

ascertainable political opinions. I explained, further, that two members, from advanced age and paralytic affliction, were rendered incapable of attending to their duties; that one member, owing to private circumstances, had withdrawn himself to a great distance from Sydney, where he was engaged in avocations which seemed to render his attendance next to impossible; that one member was absent in Europe; and that several other members very seldom attended, from age, impaired health, the distance of their residences from Sydney, the nature of their occupations, and from other causes. I stated at the same time, on the authority of the Vice-President of the Executive Council (who represents the Government in the Legislative Council), that during the period your present Advisers have held office, up to the date of my conversations, it was difficult to keep a quorum together for the transaction of business. I learn to-day from the Clerk of Parliaments that three members have never appeared in their places this session, and that fourteen have been absent from half the sittings, which have been twenty-six in all.

It has been ascertained that the exact number of Sir James Martin's appointments is fifteen out of a House of thirty-one members, and that not more than three of the other appointments have been made when I have myself had the honour to hold office. Mr. Hay and Mr. Busby were appointed by Mr. (now Sir James) Martin during the time I held office with that gentleman, from January, 1866, to September, 1868; and Mr. Samuel was appointed a short time ago by your Excellency on my recommendation.

I have stated these circumstances in detail because they seem to throw light upon the positive intimation repeatedly made to Ministers before the Border Duties Bill left the Assembly, and in apparent derision of the majorities by which it was supported, that it would be defeated in the Council.

I now come to that defeat. The second reading of the Bill was moved in a House of seventeen members, exclusive of the President; and the division showed eight in favour of the Bill, and nine against it. The eight members in favour of the Bill included several of the most considerable of our public men. Mr. Deas Thomson was many years Colonial Secretary; Mr. Hay held office in Mr. Stuart Donaldson's Administration, and has passed the Chair of the Assembly; Mr. Weekes and Mr. Samuel held office as Colonial Treasurer in several Administrations; Mr. Owen and Mr. Holt were also members of former Administrations. On the other side, no person of political consequence voted, if indeed Mr. Docker, the late Postmaster-General, be excepted, who has never sat in the Assembly. I append (marked "A") the article on the occurrence published by the *Sydney Morning Herald*, the leading journal of the colony, which has always strongly supported the character and privileges of the Legislative Council. The resolutions of which I gave notice in the Assembly, and afterwards withdrew (Appendix marked "B"), correctly state the case as between the Council and the country.

It appears to your Excellency's Advisers that they can look forward with little confidence that any measure passed by the Assembly and supported by public opinion, however important its character may be, will be considered by the Council with due regard to the interests affected by it, and the expressed wishes of the people, after the course adopted on the Border Duties Bill, which embodied a policy so clearly and emphatically supported by the elective branch of the Legislature and by the constituencies.

Under these circumstances, it devolved upon your Excellency's Advisers to decide upon the course they were prepared to take on the loss of a measure which they considered necessary to the good government of the colony. Possessing the support of the Assembly, and sustaining defeat in the Council by a few gentlemen in the party interest, as they believed, of the late Minister, who had been defeated alike in the Assembly and before the electors, they considered it to be their duty to persevere in their line of policy on the Border question. It did not appear to them, however, that the occasion called for advice to your Excellency either before or after the defeat of the Bill. They were aware of the views on the question of appointments to the Council maintained by Sir John Young at the time of its reconstruction in 1861, under the provision of the Constitution for life-membership, and of the understanding, concurred in by men of political prominence, that a maximum of twenty-seven members should be generally recognised—though it is right to observe that it is within their knowledge that Mr. Cowper (now Sir Charles Cowper), who was then at the head of the Administration, has denied that he was a party to any such understanding (Appendix C). They were also desirous of avoiding any course which might have the appearance of tampering with the Constitution to meet a sudden emergency; but they were not the less sensible of the abortive and incongruous state of things into which the colony was brought in the conduct of this question. The late Legislative Assembly in February was dissolved because it was in favour of the policy of the Border Duties Bill; and a direct appeal was made to the constituencies on the question, as is proved by Sir James Martin's address when seeking re-election (Appendix D). The result of the dissolution proved that a majority of the electors were in accord with the Assembly. The new House affirmed the same views of policy by large majorities; and the measure which was produced by these causes, and received the constitutional sanction of these events, is defeated in the Legislative Council in July, by a majority of one, without calling forth any exercise of power to avert or moderate the consequences. This state of things, they felt assured, could not fail of giving rise to popular dissatisfaction and an angry feeling in the public mind; and, after mature consideration of the case before them, your Excellency's Advisers arrived at the opinion that the action of the Legislative Council on this occasion, viewed in connection with the unsatisfactory character of certain appointments in past years, and the facility with which, in their belief, outside and merely personal influences could be exercised upon the Council's deliberations, afforded signal evidence of the failure of the nominee principle. Nor could they conceal from their view that the working of the principle on which the Council is based had invoked the interference of Her Majesty's Secretary of State in a manner not expressly sanctioned by law, and which, with expressions of deep respect, your Excellency's Advisers cannot but consider incompatible with the rights of self-government secured to the colony by the Constitution.