

reason for making the Speaker the ultimate tribunal to determine the fact of a vacancy, and the Governor the officer to give effect to it by issuing the writ.

If my view of the law be the correct one you are hardly justified in stating that "the Governor cannot constitutionally act in any matter without the advice of his Ministers," and that "the fact of an address being sent direct to the Governor in no way relieves Ministers from the responsibility of giving advice, as all public documents of whatever kind which may happen to be addressed to the Governor are uniformly transmitted by him without remark to his Ministers, who make such reply as the subject may require." The constitutional character of any proceeding depends upon its being in accordance with either custom or law. If the law assigns a certain duty to the Governor, and if it appear to be the fair and reasonable meaning of this law, that this duty should be performed by the Governor upon the advice of a certain party indicated in the statute, then it appears to me that it must be unconstitutional, or in other words not in accordance with law, that the Governor should invoke the advice or assistance of any other party. When the Speaker has declared to the Governor the existence of a vacancy, I hold it to be altogether unconstitutional either for the Governor to seek or for any party to tender any other advice.

I regret to be compelled to dissent from another statement of yours, that "it has never been the custom for Governors to enter into direct official correspondence with the Speaker of either House of the Legislature." As Speaker of the House of Representatives I have had the honor to receive many letters both from the late and from the present Governor of New Zealand.

Before concluding, I wish to take advantage of our correspondence on this subject to state that I consider the Elections Writs Act to be altogether faulty. No better proof could be desired of its defects than is to be found in this controversy which is going on between us. In my view of the matter, the Legislature should contain within itself every power necessary for constituting itself and preserving its action. It is a mistake, I think, to call upon the Governor of the Colony to perform a simply Ministerial act. It is still worse to invoke the action of a party Ministry in the question of an election to the Legislature. I beg leave to submit that our best course would be to copy the British practice. According to that, when the House is in session, it declares vacancies itself, and orders the Speaker to issue his warrant for a writ. During the recess, the Speaker, on his own responsibility, issues his warrant. The Ministry know nothing whatever of the proceeding. The Speaker forwards his warrant to the Clerk of the Crown in Chancery, and that officer issues the writ. Thus no conflict can arise between the officers of the Legislature and of the Executive.

I have, &c.,

D. MONRO,

Speaker, House of Representatives.

The Hon. the Colonial Secretary.

No. 6.

Copy of a Letter from the Hon. E. W. STAFFORD to the Hon. Sir D. MONRO.

Colonial Secretary's Office,

Wellington, 21st January, 1868.

SIR,—

I have the honor to acknowledge the receipt of your letter of the 10th instant, in reply to mine of the 7th, having reference to the issue of a writ, in consequence of the resignation by Mr. Moorhouse of a seat in the House of Representatives.

I am very unwilling to prolong this correspondence, nor would I have done so were it not that in your letter you assert that, under "The Elections Writs Act, 1858," you, as Speaker of the House of Representatives, are, in respect of the issue of writs, the Governor's responsible adviser; and with reference to the course pursued by the Governor, of referring all public documents addressed to him without remark to his Ministers, further state that "when the Speaker has declared to the Governor the existence of a vacancy," you "hold it to be altogether unconstitutional either for the Governor to seek, or for any party to tender any other advice." With such statements before me, I am compelled, however reluctantly on other grounds, to controvert opinions which I believe to be untenable in a constitutional point of view, and to reflect unjustly on the action of His Excellency and his Ministers.

I cannot admit that the Legislature has, in "The Elections Writs Act, 1858," or in any other Act, placed, for any purpose whatever, the Speaker, to the exclusion of Ministers, in the position of an adviser of the Governor, or has reduced the Governor (that is the Crown) to the position, as you state, of a Clerk of the Crown in Chancery in England. The conclusions to which such an interpretation of the law would lead are equally repugnant to the principles of Constitutional Government, and irreconcilable with the proper status of the Crown. If, for example, as might have been the case in the instance out of which this correspondence arose, the Speaker had persisted in calling upon the Governor to issue an illegal writ, the Governor would have had no power, as he has in respect of his Ministers, to remove him and appoint another Speaker, nor would the Speaker have been, like Ministers, responsible to all three branches of the Legislature, nor, in any constitutional sense, even to one branch. It would also be anomalous to hold that the House of Representatives could make the Governor personally responsible for declining to act on the advice of the Speaker, and could at the same time altogether ignore his regular Responsible Advisers.

You contend that if the law assigns a certain duty to the Governor it is the fair and reasonable conclusion that the duty should be performed by the Governor, on the advice of a certain party indicated in the Statute, and that it would be unconstitutional, or, as you say, in other words, not in accordance with law, that the Governor should invite the advice or assistance of any other party. This expression of your opinion appears to me to illustrate the fallacy under which you labour with respect to the whole question of the action of the Governor in connection with the wording of laws and executive practice in a country governed constitutionally, as is New Zealand. The basis of Constitutional Government, and an universally received axiom, is, that the Crown can only act through its Ministers, for the manifest reason that the Crown cannot be made, except by Revolution, responsible