

not affect any permanent improvement. This view is, I think, supported by the experience of the past. For the first five years after the establishment of the Council the average number of members was forty-four, and the quorum for this number would be fifteen. I find that the largest division during each of the seven sessions which were held in those five years was as follows: 26, 29, 37, 26, 31, 27, and 29. The smallest division in each session was—14, 11, 13, 14, 9, 11, and 11—nearly all below a quorum, and therefore inoperative. During the same period the House was unable to proceed to business from the absence of a quorum on fourteen occasions, and was counted out fifteen times during the progress of business. These facts would seem to indicate that the attendance was relatively not much better than it has been of late with a smaller number; and, it must be remembered that after five years' experience of a House which, as I have stated, averaged forty-four members, the leading men of all political parties were agreed that the Council was too large, and ought to be reduced.

15. At the same time, I do not pretend to say that the present number is precisely the best that can be fixed, and I am not aware of any special reason why the limit should be thirty instead of thirty-six. I believe that Mr. Parkes is so impressed with the necessity of exercising great care in making appointments for life to the Upper House that, if he had to nominate five or six new members, he would, I feel assured, make selections which would prove an acquisition to the Chamber; but the difficulty I see is that, if any addition were now made without special cause, it would furnish a second precedent for further additions, which it would then be extremely difficult to resist.

16. As regards the constitutional objections urged by Mr. Parkes to the recognition of any understanding as to a limit in the ordinary number of the Council, I need only point out that similar objections were advanced by Mr. Forster and Mr. Robertson; and, as their representations have already been, in my opinion, conclusively answered in Sir J. Young's and Lord Granville's despatches, to which I have referred, I need not go over the same ground again. I will merely observe, in reference to Mr. Parkes's allusion to Mr. Wentworth's opinion as to the advantage of expansiveness in a nominated Council, that a perusal of the debates on the Constitution Bill will show that when advocating the superiority of the nominee principle (as compared with an elective Upper House), on the ground of its greater flexibility and expansiveness, Mr. Wentworth had in view not the constant exercise of an unlimited power of making appointments to meet the ordinary exigencies of party government, but the power which the nominee system would, as a last resort, place in the hands of the responsible Minister of the day to bring the two Houses of the Legislature into harmony with each other by the creation of new members, if it should ever be found indispensable to the public safety to adopt such an extreme measure, after every other means of reconciling conflicting opinions had failed. And Mr. Wentworth, after five years' experience of the Council without any recognised limit, concurred, on the reconstruction of that body in 1861, in the advisability of fixing an ordinary maximum, which should not be exceeded except under very special and exceptional circumstances.

17. There is only one other point in the minute upon which I feel it necessary to offer any further remark. I refer to the passage which alleges "that the working of the principle upon which the Council is based has 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." I can find nothing in the past correspondence to support such a charge. When Sir John Young "swamped" the Legislative Council in 1861, and reported the circumstance Home, the Secretary of State merely expressed his regret at the course adopted by the Governor, which did not appear to him to be justified by the urgency of the occasion. When Sir John Young refused to enlarge the Council, in 1865, and Mr. Forster in consequence resigned, and appealed to the Secretary of State, Mr. Cardwell simply replied that he thought the reasons given for the refusal were sound and convincing. When Lord Belmore enlarged the Council, in 1868, from twenty-seven to thirty, and reported the appointments Home, the Secretary of State only remarked that any increase was likely to be used as a precedent for further additions, and was therefore to be regretted. And when Lord Belmore declined, in 1869, to increase the Council from thirty to thirty-three, and reported to the Secretary of State the grounds for his refusal, Lord Granville merely approved of the language which Lord Belmore had held to Mr. Robertson on the occasion. Thus it will be seen that in every instance when questions have arisen as to the appointment of additional members of Council the Governor has acted on his own responsibility, without previous reference to the Secretary of State, and that when the course adopted has been reported Home the Secretary of State has simply expressed his opinion as to the propriety or otherwise of the Governor's proceedings—an opinion which on one of the occasions referred to was specially invited by the Minister who conceived himself aggrieved by the Governor's decision. The understanding between the leading politicians in 1861 as to a limitation in the ordinary number of the Council was not come to in consequence of any suggestion from Home, nor was it even reported to the Secretary of State for several years. I can only imagine, therefore, that the passage in the minute to which I have called attention has been written under some misapprehension as to the facts of the case.

I have, &c.,

The Right Hon. the Earl of Kimberley, &c.

HERCULES ROBINSON.

### No. 3.

The SECRETARY OF STATE for the COLONIES to Governor Sir HERCULES ROBINSON.

(No. 89.)

SIR,—

Downing Street, 29th November, 1872.

I have received your despatch, No. 34, of the 10th August, transmitting a minute by your Ministers on the constitution of the Legislative Council, and also your despatch, No. 41, of the 27th August, containing your remarks upon that minute.

2. Mr. Parkes, in the minute signed by him on behalf of your Advisers, after examining the composition of the Legislative Council at the time when the Border Duties Bill was brought before