

Upper House should be twenty-one; that the quorum should be one-third of the whole number; and that the members first appointed should retain their seats for five years from the date of the first summonses, but that all future members, after the expiration of that term, should be appointed for life.

4. In May, 1856, the first Legislative Council was established under this Act. The number of members then appointed was thirty-two, but before the close of that year (three changes of Ministry having taken place in the interval) the number had been increased to forty-five. The maximum number of members at any one time during the first five years appears to have been forty-eight. This was exclusive of the exceptional appointments made within the last few days of the five years, when the Council was, to use a familiar term, "swamped" by the nomination of twenty-one new members, to carry the Land Bills. These members, however, never took their seats, for, on presenting themselves to be sworn in, the President, with the majority of the old members, retired, and the House ceased to exist by the expiration of the period specified for its duration before the next regular day of meeting.

5. Shortly afterwards—that is, in July, 1861—the Legislative Council was reconstructed by the appointment of members for life, as prescribed by the Constitution Act. The necessity for recognising some usual limit in the number of members—to be observed except under very special and exceptional circumstances—was then very generally admitted, as it had become apparent, from the experience of the previous five years, that, unless some such limitation were adopted and adhered to, it would be impossible to maintain the character and efficiency of the Council as an independent branch of the Legislature. The consultations which took place at the time, and the understanding which was eventually arrived at on this subject, were some years later thus described by Sir John Young, in his despatch, No. 14, of the 16th February, 1865: "At the time of the reconstruction of the Legislative Council in 1861 these difficulties were much and anxiously considered, and an effort was made to suggest what might be, subject to exceptional cases, a convenient limitation to the number of the Upper House. . . . I consulted the leaders of the Liberal party on the one hand—that is, the Ministers then in office—and also, with their cognisance, I availed myself of the advice of gentlemen of social standing and of leading political position in other sections. In fact, I called into counsel, under the auspices of Mr. Wentworth, the framer of the Constitution Act, several gentlemen of various political opinions who were at the time prominent in Parliament or in possession of much general influence. It was understood that Mr. Wentworth was to be the President of the new Legislative Council, and I appointed him to the office as soon as it was formed. After many interviews and much deliberation, it was the general opinion of those gentlemen that twenty-seven members might with advantage be considered a convenient usual limit of the Council, and with this view I concurred. Mr. Cooper and his colleagues recommended that seats should in the first instance be offered to twenty-seven gentlemen accordingly. Several declined on various grounds, and eventually twenty-three only were gazetted. That number was not subsequently augmented beyond twenty-six during that Administration, which lasted nearly two years and a half afterwards. Of course it was never contemplated that the Constitution Act could be set aside, or that any succeeding Ministry could be bound by the opinion of their predecessors, although by common consent the convenience of some usual limit might be recognised; neither was it ever contemplated that the Governor could relieve himself of responsibility by giving beforehand his assent to any unvarying course of action; but I thought that what was then done might with advantage be referred to thereafter by myself and others, not as an absolute guide, but as giving the assistance of the opinion of able and impartial men, who were all equally anxious for the permanent stability of the Constitution."

6. Mr. Cowper's Ministry was succeeded in office by that of Mr. Martin, which lasted from October, 1863, to February, 1865, and during that period Sir John Young yielded so far to the wishes of the Ministry as to increase the Council to thirty-two, so as to give twenty-seven members present in the colony and "available for service," four members being at that time absent from the colony, and one about to leave for England. But when Mr. Martin, in January, 1865, shortly before the break-up of his Administration, urged a further increase of the effective members from twenty-seven to twenty-nine, Sir John Young refused, and the refusal led to the resignation of Mr. Forster, the Colonial Secretary, as explained in the despatch from which I have already quoted. Mr. Cardwell, in his despatch, No. 37, of the 26th May, 1865, considered the reasons given by Sir John Young for refusing to appoint two additional members to the Legislative Council, on the recommendation of his Responsible Advisers, sound and convincing.

7. In September, 1868, Mr. Martin, being again in office, prevailed on Lord Belmore* to increase the Legislative Council from twenty-seven to thirty members, on the ground of the difficulty experienced in securing a quorum for the transaction of business; and on this increase being reported Home, Lord Granville† expressed his regret at the step, as he feared it would be used as a precedent for further additions.

8. In October, 1868, Mr. Martin went out of office, and was succeeded by Mr. Robertson, who in the following July submitted a memorandum‡ in reference to Lord Granville's despatch of the 18th December, 1868, in which he deprecated as unconstitutional the imposition of any limitation in the number of the Legislative Council, and declined, on behalf of his Cabinet, to recognise any such understanding. In acknowledging this memorandum, Lord Granville§ observed: "When writing that despatch I was fully aware that the number of the Upper House in New South Wales was unlimited. I am 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 whole value and character of the Upper Chamber will be destroyed if every successive Ministry is at liberty, without any sufficient reason, to obtain a majority in the Council by the creation of Councillors. To prevent this, some constitutional understanding, having in the public

* Lord Belmore—No. 100, 29th Sept., 1868.
Belmore—No. 109, 14th July, 1869.

† Lord Granville—No. 2, 18th Dec., 1868.

‡ Lord Granville—No. 77, 2nd Oct., 1869.

§ Lord