

1892.
NEW ZEALAND.

LEGISLATIVE COUNCIL APPOINTMENTS

(CORRESPONDENCE RELATING THERETO).

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

[NOTE.—The memoranda numbered 3, 4, 5, 6, 7, and 11 were not forwarded by His Excellency the Governor to the Secretary of State, as His Excellency did not consider it necessary.]

No 1.

MEMORANDUM for MINISTERS.

His Excellency has considered the draft memorandum left with him yesterday by the Premier, and he desires to make a few remarks upon it for the consideration of Ministers.*

He observes that the memorandum, in quoting page 590 of "Todd's Parliamentary Government in the British Colonies" (1880), recognises that the difference between himself and Ministers is "a question of an Imperial nature in which," in a sense, "the general policy of the Empire is involved, and in which it is the duty of a Governor to exercise the power vested in him, in his capacity of an Imperial officer, without limitation or restraint."

That this is so it is evident, because it is only under such circumstances that, according to the latter part of the same paragraph, Ministers can claim that, while they are responsible to Parliament for the advice they have given, they cannot be strictly held accountable for their advice not having prevailed.

This being so, His Excellency is at a loss to understand how Ministers can be of opinion "that the responsibility of appointments to the Council should have vested with the Responsible Advisers of His Excellency, and that the refusal to accept their advice is in derogation of the rights and privileges of a self-governing colony," and he desires to point out that no self-governing colony possesses the right they claim.

With regard to the statement that, in offering a smaller number of appointments than Ministers asked for, he withdrew "from those responsible the confidence which the Constitution required him to repose in them, upon the inadequate ground that nine (9) are preferable to twelve (12) additions to the Council:" in the first place, he replies that he feels himself bound to resist their advice upon the ground that to grant the numbers Ministers asked for would be an unconstitutional interference with the liberties of the Legislative Council.

In the second place, considering that His Excellency is personally responsible to the Crown for the manner in which he exercises the prerogative right of making appointments to the Council, he considers that the difference between nine (9) and twelve (12) appointments is an inadequate reason for creating a question between His Excellency and Ministers.

Government House, Wellington, 27th July, 1892.

G.

No. 2.

MEMORANDUM for HIS EXCELLENCY.

In reply to His Excellency's memorandum of the 27th ultimo, the Premier respectfully would observe that Ministers do not admit that the case is one in which "it is the duty of a Governor to exercise the power vested in him, in his capacity as an Imperial officer, without limitation or restraint." If this were so, the Governor might make appointments to the Council without the advice of Ministers.

The reference of Ministers in the memorandum to the authority quoted (Todd) was merely a reply to the assumption of those who would contend that, while the appointment of Councillors was different from the ordinary exercise of the Governor's power, Ministers were bound to resign if their advice was not taken.

That this limitation was placed on the quotation is evident from the fact that Ministers immediately proceeded to state their own opinion with respect to Ministerial responsibility.

The same authority goes on to say (Todd, page 590): "But, according to constitutional analogy, no right should be claimed by the Governor, except in cases wherein, under the Royal instructions, he is bound, as an Imperial officer, to act independently of his Ministers." Ministers do not find that, in respect of the question under consideration, such independence is expressed or implied in the Royal instructions. They believe the powers referred to in the passage quoted are of a different character from those exercisable in the appointment of members to the Legislative Council.

* See enclosure to No. 10.