

whole session, yet it was thought necessary or proper to send out warrants under the Sign Manual authorizing the Governor to summon these same persons to the Council, and with some of these warrants a Despatch has been sent speaking of the appointments as "provisional." Until lately the practice so commenced has been followed—the Governor's instructions have been under the Sign Manual, and have assumed to authorize the Governor to summon such persons as he thought prudent and discreet, a limit only being put upon the number; and the Governor has summoned from time to time such persons as he or his Ministers thought fit, and such persons have taken their seats in the Council, and afterwards warrants have been sent out authorizing the summoning of persons already summoned. Of late, however, no warrants under the Sign Manual have been sent out to the Colony. I believe the last warrant received in New Zealand was that authorizing the summoning of Mr. Sewell; it was received in 1862.

The instructions to Sir George Grey (17th August, 1861) limited the number of persons to twenty. By special instruction of the 28th March, 1862, this limit was revoked, and the number left unlimited.

Mr. Sewell was summoned by the Governor in August, 1861, and in April, 1862, it appears that a warrant was received authorizing the Governor to summon him.

The instructions of March, 1862, were received in New Zealand, in July, 1862, and in the same month three persons were summoned by the Governor to the Council: no warrant has been received authorizing the summoning of these persons.

From time to time, since July, 1862, the Governor has summoned other persons, but in no case has any warrant authorizing him to summon them been received. The practice of sending out warrants, which existed previously to the issue of the last instructions (28th March, 1862), ceased, therefore, upon the issue of those instructions.

Why it was discontinued does not appear. I have inquired, and am informed that up to the time the limitation upon the number of the Council was removed, it had been usual for the Governor, when he had appointed members to the Council, to inform the Secretary of State of the appointments made. It appears, however, that the practice ceased upon the limitation of the number of members of Council being removed; and it may be that no information having been given to the Secretary of State as to new appointments, the consequence has been that the attention of the Secretary of State has not been drawn to the matter, and the fact that no warrants have been sent authorizing the summoning of such persons is so accounted for; and that it is not to be inferred that there is any other reason for the discontinuance of the practice of sending out instruments under the Sign Manual.

I have felt much diffidence in expressing my opinion on this subject, but the importance of the question seemed to me to justify this expression and communication of my opinion. I think that the question should be brought to the attention of the Secretary of State, with a view to obtaining the opinion of the law advisers of the Crown in England. It may be that the question has been already considered in connection with the appointment of Legislative Councillors for Canada, under the 3rd and 4th Vict., c. 35. If the Secretary of State should be advised that the Royal Instructions have given a valid authority to the Governor, and that all appointments have been legally made, and that, notwithstanding that special warrants were not issued in the first place, or at all, the appointees have been capable of sitting and acting as members of the Council, no further consideration need be given to the question raised. If, however, the opinion of the law advisers of the Crown should be that special warrants were necessary, and that persons could not sit and act as Councillors, though summoned by Governor's warrants, unless Her Majesty had herself exercised her discretion as to the summoning the particular individuals, then an Act of the Imperial Legislature will be required to validate all Acts of the Assembly heretofore passed.

It will be necessary, I think, that a statement should be now forwarded to the Secretary of State, showing what persons have been summoned to the Council from the first; such statement should show whether these persons are still members, or if not, when and how they ceased to be members. I think, also, that for the future, until the Secretary of State has communicated with the Government on the subject, when new appointments are made by the Governor, they should be communicated to the Secretary of State. I think that the attention of the Secretary of State should be drawn to the terms of his Despatch, 10th December, 1861, accompanying warrants authorizing the summoning of several members; in this Despatch he treats the appointments made by the Governor as merely "*provisional*." I do not understand what is meant by the expression in a legal point of view. Is it to be received as indicating an understanding that until the appointments have been reported and sanctioned by the issue of special warrants, the persons whose names are reported have not been fully appointed?

The questions which appear to arise are as follows:—

1. Is it necessary that the instruments under the Sign Manual to the Governor, authorizing him to summon persons to the Legislative Council, should name the persons to be summoned?
2. If it is necessary that the instruments should name the persons to be summoned, have those persons been legally summoned who were summoned before the execution of such instruments, and who have not been re-summoned after instruments were received expressly authorizing the summoning of such persons?

5th December, 1867.

JAMES PRENDERGAST.