

summoned," and that "the Imperial Act imposed on Her Majesty the duty of selecting, and the power to authorize the summoning by the Governor, and on the Governor the ministerial act of summoning;" and he observes that there is "no general provision in the Act enabling Her Majesty to delegate" the power thus conferred on her. In practice, however, the Governor has nominated members to the Legislative Council, and they have at once taken their seats; but warrants have subsequently been sent from England "authorizing the summoning of the persons already summoned." The last such warrant appears to have been received in April, 1862. On the 28th of the previous March instructions had been received removing the limit of the number of the members of the Legislative Council, and from that time, without any apparent reason, the practice of informing the Secretary of State of appointments to the Legislative Council appears to have ceased, and consequently warrants have not since been issued. The Attorney-General further remarks that, if special warrants are necessary, "then an Act of the Imperial Legislature will be required to validate all Acts of the Assembly heretofore passed."

This memorandum was forwarded on the 10th of the same month to His Excellency the Governor, and the covering memorandum recommended that, if necessary, an Act of the Imperial Parliament should be passed to validate all Acts of the General Assembly heretofore passed, and to prescribe exactly the mode of summoning persons as members of the Legislative Council.

His Excellency forwarded these two memoranda on the 24th of the same month to the Principal Secretary of State for the Colonies.

In June, 1868, Mr. Adderley and Mr. Sclater-Booth brought into the House of Commons "A Bill to make Provision for the Appointment of Members of the Legislative Council of New Zealand, and to remove Doubts in respect to Past Appointments." This Bill, which it is believed has by this time become law, validates all past summonses to the Legislative Council, and, moreover, empowers the Governor to summon such persons as he may think fit to the Legislative Council; differing, in this latter respect, from the Constitution Act of 1852, where it is "amongst other things enacted that it shall be lawful for Her Majesty, from time to time, by any instrument under her Royal sign-manual, to authorize the Governor to summon persons to the Legislative Council"—transferring, in fact, the selection of persons, without limit as to number, from the Crown to the Governor.

So far, then, as the validation of the past Acts of the Colonial Legislature is concerned, the Imperial Government appears to have acted with promptitude; but they have apparently overstepped what was requested of them, in that they caused an organic change to be made in the Constitution Act, induced, no doubt, thereto by the practice which has latterly prevailed in New Zealand, and which might reasonably have been assumed to be in conformity with the wish of the New Zealand Parliament.

The further question, then, which your Committee had to consider was, Is this change desirable? It appears that, though the power of summoning persons was vested in the Crown, it was really exercised by the Governor, acting on the advice of the Ministry of the day. A similar course would doubtless prevail should the Imperial Bill become law.

Your Committee are of opinion that it is desirable that an Act should be passed leaving the selection and summoning of members in the hands of the

Crown, with a power of delegation to the Governor; and they recommend that a respectful address be presented to Her Majesty in order to effect this object.

Your Committee are still of opinion that a Bill should be introduced limiting the number of members of the Legislative Council; that such Bill should be reserved for the signification of Her Majesty's pleasure thereon, with a request, should it be informal, that the proposed limitation of the Council should be embodied in the Imperial Act.

*Ordered*, That the said report do lie upon the table and be printed.

#### APPENDIX No. 5.

##### *Report on Privileges, &c., of the Legislative Council.*

##### MEMORANDA.

[NOTE.—The numbers refer to the pages of the author's work referred to.]

In inquiring into the subject remitted to us to report upon, we have deemed it expedient to divide the investigation into three branches, viz.,—

1. As to the powers conferred on the Council by the Constitution Act and by any subsequent legislation.

2. As to the powers held or exercised by law, rule, or usage by the House of Lords and House of Commons respectively.

3. As to the powers conferred on the chief colonies of Great Britain under constitutional government by any Constitution Act and legislation, and as held and exercised by the Legislature of the United States of America.

We submit the opinions which have been expressed by eminent writers on the privileges of the Parliament of Great Britain and other Legislative Assemblies, and extracts from the Acts granting Constitutions to Victoria, New South Wales, and Canada.

We would observe, with reference to the first branch, that in the 54th section of the Constitution Act of New Zealand it is laid down "that it shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to, any Bill appropriating to the public service any sum of money from or out of Her Majesty's revenue within New Zealand, unless the Governor on Her Majesty's behalf shall first have recommended to the House of Representatives to make provision for the specific public service towards which such money is to be appropriated." So early as 1854, on the introduction into the Legislative Council from the House of Representatives of the first Appropriation Bill, the Legislative Council raised the question whether it did not possess the power to amend or alter any such legislative measure submitted for its consideration; but, as it was proposed to prorogue the Assembly on the following day, the Council consented to pass the Appropriation Bill without alteration, referring the question of its rights to alter such Bills to the consideration of Her Majesty's Imperial Government. The reply, dated the 25th March, 1856, was to the effect "that, as the New Zealand Constitution Act was silent on the subject, the analogy of the English Constitution ought to prevail; and it pointed out that the undisputed practice, as affirmed by a resolution of the House of Commons of the year 1678, was that Bills of Supply ought not to be changed or altered by the House of Lords."

The Privileges Act of 1856 indicated certain privileges as pertaining to legislative bodies and