

Enclosure in No. 4.

THE Governor has received the resolution of the House of Representatives, by which he is informed that he has inadvertently committed a breach of the privileges of that House. The House is constitutionally the guardian of its own privileges.

The Governor having now called Mr. Wilson to the Legislative Council, in accordance with his promise to his Advisers, he does not think it will answer any useful purpose to discuss the question any further, but he will transmit the papers to the Secretary of State for the Colonies.

MEMORANDUM from His Excellency the GOVERNOR to the Hon. Sir GEORGE GREY, K.C.B.

THE Governor acknowledges the receipt of Sir George Grey's further memorandum of this day's date, and he is glad to learn that the Government agree with him, and admit their constitutional responsibility to Parliament for the acts of the Governor when done on their advice. The Governor, however, cannot admit that their responsibility should be so limited, because, if the act of the Governor is such that the Government cannot accept or defend it, it is their duty to resign, in order that the Governor may be able, if he can, to form a Government who would support his views, in which case he would have of course to justify his conduct to the Secretary of State, to whom he is alone responsible. In this present instance the Government, and the Governor thinks rightly, did not consider that his refusal to appoint Mr. Wilson to the Legislative Council was a matter of sufficient importance to induce them to resign, and thereby they accepted his decision and became responsible for his act, and the whole question should have then ended, or they should have further pressed their advice upon him.

Neither can the Governor modify the view which he has expressed—that the Government were, by the oath which they took as Executive Councillors, bound, when they saw that he had unintentionally given reasons which might be construed into a breach of privilege, to have pointed out the fact to him.

The appointment or non-appointment of Mr. Wilson was one thing, and totally different to the question as to whether the Governor had unintentionally infringed the privileges of the House.

The Governor has for too many years held a seat in one branch or other of the British Parliament to wish for one moment to infringe upon the privileges of the House of Representatives; and, could he admit that he is the person responsible to Parliament, he would not for one moment hesitate to express his regret that most unintentionally he had infringed their privileges.

The Governor, however, considers that the constitutional principle for which he contends—viz., "That Ministers, so long as they retain office, are alone responsible to Parliament for the acts of the Governor"—is of such vital importance to the future good government of the colony, and for the position held by Her Majesty's Representative, that he feels that he would be recreant to his duty, and utterly unworthy of the position which he holds, if he permitted the question to drop, and did not try, to the utmost of his power, to have the matter finally and definitely settled.

This question of privilege is now no longer a matter "in agitation or debate" in the House. The Governor has been informed officially by the Hon. the Speaker of the decision of the House, and the official reports of the House are officially before him. He can therefore now refer to the matter in his communications with his Ministers, without any fear of committing a breach of privilege.

The absolute responsibility of Ministers to Parliament for the acts of a Governor is a question which has so often been decided, and is so well understood in England, that the Governor did not expect to find it disputed. The necessity and justice of this rule is obvious. In working out mathematical problems it is not unusual to demonstrate the point by showing the absurdity of any other conclusion, and the Governor would venture in this case to prove his point in that way. As an illustration he will take the case which has just occurred. The Governor refused the advice of Ministers to appoint Mr. Wilson to the Legislative Council. By his instructions, and according to numerous precedents, he had a perfect right to take that course. The Government, as he thinks rightly, did not consider it a case of sufficient importance to necessitate their resignation, and there the matter would have ended. The Governor was not obliged to give any reasons to his Ministers for the course he had taken, but he thought it more honest and more respectful to them to do so. Unfortunately, in so doing, he used expressions which were afterwards construed into a breach of privilege. The Government either did or did not see this. The Governor is perfectly ready to assume that they did not, as he should be very sorry indeed to impute to them any intention of entrapping him: at the same time the Government must have had some reasons for wishing for the production of the papers, and so little did the Governor see any public necessity for it, that he was on the point of refusing his consent, and only refrained from doing so because he did not like for the second time to refuse their advice. The papers were laid on the table of the House, and immediately the question of privilege was raised.

The Governor, by the privilege of the House, was not supposed to know what was going on. He had no voice in the House. He was not in any way allowed to explain his conduct, or to produce evidence or precedent in his favour. He could not employ counsel; and the Government, by whose advice the papers were published, and who are his constitutional defenders in the House, either took part against him, or remained in silence and refused him their assistance.

The Governor was condemned unheard, and an address was presented to him by the House expressing its disapproval of what he had done.

A criminal, on the other hand, no matter what crimes he may have committed, is, in the first place, by the English law presumed to be innocent. He is brought face to face with his accusers. He is present at his trial. He may produce evidence of his innocence, and employ counsel; and even before sentence is passed he is permitted to urge any reasons that he may think fit, in mitigation of his sentence.

The Governor would ask whether these two cases do not prove incontestably the absolute necessity for the constitutional rule which the Governor contends does exist—viz., "That it is the Government, and not the Governor, who must, so long as they remain his Advisers, be solely responsible to Parliament for his acts." Is it not absurd to contend that Her Majesty's Representative should be