arguments they may be called—which I scarcely know how to deal with. That honourable member acknowledges himself, that he has only recently come to the conclusion that an Elective House would be desirable; and his conclusions are founded, not on his own opinions, but on certain speeches, delivered some time ago, by various individuals in England. I confess when I saw my honourable friend (Mr. Cowper) take up one little piece of printed paper after another, I asked myself what on earth my honourable friend would have done without his scissors? (Roars of laughter.) Now I have no intention of detracting from the authority of Lord Grey and the other lords and gentlemen whose speeches have been quoted; but, after all, much as I am disposed to respect those opinions, I am not quite prepared to concede to those individuals any superiority over this House, in ability to decide this matter. (Hear, hear, from Wentworth.) They might bring greater talent and a higher position to bear upon their arguments; but they have not the actual local experience which we possess ourselves; they can be but theorists, whilst we have to deal practically with the question. (Cheers.) And, after all, I do not see that their opinions so very clearly supported the views in support of which they were quoted, or in what way they were more weighty than those of lords and gentlemen who took the opposite view of the question. Some of the noble lords, indeed, have derided the idea of establishing anything like a House of Lords in a colony. But their lordships have their faults as well as other men, and, perhaps, some pride and some exclusiveness entered into that derision. (Cheers.) Again, some have declared that nominee houses have uniformly failed. But what kind of nominees? Such nominees as we have the honor—or, perhaps, the misfortune—to be: Nominees mixed with representatives of the people in the same house, and owing their seats to an irresponsible executive—a system which leads to a constant and irritating species of antagonism, and, perhaps, to rather more obloquy than the nominees really deserve. (Hear, hear.) But where is there an instance of nominees having failed when combined with responsible government? I will assume that Canada, perhaps, may be adduced as an instance. But then, in Canada, there are two antagonistic races, constantly struggling for the ascendancy over one another—one of which, however amiable and intelligent, has never been remarkable for political

sagacity. (Hear, hear.) But in this colony, where the people are essentially British and essentially one, I fear no such result. I am, in fact, at a loss to discover upon what principle the proposal of an elective house is based, unless it is intended to throw the whole power of the state into one class. We have often heard "the right divine of Kings to govern wrong" questioned; but now it appears to me that they who reject that dangerous doctrine, as applied to Kings, contend for the right divine of the people to govern wrong. I acknowledge no right to govern, in the majority, as such. I will only admit that power should be extended to the people as far as it is for the benefit of the community as a whole; in fact, for their own benefit. I will admit, as the past has shewn it to be safe and right to give gradual development to the power of the people, so the day is approaching when, by the further growth and diffusion of intelligence and of virtue, it will be wise and expedient to grant them a larger and a constantly increasing share in the government. (Hear, hear.) But I utterly deny that any man has an inherent and personal right to a share in the government. It depends entirely upon his fitness—upon his relation to his fellow men—upon the existing constitution of his country—and upon those maxims and balances which are necessary to preserve the equipoise of the State. (Cheers.) Subjects, as well as Kings, must be content to have their powers subjected to such checks and limitations as are necessary for the public welfare. I will not detain the House long with what I have spoken of as a plan shadowed forth in analogy to the American Senate; for, in truth, I think I have gone too far in attributing any substance to the views of the honourable member, who has descanted so largely on the merits of that institution as contrasted with the House of Lords. That honourable member has not favored the House with any plan by which his preference could be indulged; and I answer that it is an impossibility. Without going further into this topic, I think it sufficient to observe, that there is no confederation of independent States, as in America, and consequently no analogy exists (hear, hear). Carefully considering the provisions in the bill for a nominee Upper House, I think that, in all essential particulars, it is the nearest approach that circumstances permit to the great institution of the House of Lords. I have no doubt that it will have within its walls men of honour, wealth, intelligence, and experience—not Lords, certainly, but men who, whilst they will be independent, will not be absolute; and who, if they despotically persist in opposing the popular will, will find their power controlled by the Ministry, who will be the concentration of public opinion and popular power. I do not see how it is possible that such a House, with responsible Government, can be dangerous to the public liberties, or obstructive of national progress. No doubt the two houses would often be antagonistic; but it is well they should be so; and I have little fear that it will be anything but a healthy antagonism. (Hear, hear.) It has been made a grave objection to the principle of nomineeism, that the first House is to be nominated by the Government. It is quite clear that the Council must be created in the first instance, and before responsible Government is established; and I ask what better power could be selected to create this body than the existing Government? Its creation gives no undue advantage to the Government. The political features of the colony as yet have hardly cast their shadows before. When the present question as to the Constitution is settled, the Executive Government of the colony can scarcely be said to have any political opinions. So that, supposing the Government were wicked enough to appoint a nominee House, having reference to the presumed pliability of members to carry out bad measures, they really would have nothing to guide them in the choice of their tools. Measures which they had never dreamt of interfering with them would in all probability be found to recoil upon themselves. But if the Upper

Chamber were elected by the people, or by the Lower House, the particular politics of the electors at the time of the election would guide them in their choice; the sentiments of each and every member would be carefully ascertained and weighed; and thus the Upper House would be simply the reflex of the Lower. With this view of the case, I contend that the first nominee chamber should be appointed by the existing Government. (Cheers.) It has been urged, in objection to a nominee House, that in Canada the Conservative party is in favour of an elective house, whilst the Liberal party is firm in respect to the maintenance of the nominee chamber. If this be so, how strange is it that they who assume to be the Liberal party in this House should refer to the case of Canada in support of the principle of popular election. For myself, so far from thinking that a nominated Council, with responsible Government, will not be subject to the popular will, I feel that the danger lies rather in the opposite direction. I refer to the danger that a power which should be regarded only as the "last resource of the Constitution," should be resorted to on insufficient occasions—the almost unrestricted control which the representative body would possess, through a minority dependant upon its votes, might at any time be so used as to destroy the balance of the State. Against this danger we should have little security but in the good sense of the people and the wisdom of the future statesmen of the country. But to these, and such checks as the Governor could interpose, I hope and believe that we may trust. I am convinced that the deep responsibility, which will attend upon the exercise of the power of swamping the Upper House, and the conviction which men of eminence will feel of the importance of preserving the Constitution intact, will restrain all such rash and hasty interference with the Upper House, as will impair its weight and usefulness; and I feel sure that a wise and courageous exercise of the power would not be more surely rewarded by public approbation than would the unconstitutional abuse of it be, in time, followed by retributive condemnation. (Cheers.) It is also to be remembered that, in this extreme case of swamping the Upper House by the infusion of new members, the assent of the third estate here, the Governor-General, would have to be obtained; and although his Excellency would in most cases yield to his minister, yet in so momentous a matter there can be little doubt that the most careful and anxious deliberation would be exercised. I sincerely believe that the proposed Constitution may be received with confidence by the country, in the firm reliance that the safety-valves of which I have spoken will never be opened for the purposes of destruction. (Loud cheers.) I will advert only to one other topic before I resume my seat. It has been asserted that the present nominees in this Council have no right to take part in the debate on the Constitution Bill. I deny that proposition. The nominees are appointed members of this House by the Act of Parliament under which it meets. They, perhaps, may be regarded as the conservative element of the Council, and as such it is important on this, as on many other subjects of legislation, that they should take their proper part in the councils of the country. In a reform of the House of Commons, would any one have the hardihood to assert that such reform should be conducted by the Commons alone? Still more, if a reform of the House of Lords were contemplated, would the duty be confined exclusively to the Commons? Why, such a proposition would amount to a revolution. (Hear, hear.) The Imperial Legislature, by whose authority the power of framing a new Constitution has been conferred, has assigned that power to this House as at present constituted. It is, therefore, not only our privilege, but the bounden and solemn duty of the nominee members to deliberate and vote on this great question as their convictions may require. Their privileges, if they have any, apart from their duty, they may relinquish as they will; but their duty on this occasion

it would be shameful to abandon. Thus impressed, I have addressed the House; and in voting, I feel that I am performing the greatest public duty it may ever be my lot to be called upon to discharge. (Loud and prolonged cheers.) If, in so speaking and so voting, I am contributing to the framing of a good Constitution for this important colony, I shall be truly happy. I firmly believe that I am; for the Constitution Bill before the Council appears to me to have been framed with reverential regard to the noble principles of the British Constitution. Under that Constitution I have been born; have lived; and hope that I shall die; and the same high privilege I fervently pray may be the lot of my children and their successors. (Loud cheers.)

Mr. THOMAS BARKER: In offering a very few observations on the important question before the Council, I cannot but express extreme surprise at the invidious remarks which have fallen, during the debate, from honourable members, as to the position of the nominees who sit by the authority of the Imperial Act in this chamber. Suggestions have been thrown out, that a gentleman sitting here as a non-elective member has actually lost his position in society. I desire to ask upon what grounds such a suggestion is thrown out? I will, as one of this abused body, assert that I have as much right to speak and to vote here as any of the elective members. Really, a stranger unacquainted with the existing Constitution of the colony would imagine that the Crown nominees are a most disgraceful set; with no consciences; no stakes in the country; no integrity: in fact, that they were men of straw. Now, I fearlessly assert, that the non-elective members are fully as respectable and independent as the elective; and therefore I cannot understand on what ground they are to be shut out from speaking or voting on this great question. The nominees are not chargeable with having broken their promises to their constituents; a charge too often justly made against those who, on the hustings, make all manner of pledges to the electors which they never mean to keep, and do not keep in the Council chamber. (Hear, hear.) I am sorry that the honourable and learned member for Cumberland (Mr. Darvall) is not present, because I desired to advert to several points, whereupon I consider that honourable gentleman has stigmatized the nominees most unjustly. With reference to the Bill before the Council, I quite concur with all that has fallen from those who have given such warm tribute of praise to the honourable and learned framer of the Bill and his able colleagues. The report by which it is accompanied is a most valuable document, worthy to be ranked with any state paper of the oldest legislatures. (Hear.) Looking at the despatches, and all the various papers which have passed between this colony and the mother country, on the subject of the New Constitution, I feel that the house is bound by the compact recognised through all this correspondence, in respect to a nominated Upper Chamber. His Excellency, in recommending the petition of that Council, certainly had a nominee Upper House in view: and when to that house it was promised to cede the appropriation of all the revenues of the colony, and the disposal of the waste lands, unshackled, save by a civil list—the amount of which is left to the Council to determine—it is most certain that the home government considered a nominee Upper House a main condition in the compact. As to the probable choice of nominees by the Government, can there be in the minds of any reasonable man the least doubt that the nominees would be men of high standing, honour, property, and intelligence,—men in every respect identified with the best interests of the colony. This has been called a money-loving community, and I fear that it has too truly been called so. I am afraid that very many people think of the acquisition of money only—and nothing else. I fear danger from the arts of these mere money-making men. Why, it would be the easiest thing for these people, by the wily use of a little money (and very little

would suffice), to pack an elective Upper House, and by the aid of their cats-paws there, and their confederates in the lower chamber, effect the most gigantic schemes of spoliation. (Hear.) One of their first acts would most likely be to lower the minimum price of waste lands, and this done, it would be no difficulty to monopolise all those that were available. This might be easily done by half a dozen designing men; and the knowledge that it could be done is, in my opinion, the real reason why the movement against the conservative principles of the Constitution Bill had been so successful out of doors; on no other grounds can I conceive that the leaders would act so pertinaciously against reason and common sense. A few daring speculators (if the agitation without, prevailed) might swallow up all the waste lands of the colony; each pocket one or two hundred thousand pounds, and then leave tho counlry to its fate. I shall support the second reading of the Bill. (Cheers.)

Mr. THURLOW: In rising to address the house at this late period of the debate, I will explain why I have not taken an earlier opportunity of joining in the discussion of this most important question. I feel that, out of doors, I have, to a certain extent, been committed on this question, and that I have not all the liberty of a free agent in respect to it. I have come into the house by an accident—by a vacancy occurring from the absence of one of the members for the city of Sydney, and not from being returned at a general election. Now it is known that when the election took place, this question of a Constitution was spoken of very largely. The Constituion Bills brought up by the select committee of last session, and laid upon the table, were canvassed by the public and the press; and it was very generally considered out of doors that they would be very materially altered before being brought before the house in the present session; and if this conviction had not been entertained, no doubt there would have been petitions sent in for a dissolution of the Council. Feeling this, I have wished to hear what could be said in defence of the Bill before I expressed my final opinion upon it. I find it necessary to say, that as a member of the Constitution Committee, it has been a matter of deep regret to me, owing to circumstances over which I could have no control, that I have been unable to attend its discussions so frequently as I could have wished, and ought to have done, and to suggest such amendments in the measure before the house, as would have made it more acceptable to the people at large. It is, however, possible, that in a further stage of the bill, if it should be read a second time, these amendments may still be made. I take much blame, in common with others of the Committee, for not having made these suggestions in their proper place; for it does appear to me, that all suggestions that were made in the Committee have been embodied in the measure brought up by the honourable and learned member for Sydney,—a measure which I admit is distinguished by much learning and research, and which, to some extent, reflects much credit on the honourable and learned framer. There are, however, many portions of it which are not acceptable out of doors. In proceeding to discuss this question, I would beg to make one or two prefatory remarks. I well know that for a long time past I have been looked down upon by a portion of the present government; but this feeling will not lead me to any factious opposition to the present measure. There are, I am proud to say, many members of the Government who, though their views are hostile to my own on this question, are actuated I know by the most conscientious motives. But in making a constitution for this country as at present circumstanced, it cannot be concealed that there is a portion of the members of this House whose position may naturally lead them to support a measure which has the favour of the Government. The determination the House will come to on the present motion is, I take it, pretty well known. The course the debate has taken has cleared away all doubt on that head.

The supporters of the Bill have, one after the other, been most favourably received; and as, no doubt, the members of the Government have the right to confirm their speeches by their vote, there will be a large majority in favour of the measure. Whatever may be the result of this Bill, however, it cannot be said that it is a constitution framed by the representatives of the people. If the Bill passes its second reading, and goes into committee, there are some of the clauses for which the members of the Government cannot vote. In reference to those clauses I will say that, so far as the salaries of the officers of the Government are concerned, I have no wish to reduce their amount. I gather from the observations of the honourable and learned Solicitor-General that it would be impossible to elect an Upper House in this colony. Now I cannot see the reason of this. If the people of the colony have all the requisite qualifications to elect one house, I do not see why they should be unable to elect another somewhat similar in character, but chosen from a different source. But it is said by another party that there would be difficulties enough in finding materials for one house: but if the people had intelligence and prudence enough to elect one House of proper members, they would have intelligence enough also to elect another House of a conservative character. Neither does the argument against the competency of the people to elect their own legislators seem to me very consistent, considering the source it comes from. In the petitions which have been sent home from this House, praying for redress of grievances and concession of rights, the House has always claimed the power for the people of this colony to govern themselves; and in the despatch of Sir John Pakington, in answer to one of these petitions, the fullest admission has been made of the intelligence and ability of the colonists to govern themselves. Sir John Pakington, in his despatch, states, in reference to this colony—

> With the evidence thus before them, they cannot but feel that while it has become more urgently necessary than heretofore to place full powers of self-government in the hands of a people thus advanced in wealth and prosperity, that people have on the other hand given signal evidence of their fitness to regulate their own affairs, especially under legislative institutions, amended in the manner which the Council itself has pointed out in the concluding part of this petition.

(Hear, from Mr. Wentworth.) It is true that the reservation spoken of is in allusion to the offer of the House to accept a constitution similar to that of Canada. But we heard the other night, from the honourable member for Durham (Mr. Cowper), that there is a change about to be made in that constitution, which will render it much more democratic than it is at present. But why, I ask, on such a question as this, should we be bound by an offer made some time ago, when our consideration of the matter had been small, to take a constitution which may be injurious to the interests and dangerous to the destinies of the country. Are we to be bound in a matter of this kind as in a matter of bargain and sale, for money or goods, or chattels? We had far better wait to see what the changes are which it is proposed to make in the Canadian constitution, than take one which will not work well, which cannot work well, and have eventually to fall back upon the miserable system under which we are now governed. What constitution, I would ask, can exist for long, which is opposed to the wishes of the great mass of the people, against which protestations are being received from all parts of the country; that is opposed by those whom it is the fashion in this House to call a mob, but among whom, are men of standing and intelligence equal to any honourable member. But it has always been the habit of the Council to treat the expression of public opinion out of doors with disrespect. (Oh, oh.) We never hear of attention being paid to opinion out of doors, unless it is expressed by men of great wealth, standing, influence, and some character: then, indeed, their voice is listened to, but the industrious classes, and their appeals, are entirely

forgotten. (Cheers.) They are not allowed to enter into consideration in the passing of laws by which they are to be affected; their voice is of no weight; they have no right to appeal, and are fit only to be ruled by an iron law. (Oh, oh.) It seems to be the wish of a certain class in this House that no man of low station should be allowed to rise to respectability—that he ought to be prevented from aspiring to the advantages of education and the rights of property. (No, No.) We have heard a vast number of authorities quoted by various honourable members—the press has been crammed with them, and I admit that many of these were quoted from writers deserving great attention. But they are, for the most part, antiquarian authorities. They are full of that sort of liberty which prevailed in ancient times, and the authors were very good and useful men to live in those times, but they only partially apply to our present state. We have heard of America, and of other States, and of England itself. But there might be loyalty in England, even although the House of Lords should be abolished, which it might be if its abolition should be again asked for. I would ask, in framing a constitution for this colony, should we go back to the ages of barbarism, when tyranny existed in every shape under the authority of kings and queens. We may try these theories, based on the authorities that have been read, but I repeat that we shall never be able to make any constitution that will stand, which is not sanctioned by a vast majority of the people. But though the people out of doors, who oppose the bill, do not perhaps look as closely into history as honourable members, they certainly are not men deserving of the titles of federalists and socialists. It has been said the Government out of doors has lost the confidence of the country. I believe that some of its members have; although, I admit, there are some, who, in the event of responsible government, would be returned, by the people, to the House. But the people are heartily sick of nomineeism; and the House itself has, for years, been protesting against it. It has been the greatest contest in which the House has ever been engaged, and the honourable and learned framer of this bill has been the leader in the cause of liberty. We have seen that nomineeism has been an injury to the country; it has kept down everything but favoritism among a certain class, and yet, after all this, some now want to ask for nomineeism in another shape as the best government they can have. The only suggestion which has been made of a different form of constitution is contained in the very eloquent address of the honourable member for Cook and Westmoreland (Mr. Martin); and it is that the Upper House should be elected by the landowners of the country. But this would be the election of a class only, and I agree with the honourable and learned Solicitor-General that it is not necessary to wait to see whether a man has bullocks, or whether he has land, to give him a right to vote, so long as he possesses that intelligence which can be turned to his country's good. I see no more difference between the landlord and the tenant, than I do between the producer and consumer, and I would give neither the preponderance. I also object to the clauses restricting the qualification of membership from clergymen and the judges, though certainly I should not be very likely to vote for either; nor do I think the people out of doors would. Still, however, these restrictions ought not to exist, as the time may come when even these classes may be roused to action. The House has already passed a law excluding clergymen, but it has been disallowed at home. I think, also, that the clause relating to hereditary honors should be modified, and also the clauses for the distribution of members, and the clause respecting the squatters. I fully admit that the squatters are a class deserving the greatest consideration, and that they have done much service to the country; and if they had been, on one occasion here, led on by the people to obtain that possession of the lands which is now thought undesirable, I would yield

to them that fair and reasonable compensation to which they are entitled for the restitution of those lands. With respect to one other clause—viz., that respecting the schedules—I would say, that if the principle on which it is founded be right, and I am not conclusive on this, that the officers on the government should be pensioned off. I do not think the amounts at all too high. I am for paying all good public servants well. There is one class of public officers in particular which to the best of my experience and judgment has always been underpaid; I allude to the law officers of the Crown. The learned Judges have very heavy and responsible duties cast upon them, and it is only just to say that they have always discharged them in the most upright and honorable manner. It is matter of pride to this country that it is the one colony of the empire in which, after careful research and deliberation, an honest decision can be obtained as to what is law. (Cheers.) This is a most important consideration. The Bench is the highest tribunal to which the people of the colony can appeal. The Judges stand between the Crown and the people, as the safeguard of their rights, their properties, and their personal liberties. Therefore I do not object to these amounts, although there are some gentlemen who have lately crept into office with liberal salaries, who, if this clause were passed, would have to retire at too early a period on the expense of the country. Although I am a junior member of the House, and although there are many members whose tenure in this Council is much longer than my own, and for whose abilities and public and private character I have the highest respect, still, on a question of this nature, I feel I have as good a right to speak freely as any one. Still, I have not identified myself with the opposition to this measure out of doors, because I did not think it was fair for me to do so, until I had heard what could be said in favour of the mnasure in the House, and I had determined on leaving my judgment unfettered; if I felt I ought to vote for it, I would resign my seat. I agree, however, with the honorable and learned member for Sydney, that members of the House ought not to be mere delegates, but that all ought to vote according to their conscience. I think that some concessions might be made in this Bill. The hereditary clauses, for instance, might be given up. Not but what I believe their introduction into the measure has done much good by having opened out something for the reflection of the colonists, which had not been thought of before. I do not think that the power to confer these titles should be given by Act of Parliament, but they might be conferred by her Majesty on deserving subjects here, and it would have been a wise and generous spirit for the government to have displayed, had it recommended the Crown —the fountain of all honor—to confer on those men in this country, who in its early and struggling days conferred honour on it; and it may be those men are as worthy of such honours as those in the mother country who now enjoy them. The Colonial Secretary has told us of his having been inundated with applications from gentlemen who desire to be enrolled in the commission of the peace. What has been the result of all this I will not stop to enquire. The honorable gentleman has a record in his office, and he might see from this what service these persons had rendered to the country, and how far they were respected. If this system of nomination was to be taken as a specimen of what a government might do, even in defiance of the people, the House ought to pause before they opened the door for the exercise of such a power. It is admitted, that we only want an Upper House to prevent hasty legislation, and that it will be impossible to create any thing analogous to the House of Lords. But if the nominees in this house have no weight, what additional weight can they acquire by being placed in a separate chamber? No advantage will be gained, and there will be a continued risk of the extreme measure of a stoppage of the supplies being resorted to in order to resist coercion from

this Upper House. We ought not to call these antagonistic powers into existence; but, with the many recent arrivals, it is quite possible that a sufficient number to constitute both Houses may be elected in whom the people will have full confidence. And I would suggest this: if the colonists generally are competent to elect members for the Lower House, where all the intelligence of the country will be needed, they may be equally trusted to elect, directly or indirectly, the members of an Upper House. I would propose, therefore, that the gentlemen elected by the people should have power, either from their own number, or from the colonists at large, to elect a small number—say 21, for seats in the Upper House. To make the latter independent of those who appointed them, I should propose to give them a term of office, not, indeed, for life, but three or four times as long as that for which the members of the Lower House would hold their seats. It may be said that this would be a mere duplicate of the Lower House; but this would not be the case. The nature of its position and term of office would render it independent, while it would be indirectly appointed by the popular voice. There are other suggestions from a gentleman (Mr. Norton), whose standing and long experience entitled him to considerable weight in that House, and whose suggestions honourable members would do well to consider. Their leading feature was, that the government should nominate 100 gentlemen, and that out of this number the elected chamber should select twenty-one. I concede that this subject is one of very considerable difficulty, and admits of very wide difference of opinion. What is the proposition of the body out of doors, which has taken this matter into consideration, I am not prepared to say, not having yet had an opportunity of considering it. But in any case the House has no right to gag these people. I should rather be prepared to give a due consideration to their suggestions. It is a great pity that expressions should have gone forth taunting and branding these people as all that is contemptible. There is, I maintain, as much intelligence among these people, and as earnest a desire to promote the best interests of the country as there is in this House. There has been no demonstrations antagonistic in the slightest degree to the law of the country. (Hear, hear.) In former years no one was so much looked up to as the hon. and learned member for Sydney. I have myself been in the habit of looking up to that gentleman as one of the ablest men in the country. And if I now insist upon the expression of any particular views, it is that gentleman's influence and example I have to thank for it. Although differing from the hon. and learned member's present views, and opposed to his present measures, people out of doors still admire him for his great abilities, and appreciate the good he has done in times past. That gentleman might, in fact, pass as safely through the city at any hour of the twenty-four as the most popular member of the day. The people, whose representations have been rejected and treated with contempt by that House, must appeal to the Parliament of England if this measure be pressed against their will. And if they are compelled to take this step, one object which the House and the country have in view, that of obtaining responsible government, will be defeated. The government at home will never venture to confirm a law which has been passed by thirty gentlemen in the face of thousands; and seeing that there is no agreement here as to what form of constitution should be adopted, they can come to no other conclusion than that the time for granting responsible government had not arrived. I will call upon the House to pause ere it grafts nomineeism upon this measure, in the vain hope of establishing an institution bearing some analogy to the British House of Lords. We have abundance of talent and abundance of experience among us, and we ought to make a constitution for ourselves—a constitution not copied from that of any other land, but one which shall be peculiarly our own, and adapted to the exigencies of the country. There

are people here of all pursuits. The honourable and learned member for Sydney has himself had a finger in every pie, and an iron in every fire, until he attained his present happy position of complete and comfortable independence. And this, by the by, he attained through the gold discovery, from which he predicted nothing but loss and confusion. The interests of the country are by no means identical with those of its great freeholders or great squatters, and no paramount influence should be given to either of these classes. Mr. Lowe, I presume, will not be objected to as an authority in this House, (hear, hear, and ironical cheers,) and I will quote from that gentleman with reference to the position and influence of nominees, although, as a general principle, I must condemn, as useless, the very lengthy and continued quotations from various writers in all ages which have been made throughout the debate. Mr. Lowe said—

> I speak with some degree of certainty upon this subject, because I have had the honour of filling that office myself, and of resigning it, because I found it impossible, whatever I did, to fill it to the satisfaction of my own conscience, and, at the same time, to the satisfaction of others. For instance, if I voted with the government, I was in danger of being reproached, as I have been on one or two occasions, by representative members, as a mere tool of the government, and not, according to the theory of the constitution, acting for the colony at large; and if I took the opposite course, and voted with the opposition, as I did upon most questions, and upon none more heartily than on that relating to district councils, I was reproached by the officials as a traitor to the Government. In fact, I was in this position —if I voted with the government I was taunted with being a "slave;" and if I voted against them, I was taunted with being a "traitor." The emoluments of the office are not so tempting as to induce any one with the least spark of independence to put up with this situation, and therefore I thought it the wisest course to resign my seat, and I did resign it altogether. Observe, now, the position which these nominees hold universally throughout the colonies. It is one full of anomalies. They represent nobody; yet they have not the slightest affinity to an aristocratic institution. They are the scapegoats of the constitution, the target for every attack, the butt of every jest. Ignominy and obloquy rain thick upon them: and when it is asked whether the colonies have materials for a second chamber, the question may, I think, with more propriety be put, can they have materials for nominees? Can they have people so paramount in talent, so independent in property, so conciliatory in manner, so combining all sorts of contradictory attributes, that they can hold this invidious office without exposing themselves to the sort of treatment to which I have alluded? That I think is impossible; and it is not my opinion alone, but that of almost every other person throughout the Australian colonies.

At one time the whole house had been in arms to put down this creature nomineeism (hear, hear, and laughter). The hon. and learned member for Cumberland, and the hon. member for Durham, brought under the consideration of the House a great mass of arguments and authorities to show the fallacies of this measure; but they had all up-hill work, and met with nothing but unmerited abuse. The hon. member for Northumberland has entertained the House with details of tyranny and oppression during the early times of America. But surely the hon. gentleman does not mean to say, that such acts would be permitted here in the present day. They might have done very well at former periods of the colony's history, for there were many cruelties here in times past. What those cruelties were I will not stop to inquire; but I will leave the hon. member to inquire for himself. The details of the measure will have to be considered and discussed when it goes into committee, and I will therefore not detain the House by going into any of these questions. My chief desire has been, in performance of what I conceive to be my duty to my constituents, to vindicate them from the aspersions which have been cast upon them. I again entreat the House to pause before it admits this principle of nomineeism into the bill. After having contended so long and so earnestly to get rid of this system altogether, it is better that hell should gape, and swallow us, than that we should thus, by our own act, give up a measure of freedom within our grasp.

Mr. NICHOLS: Had it not been for the lengthy arguments which have just been addressed to the House, I should

not have thought it necessary to trouble the House long. As to the attacks upon the honorable and learned member for Sydney, I may well leave him to defend himself. But whatever opinions may be entertained upon this bill, however the measure may be condemned, I have no doubt that every reflecting and impartial man must give the honourable and learned gentleman who framed it, credit for having preserved and conservated the best interests of the country. (Cheers.) In its main features this measure is characterized by a large and enlightened liberality; and we should be traitors to ourselves and to our posterity if we refused to accept it. (Cheers.) Now I am unable to come to the conclusion that the country is not pledged to this measure, although I admit that some latitude of discretion is allowed in the despatches of Sir John Pakington; and I believe if the measure is not accepted, the colony will lose all those great advantages which it has so long contended for, and which are at length conceded to it. I believe, although the question of a nominee or elective house will have to be settled in Committee (hear, hear), I believe that this bill will check anarchy, whilst it will secure to every man his liberty. (Loud cheers.) And when future generations shall enjoy the inestimable blessings of true public liberty—when the party animosities and personal antipathies of the present day have faded away—when our posterity comes to weigh impartially the great actions of distinguished men—I believe they will place at the head of the list of the worthies of Australia, the name of William Charles Wentworth. (Loud cheers.) I believe that, as a reward for his public services, he will have the praise of having laid the deep and secure foundations of the future empire of the South; for, to use his own expressions, there is no doubt that this colony has been precipitated into a nation. I and my honourable and learned friend are not wanderers in the land; we are natives of the soil—all our affections and all our hopes are centered in this land; and can we so betray our posterity as to found a constitution which will degrade us as a nation? (Cheers.) We are of the people. Have not I risen from the ranks of the people? Has not my honourable and learned friend raised himself, by his genius and his talents, from the ranks of the people? Is he not one of the people now? and has he not the same deep interest in the country as any other man has? Why should he wish to injure himself and his own children? Does any one believe it possible that he who has achieved for his country the freedom of the press, trial by jury, and the right of electing its own representatives, that he should wilfully forfeit his claims to the gratitude of that country,—that he should deliberately tarnish his fair fame? (Cheers.) I do not and cannot believe this. I cannot believe that, at the close of his great career, my honourable and learned friend could be such a traitor to himself. (Cheers.) The hon. member for Sydney has quoted some observations of Mr. Lowe in support of his arguments; but if he had read a little further he would have found that those observations went the other way. And, indeed, Mr. Lowe is well known to have changed his opinions as often as the cameleon changes its skin. (Hear, hear.) In the speech of Mr. Lowe to the Colonial Reform Association, in June, 1850, after he had quitted this country, though he complained of his position as a nominee, he never dreamed that the Imperial Government would consent to give an elective Upper House to the colony. And he had first broached the idea in a letter which was addressed to the editor of one of the Sydney papers. I am surprised—or rather I am not surprised—at this sudden change of opinion on the part of Mr. Lowe. (Laughter.) I have answered that letter through the press, referring to the former speeches of that gentleman, because I do not like to see my fellow-citizens led away by the opinions of a man who is so constantly vacillating. (Hear.) [The honourable gentleman here referred to one of those speeches in which Mr. Lowe had strongly advocated the maintenance of the British constitution.] It is my

desire to see that British constitution maintained. I have been taunted with changing my opinions; and, in truth, I did begin life as a radical, but only as a radical reformer of all proved abuses; and I have yet to learn that the British constitution is a proved abuse. (Cheers.) On the contrary, it is acknowledged on all hands to be the pride, the admiration, and the glory of the world. (Renewed cheering.) The honourable member for Sydney has said that he is not here as a delegate but as a representative; but his speech denies his assertion. His speech, indeed, is merely a repetition of what has appeared for the last month past in the columns of the Opposition press, and I compliment the honourable member on the excellence of his memory. (Laughter.) But I have a much higher view of the duty of a representative. If my services to my constituency are not worth their votes, I declare at once that I care not two straws for a seat in the Legislature. (Hear, hear.) These are my principles. I have a deep respect for public feeling and for popular applause; but I will always give my honest opinion fearlessly, hoping that what I do will be for the benefit of the country. (Cheers.) If they reject me, let them do so; I shall be no worse a man, and they may get a better representative. (Cheers.) I have no intention to trouble the house with lengthy authorities; and, indeed, I think that it is a very inconvenient practice that has grown up in this house; but I will refer briefly to a modern writer who has lived in the neighbourhood of a democracy, and knows well what it really is. Now it may be that I should be for extending the franchise; and I think that a class of persons who are now paying large taxes to the Government ought to be enfranchised. But I believe that in no part of the world is life and property safer than in New South Wales. (Cheers.) Every man that is honest and industrious can sit under his own vine and his own fig-tree. The Government has done much by its educational plans to advance the social and moral welfare of the people; and it is no vain hope that, in future days, orators, statesmen, and poets, will spring up in this land equal to those of any other country under the sun. (Cheers.) The labouring classes are better off than in any other country. Would to God the poor starving thousands in the mother country could share in their abundance, for all we want are the sinews of the labourer to make this colony a great nation. But though I am favourable to the extension of the franchise, I am not now for universal suffrage. I read my recantation on that point (hear, hear); and I am reminded of an old man, now living, who was the contemporary of Fox, Pitt, Burke, and Sheridan, but who acknowledged that in early life he was a Radical, in middle age a Whig, and he intended to die a Conservative. (Laughter and cheers.) Now I believe in my heart the honourable member for Sydney is the rankest aristocrat in the colony (renewed laughter); and that he would be eminently fitted to succeed Lord Campbell, of Campbell's Wharf. Why, I remember the time when the honourable gentleman would not deign to sit upon a jury. (Hear, hear.) Where was he when the Patriotic Association was fighting for the liberties of the country? (Laughter.) Why, either in his counting-house, counting out his money, or at the Pestle and Mortar Club. (Laughter.) Talk about consistency! Why he is the most inconsistent man in the House. (Cheers.) And I will tell him that I thought at first that the representation of Sydney ought to be increased; but, after the exhibition he made of himself the other night, I am more inclined to think that Sydney has one representative too much. (Laughter and cheers.) I have listened to the honourable gentleman's speech with great attention; but I defy anybody to understand what he meant, and I defy the honourable member himself to explain what he meant. (Continued laughter.) Of all the melancholy exhibitions that have ever been made by the representative of such a city as this, that was the most disreputable. The honourable member from Salisbury Plains (Mr. Marsh) has said that the greatest constituencies often returned the worst

members; and I am only too much afraid it is true in the case of Sydney. (Cheers and laughter.) The honourable member said he would support the Bill, yet all his arguments were against it: he reasoned in a circle, neither knowing where he began nor where he left off. (Cheers and laughter.) I will now quote a few passages from Sam Slick, to show the absurdity of an elective Upper House;—

That's the beauty of havin' two bodies, to look at things thro' only one spyglass, and blow bubbles thro' one pipe. There's no appeal, no redress, in that case, and what's more, when one party gives riders to both horses, they ride over you like wink, and tread you right under foot, as arbitrary as old Scratch himself. (Laughter.) There's no tyranny on airth equal to the tyranny of a majority; you can't form no notion of it unless you seed it. Jist see how they sarved them chaps to Baltimore last war, General Lingan and thirty other fellers that had the impudence to say they didn't approve of the doin's of the administration; they jist lynched 'em and stoned 'em to death like dogs. We find among us the greatest democrats are the greatest tyrants.

I have no doubt the honourable gentleman would live to find that out. (Cheers.) Looking at the effects of democracy on the Continent and in California—looking at the shooting down of innocent women and children in France, and the hanging of people without trial in America, I would ask, is that the sort of government that Englishmen desire? (Cheers.) God in his infinite goodness preserve this country at all events from such horrors as those. (Loud cheers.) But let the house hear Sam Slick again:—

If there be any good in that 'are Council at all, it is their bein' placed above popular excitement, and subject to no influence but that of reason, and the fitness of things; chaps that have a considerable stake in the country, and don't buy their seats by pledges and promises, pledges that half the time ruin the country if they are kept, and always ruin the man that breaks 'em. It's better as it is, in the hands of the government. It's a safety-valve now, to let off the fume, and steam, and vapour, generated by the heat of the Lower House. If you make that branch elective, you put government right in the gap, and all difference of opinion, instead of being between the two branches as it is now, (that is, in fact, between the people themselves,) would then occur in all cases between the people and the Governor. Afore long that would either seal up the voice of the executive, so that they darn't call their souls their own, or make 'em onpopular; and whenever the executive once fairly gets into that are pickle, there's an eend of the colony, and declaration of independence would soon foller. Papenor knows that, and that's the reason he's so hot for it—he knows what it would lead to in the eend. That critter may want ginger, for ought I know; but he don't want for gumption, you may depend. Elective Councils are inconsistent with colonial dependence.

(Hear, hear.) No one could doubt that; and I would ask whether the House would rather see the colony independent, or see it continue under the protection of the glorious flag that has

Braved a thousand years,
The battle and the breeze?

(Cheering.) I do not think it worth while to reply to the scissors and paste speech of the honourable member for Durham. I have read it, but I can make neither head nor tail of it. (Hear, hear). I have been taunted with making an after-dinner speech, in which I said that, if the British Government refused to concede the colony its rights, they could look to American sympathisers to enforce those rights. True, I did say so; but has not the British Government actually conceded all demands? (Cheers.) There is no occasion now for sympathisers to take away our allegiance from our Sovereign—(cheers)—and I will say, with my honourable and learned friend the member for Sydney, that I hope the British flag will never again witness the bloodshedding of freemen; and whenever the day comes—which may come indeed—in which a separation must take place, it will be a peaceful separation. (Cheers.) The House will pardon me if I now say a few words in reference to the hereditary clauses. It has been said of me that I want to become Marquis of Waterford. (Laughter.) As reasonably might they call my honourable friend from Toxteth Park Earl of Drinkwater. (Renewed laughter.) I have never done the disgraceful things which were recounted of the Marquis of Waterford. I am strongly opposed to hereditary titles, for I consider that where high merit claims

recognition, it is at the Sovereign's own hands it should be given. It has been made a matter of obloquy that the local government has been inundated with applications from gentlemen desirous to be placed in the commission of the peace. I deny that such a desire is a too ambitious one. In distant districts of this colony, where probably the farms and stations are infested with marauders or hostile tribes, it is natural, on the part of gentlemen holding large stakes there, and also for their neighbours and dependants, to desire to have the great advantages of the speedy administration of justice. Those gentlemen, therefore, who profess their willingness to perform the onerous duties of justices of the peace, so far from being twitted with being guilty of an inordinate ambition, ought to be praised for aspiring to an honorable and responsible office (cheers). To one mis-conception of the honourable member for Sydney (Mr. Campbell), I must allude; and in doing so, I would observe, that when members express their opinions upon points of constitutional law, they really ought to take the trouble to make themselves acquainted with the principles and provisions of the laws they referred to. A fair knowledge of the laws under which he lives is an important part of every gentleman's education; and I was certainly surprised to hear the honourable member, in deprecating the exclusion of judges from seats in the legislature, (as proposed in the bill before this House) assert that judges sat in the House of Commons by virtue of their offices. Now, the fact is, that the only one who now occupies a seat in the Commons is the Master of the Rolls, and that is deemed so objectionable, even though he is an elective member, that a bill has been introduced to exclude learned gentlemen, in his position, from being eligible for election. In respect to the exclusion of clergymen from seats in the Council, I (Mr. N.) would refer the honourable member to the special act made in the case of Horne Tooke, which prohibits any one who had administered the Sacrament from being elected to Parliament.

Mr. CAMPBELL: A special Act is not part of the Constitution.

Mr. NICHOLS: I have always been taught that an Act of Parliament is part and parcel of the Constitution; and both as respects the exclusion of judges and clergymen from the House of Commons, I maintain that the highest constitutional principles have been carried out. As to a judge occupying a seat in the legislature by virtue of his office, the danger is incalculable. A political judge is placed in the most invidious of all positions. On the one hand, the necessary suspicions which would be raised as to his integrity and impartiality would sadly impair his usefulness on the judgment seat, be he ever so independent and upright; whilst on the other, he, if a willing tool to power, would be in a position to endanger the liberties of the people. (Hear, hear.) In this colony the baneful results of judges sitting in the legislature has been seen in former days. A high minded and honest judge has been bullied in Council by a despotic governor, to whose mandates he refused to yield. (Hear.) I hope that such scenes will never again occur in this colony; and, I will repeat, that a political judge is the most dangerous evil with which a community can be cursed. (Loud cries of hear.) In times of political strife and social danger, what might not be dreaded, if persons accused of treason, libel, or other offences against the state, were arraigned before a judge who had already, in his capacity of political partisan, expressed in his place in Council his decided opinions upon the very questions he was called upon to try in his place in the Supreme Court? (Hear, hear.) With reference to the approximation of the Constitution, now proposed for this colony, to that of Canada, it has been asserted the latter has worked badly; but I do not believe that any proposition, to amend or modify either that or the Jamaica Constitution has yet been formally brought before Parliament. I will observe that, with the exception of the new Cape Constitution, which is scarcely working as yet, there is no instance of

a British colony where the nominee principle does not obtain in respect to the Upper House. The recent experiment at the Cape is too new to be referred to; but it is opposed by a very large and influential body of the wealth and intelligence of the colony. (Hear, hear.) As to the alleged failure of the nominee principle in Canada, it is easily accounted for. Those who were foremost in the rebellion were now at the head of affairs in that country. In looking over the list of the present Canadian ministry, I find the name of one who was an assigned servant of mine, when he arrived in this colony under sentence of transportation as a rebel. (Hear, hear.) That individual was a man of honour; and his only offence was a political one; and I merely allude to the circumstance to show that angry political differences, the antagonism of two unfriendly races, old family feuds, jealousies, and struggles for supremacy, prevent Canada from being, in respect to its social constitution, any precedent for this colony's guidance. The high principles, however, of its political institutions had been carefully weighed both here and at home when this colony asked for a new constitution; and I feel, looking at the terms of the correspondence between the Governor-General and Sir John Pakington, that the Council is bound by the contract then made in its full integrity. (Hear.) I think that honourable members have misconceived the question when they allude to the dangerous power which could be exercised by an Upper House of nominees. What undue power could they exercise so long as the purse-strings were held by the Lower? (Hear, hear.) I conceive that this would be the course of action in the event of the Bill passing into law. The election of members for the Lower House would first take place; and amongst the elected I sincerely hope to see certain members of the present Government. (Cheers.) Most earnestly do I hope, above all, to see my honourable friend (the Attorney General) returned as a representative of the people—a meet tribute to his worth and ability, and in grateful recollection of his long and unwearied services, both as a legal adviser of the Crown, and as a member of the Legislative and Executive Councils of the colony. (Loud cheers from all parts of the House.) The election over, it would then be the duty of the Governor-General to form his ministry, and, with responsible government, it is clear that the ministry must be chosen in accordance with the approval of the majority of the House. In a little *brochure* just published in Sydney, this fact is recalled to our recollection by quoting some observations of Mr. Roebuck, in reference to a fallacy pervading at the time when the Reform Bill was under the consideration of Parliament. The learned gentleman writes thus:—

> Who determines all the important acts of the King? Is it the King or the House of Commons? By whom is Lord Melbourne made minister? Is it by the King or the House of Commons? It is notorious that his most Gracious Majesty cordially detests the present ministers; but he cannot get rid of them, simply because the House of Commons determines that he shall have no one else. In a desire for independence, the King lately chose Sir Robert Peel. What was the result? The Commons very coolly told his Majesty that Sir Robert did not suit them, and Sir Robert consequently retired. So it is with all the acts of the Crown. The ministry, while in office, determine everything, and they are chosen by the Commons.

Well, the ministers chosen by the Governor in accordance with what his Excellency would undoubtedly know to be the wishes of the House, the first nominees of the Upper Chamber would be chosen with their sanction and upon their recommendation; and thus it must be plainly seen that the first nominee chamber would, virtually, be appointed by the people through their representatives. (Loud cries of hear.) If, on the other hand, there were two elective Houses, so both would claim the right of holding the purse strings, and having an equal right in the appropriation of the public revenues. And suppose a rupture between the two chambers, and one refused to pass the money-bills of the other, what would be the result? The wheels of government must at once stand still. (Hear, hear.) The elective

and non-elective checks are thus found to be necessary; and as they are essential elements of the British Constitution, I earnestly hope they will be found in the new political institutions of this colony. (Cheers.) With regard to the cry out of doors as to injustice threatened to the people, I will say, that in the working sense, in every sense of the word, I myself am one of the people. The working man who toils from six in the morning until six in the evening, does not toil so hard as I do. Frequently am I busily employed from six o'clock in the one morning until two or three in the next; and thus I do lay claim to the honorable title of a laboring man. Still I, in that capacity, deny the right of the laboring classes, who form, of course, a large majority in most communities, to monopolize that power claimed for them by the leaders of the movement now attempted out of doors. I must again express my concurrence with my friend Sam Slick, who thus describes the minister's toast—"*May our Government never degenerate into a mob, nor our mobs grow strong enough to become our Government.*" (Loud and long continued cheers.) Having recurred to Sam Slick, I will, for the edification in particular of my honorable friend and member for Sydney (Mr. Campbell), whom I strongly advise to study the Clockmaker, request attention to the following passage. He is speaking of the British Constitution, and he says:—

> Presarve the principle of the mechanism of your Constitution, for it ain't a bad one, and presarve the balances, and the rest you can improve on without endangerin' the whole engin'. One thing, too, is sartain—a power imprudently given to the executive or to the people is seldom or never got back. I ain't been to England since your Reform Rill passed, but some folks say it works complete, that it goes as easy as a loaded waggon down hill, full chisel. Now, suppose that Bill was to be found alterin' any of the balances, so that the Constitution couldn't work many years longer, without comin' to a dead stand, could you repeal it, and say, "As you were?" Let a bird out of your hand, and try to catch it agin, will you? No, squire, said the Clockmaker; you have laws for a regilatin' of quack doctors, but none a regilatin' of quack politicians. Now a quack doctor is bad enough, and dangerous enough, gracious knows, but a quack politician is a devil outlawed—that's a fact. (Loud laughter.)

I would observe that there can be no doubt that the framing a constitution for a colony is a grave and most nice experiment, and I think that New South Wales ought to be truly proud that she is the only British colony to which has been entrusted the important duty of framing its own constitution. That many amendments and modifications may be needed in time, the experience of the past assures us. The Reform Act, that great work of a "bloodless revolution," is now about to be amended by its noble author in various points where new concessions are to be given to the people. But here, also, the power of amending our constitution will be given to us under the conditions of the bill before the council. I, however, would observe that organic changes ought not to be made here without the utmost caution and deliberation. In America, it is to be remembered that federal states form a supreme government themselves; whilst, with us, our right to govern ourselves, is derived from a higher original power. (Hear.) Before I conclude I will once more draw attention to some further sayings of the clockmaker, for, upon the question of "Elective Councils," the learned author offers, in the disguise of Sam Slick, some most valuable suggestions:

> "What would be the effect, Mr. Slick," said I, "of elective councils in this country, if government would consent to make the experiment?" "Why, that's a thing," said he, "you can't do in your form o' government, tryin' an experiment, tho' we can; you can't give the word of command, if it turns out a bungling piece of business, that they use in militia trainin' "as you were." It's different with us, we can—our government is a democracy—all power is in the people at large; we can go on, and change from one thing to another, and try any experiment we choose, as often as we like, for all changes have the same result, of leavin' the power in the same place and the same hands. But you must know beforehand how it will work in your mixed government, and shouldn't make no change you arn't sure about. What good would an elective council be? "It is thought it would give the upper branches," said I, "more community of feeling, more sympathy and more weight with the country at large: that being selected by the people, the people would have more confidence in them, and

that more efficient and more suitable men would be chosen by the freeholders than the crown." "You would jist get the identical same sort o' critters," said he, "in the eend, as the members of assembly, if they were elected, and no better; they would be selected by the same judges of horse flesh as t'others, and chose out o' the same flock. It would be the same breed o' cattle at last." "But," said I, "you forget that it is proposed to raise the qualification of the voters from forty shillings to forty pounds per year; whereby you would have a better class of electors, and insure a better selection." "Jist try it," said he, "and there never would be an end to the popular motions in the House of Assembly to extend the suffrages —for every thing that gives power to numbers will carry numbers, and be popular, and every feller who lived on excitement, would be for everlastin'ly a agitatin' of it, candidate, slangy-whanger, and member. You'd have no peace; you'd be for ever on the move as our citizens are to New York, and they move into a new house every first o' May-day."

With reference to the movement which has been begun out of doors, I beg distinctly to be understood in my admission of the full right of the people to meet for the purpose of considering public questions, and petitioning the Legislature, which petitions, when respectfully worded, it is the duty of members to present. But I cannot but be struck that the objections now raised against this measure have never been urged until within the last month or so, when the Constitution Committee made their report and presented their Bills. It is true that Mr. Beit has said that he wrote a letter against the main principles of the Bills some time ago, but, with that exception, I do no not believe a single voice has been raised against those principles which, it has been known for a length of time past, it was the intention of the Constitution Committee to recommend and to maintain. Therefore, the silence of the colonists may justly be taken to be a consent to those principles, and I contend that in all honour we are bound to fulfil the contract which has been made. (Hear, hear.) In conclusion, I desire to thank the House for the patience with which they have heard my lengthy, and, I fear, tedious appeal to their attention. (No, no, and loud cheers.) I know of no country but this. It is my own. (Hear, hear.) I therefore hope that, in the discharge of my duty on so important an occasion as the present, I am serving my country; for by any act of mine that might tend to its injury, most assuredly I should be deeply injuring myself. It is a source of proud satisfaction to me to be enabled to state, that when I had the honour to be connected with the press of this colony, I single-handed advocated the policy of that enlightened and liberal Governor, Sir Richard Bourke, when it was proposed that trial by Jury should be introduced into the then penal colony of New South Wales. And in other important movements in the direction of freedom, I ardently supported that wise ruler as far as my position with the press, and my humble abilities, would allow; and justly proud am I to have in my possession the most flattering testimonials as to my earnest advocacy from Sir Richard Bourke. (Loud cheers.) I have lost a fortune in pursuing the course I did, but I feel no regret at losing it in so good a cause. (Hear, hear.) From my youth to manhood I have struggled for the liberties of my native land; and never have I done an act in my public career which I would desire to recal. The constitution which I have assisted to frame will, I earnestly pray, enjoy that permanency which my honourable and learned friend, the member for Sydney, predicts for it. Framed in accordance with the great principles of the British Constitution, I fondly hope that it will be said, "*Esto perpetua,*" and that in its working it will ever tend to the happiness and prosperity of the people. (Loud and continued cheers.)

Mr. WILLIAM BOWMAN: I rise to express my concurrence in every outline of the Bill. I believe it to be a measure admirably adapted to its high purpose; and I have not been able to discover in any one of the plans proposed in lieu of it, whether within or without the walls of that house, anything practical or worthy of adoption. I regret to be obliged to differ from many gentlemen who oppose the Bill; but I consider that sufficient attention to the principles and provisions of the measure have not been given by those out of

doors who have opposed it. No doubt the citizens have a right to canvass the merits of the Bill, but I deny their right to dictate to this Council, which has ever been ready to receive and to give every attention to petitions. I sincerely hope that the Council will not be intimidated by out-door agitation, but carry out this great measure, on which the destinies of the colony depend. The personal attacks upon the honourable and learned member for Sydney, to whose great ability the Council and the country are indebted for the well considered and comprehensive measures under consideration, might well have been passed over by that gentleman with pity; for he assuredly stands too high in the opinions of the colonists to render it necessary for him to stoop to resent such poor assaults. (Loud cheers.)

Mr. RUSSELL: Whilst I express my concurrence in the main features of the Bill, I cannot, as one of the members for the northern district of the colony, agree to a measure which, in its fifty-first clause, prevents the separation of Moreton Bay from the middle district of New South Wales. I must, therefore, feel it my duty, knowing how deeply my constituents feel on the question of separation, to oppose, in all its stages, a measure which seeks to prevent the attainment of that great object. With reference to the remark made by the honourable member for Sydney (Mr. Thurlow), that the squatters locked up the lands of the colony, I, as a squatter myself, can only say that I should be glad to see many of the pastoral lands occupied for agricultural purposes, as I will prove if any agriculturalists will visit my stations. (Hear.)

The debate was adjourned, on the motion of Mr. Morris.

Mr. MORRIS: After the long protracted debate which has engaged the attention of the House, I feel that the subject before it, as well as the patience of the House, must be nearly exhausted; nor would I now venture to trespass on the attention of the House for the mere purpose of replying to the arguments of those opposed to the bill; but I will venture to claim the patience of the House, in order that I may throw out a few suggestions, which may perhaps smooth the way to the removal of all difficulties in the way of the settlement of this important question. I have one satisfaction in addressing the House on this question, which is, that I have so often seen some hon. members change their minds upon it, that I think they may perhaps be induced to change them yet again; and I have felt the difficulties of the question, and have experienced this variation of opinion. In the first place, I have been in favour of a nominated Upper House, then I turned to favour an elected Upper House, but I have now, with no real change of principles, but a more mature consideration of the circumstances, come back to my former opinions, and am convinced that they are right and just; and I hope that I may be able to induce some others to follow my example; and I would call upon those who are opposed to this Bill, to see now the greatness of the tyranny which those who were opposed to it would, if they could, exercise over honourable members of this House. I would call their attention to this point, and particularly would I remind the honourable members who were opposed to this Bill, of the words of scripture, "In the greatness of his folly shall the fool be led astray." I find in one paper that has set its face against this Bill, and which has for some weeks past been endeavouring to subject this Council to a dominion of terror, had on one occasion said, that to hang the honourable and learned member for Sydney, would be too good a fate for him, and which has poured scurrilous abuse on every member who has been opposed to its political views on this question,—that in another, there was made a most indecent personal attack on an honourable member who addressed the House last night on the Bill—an attack founded principally on the circumstance of the honourable member having quoted a book in which the author, under a certain levity of style, conveyed principles and precepts, which almost every member of that House admitted to be

fraught with profound wisdom. (Loud cheers.) This is the sign, the signal of forbearance, of what is called the democratic party. I find, too, with much regret, that honourable members of this House do not hesitate in like manner to add their weight in the endeavour to establish this dominion of terror over the Legislature of the country. I find the honorable member for Durham, and the honorable member for Bathurst, joining in the assertion, of the Council being in a conspiracy against the liberties of the people. I did hope that some attempt would be made to explain in what the conspiracy consisted. The honorable and learned member for Cumberland (Mr. Darvall), who joins in the same cause, said that the grounds for believing in such conspiracy, were in the proceedings of the Council in respect to this Bill. The honourable member for Durham said nothing; whilst the honourable member for Bathurst (Mr. Bligh) has alledged it to be in the 68th clause of the Bill, referring to certain privileges to be granted to squatters. None, however, have condescended to say what the conspiracy really was, at what object it aimed, and how it was being worked. (Cheers.) This, I contend, is the mere claptrap of the debate; this is the real levity which has been introduced into this discussion. Well may those gentlemen who are content to adopt such a course as this wish for American institutions. But they now deny that they have ever suggested American institutions. They now confine themselves to the argument, if it can be called such, that a representative house and a nominee house would be continually brought into collision. But when asked to go to the American Constitution, then they refuse to go, although it is the only foundation on which their real views can be maintained. They prefer, to having a constitution on which individual as well as national rights are secured, a system under which security against wrong is never even claimed. I am sorry to occupy the attention of the House so long in prefatory remarks, and I will now briefly proceed to express my own opinions upon the question. It is that the members of the Upper House should be nominated by the Colonial Parliament. This is not a new idea, but one which has been acted on in England; and I find in Allen's history of the Middle Ages, the following passages:—

> The next method of conferring an honour of peerage was by creation in parliament. This was adopted by Edward III. in several instances, though always, I believe, for the higher titles of duke or earl. It is laid down by lawyers, that whatever the king is said, in an ancient record, to have done in full parliament, must be taken to have proceeded from the whole legislature. As a question of fact, indeed, it might be doubted whether, in many proceedings where this expression is used, and especially in the creation of peers, the assent of the commons was specifically and deliberately given. It seems hardly consonant to the circumstances of their order under Edward III. to suppose their sanction necessary, in what seemed so little to concern their interest. Yet there is an instance, in the fortieth year of that prince, where the lords individually, and the commons with one voice, are declared to have consented, at the king's request, that the Lord de Courcy, who had married his daughter, and was already possessed of estates in England, might be raised to the dignity of an earl, whenever the king should determine what earldom he would confer upon him. Under Richard II. the marquisate of Dublin is granted to Vere by full consent of all the estates. But this instrument, besides the unusual name of dignity, contained an extensive jurisdiction and authority over Ireland. In the same reign Lancaster was made Duke of Guienne, and the Duke of York's son created Earl of Rutland, to hold during his father's life. The consent of the lords and commons is expressed in their patents, and they are entered upon the roll of parliament. Henry V. created his brothers Dukes of Bedford and Gloucester, by request of the lords and commons. But the patent of Sir John Cornwall, in the tenth of Henry VI., declares him to be made Lord Fanhope 'by "consent of the lords, in the presence of the three estates of parliament;" as if it were designed to show that the commons had not a legislative voice in the creation of peers.

Thus it is shown that, by the assent of Parliament, peers have been created in England. The process by which this nomination by Parliament should take place here, would be for the Governor to send down notice to both Houses, of a number of names as members for the Upper House, and if there was no objection made to them, then that they should be appointed. In the first instance, of

course, the Upper Council would have to be appointed *pro tempore* by the Governor, as in the case of new Corporations. This seems to my mind to establish a most salutary system of balances or checks, in the constitution of an Upper Legislature. I do not imagine that any difficulties, even in practice, would arise from such a system as this, as it must be that only men of mind and standing would be nominated. Such a system would, I think, keep out objectionable persons, and admit only those that were unobjectionable. I have been told if such a system were adopted, scenes would occur in the House similar to those which once occurred in the nomination of the Senate of the Sydney University. But I do not believe that this would be the case. Improper and objectionable persons would not be proposed, and such objections could scarcely exist. I believe this would be the best method of reconciling the objections to both the nominative and the elective systems. I will now beg to add a few remarks in reference to the distribution of members under the system of representation proposed. That system will not alter the representation as it at present stands; but I agree with the honourable Colonial Secretary that there is nothing magical in the number 54: and I would add 4 members to that number, 2 of whom I would give to Sydney, and 2 to the southern and western boroughs, thus ensuring full representation to the mercantile, manufacturing, and mining interests. Now, although I do not think representation should be based on population alone, I do not think I should find much fault at present with such a system here; and I find, under the proposed system, that the agricultural districts, with a population of 87,000, return 26 members, or 1 member to every 3347 persons. The Sydney and other urban electorates, with a population of 72,000, 20 members, or one member for every 3600 persons. The pastoral districts, with a population of 28,000, 12 members, or 1 for every 2330. By this it seems that the urban and rural representation are nearly the same, but that the pastoral districts on this scale are at a disadvantage of one third. But if we are to take the true principle of adjusting the representation in proportion to the adult male population—who are alone entitled to vote—we shall find a great difference. I find that in Sydney and other urban districts (on the basis of the last census) the number of adult males was 19,555 and they returned 20 members, or 1 in 877. The counties had a similar population of 27,426, and returned 26, or 1 in 1054. The pastoral districts had a population of 13,552, and returned 12 members, or 1 in 1130. Sydney and the Hamlets, with a male adult population of 13,221, would return 8 members, or 1 in 1777. Other boroughs with a population of 6334, 12, or 1 in every 526. Cumberland, including Sydney, and other boroughs with a population of 22,139, returned 15 members, or 1 in 1475. The County of Cumberland 4 members from a population of 5943, or 1 in 1480. Newcastle, with a population of 492, 1 member. Camden, with a population of 2789, 4 members, or 1 in 697. Parramatta, with a population of 1191, 2 members, or 1 in 595. Cook and Westmoreland, with a population of 1320, 2 members, or 1 in 660. So that, with the exception of the County of Cumberland and Sydney, the pastoral districts are less fully represented than any other. I am satisfied that the addition which I have proposed would be acceded to by the House, and by my honorable and learned friend, the member for Sydney, whose only wish I know is to establish a safe and satisfactory constitution for the country; and I am sure such a concession would be embraced with satisfaction by all classes of the community: those who would seek more, may be safely set down as unreasonable and perverse individuals, who clamour from a wish for disturbance, and not from a desire of conciliation and settlement. If I have succeeded in contributing a single reflection which may assist in the settlement of the great question before the House and country, I shall have realized, I hope, the observation of Mr. Burke, that a great statesman oftentimes

receives some assistance in perfecting his measures from the least of his followers, rather than have laid myself open to the charge of the honourable the Attorney-General, that "fools rush in where angels fear to tread."

The POSTMASTER GENERAL: As far as I can understand the remarks of the honourable member for Liverpool Plains, his speech divides itself into two branches. The one relates to a matter of detail, which can be considered better when the bill comes before the house in committee, and is not a matter of principle affecting the question upon its second reading. The other does somewhat affect that question, and to this I will briefly refer. The plan which I have just heard propounded, for the first time, proposes, not that the Governor should nominate the members of the Upper House, but that his Excellency should nominate a number of gentlemen to be submitted for approval to the Legislative Assembly. In the first place, I consider that such a course wou'd be a departure from the British constitution; in the next, that the proceeding would be sure to lead to acrimonious debates, seeing that the personal character of each individual, some of whom might be members of this House, would have to be fully discussed before election to the Upper Chamber. (Hear, hear.) I will now make a few remarks on what has fallen from the honourable members in reference to the right of members in my position to address the house. The honourable member for Sydney has put it boldly, that if the constitution be passed by this House, as at present constituted, it cannot be regarded as the work of the people. What is meant by the people I do not know, unless the honourable member desires that the Constitution should be framed and established in the public streets. I do know, however, that this House is the only authority in the country which is competent to make laws and enforce them. Only very recently the honourable member resorted to this house, when he wished to have bills passed to regulate hackney carriages, and to amend the Corporation of the city. To what other body, except the Imperial Parliament, can we appeal in the present instance? The Imperial Parliament has given this Council power to frame the bill. And honourable members seem to forget that this very bill gives us power to get rid of the nominee element, of which we hear so much complaint. (Hear, hear.) Notwithstanding what has been said by the honourable member for Cumberland, I feel that I have every right, although an officer of the government, to discuss the merits of a constitution under which my children and my children's children are to live. (Hear, hear.) When I was nominated to this house by the Governor General, I never for a moment understood that I was bound to remain a silent spectator, while one of the most important measures which has ever come before this house was under consideration. I am aware that any argument which I can bring forward will be only a reiteration, in a more feeble shape, of those opinions which have been so ably expressed by the supporters of the measure who have preceded me. I feel I have not the ability which will enable me to grapple effectively with the leading points of the question; neither have I devoted that attention and research to the subject which is necessary: but being aware that every man who considers a great question, must view it in somewhat a different light from others, I will trespass on the attention of the house while I make a few remarks on the general principle involved. It needs not the unanswered and unanswerable arguments which have been adduced, to satisfy me that the general tendency of this bill is to frame a constitution for the land of my adoption, closely assimilated to that of Great Britain. If my honest convictions on this head were not clear and precise, I might, indeed, repose with some security on the circumstances under which this bill has been brought under the notice of the house. When I find that the measure has emanated from a man who stands first in the country in point of intellect, and every tendency of whose heart must necessarily lead him,

not only to seek to render the bill such as will endure for ages, but to make it one that will ensure the greatest possible happiness to the country and the people with which his name is so indissolubly linked, I feel I have an additional guarantee in favour of the measure. Future ages may see in the Senate of this country patriots, orators, and statesmen, with

Thoughts that breathe, and words that burn.

(Cheers.) But at present who can echo the sentiment of the Spartan mother, and say that

Australia hath many a worthier son than he?

And had I not the genius and patriotism of the framer of the bill to insure the conviction, that of all the schemes that have been brought before the house and the country, this is the closest approximation to the institutions of our forefathers, I have my own judgment to guide me to the belief that the measure approaches nearer to the British constitution than any other we can devise. I will not detain the house with any observations on the British constitution, whose praises we have heard so often repeated. I will, however, say, that although I have travelled in many countries, I have never yet seen the great bulk of the people enjoying greater happiness than they do in Great Britain. If, in former times, some misery did exist, I believe that the day has arrived when the people have found a panacea for whatever social evils they endured. That panacea is emigration, which, like Mercy, is

Twice blest; it blesseth him that gives, and him that takes;

and through the effects of which the working people of the kingdom are now ensured what alone they desire—a good day's wage for a good day's work (hear). If history be not a myth, and if her pages have not been unrolled for us in vain, then do I gather from her records that certain institutions have a tendency to favor and superinduce democracy, and other institutions are necessary if we would uphold monarchy; and that whilst the machinery favorable to the latter is freely made use of in the provisions of this Bill, that with a known republican tendency, is prominently brought forward in the schemes which have been shadowed forth by its opponents. The hon. member for Durham has quoted an array of names to convince the House that an elective Upper House would be more in accordance with the British Constitution than that which is proposed. It may be that I belong to a by-gone regime, but I must say that the names quoted, with one or two exceptions, are not names that have any weight with me. I do not think they are the sort of men, from Carter up to Adderley, whose opinions are entitled to confidence on a question like this under debate. If I understand the arguments relied upon, they go to show, in the first place, the progress of intellect to be such, that the checks and balances of the British Constitution are no longer necessary; and next, that what may be applicable to the state of society in Great Britain, is not applicable to these colonies. With regard to the first position, I would ask whether mankind has in any respect altered?—whether we do not see that men are still actuated by the same ambition, the same perversity, the same feelings and motives, which have always governed their actions? Who can say that men are now different from what they formerly were? Let us look to the history of nations, and glancing at the course of events in France, I would ask, what is the difference between Napoleon I. and Napoleon III.? (Hear, hear.) In politics, as in mechanics, as a natural law, similar results must invariably follow from similar causes. To say that what is good for Great Britain may not be good for this colony, is, in fact, a libel on the country. Every man who has visited this colony, and every writer who has written on the customs and conditions of its people, has been struck by its similarity to the mother country. It may be true that the gentlemen, the professional men, and the artizans, that Great Britain has sent forth to this colony, may not be of so high a character as some of those left behind; but the reason of this is very obvious.

Through every rank of society, from the highest to the lowest, there must be the inferiority of a small nation to a great one—and of an old country to a new one. But as her youth must ripen to maturity, and the core of her heart is British, why should we deny to Australia the institutions of our father land? (Cheers.) One circumstance ought to stamp the authorities which have been quoted to the House with suspicion. That is, that the opponents of this Bill are not heard advocating the application of the same system to England, which they wish to enforce in the colonies. I should like to see these gentlemen seeking to apply the elective principle to the House of Lords, before they seek to enforce it in regard to the Upper Houses of the colonial legislatures. And suppose this experiment is tried, and turns out an utter failure, where will all these gentlemen be? The colony will, indeed, be in utter confusion, but they will be coolly seated round their mahogany tables in Belgrave-square, or some other equally fashionable locality, where, sipping their Chateau margeaux, they may exclaim, "Ah! I now see clearly that elective institutions will not answer in New South Wales." (Hear. hear.) The suggestions of these gentlemen remind me of the mode of training which surgeon's apprentices undergo in all parts of the world. The more influential and richer patients are always reserved for the attendance of the master, being never approached by the apprentice's hand. The functions of the latter are to extract the tooth of a pauper, or to bleed some friendless boy, or he may even, for the sake of experiment, be permitted to apply prussic acid to the tongues of surplus kittens. (Loud laughter.) We must, however, demonstrate that Australia is by far too valuable a patient for experiments. We must have no experiments. If we are to have British institutions, we will travel the beaten road to obtain them, and not pursue some untrodden by-path. (Hear.) It is impossible that we can ingraft monarchy on a democratic basis; as well may we expect that on placing the seed of one plant in the soil, another will spring forth and flourish. I feel fully satisfied that the principles of the British Constitution are those best adapted to this country; and having satisfied myself by due consideration, that the principles and the stability of monarchy will be promoted by the bill under consideration, I have made up my mind to give the measure my most heartfelt and earnest support. (Hear, hear.) If I may be allowed to allude in such a discussion to my own personal history, I would say that I am one of six brothers, all of whom have served the sovereign of Great Britain; some of the number having sealed their devotion to that service with their blood. My father and my grandfather were in that service, and I may add that I myself have known no other since I was a lad of fifteen. I earnestly pray that my bones may moulder cold and low, before I or mine are called on to transfer our allegiance to any Republican Government, from the monarch of the most glorious empire on which the sun has ever shone. (Loud cheers)

Mr. PARKER: I will not detain the House long, as there is, doubtless, a natural and generally pervading anxiety to hear the reply of the honourable and learned member for Sydney. But I conceive it to be the duty of every member, in the discussion of so deeply-important a matter, to afford every assistance in his power, however small the amount of that assistance may be. I am decidedly opposed to the amendment of the honourable and learned member for Cumberland. If we have not experience enough now to deal with this question, we shall be in no better position six months hence. If the measure is to be postponed at all beyond the period named by the honourable and learned mover, it had better be postponed for several years. But the interval between the second reading of this Bill and its consideration in committee will be quite sufficient for the purposes of full and fair deliberation, and I hope that, when the details come to be considered, we shall be able to arrive at such a conclusion as will prove satisfactory to the countr I will beg

leave to offer one or two observations with reference to the public meeting and petition which have been so often alluded to. I will be quite ready to treat every representation from without with proper respect; but, in considering a petition of this sort, it is open to us to consider also how its signatures have been procured. And I am credibly informed that this petition has been carried for signature not only into the public-houses of Lower George-street, but to the various shipping offices, where the names of sailors, or any other persons who could write, were added to it. (Hear, hear.) The mere numbers made up in this way are not entitled to any weight. We must look to the nature of the petition itself, and to the names of the respectable and intelligent persons who have signed it, and must give it only such weight as these may warrant. (Hear, hear.) A great many gentlemen went to the public meeting also, not for the purpose of identifying themselves with what might be then said and done, but for the laudable purpose of hearing both sides of the question, and there were many whose names were included in the list of the self-appointed Committee without their sanction. (Hear, hear.) I know one or two who were not only placed in this position, but who entirely dissented from the opinions which were expressed, and the course which was pursued. (Hear, hear.) When we reflect upon these things, upon the circulation of inflammatory placards, which have been resorted to, and upon other measures of a similar nature which have been taken, it is quite fair and reasonable to say that respect should be paid now, only to the opinions of such persons as are capable of forming a reasonable judgment, and that time should be given for mature and calm deliberation throughout the whole country before it can be assumed that the popular voice has been heard upon the question. (Hear, hear.) And while the oppositionists out of doors charge the supporters of the Bill with inconsistency, they have been themselves peculiarly inconsistent. In the very first session of this house, when it was substituted for the old nominee Council, Committees of Grievances, territorial and general, were appointed, and these committees had, year after year, urged their claims for redress in the most strenuous terms, vituperating, in fact, the ministers who turned a deaf ear to their applications. The final petition to the Queen for redress was carried by the almost unanimous vote of that Council, and I maintain that the Bill before the House contains, in a condensed shape, the redress of every one of the grievances which have been so long complained of. (Hear, hear.) There is no deviation except in the hereditary clauses. To show how inconsistent is the present outcry, I will quote from the despatch to the Secretary of State as to what is asked for and proposed. The petition, after setting out the grievances, proceeds to declare that, in order to afford no excuse for the continuance of these complaints, the Council

> Are prepared, upon the surrender to the Colonial Legislature of the entire management of all revenues, territorial as well as general, in which we include mines of every description, and upon the establishment of a constitution among us similar in its outline to that of Canada, to assume and provide for the whole cost of our internal government, whether civil or military, the salary of the Governor-General only excepted, and to grant to your Majesty an adequate civil list on the same terms as in Canada, instead of the sums appropriated in the schedules and the Imperial Act 13 and 14 Victoria, cap. 59.

And, in conclusion, humbly prays that Her Majesty will be graciously pleased to cause such measures to be adopted as may be necessary to give effect to this proposal.

> I have already in my despatch, No. 69, of the 12th April, 1850, expressed my opinion on the principal points now submitted to her Majesty's consideration; but I deem it right to add, that when the motion upon which this petition was adopted was brought before the Council it was carried (after a division which was called for by the Colonial Secretary, on the part of the Government,) by a majority of 21 to 8, the minority consisting entirely of the official nominee members, with the exception of one non-official nominee member, Mr. Parker.

Now, I would beg to observe, with reference to the mention of my name in the foregoing paragraph, that the only

reason why I did vote with the majority on that occasion was, that I did not at that time think the colony was fitted for Responsible Government. The despatch then goes on to say:—

It is also proper that I should state my conviction that the desire to have a Constitution conferred upon the colony, agreeing in its principles with that applied for in the petition, is not confined to the Legislative Council alone, or to a party in the colony, but that it is supported by the general and deliberate opinion of the most loyal, respectable, and influential members of the community.

And further, his Excellency expresses his opinion that such a concession would be considered as a great favour conferred upon the colony. (Hear, hear.) But my honourable and learned friend was not satisfied with this, and he attempted to induce the House to stop the supplies; which was thus noticed in the Governor-General's despatch of the 31st August, 1852:—

I also transmit a copy of the *Sydney Morning Herald* of the 26th instant, containing the report of a debate in the Legislative Council on the previous day, on a further motion brought forward by Mr. Wentworth that the Council should pledge itself to refuse to vote the supplies for the year 1854, unless a favourable reply was returned to the above-mentioned petition.

And farther on:—

I have only to add my conviction of the great and growing desire entertained by all classes in this community that this concession should be granted.

Now it appears to me that it is impossible any measure could be devised so completely to redress the grievances complained of as the Bill now under the consideration of the House. (Hear, hear.) And considering the length of time during which the public at large have had these matters under consideration, and considering the total silence which has prevailed out of doors, which must be construed into acquiescence, I do think, if the measure be rejected now, the colony will be guilty of the grossest inconsistency. (Cheers.) Sir John Pakington, in his reply to that despatch, says:—

They (her Majesty's Government) have been fully impressed with a sense of the importance to be attached to that petition, not only as proceeding from a great majority of the Legislature of the province, but as reiterating that statement of the causes of discontent felt by the community, which had been deliberately urged by their predecessors upon the attention of her Majesty's then Government—a statement, moreover, which was accompanied by your assurance that its sentiments were shared by the most loyal, respectable, and influential members of the community.

And further on:—

In compliance, therefore, with the opinion expressed by the Council in favour of a Constitution similar in its outlines to that of Canada, and with a view also to the most simple and expeditious mode of completing the whole transaction, it is the wish of her Majesty's Government that the Council should establish the new Legislature on the bases of an Elective Assembly and a Legislative Council to be nominated by the Crown.

Now, I consider that this is as plain as language can possibly be. (Hear, hear.) It clearly sets forth what the colony asks for, and what the Home Government is prepared to accede to. (Hear, hear.) But it is asserted by some honourable members that there is no compact, and that, even if such did exist, there is no guarantee that Her Majesty's Ministers will perform their part. (Hear, hear, from Mr. Thurlow.) But I can really see no grounds for such an argument. If this Bill goes home, and is accepted, the concessions to the colony will be made concurrently with the establishment of the new Constitution. The measure must be passed as a whole or not at all. (Hear, hear.) But it is urged also that the Duke of Newcastle, in his despatch, has opened a door—has given a certain latitude of discretion; and I find that this is admitted even in the report of the Select Committee. But I confess I cannot discover anything of the kind in the despatch of his Grace. The only part which refers to the subject in any way is the last paragraph but one; which, to say the most, is exceedingly obscure. But even if it is the intention of the Secretary of State to open the door to discussion, still the latitude is explicitly left to this House itself. (Hear, hear, hear.) The paragraph is as follows:—

I am ignorant of the shape which the project under the consideration of the Committee of the

Council may eventually assume. The Legislative Council, indeed, in the petition before adverted to, favoured a constitution similar in its outline to that of Canada. It would be premature for me to pass an opinion, without materials for forming a judgement, upon the policy of totally reconstructing the frame of Government recently established; but I may state that I have always thought it probable that the experience and wisdom of the Council would dictate better provisions than Parliament for securing good government in New South Wales, and promoting harmony in the connexion subsisting between Great Britain and this important province of the empire.

There is no other part of the despatch bearing upon the question; and the decision is clearly left to the Legislative Council. (Hear, hear.) Now it has been charged against my honourable and learned friend the member for Sydney, that he has changed his opinions. But I do not think so. The Bill is a specific confirmation of all that he ever has contended for. Possibly the language he has recently used was more conservative than that which he formerly indulged in (a laugh); But after all, with what grace does such a charge come from hon. members opposite? They are so fond of citing Mr. Lowe! Has not Mr. Lowe changed his opinions? (Hear, hear.) Has not the hon. and learned member for Cumberland changed his mind? Have not many other hon. gentlemen changed their minds? (Laughter and cheers.) They claim that privilege, but they will not allow that time and experience should influence anybody else. (Cheers.) The whole scope of the arguments in the house have been as between the British Constitution and other Constitutions. I have been happy to be instructed by these comparisons, but for my part I do not want to go to America, or to Belgium, or to any other country for a Constitution. (Cheers.) I am satisfied to live under the Constitution of England; and it appears to me that all we have to do is to fall back upon the nearest resemblance to that Constitution which we can devise. (Cheers.) And how it can be argued, that an elective Council would in any way resemble the House of Lords, I am quite at a loss to conceive. In the composition of the House of Lords there is nothing elective: the only approach to it is the case cited, which occurred in the reign of Edward III. But this, which was an election of a peer by peers, was admitted by Hallam to be very doubtful, and wrapped in obscurity. At all events, the Commons had nothing to do with the election. But even this was only an exception to the general rule. The House of Lords, in its legislative capacity, is entirely a nominated body; and I know of nothing to prevent the Queen from adding any number of peers by nomination. (Hear, hear.) What, therefore, can be a closer resemblance than a House of Nominees appointed by the representative of the Crown? (Hear, hear.) But though this is quite clear, I think it still desirable to satisfy all reasonable doubts, and I would offer one or two other observations. If we trace the history of the Commons, we shall find that they are absolutely supreme as regards the power of taxation (hear, hear); and with that power neither of the other branches of the legislature can interfere. There is all the difference between the power of taxation and the power of legislation, without representation. The house of Lords can only assent or dissent in the case of money bills, but cannot alter them; but in respect to all other legislation it has equal powers with the other two estates. This absolute power over taxation possessed by the Commons, as representatives of the people, is expressly acknowledged in various ways. The Queen, in opening the session of Parliament, always addresses the Commons separately on the subject of the finances of the nation, and the preamble of the Annual Appropriation Bill is differently drawn from that of all other bills, expressly acknowledging that grants of money are of the Commons alone. And the royal assent is also given to money bills in a different form from that which applies to all others. Instead of the words *La Royne le veult*, the formula used is *La Royne remercie ses bons sijets, accepte leur benevolence, et ainsi le veult*. Now I think, that all reasonable persons ought to be satisfied with this supremacy which resides in the people's

representatives with respect to money bills; and I contend that, with a system of responsible government, no reasonable man will be dissatisfied. (Hear, hear.) I will say no more on this particular point, but will only address a few observations to the house on the subject of the electoral districts. Additional representation is claimed for Sydney. (Hear, hear.) Now I have analysed the returns in Parliament under the general election of 1852, and will beg to trouble the house with a few strange anomalies, in regard to the representation of the people of England. For instance: the cities and boroughs of England (excluding the universities) elect 319 members, and they contain a population of 7,140,241; the remainder of the population, 20,310,621, elect 339 members, —a minority of the people, electing a majority of the Parliament. The nine counties (or portions of counties) of Rutland, Westmoreland, Sussex (West), Huntingdon, Worcester (West), Cumberland (West), Northumberland (North), Salop (South), and Nottingham (South), having a population, exclusive of towns in them represented, of 514,783, with 30,647 voters, and rated to the poor at £2,855,452, send 18 members, while the West Riding of Yorkshire, with a larger population (794,779)—electors 37,319—and rated to the poor at £2,405,871, sends only 2 members! The Tower Hamlets, with a population of 539,111, registered electors 23,534, property rated £1,373,052, returns only two members; whereas the Borough of Honiton also returns two, but with a population of only 3,427, registered electors 278, and property £9,924. Each has the same legislative power, yet one has 157 times as much population, 82 times as many electors, and has property rated to the poor 132 times greater than the other. These illustrations, showing conclusively that population is not the basis of representation, are only a few of those which might be taken from the eccentric anomalies in the representation of England—the majority are excluded from the representation, the majority of the electors are out-voted by a minority. Parliament is elected by only a portion of the electoral body, and represents only a minority of those who are entrusted with the franchise! And yet we have the most ample experience that this anomalous construction is found to be perfectly compatible with the purest liberty, with national prosperity, and national greatness. (Cheers.) Now I appeal to these figures to show that population is not, and ought not to be, the basis of representation. But if the meeting which is to be held on Monday will be satisfied, if Sydney will be pacified by a small concession, I have no objection whatever that her share in the representation should be somewhat increased. (Cheers.)

Mr. BERRY: In rising to express my entire concurrence with the great principles of the Bill, I request the indulgence of the Council on the ground of a very severe hoarseness under which I am labouring, and which I fear will render my few remarks but imperfectly understood. With respect to minor details of the Bill, and also as regards the schedules, I do not intend to refer at this stage of the proceedings, as they can be far more appropriately discussed in Committee. With reference to the great point, the institution of two Houses of Parliament, it appears that all parties are agreed: but with this wide difference —the mode of returning the members. That party which support the Bill before the Council advocate a nominee Upper, and an elective Lower Chamber. The opponents of the Bill contend that both Chambers should be elective. Then the first party are stanch advocates for monarchical principles; the second vehement clamorers for republicanism. (Loud cheers.) I will remind the Council that, agreeably to the principle of the British Constitution, the House of Lords is composed of nominees, whilst the Americans, when they first shaped their constitution, had no remedy but to resort to elective councils, for they were all rebels. (Hear, hear.) They might have had great cause to rebel; but they nevertheless were rebels in the eyes of the law. (Hear, hear.) Thank God, Australia has not come to that pass, and I hope and believe

she never will. (Loud cheers.) Indeed I should be extremely puzzled to know what the colonists can possibly have to rebel about. (Renewed cheers.) We have no grievances, no taxes, nothing on earth to complain about; we have liberty of the press; and God knows we have freedom of speech enough: for if such rampant speeches as were uttered at the Victoria Theatre the other day, had been spoken in any of the countries of Continental Europe or America, the speakers would have been liable to incarceration, if in foreign lands, or Judge Lynch's law in the States of the Union. (Hear.) Now, I prefer a monarchy to a republic. Independently of my love for the noble institutions of the mother country, as those under which I have been born, I love them for their intrinsic value, for I do not hesitate to declare my full and unqualified belief that Great Britain and her magnificent colonies are the only countries in the world where free constitutions exist. (Loud cries of hear.) Talk of the liberty of the model republic indeed! Can that land be said to be free where, in its slave States, one-third of the population form the goods and chattels of others?—where, in what were mockingly styled the free States, every man was the slave of the mob, who resorted to Judge Lynch if he dared to resist its power? (Hear, hear.) In England, or in this colony, who dare oppress the meanest person in violation of the law of the land? No man. And I declare before God, that for myself I can see no blemish in the British Constitution; but, on the contrary, can only see that which this great and rapidly rising colony will do wisely and well to follow. (Cheers.) All that can be said in favour of America is, that there, as in Australia, the hard-working industrious man is sure to find constant work and fair remuneration. (Hear.) But here all men are free; whilst in America there are fifteen slave states, whence, if any slaves escaped, they were hunted like wild dogs by their savage masters, and if they reach any of the free states they, under the infamous Fugitive Slave Law, are at once given up to their pursuers, and carried back to their abode of misery. (Hear.) Their only place of refuge is on the ground of British America, upon which, when they place their feet, they, by the law of England, are at once free. (Cheers.) That the Constitution Bill before the Council will have to be improved and modified, as the colony increases in wealth, population, and importance, there can be no doubt. The British Constitution is the result of six or eight hundred years' experience; and the great great grandson of the first Norwegian pirate who landed on England's shore, never could have dreamed of the future glory of the land his ancestors came to ravage. The attacks of hon. members on pastoral and other rural occupations, I can afford to smile at. These attacks are so easily and so constantly made, when solid argument is not forthcoming, that it is really a waste of strength to repel them. (Hear.) As to vague but dark hints thrown out by agitators, that the example of America might soon be followed here, in so far as throwing off the yoke went, I would only remind these revolutionary gentry, that all that America asked for—nay, much more than she asked for—when she quarrelled with the mother country, is now cordially offered to her Australasian colonies. (Loud cheers.) I assert, that no colonist of New South Wales has any just reason to predict its separation from England; we had far better, from every motive of love, duty, and our own great advantage, teach our children to hope for, and to bid our descendants also to hope, an eternal alliance with the greatest and most prosperous empire of the earth. (Prolonged cheers.) To another point I would briefly allude, namely, the desire expressed by certain of the Northern settlements for separation from New South Wales. I deeply deplore the infatuation of these people, and deprecate the miserable example they want to set. If they succeed we shall next have St. Vincent, Northumberland, and other of our districts, praying to be allowed to set up for themselves; and then what a pretty prospect of being cut up into ridiculously petty and republican States

will be held out for a great colony which now aspires to take rank as a nation. (Renewed cheers.) I firmly trust to the good sense of the colonists to resist these dangerous quackeries. [The hon. member, who, in consequence of severe indisposition, was nearly inaudible in many parts of his address, thanked the House for the indulgence which had been shown to him, and, amidst cordial cheers, concluded by expressing his determination to give the Bill his most earnest support.

Mr. GEORGE BOWMAN: After the many able addresses which have been offered during the most important debate which has ever taken place in this House, I will not detain the Council with any comments of my own; for I feel that every point has been fully discussed, and every objection completely refuted. I will only express my concurrence with the great principles of the measure, and state my intention to vote for the second reading, and to support the Bill through all its remaining stages. (Cheers.)

Mr. WENTWORTH, in reply: Mr. Speaker, I can assure the House that it is not without the greatest delight that I perceive that there is at last some probability of a termination to this tedious, this very prolonged—unnecessarily prolonged—debate. I say unnecessarily prolonged, Sir, because the arguments, if they may be so called, which have been urged against this measure by one or two hon. members of this House—from whom such arguments, judging from their antecedents, certainly could not have been expected—were demolished, I may say, at the very first broadside fired against them. Sir, the speech, the single speech, of my hon. and learned friend, the member for Cook and Westmoreland, did not leave them even the rag of an argument; for, that speech demolished the basis on which all the propositions, and all the reasonings of this miserable faction rest, namely, that the people of this country have an inherent and inalienable right to representation. That is the basis, the erroneous basis, upon which all the assumptions put forward in this case rest. That basis was cut from under their feet by that speech. They have nothing more to rely on. And, Sir, I think that the altered tone of the public press, since that speech was delivered, sufficiently shows the conviction at which this miserable party have arrived—that their schemes for the revolution of this country cannot, at all events, be realised now, and that if they are ever to be realised, they must be realised at a much later period of the history of this colony than the present. Sir, I can assure the House that I labour, notwithstanding, under a weight of oppression which I never yet before experienced. Commendations, unmeasured commendations, have been heaped upon me, at all events by every party within these walls (Hear, hear.) But, Sir, it would seem that I am a despised and calumniated object beyond them (No, no, no.) It is some consolation that I retain the friendship of my early associates, of those who have been the partners of my toils, my feelings, and my fame (Hear, hear.) After a life spent in the service of my country, it is not gratifying to find that I am a man so little understood by the great body of my countrymen—that all the efforts, all the labours of my life to achieve the liberties of my country—those liberties which we have won, in frequent contest, piece by piece, until now we have this glorious opportunity of accomplishing their consummation,—I say it is painful to see that notwithstanding the long period I have devoted to this object—I may say, almost exclusively devoted to it—the people of this country can style me—their earliest champion, their best friend—a traitor—aye, Sir, a traitor to those liberties which certainly I have been mainly instrumental in achieving (Hear, hear.) Sir, I admit that there has been a weak point of mine in this debate—that I have taken notice of the calumnies and slander heaped upon me. I admit that I forgot what was due to the dignity of my nature and my station on that occasion (Cheers.) But, Sir, I would not have it believed, for it is not true, that the epithets I retorted upon my revilers were epithets addressed to the colony or the people at large (Cheers.) No; they were

limited, at all events in my intention, if not in my words, as I believe they were, to the vile slanderers themselves. I never meant to apply those terms which have been considered so objectionable, and which I admit were objectionable, to any beyond the few paltry assailants of my motives and my character (Hear, hear.) And, Sir, I hope that the public at large will receive from me this sincere declaration of what was the real object and intention of the words which I then uttered (Loud cheers.) No doubt it is expected of me, and perhaps with reason, considering that now sixty winters and more are on my head, that I should possess some moderation. No doubt it is expected that when I am smitten on one cheek, I should turn my other cheek to the smiter. Unhappily it is not in my temperament or in my nature to be thus forbearing. There is within me a flood of lava which ever and anon boils over, and which I cannot keep down. This is the infirmity of my nature, rather than the fault of my intention. It will, no doubt, Sir, be expected of me that I should infuse into this debate—into the concluding scene of it—some novelty of argument or of illustration. But, after the complete exhaustion of the subject—after the analysis and dissection of the arguments on the other side, which have already been made by so many speakers, I feel the task to be almost impossible: I feel, in fact, that nothing is left me to answer; that everything that has been advanced by the opponents of this Bill has been completely disposed of already; and if I have anything to offer now, it must be rather with the view of supplementing some omissions which I made in my original address to this House, than of adverting to any of the already reputed arguments which have been adduced against this measure. Sir, I do not see in his place at this moment, my hon. and learned friend, the member for Cumberland, who led the assault on the great measure now under consideration. I will not taunt him with his inconsistency, for that he admits; I will not repeat what has been said before, that a man who has arrived at the maturity of manhood and of his intellect, should not be subject to these frequent oscillations. I will assume that he is sincere; but on making this assumption, I still cannot understand how it is that he should feel himself justified in alluding, as he has done, to the impenetrable dignity in which, he says, I have involved myself: he, a man, if I know him, who, though he has undoubtedly formed just now strange associations, is more distinguished for his aristocratic pretensions than perhaps any single member within these walls. No doubt he has some reasons, best known to himself, for the course he has pursued on this occasion: but whether they proceed from conviction or from pique, whether from accident or from design, I shall not attempt to determine. He has undoubtedly lately formed strange alliances: and, Sir, not only formed them, but attempted to vindicate in this House the course of conduct he has pursued. I shall not now allude to that vindication: first, because the castigation he was smarting under proceeded from himself originally: and next, because the fallacy of the justification he has attempted has been amply shown by my hon. and learned friend, the member for Cook and Westmoreland, who, without questioning the right of the public generally, whether consisting of members of this House or persons out of it, to attend public meetings, has at all events shown that he and those similarly situated, who are in fact the constitutional judges appointed to decide this question, have no right to prejudge it by foregone conclusions, and therefore no right, at all events in such a case as this, in a question then under pendency, to attend such meetings at all; and that, as a necessary consequence, their attendance on that occasion has degraded them from the position of representatives of the people into that of mere delegates. Sir, whilst I advert to what I consider to be this great impropriety, which that hon. and learned member, as well as others, has committed in this case, I by no means intend to question the right of the great mass of the people who attended that meeting to give us their opinions on the measure now before us. They have a

perfect right to give us those opinions in the usual and constitutional way, by petition: that right, which they have already exercised to a certain extent, they may exercise further. But I do deny, in common with many other members of this House, the right of any body of the people to form themselves into a convention, and to frame a constitution for the colony, or to dictate a constitution for the colony, by which we should in any way be bound. Sir, this is a duty which the Legislature of England has cast upon us, a duty which we cannot get rid of if we would, a duty with which we should allow no interference. And, Sir, whatever influence the opinions of this meeting, or of any other meeting, may have upon this House, and upon its deliberations, at all events that influence will be, as far as regards myself, only the legitimate influence such bodies ought to exercise, the superior reason and intellect which they can bring to bear on the question under consideration. Sir, I think this body of petitioners has no right to complain, although I find they are complaining, of the course this House is adopting. For what was the tenor of their petition? That we should give them a month's delay, in order that the views and opinions of the country might be conveyed to us. They asked for a month and we give them three months, which is the interval I propose shall elapse before the House goes into Committee on this Bill. This, at all events, does not look as if I were myself a conspirator, surrounded by a set of other conspirators, whose object is to strangle the liberties and birthright of the country. Sir, whilst, however, I deny the right of the parties who have signed this petition, or of any person or persons out of this House, either individually or collectively, to dictate to us, or to frame a constitution which is in any way to guide our deliberations, it is to me a matter of infinite pleasure that they have appointed a Committee to try their hands at this sort of work. Sir, we have before us already the first outline of the Constitution which this body, with its superior intellect, intellect so superior to anything of the kind to be found in this House, have determined upon; and what is it? A system of Crown presentees and people's presentees. Why, Sir, they have purloined the very idea and elementary principle of the constitution of this very House. For what have we here but the Crown presentees in the nominated members, and the people's presentees in the elected members? It is true, Sir, they want to constitute the thing in a somewhat different manner. They propose, for instance, that the Governor should send down double the required number of names to the people for their acceptance—whom they mean by the people I cannot understand—and that the people should send up to the Governor for his acceptance also double the required number; half of each of these lists to be rejected by the vetoing power on both sides. Now, Sir, if it should happen, as I think it will be very likely to happen, that the Governor might not think any of the people's presentees the sort of persons to sit in a nominated Upper House, why of course he is bound, in the exercise of his veto, to send them back to the people; and if, on the other hand, the people, as would be most likely the case, should think the Governor's presentees equally objectionable, I suppose they also would have to go through the same sort of evolution; and then a consequence would arise which these worthies seem not to anticipate, namely, that there would be no Upper House at all, and the Legislature of the country would consist of only one House, the representatives of the people properly so called. But perhaps it is not at all impossible that this is the very object some of these worthies have in view, and that, by a sidewind, they want to get rid of the Upper House altogether. If that really be their aim, I should like to know who are best entitled to the name of conspirators? The members of this House, or a certain Committee out of doors? But, Sir, really it is absurd to talk of, to waste one's consideration on such crude projects as these. It ought to show these people, if they are open to conviction at all, how difficult a thing it is to frame a constitution,

how impossible it is to avoid some folly or other when we depart from the great landmarks of the British Constitution (Loud cheers)—when we cease to regard the maxim "*Stare super antiquas vias.*" That, Sir, is the maxim we ought to adhere to. (Cheers.) It is the maxim which has guided me in framing this measure, and the maxim which I confidently anticipate will be adopted by this House. Sir, I do believe from my conscience, that all the opposition which we are now encountering has arisen from a few obscure demagogues, who, if they could get the upper hand in this country, would tread with an iron heel on its neck (loud cheers, and no, no). I do not deny that many honourable and respectable men have been foolishly induced to join in this movement (hear, hear.) But I do hope, that when the deliberations of this House go through the country —when they see the grounds upon which the recommendations of this self-elected body out of doors rest, and the grounds of our opposition to them, which have been developed in this discussion; I do hope and believe that many persons, who have joined inconsiderately in their train, will desert them, and that before the three months expire, which I have proposed to give the country at large, for the consideration of this question and the expression of their opinion upon it, there will be very few persons who will stand by them. I believe, sir, this miserable ebullition will soon subside, and that though we have had undoubtedly a bottle of soda-water opened under our noses just at present, it will be very stale indeed before the end of that period (laughter.) Sir, I am not going on this occasion to weary the House with quotations. I have trespassed long enough in that way already; but before I go further into the subject, let us see the manifesto which the arch-anarchist himself has put forth as to the nature and extent of the rights to which these people are entitled. We have got it here fortunately under his own hand and seal. It will be found in his issue of the 10th of last month. It is fortunate, at all events, that he has put forth something definite—something with which this House may deal—something with which the country may deal. I will now, sir, take the liberty of reading to the House what he says on this important subject, which is in fact the pivot on which the whole debate ought to turn. Speaking about the Chamber of Nominees proposed by the Bill, he says,—

> First, with regard to what we are entitled to expect? With increased population and increased wealth, with new accessions of population and wealth every day; with nearly an unbounded prospect of numbers and prosperity at no great distance, and a high destiny in the future, the colony has an undoubted right not only to a Constitution which would be an improvement upon the last, but so eminent and free a Constitution as Great Britain herself enjoys. This is our right. No power in England has any just authority to gainsay it, and no individual here can well be satisfied with less, who is not a slave in the recesses of his own heart. Mr. Wentworth's Bill professes to be something of this kind, and pretends to assimilate itself, in form at least, to the British Constitution. In reality, it is worse than that which degrades the colony at present, and which it proposes to displace.

Now, sir, there is his manifesto. He says that the people of this country have a right to the British Constitution. I admit they have a right to it. But neither more nor less. They have no right to that Yankee Constitution of an elective Upper Chamber, which is now insisted on (hear, hear.) Now, I ask this House—I ask the people out of the House, whether there can possibly be a nearer approximation to the British Constitution than is contained in this Bill? Mr. Parkes says this Bill pretends to be an assimilation to the British Constitution. Let him and his adherents show in what point it does not come up to the British Constitution. Let him show, if he can, that it is not as near an approximation as possible to that Constitution. If he shows that, then, sir, I will admit that there is in this Bill some defect which ought to be remedied. If he cannot show it, then it follows that he ought to be content with the Constitution now before the House, and that the people, having under it the rights and privileges to which they are entitled as Englishmen,

ought to be content with it too. This is the conclusion, Sir, at which I have arrived, in considering this question; and if the House shall agree with me that this is as close an imitation of the British Constitution as the circumstances of this colony admit; if they agree with me, as I confidently anticipate they will, then it follows, even according to the showing of these agitators, that the people of this colony have got all they are entitled to, or have a right to demand. Sir, it was with the sole object that they might have all they have a right to demand, that I framed this Constitution. It was to confer on them those rights for the attainment of which I have fought the battle of the country for the last thirty years. It was to confer on them these rights and no other, that I have taken the lead in this great question. And if they are not satisfied, all I can say is, that I, for one, will be no party to giving them any more (hear, hear.) Sir, the nature of the Constitution embodied in this measure—of the more important and prominent clauses of it—has been well dwelt upon and explained by my honourable friend the Colonial Secretary, who, in this way, has supplied a very great omission contained in my original address to this House, in which I failed on some points to give the necessary explanation. Sir, I will, notwithstanding, advert a little more at length than he did to the Constitution of the Upper House, which this Bill proposes to establish. This measure, if it shall pass into law, empowers the Governor, in order to constitute the Legislative Council, or Upper House, by an instrument under the great seal of the colony, to summon to the Legislative Council such persons, being not fewer than twenty, as her Majesty shall think fit. That, Sir, is the first proposition in these clauses—that her Majesty, or the Governor, under her direction, may summon to the Legislative Council, a body of twenty nominated members at the least. But, sir, there is nothing in these clauses to prevent her Majesty, if she think fit, to direct the Governor to summon a hundred such members; and it is in this expansive character of this Upper House that the real safety-valve is to be found (cheers.) Sir, it is this expansive character of the House of Lords which has saved England from more than one revolution. It is to this expansive character in the Upper House proposed in this Bill that I look forward as a port of refuge for the Constitution at all times. Sir, any one can perceive, if the time should arrive—and most assuredly it will arrive—that there is an obstructive body in the Upper House impeding the legislation of the Lower House unnecessarily—impeding it, not for purposes of revision or consideration, but for purposes of faction, or even from an erroneous conviction or opinion of their own—I say, if a dead lock of this kind should ever arise, there is a remedy. The constitutional minister of the day has only to advise a further creation to the extent necessary to get rid of the obstruction, and then the obstruction, as a matter of course, will cease. Now, sir, my honourable and learned friend the member for Cumberland has spoken of this power, the menace of which, at all events, is within our own recollection, as a great defect in the character of the House of Lords. He has said that on certain important occasions they abdicated their functions, and he alluded to the fact, that on one of those occasions, the passing of the Reform Bill, they gave a reluctant and unwilling assent to that measure. No doubt, sir, they were driven to give that assent by an intimation that there would be a new creation of Peers if they obstructed the Bill any further. But, sir, the House will recollect that, at this period, this measure of reform had undergone, over and over again, discussions in both Houses of Parliament. It had been considered, amply considered, from one end of the country to the other. Whatever opinion the House of Lords had upon that question, a great and vast preponderance of the enlightened opinion of the country was then in favour of it (cheers), and if their obstruction had not been got rid of as it was, by their abdicating their functions,

as my honourable friend calls it, what must have been the consequence? Why, Sir, it has been termed a peaceful revolution as it was; but if it had not been a peaceful revolution, it must have been a revolution of another character. Therefore, sir, so far from this abdication, which is objected to, being a blemish in the constitution of the House of Lords, I consider it one of its greatest recommendations, and one of the purest efforts of the patriotism of its members, that they had the good sense, at last, when the question had been perfectly discussed, to give way and to bow to the general and superior intelligence of the country (cheers.) Now, sir, my honorable friend, who seems so little fond of abdications, with a sort of marvellous consistency—a consistency for which he is so particularly distinguished—for I will say this of my honourable and learned friend, that long as I have known him, greatly as I admire his eminent abilities, he is still a puzzle to me; I have never been able to understand him, and in the ten years during which I have had the honor to be associated with him in this House, I declare solemnly it has scarcely ever been my good fortune, when he commenced his speech, to know what would be his conclusion (laughter,) for it has so frequently happened that his conclusion has not been warranted by his premises, and his premises have not borne out his conclusion, that I have never felt sure whether he was for or against me, until I got his vote (renewed laughter). But I say my honourable and learned friend, with marvellous consistency, has a strong predilection for abdications here; for what does he advise the nominated members of this House to do on this occasion?—to abdicate their duty—to follow the example of the House of Lords and march out of the House. I am very glad those independent gentlemen who sit here as nominated members of this House—I mean particularly the unofficial ones—have felt that they belong to the people at large (hear, hear,) that they have as great a stake in the interests and welfare of the country as my honourable friend or any other elected member, and that they have as much right to vote and be heard as he has. Sir, that is the conclusion at which they have arrived—a conclusion which will no doubt be equally satisfactory to their own judgment and to the judgment of the intelligent portion of the public out of doors. Sir, it is precisely because that form of constitution for the Upper House, which my honourable friend behind me (Mr. Darvall) suggests, is incapable of this elasticity, that it can form no part of the British Constitution. My honourable and learned friend admits that we cannot, if we would, imitate the Senate of America. And if he did not admit it, every body must know that it represents the federal principle of the United States, and that we have no analogous principle here which an elective body could represent. What then, sir, I would ask, is this elective body to represent but democracy?—that democracy which, whatever any one may say to the contrary, is sufficiently amply represented in the House of Assembly proposed by this Bill. I say, sir, the principle of democracy will be more largely represented in this House than it is in the British House of Commons. And I say too, that this measure proposes an extension of the elective franchise to which no analogy is to be found in that Constitution, And, sir, while on this subject, I will have the candour to admit—for I hate concealment—that I have proposed this extension, not because I think it will render the Lower House more democratic, but because I think that franchise more conservative than some of the franchises we possess already. I believe that franchise in particular which admits persons in the receipt of salaries of £100 a year, will be highly conservative—that it will introduce for the first time a new conservative principle, a principle to be found among the middle and intelligent classes of the community—a principle which the existing Constitution has totally excluded (hear, hear.) Sir, I do not mean to say this principle can have any extensive operation in other parts of the colony but the towns and cities. But,

sir, it will have an extensive operation there, and if the effect of it should be, as I hope it may be, to alter the majorities which have hitherto prevailed in this city and in some other parts of the colony, I can only say it is a consummation devoutly to be wished. For as things now are, what is the nature of the representation of this great city? We have six wards in it, two of which can swamp all the rest; and give Sydney four, six, or any number of members. If you do not divide the constituency into wards, the only result will be that a bare majority of the electors will return all the members. And what does that majority consist of? Sir, you have only to go to an election and stand by, as I have often been obliged to do, and see the elements of which the electors are composed, and then you will know the class in this city who actually command and control its representation. This is a state of things which may seem desirable to some, but its perpetuation does not seem at all desirable to me. I can only say, whilst I am on this point, that if I should be induced to be a consenting party to any addition to the number of members for Sydney—if I am induced to aid my honourable friend who spoke first in this debate this evening (Mr. Morris), in giving the city two more members, it shall be on the single condition that the city shall be divided into wards. I have said before, and it has been proved conclusively, in the course of this debate, by my honourable friend, Mr. Parker, who has spoken this evening, that this city of Sydney is over represented. That, sir, has been demonstrated. And, whilst on this subject, I will not hesitate to express the conviction I feel, that if the system of clamor and tumult which has prevailed is to go on increasing—if this system of intimidation is to be applied in an augmented ratio to the deliberations of this House and the councils of the Government, the sooner this House takes the patriotic step of removing itself and the Government from such influences—the sooner it adopts the wise policy of the United States, which people are so fond of admiring, and establishes a new Washington beyond the reach of the mob orators and the mob force of this city, the better it will be for the calm deliberation of the representatives of the country, the better for the independence of the Government, and the better for the safety and welfare of all classes of the community, including even the citizens of Sydney themselves. (Cheers.) Sir, if I understood my honorable and learned friend behind me (Mr. Darvall) rightly, he has made a most important admission in this matter. I trust I understood him correctly. He has admitted that the necessary sequence of an elective Upper House is a republic—that monarchy cannot co-exist with it.

MR. DARVALL: I beg my honorable and learned friend's pardon. He has entirely misapprehended the tenor of my observations. His version is entirely inconsistent with what I said and what I meant. I have found great difficulty, Mr. Speaker, in making myself understood on this point. What I meant to say was this: no doubt the time may come—at all events those who most heartily desire the longest adherence to our connection with Great Britain must admit that the time may come when a severance of that connection must take place. I say, then, that the expectation of a transition to a limited monarchy, without a previous course of bloodshed and revolution, is unwarranted by history, and that so long as we continue under a monarchical form of government an elective Legislature will be more conducive to that continuance, and when the time of separation from the parent state does come it will render the separation easier.

MR. WENTWORTH resumed: Well, then, Mr. Speaker, it appears that, in common with many other honorable members of this House, I have had the misfortune not to understand my honorable and learned friend's sentiments on this question. But whether he admits or denies that the inevitable tendency of an elective Upper Chamber, in combination with an elective Chamber of Repre-

sentatives below, is to sever the connection with the mother country, I will now undertake to prove it. What he has not admitted I will endeavour to establish by argument. Now, sir, my honorable and learned friend will at all events not deny that an elective Upper House is as yet a matter of mere theory, so far as the British empire is concerned, There is unfortunately one British Colony, the Cape of Good Hope, in which this experiment has been made, but the experiment itself has not yet come into operation. Now, if it is, as I infer of that experiment, the same constituency, only differently distributed, which returns the members for both the lower and the Upper House—a constituency resting on the low franchise of £25 a year, and having also another franchise introduced into it, somewhat similar to the enlarged franchises which are contained in this Bill, giving to persons having salaries of a certain amount—I think £50 a year—a right to vote, and giving even to servants who receive wages of £25 a year, with board and lodging, also a right to vote ; it cannot be denied that the franchise on which this elective principle in that colony rests, is of a most wide and extended nature. What sort of a lower House the coloured and degraded races, who have thus obtained so large a share of the franchise, will elect, it is impossible to say. What sort of an Upper House they will elect it is equally difficult to surmise. But, at all events, this may be safely predicated, that inasmuch as those constituencies are grouped together in the election of an Upper House, that Upper House will necessarily be more democratic and less conservative than the Lower House. And, sir, I think this anticipation is fully justified by the knowledge which every one here must possess, of what would be the nature of an Upper House elected under a similar system of grouping in this country. Why, sir, if Sydney and the other towns were thrown into one, two, or even three great electoral divisions, the rural population would be swamped, and the urban population would be all predominant. The inevitable result of such a combination as this would be, that the Upper House would be more democratic than the lower. We should then have a double democracy, or a democracy in the Upper House for the revision of the deliberations of the more conservative element in the Lower House, Now, what chance would there be that these two bodies would pull different ways on any popular question ? What possibility is there that they would do it ? Suppose then, that, acting in concert, the two Houses at the Cape, elected in this way, should attempt, as they undoubtedly will before long, to force on the Governor of that colony some legislation which he cannot ratify, to which he cannot give the assent of Her Majesty—what must be the consequence ? Sir, the framers of that constitution have foreseen that these conditions may arise, and they have given the Governor the power of dissolving either or both of these assemblies, for that is their proper name—to call one a council and the other an assembly is an absurdity. But what would be the consequence of the exercise of this power of dissolution ;—a consequence that we have seen to follow invariably in all similar cases ? That the constituencies will send back to him the same men, and the same men will send back to him the same measures, (hear, hear.) and ultimately the vetoing power of the Crown will be overthrown. (Hear, hear, hear.) My honorable and learned friend may shrug his shoulders at this consequence, but to me it appears a most disastrous one ; for it satisfies me that the authority of the Crown cannot exist as a separate and independent estate under such circumstances, and that these two elective House can coerce the Government into giving the Royal assent to any measure however destructive. Then, sir, the ultimate consequence which I wish to prove must follow, the dissolution of the connection with Great Britain. Yes, sir, in the place of the Crown must be substituted an elective President ; and the country must very soon, or at all events in the long run, become a republic and nothing else. I admit that my honorable and learned friend behind me (Mr.

Darwall,) or the honorable member for Durham (Mr. Cowper,) who seems to be associated with him in this new predilection for an elective Upper House, as an inducement to this country to substitute this form of government for the venerated British constitution, which other colonies so long and so happily have lived under, has quoted the authority of some great names in England, the authority among others of Lord Monteagle, Mr. Gladstone, and the Duke of Newcastle. But after all, what are these but opinions—the opinions, indeed, of eminent men—formed at a distance from us, of men ignorant of the state of society which exists among us, ignorant of our wants, ignorant of our wishes, ignorant even of our principles, (Hear, hear.) I really believe that these gentlemen have arrived at the conslusion that we are a democratic community, and that nothing but democratic institutions will go down with us. Perhaps I myself may have been unfortunately instrumental in misleading these statesmen. I will admit that some of the speeches I have delivered in my earlier days, out of this House, many even in this House, might well impress these statesmen with that conviction. We ourselves most likely have been the authors of this impression; and I, perhaps, a greater offender in this respect than others. But there can be little doubt that they have arrived at the conclusion that, now that a perfect measure of self government is to be conceded to us, this elective principle in both Houses is the only principle which we will tolerate or accept in our constitution. Sir, those speeches, of which we have had a full narrative given to the House by the honorable member for Durham (Mr. Cowper), were for the most part delivered upon the passing of the Bill to confer the present Constitution on the Colony of New Zealand. But, sir, what is the Constitution, these speeches notwithstanding, which has been conferred on that colony? Why, sir, a representative assembly and a nominated Upper House. (Cheers.) So that whatever effect the speeches of these eminent individuals may have had in guiding the convictions, or regulating the conclusions of my honorable and learned friend behind me, and his colleague in this contest, they, at all events, had little effect on the deliberations of Parliament on the question then under consideration. They were not considered sufficiently potent by Parliament to induce a deviation from that form of Constitution which for centuries has existed in British colonies. Why then, sir, should they influence our decisions in this matter at all? I believe that there is within this House as great a fund of experience and information on this subject as belongs to any of these noble individuals. There are members here who have made this subject the study of their lives. I believe we are capable of forming as correct conclusions on this matter as any member of the British Cabinet, as any member of the British Parliament. The Parliament itself has come to this conclusion; the ministers of England have come to this conclusion. They have told us—even the Duke of Newcastle, who advocates an elective Upper House, has told us, in a despatch quoted by my honorable friend, Mr. Parker, this evening, that he doubts not we are more competent to deal with the matter than himself. Lord Grey held the same language to us; for in a memorable despatch now amongst the papers of this House, what has he stated? That we are "an authority more competent to deal with this matter than Parliament itself." These are the words of his despatch. And yet, sir, this minister, the author in other days of so much ill blood and ill feeling in this House, and throughout these colonies in general; who would have ruled the colonies with an absolute autocratic sway, if permitted; who for so many years has treated them, not as British communities, but as fiefs of the Crown,—since his place is no longer possessed by him, comes round and advises these colonies, with respect to which, at all events, he ought to be better informed—advises, or rather permits them, to deviate from the old landmarks of the British Constitution, and to elect an Upper House. Sir, this same nobleman

by the authority, not of Parliament, but of the Queen alone, was the first to sanction this innovation, this great innovation, in colonial constitutions, by proposing such a thing for the Cape of Good Hope. No doubt, a certain class of people there have accepted it with joy. No doubt, his influence and authority in this matter has extended further. He has induced a pliant Privy Council to give their recommendation to this measure. And the fact that so intelligent, so highly conservative a body of such distinguished statesmen, as comprise this Council, have concurred in this new principle, is relied on by my honourable and learned friend behind me, and the honourable member for Durham, as affording unanswerable proof that this old nominee principle—the sole principle that has hitherto existed in the Upper House of the colonies of England—is now an exploded principle; that it is worn out, and will work no longer. Now, Sir, I will just read a passage from Lord Monteagle's speech, when it will be remembered by this house that Earl Grey pursued a precisely similar course when the present constitution of this colony was under consideration. He referred to the Privy Council, and this same Council brought up a report upon it. The authority of this report was much relied on, both in England and elsewhere; but what does Lord Monteagle say of it? And it is important that we should recollect that Lord Monteagle himself was once Colonial Minister, and knows all the ins and outs of the way in which this Privy Council is worked upon. I will read an extract from his speech, to show the value of the testimony which the Council have borne to this new principle:—

> But his noble friend had taken a most extraordinary and unprecedented step to get himself out of the difficulty into which he had been plunged by his former experiments. He introduced a new principle, unheard of before. He sought the aid of a Committee of the Privy Council, to assist him in framing constitutions for the colonies, casting on them a responsibility which should have attached to himself alone. But he did not leave to those councillors the freedom of thought and action essential for offering sound advice. He had already prejudged the question, and committed the Government. The Committee of Council felt themselves bound by what the Secretary of State had already announced. He only allowed them to advise, so long as he was himself pleased to take their advice. It was, on the whole, the greatest farce ever performed.

That, Sir, is Lord Monteagle's opinion of the value attachable, and justly attachable, to reports of Committees of the Privy Council appointed and selected in this way. Sir, I leave to the country the conclusions to be drawn from this undoubted fact, stated by Lord Monteagle in the House of Lords, in the presence of Earl Grey, and not denied. I leave this house and the country to say, after those conclusions have been drawn, what weight is to be given to such an opinion as that given by the Privy Council. Ought it to weigh for a feather in the deliberations of this house on this most important question? As I have, Sir, said before, whatever may be the desire of any members of this house, or of any of the people of the country at large to have a body among us assimilated to the Senate of the United States of America, it is impossible, for the reasons I have stated. But, if we could have such a body, what other consequence would result from it than that I have already deduced, as the necessary sequence of the existence of any elective Upper House—I mean, the severance of the colony from the mother country. Why, Sir, the authors of the American constitution themselves were perfectly cognisant of this fact. They have only two estates in their constitution, not three. The President of the United States has no power of vetoing the measures sent up to him by Congress and the Senate. He may send them back for reconsideration, but if they do not choose to alter the measures within a certain specified time—three weeks, I think—they become law. The constitution of the United States, then, is a constitution without a third estate—a constitution in which the legislature of the country is omnipotent, as far as regards legislation—in which the President has nothing but a suspensive veto.

Mr. COX thought the honourable and learned member was in error on this point.

Mr. WENTWORTH: Sir, I have already taken the trouble to read to this house the outlines of the American constitution, and I am satisfied I am right. I say, the government of the United States is composed only of two estates, the House of Representatives and the Senate. The President has no veto on legislation but what is called a suspensive veto, which enables him to refer measures back for the consideration of the houses that passed them; but if they persist, those measures become law, whether he likes them or not. That, Sir, is the constitution of the confederated States of America. And if there was within us a federal principle which could be represented in the same way, who would think of introducing such a constitution into this colony? But it is enough to say, that we have no federal principle to represent. We may frame a mongrel imitation of it—some faint and distant approximation to it; but that is all that the ingenuity of my hon. and learned friend behind me, and his colleagues, can propose for adoption. Sir, I have said before, and I repeat it, that the great and insuperable objection to all these elective bodies is, that they are inflexible; their numbers are unalterable, and can neither be added to nor diminished. The third estate of the realm can exercise no authority over them but the authority of dissolution. I have shown that that authority is not sufficient to preserve the vessel of the State from wreck—that the elective element, doubly represented as it would be in any such constitution, must and will become too powerful to be controlled—and that under such a form of Government the throne must give way. Sir, I think that these arguments ought to be sufficient to convince the House, and the country at large, that this proposed elective Upper House is an innovation which we cannot safely admit. Yes, Sir, it is an innovation we can never introduce without contemplating, not in the far future, as my honourable and learned friend has stated, but as an immediate, or at least an approximate result, the severance of our allegiance from the mother country, and of our loyalty to the throne (hear, hear, and no, no)—the severance of that ancient and glorious tie which binds us to our father land—that golden link which, I trust, will ever bind us to it—which those may sever, or attempt to sever, who like, but which I trust will be maintained for ages to come by a very large majority of the loyal and respectable portion of this community. (Loud cheers.) Sir, I will now go into a brief examination of the hereditary clauses of the Bill now before the House. I have said before that there are three clauses connected with the formation of the Legislative Council here proposed, which involve two propositions: first, a nominated Upper House, without titles; and, secondly, a nomination of patentees, to have titles which are to be descendible to their children. When these two orders together—that is, the patentees, and the children of patentees, inheritors of their titles—shall amount to a certain number, it is proposed that then the mere nominated Upper House shall cease—that is, that portion of it without titles; and that the functions of legislation shall then be taken up by the original patentees who may then be living, and a certain number to be elected out of the whole body by the patentees, and persons by whom descendible titles shall have passed. Sir, I do, upon my conscience, believe that if these clauses had not been introduced into the Bill by me, much of the opposition this measure has met with would have been avoided; and that an outcry and clamour have been raised by these means throughout the country, which can only arise, in my opinion, from the fact that the nature of these clauses is not understood, and from the preposterous notions which even really well informed people, I am told, entertain on this subject. I have heard, from good authority, that a very respectable, and generally intelligent man, made this observation—"Mr. Wentworth is to be Duke of Vaucluse, and to have £50,000

a-year: Mr. Macarthur is to be Earl of Camden, and to have £30,000 a-year." And so he went on through a regular series of Earls and Barons, varying the amount of incomes they were to receive from the £50,000 a-year of the Duke of Vaucluse, to the £10,000 a-year of the lesser Barons. Now, Sir, can any one think it possible that such absurd opinions as these could be circulated throughout the country? But I have no doubt that statements and opinions of this kind are at the bottom of the main objections which prevail against this Bill. In introducing, however, such clauses into this Bill, I have done so under the conviction that the inhabitants of this country have been too long excluded from titles. It has been well observed by my honourable and learned friend, the member for Cook and Westmoreland, that the love of distinction is a natural passion of the human mind. What is it that gives value to property, that thing which is sought after by all men—what is it but its transmissible quality? Is it not its chief attraction that a man can leave it to his children? And, Sir, when after a course of prosperous industry, or long and meritorious services rendered to a country, rewards of this kind become coveted and desirable, why should the British subjects in this distant dependency, be excluded from the privilege enjoyed by their fellow subjects at home? (Hear, hear.) Will anybody tell me that any good and sufficient reason exists for this exclusion? Will it be asserted that there are not some men in this colony—though indeed they may be few—who are worthy of this distinction? Sir, it has been insinuated that my desire to acquire a distinction of this kind is at the bottom of these clauses. I deny the assertion. I have a large family, a family of ten children, and when what I possess comes to be divided into ten parts, there will not be sufficient for any one of them to maintain an hereditary title with honour. There will not be an estate on which any hereditary title could properly rest, at all events in my family. But, Sir, what is that to the question? Is it any reason because I do not wish, or because the circumstances of my particular case render it inexpedient that a title should be conferred on me; is that any reason why this badge of exclusion should be applied to the colony? The idea of conferring titles just now is new no doubt; but the Quebec Act to which these hereditary clauses are, to a certain extent, an approximation, confers, or, at least, did confer whilst it was in force, a right to do much more than these clauses seek to establish—a right to confer honors, with hereditary seats in the legislature to the possessors of those honors, those hereditary seats being descendible to their families. It intended to place the titled inhabitants of Canada exactly on the footing of the lords of England, to make them a legislative body of themselves, and to give to their descendants an hereditary right of legislation. Sir, I have not gone so far, because I consider this principle of hereditary legislation objectionable; because I think it a much better principle to establish among this body that right of election only from among themselves which belongs to the peers of Scotland and of Ireland. And, it does appear to me to be somewhat inconsistent that those honourable members who are so fond of the principle of election, in reference to the Upper House, should object to it in the form in which I propose it, for it will be a necessary consequence of the adoption of these clauses, that that which, in the first instance, will be a purely nominated body will eventually become a body partly nominated and partly elected. It may be, indeed, in the progress of things, that when the persons to whom these hereditary titles belong shall amount to a certain number, the upper legislature would become wholly elective. Now, Sir, my honorable and learned friend the Solicitor-General stated last night, as one of the main objections that occurred to him against these propositions, that the power of creating titles, or patents, of this kind, must, of necessity, be local. Well, Sir, I agree to that proposition, but I referred him to an authority last night, which, I believe, has been misquoted. I referred

him to the Charter of Maryland to show that such a power as this had been delegated to Lord Baltimore. But it has been stated that the power which I alleged to have been given to Lord Baltimore, was a power to create an hereditary peerage. So far from that being the case, the power so conferred was a power to create titles of a different nature. Sir, I will read the words used in granting this power, for, undoubtedly, if hereditary honors are to be conferred at all in this colony, either with or without an hereditary right of election to the Upper House, it may be important to consider in what way this power must be exercised. The clause in the Charter of Maryland is this :—

> Furthermore, that the way to honors and dignity may not seem to be altogether precluded and shut up to men well born, and such as shall prepare themselves unto this present plantation, and shall desire to deserve well of us and our kingdoms, both in peace and war, in so far distant and remote a country; therefore we, for us, our heirs and successors, do give free and absolute power unto the said Lord Baltimore, his heirs and assigns, to confer favors, rewards, and honors upon such inhabitants, within the province aforesaid, to invest them with what titles and dignities soever as he shall think fit (so as they be not such as are now used in England.)

Now, Sir, I do not know whether Lord Baltimore, his heirs or assigns, ever exercised this power. I have not made the researches necessary to ascertain the fact. Neither do I know whether his Majesty, under the Quebec Act, ever exercised the power to confer hereditary honors in connection with an hereditary seat, as that Act permitted. I think it is likely, as this Act was passed just on the eve of the great French revolution, when the attention of ministers must have been drawn off from all other subjects—when they had not time to attend to such minute and petty details of government as this, that the clause was altogether forgotten, and that the power remained altogether in abeyance. I say I think this is probable, and this probability is greatly strengthened by the consideration that there could have been few, if any, men in the province of Quebec, at that time, who had sufficient private fortune to support such honors. It may be that this was the reason why these honors were not conferred on any of the inhabitants of any of the northern provinces yet united to the Crown of England. We all know, as a matter of fact, that even in Canada, where there are large and rich merchants connected with the trade of the country, the majority of the people are mere farmers—that there is scarcely a man among them who has more than two or three hundred acres of land, which he tills and cultivates himself by the aid of his family; and that, with few exceptions, hereditary honors could not be supported, if her Majesty were disposed to confer them. But, Sir, I would ask, is that the case in this colony? I believe, on the contrary, that of all the dependencies of the British Crown, there is none, and never will be any, where such large fortunes in land, and in various other ways, exist, and will exist. Sir, have we not a distinguishing characteristic in this country which renders it the most eligible of all others to support a nobility? Nobility! That word is not found in the Bill; and I believe no one who concurred in these clauses had any expectation that Her Majesty would confer on any person in these colonies a greater dignity than that of a baronet. But I would say, Sir, is there not—to say nothing of large landholders—is there not a class peculiarly fitted for hereditary distinctions? a class which has been great and powerful in all ages and in all countries where it has existed; which must continue to be great and powerful here as long as the great interior wilds of this country can be applied to no other purpose than the sustentation of sheep and cattle? Yes, Sir, we have among us, and we shall have among us to the latest generations, our Shepherd Kings. And I believe that, as they are a body peculiar to this colony, so are they, as a general proposition, the body most fitted of all in the colonies—I mean the principal men among them—to receive these hereditary distinctions. I can afford to say this now, because I can scarcely be called a squatter myself any longer. I

ask if men of this class, in ages long gone by, were not the founders of the greatest and most celebrated cities and nations of antiquity? Who but this race founded Nineveh and Babylon, and subjugated the surrounding nations? It has been admitted, in the course of this debate, by the honourable and learned member for Cumberland and others, that though it may be fit that hereditary titles should be created, yet that there should not be attached to them any power or faculty of legislation. Sir, those are not my views. My views on this subject, I dare say, will be opposed by probably a majority of this House, as they are opposed by a majority out of doors. But I am not inclined to persist in them, if the opinion of this House should be against me. (Hear, hear.) I am willing to give them up. The Bill is a perfect measure without them. It will then still leave us a nominated Upper House—an element which I believe to be an essential and indispensable element in the Constitution—an element which, though antagonistic at times, and necessarily antagonistic, because it exercises, and has a right to exercise, a veto on the legislation of the Lower House, contains within it a principle without which, I have shown, there is no safety-valve, and can be none, in the British Constitution. Sir, the working of this principle has been well described by Pope, in his allusion to the British Constitution, and the beautiful mixture of antagonistic elements which it contains:—

> Till jarring interests of themselves create
> The according music of a well-mixed State.

These lines, Sir, convey Pope's views of the British Constitution. They are views which I have no doubt will be adopted by this House, and, I hope, by a very large majority of the country. Sir, I have forborne, in this discussion, from noticing many personal observations which have been addressed to me by various members, and particularly some that I conceive to have been addressed to me by my honourable and learned friend behind me. As I have stated before, I feel indebted to him for the chivalry with which he attempted to vindicate my motives and my character at the public meeting to which I have formerly alluded. Sir, he has told us, in the course of his remarks to this House—and, no doubt, in the same spirit which prompted him to that vindication—that he does not desire my scalp (laughter)—that he would be sorry to raise the hairs of my head in that way. Sir, I am excessively obliged to him for his forbearance. And when I consider the gross onslaughts made upon me by others out of this House—that, as my honourable friend opposite (Mr. Morris) has stated this night, one ruffian has proposed that I should swing—I cannot but feel, after the delicate allusion he made to the fate of a namesake of mine in New Hampshire, that he was particularly lenient; for his dose would be merely evacuatory, whilst Hawkesley's would be most stringent. (Laughter.) All that my honourable and learned friend has suggested is, that my house might as well be gutted as the house of my namesake in New Hampshire. (Laughter, and "No, no," from Mr. Darvall.) That was the course adopted in his case; and the mere suggestion of such a course to certain gentlemen out of doors might be all-sufficient. Now, fortunately for me, I have long ago anticipated that process, and with the aid of Mr. Salamon I have cleared out all; so that if these marauding gentlemen were to act upon the suggestion, they would find nothing but the bare walls. (Laughter.) But, Sir, notwithstanding this—he may call it what he likes—I thought it was a suggestion; but my honourable and learned friend does not concur in that interpretation; but I repeat this suggestion, or whatever name it may deserve; notwithstanding this, I shall not seek to retaliate on him in the way in which it is possible I might. And I am still less inclined to adopt that course, because I do think that my honourable and learned friend feels miserable within himself. (Laughter.) Sir, if I could judge of his feelings by his attempted

vindication in the House, whilst I was listening to him dragging his slow length along, like a wounded snake, I could not but believe that he himself sincerely and conscientiously felt aware of the badness of his cause, and the dreadfully disreputable associations he has formed. (Laughter.) Therefore, Sir, considering the lashing he has got from many other honourable members of this House, combined with that inward self-disapprobation he must feel, I shall leave him to his reflection, which I hope will, at all events, teach him that "evil communications corrupt good manners," (loud laughter) and teach him to avoid such bad company for the future. Sir, as I have said before, I really have felt that every additional argument that I could apply to this subject has been already anticipated. But there is one observation yet remaining, of my honorable and learned friend, which I must notice—an observation which tends to fix upon me the charge of inconsistency, to which he himself has pleaded guilty, and with the fact that in the earlier years of my career in this House I was one of the strongest reprobators of the nominee element which obtains here, and which I now seek to place in a Legislative Council by itself. Sir, if my honorable and learned friend had given himself time to think, he must have known that was a charge that could not be sustained. He must have known that I myself was the suggestor, the author of this Constitution under which we now sit; that it was I who introduced the nominee element into the House, (hear, hear); and with the view that by means of the official members of the House the government might be represented, and by means of the nominee members, a conservative and equipoising body might intervene between the official members, on the one hand, and the representatives on the other. Sir, I have often said, and who can say otherwise? that during the violent times of a preceding government, which I shall not characterise, the unofficial nominees in this House neglected their duty. I have often said that they ought to come into this House as free and independent as the elective members. I have said that it was not their duty or their business to give pledges to the government. And I do remember, when one member, a particular friend of my own, in alluding to a certain measure of colonial policy then under the consideration of the House—I mean the formation of District Councils in this country—said openly in this House, that he had voted for that measure against his conscience—that I did get up and express the strong disapprobation which I felt. But, Sir, the whole tenor of my observations, throughout my whole life, on this subject has been this, not that the nominee element ought to be got rid of, but that the nominee element here should act that independent and conscientious part which the Constitution intended. (Hear, hear.) That was the tenor of the observations which I did address to the House on this subject, though I may have been misunderstood, Now, Sir, in further corroboration of my assertion, that these were my views, and always have been my views, let us refer to the divisions which took place when the elements of which it was proposed to form the Constitution of 1848, were under the consideration of the House. When my honorable and learned friend, and the honorable member for Durham, introduced a resolution into this House, to the effect that the deliberations of the nominees should be separated from those of the elective members, who was it that opposed that resolution but myself? Sir, that resolution, supported by the eloquence of the late honorable and learned member for Sydney, and by the majority at the back of these honorable members, was carried, on a division, by eleven to ten against me. Sir, whilst the whole country was in favor of a nominated Upper House at that time, I was the great champion for retaining the nominee principle in this House, which it is now said I have always opposed. If at that period it had not been for me, and those who thought with me, that we were not ripe for a separation of this kind, this nominated Upper House would now have been constituted then. Sir, all who remember

the debates that took place in Parliament must know, that the Minister was so convinced of the division of opinion on this subject which existed in this House, and out of it, that though, when our present Constitution was given us, a very large majority of members of Parliament in both Houses were for at once separating our Legislature into two parts, he and the other Ministers of the Crown preferred, on the contrary, that we should retain the form of constitution which we then possessed, and that the power of altering and adapting it to suit the circumstances of the colony should be given to us. That, Sir, was the origin of the constituent powers which we are now assembled here to exercise. I therefore think that I have proved to the satisfaction of the House, that the observations I made on this subject have been misunderstood by my honorable and learned friend. (Hear, hear.) Sir, it has been further objected to me by some honorable members in this House, and by an immense multitude out of it, that I have deserted the principles of my early days, and that I am no longer the same William Charles Wentworth that I was—that I, the man of 1853, in the words of my honorable colleague opposite, am not the man of 1843. If this charge were true—if it could be really objected to me that I was ever in favour of democratic institutions, or that I ever gave them a preference over the glorious constitution of our fatherland, I might claim the same right of altering my opinions as my honorable and learned friend behind me. I might claim it, even according to these objectors, on much better grounds, for whilst he is in the prime and vigour of his intellect, it has been stated of me that I am in my senility. (Loud and indignant cries of no, no, from all sides.) Sir, without enquiring how far a charge of this latter kind is true or false, I deny the imputation altogether—I will not even admit that I commenced my life, like the old gentleman whom my hon. and learned friend, the member for the Northumberland Boroughs, quoted last night, a Republican, that I became in middle age a whig, and that I shall die a conservative. Sir, at all events, I shall die with conservative principles; but however I may die, I deny emphatically that I ever was a democrat or a republican. I was a whig, I admit, till I was ashamed of whigism. I was a whig until that great whig leader and despot—that man who played so many pranks with the colonies of the British Crown, and with this colony in particular—Earl Grey and his faction converted me from whigism. (Cheers and laughter.) In the wildest flights of declamation I have ever indulged in I defy any one to say that I ever ceased to be an advocate for the British constitution. What has been the uniform object of all the political battles I have fought but to confer such a constitution on this country? It is fortunate for me that my consistency in this particular—the deep ardour and attachment that I feel, and have ever felt, to that constitution, can be established in other ways than by my mere unsupported allegation. Sir, I can refer, for proof of this, to one of my early productions—a production which attracted more attention than it deserved, but which, at all events, shows that from my boyhood upwards the establishment here of the British constitution has been my sole end and aim. Sir, that production concludes with these lines:—

May all thy glories, in another sphere,
Relume and shine more brightly still than here.
And oh, Britannia! shouldst thou cease to ride,
Despotic Empress of old Ocean's tide;
Should thy tamed lion, spent his former might,
No longer roar, the terror of the fight;
Should e'er arrive that dark, disastrous hour,
When, bowed by luxury, thou yieldst to power;
When thou, no longer freest of the free,
To some proud victor bend'st the suppliant knee;
May this, thy last born daughter, then arise,
To glad thy heart, and greet thy parent eyes:
And Australasia float, with flag unfurled,
A New Britannia in another world!

(Enthusiastic cheering, the gallery joining in the applause.) Sir, an effusion of now more than thirty years standing, will, at all events, prove that I commenced my career as a boy, an ardent admirer of that constitution, and that only under a policy which was to flow

from a similar constitution did I ultimately expect an Empire to rise in these seas, and upon these shores, which might rival in greatness and in splendour the glorious mother-land, when her glories have departed. (Loud cheers.) This was my early dream—it is the hope of my life; a hope which I will not part with but with the last pulse of my existence. (Renewed cheers.) Sir, I feel that we have arrived at a great crisis in the history of this country. I feel that we are in the throes and agonies of a constitution which must influence, for good or for evil, for weal or for woe, our future generations—influence them, I repeat, in exact proportion as we assimilate that constitution to the glorious model of our fatherland. (Great cheering.) Sir, I am aware that there are those by whom the authority of the ancient pilot is unheeded. I know that we are surrounded by a crew of rash and daring, and, as I conscientiously believe, of disloyal innovators, who would wrest the helm from my hands, and steer the vessel right on the rocks which lie ahead of her. (Hear, hear, hear.) Sir, those rocks are anarchy and confusion. These are the Scylla and Charybdis we have to avoid, and which we must avoid, before this glorious vessel of the state can be anchored in security. Sir, I call upon the officers and the crew of this vessel—that is, the loyal part of the crew—to put down this mutiny—to put it down, I repeat, at all hazards. I call upon them to be firm, to be resolute, to do their duty. Sir, if we are firm, we shall succeed; if we falter, we shall be beaten. We shall not, Sir, retire from this disgraceful and ignominious contest—this fatal Paria—even with our honour. No, we shall leave even that behind; we shall not be able to exclaim, with Francis the First, "*Tout est perdu, saufe l'honneur.*" (Cheers.) Sir, we have in this matter a solemn duty to perform; that duty which we owe to ourselves, our children, our posterity, our country, and our God. I call upon you fearlessly, faithfully, to perform it. We cannot recede without disloyalty and disgrace. Our only chance of success lies before us; lies, in an onward course, to the goal we have in view—the consummation of this glorious constitution. Sir, I will trouble the House with but a few more observations. This is probably the last occasion—at all events, the last important occasion—upon which this voice may be heard within these walls; and the time cannot be far distant when this tongue will be mute in death. In the short interval which must elapse between me and eternity, on the brink of which I now stand, I would ask, what low motives, what ignoble ambition, can possibly actuate me? The whole struggle and efforts of my life have been directed to the achievement of the liberties of my country; and it is with this constitution, which I now present for its acceptance, that this achievement will be consummated. Sir, it has not only been my misfortune, but it has been the misfortune of all my countrymen, that we have not lived in troublous times, when it became necessary, by force, to repress domestic faction or treason, to repel invasion from without, or, perhaps, to pour out our chivalry to seek glory and distinction in foreign climes. This is a privilege which has been denied to us. It is a privilege which can only belong to our posterity. We cannot, if we would, sacrifice our lives upon the altar of public good. No such opportunity has occurred, nor, probably, will occur, to any of us. Yet, Sir, there is one heroic achievement open to us, and that is, to confer upon this country that large measure of freedom, under the protecting shade and influence of which an ennobling and exalted patriotism may at last arise, which will enable the youth of this colony—the youth of future ages—to emulate the ardour, the zeal, and the patriotism of the glorious youth of Sparta and of Rome, and to teach and make them feel that ennobling sentiment which is conveyed in the lines of the Roman lyric,—

"Dulce et decorum est pro patriâ mori."

Sir, this is not our destiny, but I trust it will be the destiny of another genera-

tion, who shall arise with larger feelings, and, it may be, purer aims. Sir, this great charter of liberty, which I believe will be pregnant with these results in after-ages, I leave now as my latest legacy to my country. I beseech this House and that country to accept it. (Cheers.) It is the most endearing proof of my love to that country which I can leave behind me. It is also the embodiment of the deep conviction which I feel that the model, the type, from which this great charter has been drawn is, in the language of the eloquent Canning,—

> The envy of surrounding nations, and the admiration of the world.

Sir, in the uncertainty which hangs over the destiny of the country—in this awful crisis of our fate—I can only hope that the deliberations of the country may be guided to a safe conclusion upon this vital question, and that by a large, a very large majority of this House, and of the community beyond it, the Constitution will be gratefully and thankfully received. (Loud cheers.) Sir, I shall only say, in conclusion, that in inviting this House to the second reading of this Bill, I have to enunciate distinctly, as I did before, that the sole principle I wish to have affirmed by the second reading is, that there shall be two Houses of Parliament, an Upper and a Lower House, and that whether the Uppper House is to be elective or nominated is to remain an open question until we shall receive an expression of opinion from the different districts of the country on that subject; and that this important part of this measure shall only be determined when the House goes into committee of the whole House, which I propose it shall do—not, as I stated before, on the 20th November, but on the 6th December, which I find will be more suitable to the general wishes and convenience of honourable members.

The honourable and learned gentleman sat down amidst the greatest applause from all sides of the House, the numerous strangers in the gallery joining most enthusiastically until called to order by the Speaker.

The House then divided on the question, with the following result:—

Ayes, 33.	Noes, 8.
The Colonial Secretary	Mr. Bligh
The Attorney-General	Mr. Richardson
The Colonial Treasurer	Mr. Park
The Solicitor-General	Mr. Russell
Mr. James Macarthur	Mr. Smart
The Auditor-General	Mr. Darvall
Captain King	Mr. Cowper } Tellers.
Mr. W. Macarthur	Mr. Thurlow }
Mr. Wentworth	
Mr. Cox	
Mr. Dobie	
Mr. Fitzgerald	
Mr. Nichols	
Mr. Flood	
Mr. G. Bowman	
Mr. W. Bowman	
Mr. Broadhurst	
Mr. Campbell	
Mr. Barker	
Mr. Macleay	
The Collector of Customs	
Mr. Jeffreys	
Mr. Bradley	
Chief Commissioner Crown Lands	
Mr. Parker	
The Postmaster-General	
Captain Dumaresq	
Mr. Finch	
Inspector-General of Police	
Mr. Allen	
Dr. Douglass	
Mr. Martin } Tellers.	
Mr. Morris }	

The Bill was then read a second time, and its committal ordered to stand an order of the day for Tuesday, the 6th of December.

The announcement of the result of the division was the signal for renewed and hearty cheers.

SYDNEY:

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