

The position in which the Ministry stood at the time that these appointments were proposed was another consideration which had weight with me.

In October, 1864, they had met Parliament. In a few days after the Minister for Works had resigned; an amendment to the Address, in the form of a vote of want of confidence, was carried. A dissolution was asked for, and I gave my consent. I could not but observe that the general result of the elections appeared to be adverse to their hopes. The vacancy in the office of Ministers of Works had not been filled, and the Finance Minister had failed to secure a seat.

The Ministry were, as far as it was permitted me to judge, *in extremis*, and so it proved; for, on the day the new Parliament was opened, Mr. Forster's resignation was announced, and an hour after an amendment on the Address, in the form of a vote of want of confidence, was carried against the Ministry by a majority of forty-two to fourteen.

For the reason I have stated, I felt that at the time when these appointments were suggested I might not unreasonably have urged that the action of the Ministry should be limited to the ordinary administration of the Government.

All Mr. Forster's colleagues appeared to feel the weight of my arguments.

So far I have mentioned objections which apply only to the case in hand. I come now to more general considerations, which may be viewed as applying equally to this and to other future proceedings in reference to the Legislative Council.

By the Constitution Act, the number of Councillors is unlimited, subject only to a minimum of twenty-one. But it needs no argument to prove that if every Minister determines to push his advice to the same issue as Mr. Forster the dignity and usefulness of the Council would be destroyed. On Mr. Forster's principle every Ministry in turn might insist on any number of fresh appointments, to gratify their friends, or to secure a majority. If the Governor refused they would resign, and he would in the end be left without the means of forming an Administration; while, if he yielded, there would soon be an end of the Upper House, or, at least, of its independence, or of any effect or utility which it might have as a deliberate body. Theoretically, in the written Constitution, there is no limit, but practically, to give life to the Constitution, there must be a limit.

Putting aside, therefore, exceptional cases and special exigencies, it appears to me that a limit ought to be observed; and, with a view to its observance, and, indeed, as the only mode that occurs to me of insuring such observance practically, weight should be allowed to attach to the opinion of the Governor as to any proposed increase of the members, as well as the propriety of individual appointments. Any increase of members should first be formally proposed, and sanctioned by the Governor, before the consideration of particular appointments is entered upon.

At both stages the Crown, or Governor acting in lieu thereof, should have a recognised independent discretion, and no offer of a seat should be made until it has been formally sanctioned by the Governor and Executive Council. The nominations to the Upper House ought not to be viewed as mere ordinary appointments, the refusal to sanction which might justly be considered an interference with proper Ministerial action and responsibility.

It seems to me that by the Constitution Act Her Majesty's Government and the people of this colony are entitled to hold the Governor responsible in the exercise of the power conferred on him for the preservation of the Legislative Council as an efficient branch of the Legislature.

But how can this end be attained unless successive Ministries consent to exercise moderation in pressing advice on this point, and recognise the power and responsibility of the Governor in giving or withholding assent?

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, to which Mr. Forster takes exception. He appears to misapprehend what took place when he says that a limit was arbitrarily fixed by me to the number of the Legislative Council in concert with his predecessors.

At the time of the reconstruction of the Council 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 that 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 these gentlemen that twenty-seven members might, with advantage, be considered a convenient usual limit of the Council, and with this view I concurred.

Mr. Cowper 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 and half years 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 assent 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.

The recollection of these circumstances weighed, I admit, with me to some extent in arriving at the conclusion that no further addition should be made to the number of the Legislative Council at that time. I thought it unwise, in the absence of any particular reason, to deviate from a course