

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.

His Excellency states that "he feels himself bound to resist their advice, upon the ground that to grant the number Ministers asked for would be an unconstitutional interference with the liberties of the Legislative Council."

This, Ministers submit, is the whole question at issue. They have given reasons why the appointment of twelve members would be constitutional and proper, and they respectfully remark that His Excellency has stated no reason why nine would be constitutional and twelve unconstitutional, or upon what grounds it would be "an unconstitutional interference with the liberties of the Legislative Council."

In reference to the last paragraph of His Excellency's memorandum, Ministers do not agree that the Governor is "personally responsible to the Crown for the manner in which he exercises the prerogative right of making appointments to the Council" in any other sense than the exercise of responsibility upon the advice of his Responsible Advisers.

They would further observe that the appointment of Councillors is not a "prerogative right," but a statutory act under "The Legislative Council Act, 1891" [N.Z.].

His Excellency's attention is respectfully directed to Despatch No. 19, of 11th April, 1891, from Lord Knutsford to Lord Onslow, in which the Secretary of State remarks: "With regard to the appointments to the Legislative Council recommended by the late Government, I am of opinion that, in accepting the advice tendered to you by your Lordship's Responsible Ministers, under the circumstances described in your despatches, you acted strictly in accordance with the Constitution of the colony; but I do not desire to be understood to offer any opinion upon the action of your Ministers in tendering that advice." The terms of this despatch, Ministers are of opinion, show that the appointment of Councillors is not "a personal act" on the part of the Governor in the sense referred to by Todd in the passage cited by His Excellency.

Ministers agree with His Excellency that the difference between nine and twelve appointments is "an inadequate reason for creating a question between His Excellency and Ministers," but they also think that this argument applies also to the effect on the "liberties of the Legislative Council" of the three appointments His Excellency has been unwilling to make. If these form an inadequate reason for creating a question between His Excellency and Ministers, they are surely as inadequate to deserve the name of "an unconstitutional interference with the liberties of the Legislative Council."

Ministers thought, and were therefore bound to advise, that less than twelve would not be sufficient to enable the functions of the Council to be properly discharged. They also think their advice was not unreasonable or unconstitutional.

Premier's Office, Wellington, 2nd August, 1892.

J. BALLANCE.

### No. 3.

#### MEMORANDUM for the PREMIER.

WITH reference to the recent communications that have passed between the Governor and the Premier on the subject of appointments to the Legislative Council, His Excellency only yesterday observed that it is laid down in Todd's Parliamentary Government in the British Colonies, page 586, that the Governor "is bound to direct—as by his commission he is authorised to require—that the fullest information should be afforded to him by his Ministers upon every matter which at any time shall be submitted to his approval."

This information has never been given to His Excellency; he has felt himself precluded hitherto from obtaining it from other than his constitutional advisers, and, if Ministers with their greater experience, had afforded it to him when they tendered their advice, there might have been no hitch in the negotiations, for His Excellency has repeatedly assured the Premier that he will be only too happy to accept Ministers' advice, if it were proved to him that he could conscientiously do so.

His Excellency now directs that the information he asked from the Premier, now some ten days ago, but which he has not received, be supplied him—namely, a list of the members of the Legislative Council who support the Government, and, in addition, any other information which will enable him to ascertain the effect which the addition of twelve appointments, as advised by Ministers, would have on the present condition of the Government and the Opposition benches in the Legislative Council, and he requires this information to be forwarded to him by Tuesday, at noon, at latest.

30th July, 1892.

GLASGOW.

### No. 4.

THE Premier presents his compliments to His Excellency the Governor, and, in reference to His Excellency's memorandum of this date, wishes to express his regret that His Excellency should be under the impression that any information has been withheld.

The Premier has no recollection of any omission in supplying information, but will be happy to furnish what His Excellency now asks for, after conferring with Sir Patrick Buckley, viz.: A list of the members of the Legislative Council who support the Government, and any other information which will enable His Excellency to ascertain the effect which the addition of twelve appointments would have on the present condition of the Government and the Opposition benches in the Legislative Council.

The Premier will place in His Excellency's hands, on or before Tuesday at noon, a memorandum on the subject.

30th July, 1892.

J. BALLANCE.

## No. 5.

THE Premier presents his compliments to His Excellency, and, after asking Sir Patrick Buckley to give the result of his experience as the representative of the Government in the Legislative Council, presents the following statement of parties in the Council, also the probable effect of the addition of twelve members :—

An inspection of the division-lists of last session on critical points of policy will show that the Government could, as a rule, only rely on the support of five members. These were Sir P. A. Buckley and Messrs. Dignan, Taiaroa, Shrimski, and Wilson. Of the five, two did not invariably vote with the Ministry. They did, however, usually do so. Since last year, however, Mr. Wilson, the most consistent supporter of the Government in the Council, has left the colony with the intention of not returning; and Mr. Shrimski is also absent through ill-health. Sir Patrick Buckley has, therefore, now only Messrs. Dignan and Taiaroa on whom to depend. Of course, two or three Councillors will often vote with him, some on this question, some on that; but on those critical points of policy in dispute between the Council and the Lower Chamber Sir Patrick can only count positively on two certain supporters.

The addition of twelve Councillors would give the Government the hope of fifteen votes: though this would still leave Ministers in a clear minority, it would insure full discussion for their measures. At present, beyond the speech of the Minister in charge, no advocacy is given in the Council to the Government policy. Its demerits are ably urged by many speakers, its merits are not even heard beyond the speech of the Minister. The addition of twelve members would raise the numerical strength of the Council to forty-seven. Ministers respectfully submit, a following of fifteen or sixteen is not an undue strength for the Government to possess in a Council of that size.

Ministers are charged with the Government of the country, and they are responsible for the proper transaction of parliamentary business; yet in the Legislative Council at the present time they can neither have their measures fairly debated nor can they be represented on Committees. In the House of Representatives it is admittedly proper for the Government to have a majority on Committees; in the Council Ministers cannot even be secure of having an appreciable minority of supporters present at any Committee discussion.

Premier's Office, Wellington, 1st August, 1892.

J. BALLANCE.

## No. 6.

## MEMORANDUM for the PREMIER.

HIS Excellency the Governor thanks the Premier for the memorandum of this date on the state of parties in the Legislative Council, but he begs to point out that the information given him is not as to the strength of parties, but as to the support which the Attorney-General receives in that Chamber.

HIS Excellency need not remind the Premier that the power of determining the number of appointments to be made to the Legislative Council is vested in him, in order that the liberties of that body may not be infringed in order to meet party exigencies.

Consequently, he must be certified that, when the policy of the present Government is settled, one way or the other, the complexion of the majority of the Legislative Council will not be altered by the appointments proposed to be made.

For this purpose he requests to be informed of the number of appointments in the Council which have been made by Liberal or advanced Governments and by Conservative or moderate Governments respectively.

Wellington, 1st August, 1892.

GLASGOW.

## No. 7.

REPLYING to His Excellency's memorandum of the 1st instant, and referring to His Excellency's statement "that the information given him is not as to the strength of parties, but as to the support which the Attorney-General receives in that Chamber," the Premier begs respectfully to observe that he considers the support given to the Attorney-General in the Legislative Council is an exact measure of the strength of parties—the Attorney-General representing the Government, which represents one of the great parties in the colony.

The Premier would point out that the number of appointments made in the past by Conservative and Liberal Governments respectively can throw little light upon the strength of parties in the Council, as, being appointed for life, many members have changed their politics almost invariably in the direction of Conservatism.

The Premier encloses a paper placed on the table of the House of Representatives this session showing the appointments made by the several Governments. The Government of "Grey" may be said to come under the term "Liberal or Advanced," that of "Stout" as "Coalition," the appointees being half-and-half, and all the others as "Conservatives or Moderate." This would give to the "Liberal or Advanced" nine members, and to the "Conservative or Moderate" twenty-six members. When the appointments were made the party-lines would have been indicated by the figures, but are not so in the year 1892, many of the members having changed their political views.

Premier's Office, Wellington, 2nd August, 1892.

J. BALLANCE.

## Enclosure.

Name of Member.	Date of Appointment.	Premier in Office.
W. D. H. Baillie ... ..	8th Mar., 1861	Stafford.
Sir G. S. Whitmore ... ..	31st Aug., 1863	Domett.
J. B. A. Acland ... ..	8th July, 1865	Weld.
H. J. Miller ... ..	"	"
W. B. D. Mantell... ..	19th June, 1866	Stafford.
Mathew Holmes ... ..	"	"
Henry Scotland ... ..	24th Feb., 1868	"
J. A. Bonar ... ..	27th June, 1868	"
M. S. Grace ... ..	13th May, 1870	Fox.
Robert Hart ... ..	9th July, 1872	"
G. R. Johnson ... ..	23rd July, 1872	"
Daniel Pollen ... ..	12th May, 1873	Vogel.
J. T. Peacock ... ..	9th Oct., 1877	Atkinson.
J. N. Wilson ... ..	23rd Nov., 1877	Grey.
W. H. Reynolds ... ..	30th April, 1878	"
Sir P. A. Buckley ... ..	25th July, 1878	"
Patrick Dignan ... ..	3rd Feb., 1879	"
Richard Oliver ... ..	10th Nov., 1881	Hall.
George McLean ... ..	19th Dec., 1881	"
E. C. J. Stevens ... ..	7th Mar., 1882	"
Henry Williams ... ..	"	"
J. C. Richmond ... ..	14th May, 1883	Whitaker.
J. W. Barnicoat ... ..	"	"
C. W. A. T. Kenny ... ..	15th May, 1885	Stout.
G. B. Morris ... ..	"	"
Robert Pharazyn ... ..	"	"
Joseph Shephard ... ..	"	"
S. E. Shrimski ... ..	"	"
William Swanson ... ..	"	"
H. K. Taiaroa ... ..	"	"
Lancelot Walker ... ..	"	"
Ropata Wahawaha ... ..	10th May, 1887	"
C. C. Bowen ... ..	20th Jan., 1891	Atkinson.
C. J. Johnston ... ..	"	"
J. D. Ormond ... ..	"	"
W. D. Stewart ... ..	"	"
J. B. Whyte ... ..	"	"

Colonial Secretary's Office,  
Wellington, 13th July, 1892.

HUGH POLLEN, Under-Secretary.

## No. 8.

## MEMORANDUM for the PREMIER.

IN reply to the Premier's memorandum of the 2nd August, the Governor notes 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 as an Imperial officer without limitation or restraint;" in that he agrees with Ministers; and, as the inference (which the Governor still thinks he was justified in drawing, from the reasons given by Ministers for not resigning) turns out to have rested on a misconception, the argument which he based on it falls to the ground, and it only remains for him to notice one or two points.

The Premier directs attention to the use the Governor made of the words "prerogative right." The sentence should have run thus: "Considering that the Governor is personally responsible to the Crown for the manner in which he exercises the prerogative right in discriminating as to the number of appointments which ought to be made to the Council, he considers," &c.

With regard to the statement that in the opinion of Ministers the appointment of Councillors is not a "personal act" on the part of the Governor, the Governor replies that the appointment of Councillors is, in his opinion, a matter in which he is not bound to follow the advice of his Ministers, except on the occasion of great emergency, and that precedents in the history of the Mother-country exist sufficient to show what are to be considered such occasions. In ordinary circumstances the Governor would naturally accept Ministers' advice as to appointments, but occasions may arise when the Governor is of opinion that the appointments proposed may interfere with the balance of parties in the Upper House; in such a case it is essential, in the interests of the colony, that appointments should only be made to such an extent as shall be safe.

In a despatch written by Sir H. Robinson to Lord Kimberley, on the 27th August, 1882, will be found the following: "It will be seen that in every instance when questions have arisen as to the appointment of additional members of Council, the Governor has acted on his own responsibility, without previous reference to the Secretary of State, and that, when the course adopted has been

reported Home, the Secretary of State has simply expressed his opinion on the propriety or otherwise of the previous proceedings."

The Governor adduces this extract as a proof that he is by no means the first Governor who has acted on his own responsibility on similar questions in colonies possessing Responsible Government.

In a despatch written by Lord Carnarvon to Lord Normanby in 1874 occurs the following: "In a colony having a Constitution such as Queensland, the tendency to introduce a large addition to the number of Legislative Council, for the purpose of giving effect to a particular course of policy, will from time to time make itself felt. But, if the balance of constitutional power is not to be more than a mere theory, it is clear that such a tendency cannot be encouraged to take its full course. . . . It is prudent to avoid such an increase in the number of Legislative Council as may give a temporary advantage to one party, thereby altering the constitutional character and functions of the legislative body, weakening its general influence, and possibly, if not provoking political reprisals at some future day, at least encouraging a practice which the more it is indulged the less easy will it be to restrain."

The Governor claims that the arguments used by Lord Carnarvon, though used under slightly different circumstances, meet the present case, in so far as that which Ministers ask would give them the right Lord Carnarvon deprecates.

In the memorandum which Ministers propose should be sent to the Secretary of State,\* they aver that the responsibility of making appointments should have vested with the Responsible Advisers of the Governor; if this is conceded, then Ministers may give way to the tendency deprecated by Lord Carnarvon, without check or hindrance; indeed, nothing but their own moderation could hinder a strong Ministry, on entering office, from taking steps to bring the Upper House into harmony with the Lower—a step which the Governor need not remark can only be done constitutionally on an occasion of great emergency.

In reply to Ministers' remark that the Governor has given no reasons for thinking that it would be unconstitutional to grant twelve members, and constitutional to grant nine, his reason was based on the best information he was able to get on his arrival in the colony, and it is supported by the return issued on the 13th July, showing names of present members of the Legislative Council, from which he finds that there are in the Council, excluding the Speaker, eighteen Councillors appointed by Conservative Governments, and sixteen appointed by Liberal Governments. But he understands that four of these appointed by Sir Robert Stout were really the appointments of coalition members of his Ministry, and should therefore be counted as Conservatives; taking four members from the Liberals and giving them to the Conservatives brings on the numbers as twelve Government supporters against twenty-two Opposition members, or a difference of ten. The Governor therefore concludes that nine is the largest number he can offer.

The Governor is aware that the Premier does not agree that this is a proper measure of the strength of parties, and he admits that it is not easy to come to a conclusion in a non-representative House; but the Governor believes that, when a new policy of an advanced kind is introduced in such a Chamber, members vote according to their consciences and not on party-lines, and that, when the crisis is over, members generally will return to their party allegiance.

With regard to Ministers' reasons for preferring twelve, the Governor desires to point out that, besides those given in the draft memorandum addressed to the Secretary of State, which practically meant efficiency, the Premier, in his reply to the Leader of the Opposition on the 24th June, gave a reason of a different nature, the gist of which was that the Governor had been advised to grant such appointments as would enable the Chamber more efficiently to discharge its functions, and to perform those functions more in harmony with the feelings of the country.

The latter phrase confirms the Governor in the opinion that he should not grant more than the number he has offered, and having reconsidered the whole question he finds that he cannot recede from the position he has taken up, and he will be prepared to forward Ministers' memorandum to Her Majesty's Secretary of State for the Colonies, and he begs that he may have it not later than Friday evening (5th instant).

4th August, 1892.

GLASGOW.

## No. 9.

### MEMORANDUM FOR HIS EXCELLENCY.

MINISTERS have read His Excellency's memorandum of the 4th instant, and are glad to recognise that His Excellency does not insist on the position of "an Imperial officer, without limitation or restraint;" that His Excellency is bound to accept the advice of his Ministers "on the occasion of a great emergency;" and that "in ordinary circumstances the Governor would naturally accept Ministers' advice as to appointments:" but they cannot admit that His Excellency has been well informed that the proposed appointments would "interfere with the balance of parties."

In reply to the remark of Ministers that no reason had been given that it would be unconstitutional to grant twelve members and constitutional to grant nine, His Excellency replies that "his reason was based on the best information he was able to get on his arrival in the colony, and it is supported by the return issued on the 13th July, showing the names of the present members of the Legislative Council." Ministers would observe that "the best information" referred to was never submitted to them, in order that its character or source might have been examined by responsible Ministers, so that they might have had the opportunity of advising His Excellency upon it; and they desire to express their astonishment and regret that a course should have been taken which tends to discredit the Government.

\* See Enclosure to No. 10.

That the information referred to is supported by the return is not shown. His Excellency has apparently made a mistake in respect to the members appointed by Conservative and Liberal Governments. In the memorandum of Ministers of the 2nd August they gave the numbers as 26 and 9, whereas His Excellency states the numbers as 22 Opposition members and 12 Government supporters.

His Excellency believes that, "when the crisis is over, members generally will return to their party allegiance."

Ministers do not know of any "crisis," and think that there is as little likelihood of members returning to their party allegiance as there is of a Whig who had become Tory after being made a Peer returning to his allegiance to Mr. Gladstone. The precedents are so few for such a reversion in politics, that they prove the rule that, once members leave the Liberal fold, they leave for good. The "crisis," in this instance, is the well-developed policy of the Liberal party in the country, which an overwhelming majority of Tory gentlemen in the Legislative Council have found themselves in a position to mutilate and destroy.

Nor do Ministers understand why the phrase used by the Premier—"to perform those functions more in harmony with the feeling of the country"—should confirm the Governor in the opinion that he should not grant more than the number he has offered. Ministers respectfully submit that the Governor, being neutral in politics, is in no way permitted by the spirit of the Constitution to do anything that will prevent the feeling of the country from being expressed in legislation. It would indeed be a dangerous doctrine, keeping in view the friendly relations that should exist between the colony and the Mother-country, that the Representative of Her Majesty should consider it to be his duty to thwart the people of the colony in giving expression to their feelings and opinions.

Ministers do not consider the authorities, quoted in his last memorandum by His Excellency, are applicable in the present case, and they need not be more particularly noticed.

Ministers thank His Excellency for the intimation that he will forward their memorandum to the Secretary of State, and they respectfully request that the whole of the memoranda on the subject may be forwarded at the same time.

Premier's Office, Wellington, 5th August, 1892.

J. BALLANCE.

## No. 10.

### MEMORANDUM FOR HIS EXCELLENCY.

THE Premier presents his compliments to His Excellency, and begs to submit for His Excellency's information a memorandum which it is the desire of Ministers should be transmitted for the consideration of the Right Honourable the Secretary of State for the Colonies, relative to the difference of opinion which exists between Ministers and His Excellency as to the appointment of Legislative Councillors.

The Premier begs respectfully to request His Excellency to be good enough to forward the memorandum to the Secretary of State.

Premier's Office, Wellington, 5th August, 1892.

J. BALLANCE.

## Enclosure.

MINISTERS respectfully desire, through His Excellency, to direct the attention of the Right Honourable the Secretary of State for the Colonies to a difference between His Excellency the Governor and his Ministers, on a question which Ministers think involves the status of a self-governing colony of the Empire.

The facts are briefly as follows: Immediately after the last general election the then Governor, Lord Onslow, appointed upon advice seven members to the Legislative Council. The Government of Sir Harry Atkinson was, as the result of the election at the time, in a minority, and resigned office upon the day of the meeting of Parliament. Mr. Ballance was sent for to form an Administration, and his Government was supported by a large majority of the House of Representatives. A short session was held, and the General Assembly was prorogued to enable the Government to bring down their policy in another session. In that session their principal measures were carried by large majorities in the House, but some of the vital points of policy in these measures were defeated by still larger majorities in the Legislative Council, the position of the Government in the second Chamber on the question being represented by adverse votes of 18 to 5. In the majority were included six out of the seven members (the seventh being the Speaker) appointed on the advice at the time of a defeated Ministry. During the recess, and shortly before Lord Onslow's departure from the colony, Mr. Ballance advised His Excellency to appoint twelve members as the least number thought necessary to allow the Government to be fairly represented in the second Chamber, and to enable the legislative and other functions which constitutionally pertain to this branch of the Legislature to be adequately performed. Between the time of Mr. Ballance's Government being formed and when advice was offered to Lord Onslow there had been six deaths, one vacation through absence, and leaves of absence extending over the next ensuing session, while it was notorious that several members were, through old age, extremely unlikely to attend the next meeting of Parliament. Notwithstanding these facts, Lord Onslow refused to appoint a greater number of Councillors than eight, which number Ministers refused to accept. Lord Onslow left a confidential memorandum (which he was good enough to submit to

Mr. Ballance for perusal) for his successor, in which was contained an extract from a Wellington Opposition newspaper extremely hostile to the Government, containing reasons for not accepting the advice of Ministers. The responsibility was transferred from Lord Onslow to his successor, Lord Glasgow.

Between the departure of Lord Onslow and the arrival of Lord Glasgow the strength of the Council was still further diminished by one death. Upon the arrival of Lord Glasgow Mr. Ballance tendered His Excellency the same advice as he had given Lord Onslow—namely, to call twelve new members to the Council. His Excellency declined to accept the advice, but offered to appoint eight, with an additional member when the written resignation, telegraphed by the Agent-General, of the Hon. Randall Johnson arrived in the colony. Ministers declined to accept a less number than they advised. Since then a member of the Council—the Speaker—Sir Harry Atkinson, has died, while another has resigned. In this position the question remains.

Ministers would point out that the Parliament is in session, and they are answerable to the House of Representatives for the advice tendered to His Excellency. It has been alleged that they ought to have resigned when their advice was declined, but they rely on the constitutional practice as expressed in Todd's Parliamentary Government in the British Colonies, 1880, p. 590, which is as follows: "They would be responsible for the advice they gave, but could not strictly be held accountable for their advice not having prevailed; for, if it be the right and duty of the Governor to act in any case contrary to the advice of his Ministers, they cannot be held responsible for his action, and should not feel themselves justified in retiring from the administration of public affairs."

Ministers are of opinion that the responsibility of appointments to the Council should have rested 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. In this case His Excellency is placed in the position of acting without advice, unless it be the advice of persons who are not responsible, and withdraws from those responsible the confidence which the Constitution requires him to repose in them, upon the inadequate ground that nine are preferable to twelve additions to the Council. It is further to be observed that, while the advice of a Government that had just been defeated at a general election was accepted, the advice of a Ministry enjoying the confidence of a large majority of the representatives of the people is declined. Ministers, in fact, are impelled to the conclusion that the way in which their advice has been treated is more in harmony with the methods of a Crown colony than with the practice followed in a great self-governing colony which has long enjoyed the advantages of a free constitution and a wide autonomy within the limits of the Empire.

Premier's Office, Wellington, 5th August, 1892.

J. BALLANCE.

## No. 11.

### MEMORANDUM for the PREMIER.

THE Governor begs to acknowledge the memorandum dated the 2nd instant which the Premier did him the favour to send, accompanying a return of present members of the Legislative Council.

His Excellency does not know that it requires any specific reply. In his memorandum of the 4th August will be found the Governor's views as to the state of parties in the Legislative Council.

Wellington, 5th August, 1892.

GLASGOW.

## No. 12.

### MEMORANDUM for the PREMIER.

THE Governor in reply to Ministers' memorandum of the 5th instant does not propose to make any comment upon it, except, in the first place, to explain that "the best information he was able to obtain" was procured solely from public documents and the memorandum left by Lord Onslow.

In the second place, with regard to the passage where Ministers submit "that the Governor, being neutral in politics, is in no way permitted by the spirit of the Constitution to do anything which will prevent the feelings of the country from being expressed by legislation," he wishes it to be distinctly understood that the sentence quoted accurately expresses the principle which has actuated him in the course he has adopted. The country should not in any way be prevented from expressing its feeling as to legislation.

The fact is that the idea underlying the whole case of Ministers is that whatever measures an Administration bring forward are certain to express the feeling of the country.

The Governor directly traverses that assumption, and points out that the suspensory powers conferred by the Constitution on the Second Chamber is a constitutional check intended to give power to the electorate, through the intervention of the Legislative Council, at any time to step in and control legislation.

This plan insures greater freedom to the electorate than that favoured by Ministers.

The Governor sees no reason for continuing the correspondence, and he intends to send the series of communications between Ministers and himself—of which this is the last—along with the reference which he has been asked to send to the Secretary of State for the Colonies.

8th August, 1892.

GLASGOW.

## No. 13.

## MEMORANDUM FOR HIS EXCELLENCY.

MINISTERS beg to acknowledge the receipt of His Excellency's memorandum of the 8th instant, and desire to notice one or two matters therein. His Excellency remarks that the "best information he was able to obtain was procured solely from public documents, and the memorandum left by Lord Onslow." Ministers reply that no public documents have ever been submitted to them by His Excellency of any kind bearing on the question, and they have had no opportunity of expressing any opinion upon them. The same observation will apply to the memorandum left by Lord Onslow, in so far as it was treated confidentially; and, although a memorandum (probably that referred to) was sent the Premier for his inspection, no copy was kept, and His Excellency has never asked for the opinion or advice of Ministers on this confidential memorandum. Moreover, the circumstances affecting the Council have greatly changed since the departure of Lord Onslow; and his memorandum could hardly be supposed to express the present condition of affairs.

Ministers take exception to the statement "that the idea underlying the whole case of Ministers is that whatever measures an Administration bring forward are certain to express the feeling of the country." It would be more correct to say that measures passed by large majorities of the House of Representatives within eighteen months of its election are sufficient to entitle Ministers to the confidence of His Excellency, and to express in terms not to be misunderstood in a self-governing community that the measures do express the feeling of the country.

Ministers notice that His Excellency points out "that the suspensory powers conferred by the Constitution on the Second Chamber is a constitutional check intended to give power to the electorate through the intervention of the Legislative Council at any time to step in and control legislation," and that "this plan insures greater freedom to the electorate than that favoured by Ministers." Ministers reply that the argument, if applied in practice, would prove immediately destructive to the Constitution. It means that with the sanction and support of the Governor the Council is at all times to possess the power to impose a penal dissolution on the country; that a nominee Chamber is to be accepted as a better judge or exponent of the feelings of the country than the representative of the people; and that a decisive majority in the Second Chamber is to be maintained by the Representative of Her Majesty in order to "control legislation." It also means that a majority irresponsible for its acts may harass, by the expense and worry of an election, the representative body; and it suggests the fatal position that the Governor is to be associated with the Council as the practical application of the doctrine.

If Ministers could believe that this was the true intent and meaning of the Constitution, they would despair of its survival beyond the popular recognition of the fact; but they have not so read it, and hope, for the sake of the Constitution, that such a construction may not prove to be accurate.

The construction may be stated (in accordance with actual facts in recent history) to be this: A majority in the Legislative Council should be in harmony with the minority in the House of Representatives when the Liberals are in power, with a penal dissolution suspended over the heads of the Government; but when the Conservatives are in power they should have majorities in both Chambers without the "constitutional check." If the first plan insures "greater freedom to the electorate," it is difficult to describe the constitutional bearings of the second. Yet Ministers have asked for no more than a respectable minority in the Second Chamber. It is against the application of such constitutional doctrines as these that Ministers respectfully enter their protest.

Ministers thank His Excellency for the information that the series of correspondence will be sent to the Secretary of State, and request that this memorandum may be included.

Premier's Office, Wellington, 9th August, 1892.

J. BALLANCE.

## No. 14

His Excellency the GOVERNOR to the Right Hon. the SECRETARY of STATE for the COLONIES.

MY LORD,—

Wellington, 8th August, 1892.

I have the honour to forward herewith a memorandum from my Ministers, dated the 5th August, calling your attention to a difference which has occurred, to my deep regret, between myself and them regarding appointments to the Legislative Council. I addressed a confidential despatch (No. 31/92) to the Secretary of State for the Colonies on the 22nd day of June, giving all information on the subject up to date, and I annex a schedule containing a list of papers bearing on the subject. The papers themselves accompany this despatch.

I submit that the memorandum contains something more than a statement of the difference between us; it is also an expression of opinion that greater powers should be given to Ministers than they at present possess.

I would now respectfully offer a few remarks upon the result of granting the powers Ministers think should be given them.

Let it be supposed that in a colony possessing representative institutions Ministers resign, appeal to the country, are defeated, and replaced by the Opposition. On coming into power the new Ministry introduces—as Ministers are not unlikely to do—a measure which it thinks will be popular, besides that which they were returned to carry out. The Legislative Council throws it out. The Ministry advises the Governor to appoint sufficient Legislative Councillors to overcome opposition in the Chamber. The people have not been consulted, and support the arguments advanced in the Council. But, supposing the Ministers have the power they think should be theirs, the Governor must grant the appointments asked for. The result would be that the Council is coerced, the measures are passed, and the people come under a law to which they may object, and on which they have not been consulted.



The two Houses of the New Zealand Parliament possess each at present absolute liberty of speech; but under the proposed change the freedom of the Legislative Council would be at the mercy of the Ministry. The consent of both Chambers is now necessary before a measure can receive the Governor's assent. Should a measure be thrown out, it is open to Ministers to appeal to the country. Thereafter, if the Legislative Council were to disregard the wishes of the electorate as expressed at the polls, sufficient emergency would then have arisen to justify the Governor in granting Ministers a sufficient number of appointments to bring the Upper House into harmony with the country.

This is, I submit, the constitutional practice; and it is more in accordance with the principles of freedom than the people should be the ultimate Court of appeal in any difference between the Chambers than that the power should rest with Ministers.

In a despatch dated the 19th October, 1839, Lord John Russell says, "Every political constitution in which different bodies share political power is only enabled to exist by the forbearance of those among whom this power is distributed." I would add that if the constitutional checks which experience has placed on the power of the different bodies is swept away the result will be a distinct loss of liberty to the colony, and almost absolute power to the Ministry.

The late Lord Granville, in a despatch to Lord Belmore dated the 2nd October, 1869, writes as follows: "When writing that despatch I was fully aware that the number of the Upper House was unlimited; I was also fully aware that on certain critical occasions it may become not only expedient, but indispensable, to bring the two Houses into harmony by creating, or threatening to create, a number of Legislative Councillors, sufficient for that purpose; but it is not the less clear that the value and character of the Upper Chamber will be destroyed if every successive Ministry is at liberty, without sufficient occasion, to obtain a majority in the Council by the creation of Councillors."

I respectfully submit that this extract and the one foregoing breathe as much of the spirit of the Constitution at the present day as when they were written, and that they are opposed to the view held by my Ministers.

With these remarks, I now beg to leave that branch of the subject for your Lordship's consideration.

With reference to my reasons for not accepting the advice of Ministers, your Lordship will be already aware that only two days had elapsed after my arrival in the colony when the Premier waited on me and tendered the advice, my refusal to accept of which has given rise to this despatch. When I asked for delay, that I might make myself acquainted with the subject, Mr. Ballance explained that, to enable his supporters to settle down to their work in Parliament, it was absolutely necessary that this question should be settled and the appointments made before Parliament met (which event occurred on the 23rd of June).

Whatever may be your Lordship's opinion of the course I have pursued, you will not fail to observe that my position was one of considerable difficulty. The same advice that was tendered to me had been offered to my predecessor, who, with his three years' experience of the colony, had not been able to accept it. His secret memorandum on this subject lay before me. I had not had time to examine the matter for myself. I was confronted with a reason for immediate decision as to the value of which I had not had time to decide. The difference between the number declined by Ministers and the number they would accept was so small that I could not think the reasons given were sufficient to account for their action, and they appeared to be so incommensurate with the gravity of the step they took in creating a difference with the Governor that I felt convinced that much more cogent reasons should be given than I had yet heard before I would be justified in accepting the advice tendered by Ministers.

For any further information on the subject I would refer your Lordship to the communications which have passed between myself and the Ministers, dated the 27th July and the 2nd, 4th, 5th, 8th, and 9th August, and also to the other papers which are mentioned in the accompanying schedule.

Before closing this despatch I would beg to remark that this unfortunate difference between myself and the Ministers could not have occurred were the appointments to the Legislative Council made on a fixed principle.

If the Act for amending the mode of appointing Legislative Councillors were further amended in the following direction the system would, except in an emergency, be self-adjusting. I would enact that the strength of the Council should bear a fixed proportion to that of the House of Representatives; that it should be increased or decreased *pari passu* with the other Chamber as occasion may require; vacancies be filled up within three months of their occurrence by the Governor, on the advice of Ministers; that a clause be inserted giving the Governor the power to appoint, on the advice of Ministers, on an emergency, such a number of new Councillors as would bring the Council into harmony with the country.

Some such enactment as this would effectually prevent any future differences.

Since this paragraph was written I have ascertained that in the year 1887 the late Sir Frederick Whitaker obtained a Committee of the Legislative Council to consider and report as to the best plan of reducing the numbers of the Council to one-half of the number of the members of the House. He had previously moved to that effect, and also that the same proportion should thereafter be maintained.

The Committee reported in favour of the proposal, but no further action was taken.

From this it is clear that the Council in 1887 affirmed the general principles which I have ventured to suggest.

If there is anything in the manner in which I have brought this question under your Lordship's notice not entirely consonant with the usual practice I beg you will attribute it to the unusual circumstances in which I have been placed so soon after my arrival in the colony.

I now leave the matter in your Lordship's hands, in the most perfect confidence that you will do me the justice to believe that I have been actuated solely by a desire to do what is best for the interests of the great and important colony in which it is my privilege and pride to have been placed.

I have, &c.,

GLASGOW.

The Right Hon. Lord Knutsford, &c.,  
Secretary of State for the Colonies, Downing Street, S.W.

SCHEDULE.

1. A compilation of Acts and instruments relating to the Constitution and government of New Zealand, &c. (Wellington: George Didsbury, Government Printer, 1892).
2. Legislative Council (54 and 55 Vict.), 1891, No. 25.
3. Secret memorandum from Lord Onslow to Lord Glasgow, and papers referring thereto.
4. Excerpt from *Hansard*, on the 24th June. Question asked by the leader of the Opposition and the Premier's reply.
5. Return showing the strength of the Legislative Council for the last fifteen years.
6. Return to the House of Representatives, dated 30th June, 1892, showing the names of the present members of the Legislative Council, &c.
7. Memorandum from the Governor to the Premier, 27th July, 1892.
8. Memorandum from the Premier to the Governor, 2nd August, 1892.
9. Memorandum from the Governor to the Premier, 4th August, 1892.
10. Memorandum from the Premier to the Governor, 5th August, 1892.
11. Memorandum from the Governor to the Premier, 8th August, 1892.
12. Memorandum from the Premier to the Governor, 9th August, 1892.

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