

1877.

NEW ZEALAND.

QUESTION OF PRIVILEGE

(MESSAGE FROM HIS EXCELLENCY THE GOVERNOR ENCLOSING MEMORANDA RELATING TO A).

MESSAGE.

NORMANBY,
Governor.

THE Governor regrets that he is unable to give a definite reply to the address presented to him by the House of Representatives announcing the concurrence of the House in the report of a Select Committee appointed to search for precedents, and to report to the House in relation to the question of privilege raised by Mr. Stout, "That the action of His Excellency the Governor, in noticing a matter in agitation or debate in the House as a reason for refusing to accede to advice tendered by his Ministers, was an infringement of the privileges of the House," because, in the course of a correspondence which has taken place between himself and the Government, which correspondence he now presents to Parliament, a question of constitutional law has arisen, which the Governor considers it is absolutely necessary should be submitted for the consideration of the Secretary of State for the Colonies before he can take upon himself to accept the resolution passed by the House of Representatives.

The Governor begs to assure the House that he does this out of no disrespect to their decision, but simply in defence of what he believes to be a most important constitutional principle.

If the Governor should be wrong in the conclusion he has formed, he can assure the House that nothing was further from his intention than in any way to trench upon their privileges.

Wellington, 8th November, 1877.

Enclosures.

No. 1.

His Excellency the GOVERNOR to the Hon. Sir George GREY, K.C.B.

THE Governor presents his compliments to Sir George Grey, and requests that he will have the goodness to lay the accompanying message before the House at the earliest opportunity.

5th November, 1877.

MESSAGE.

Governor.

THE Governor acknowledges the receipt of an address from the House of Representatives announcing the concurrence of the House in the report of a Select Committee appointed to search for precedents, and to report to the House in relation to the question of privilege raised by Mr. Stout, "That the action of His Excellency the Governor, in noticing a matter in agitation or debate in the House as a reason for refusing to accede to advice tendered by his Ministers, was an infringement of the privileges of the House."

The Governor begs to inform the House that he has forwarded the same to his Constitutional Advisers, and that as soon as he has received the advice of his Ministers he will forward his reply to the House of Representatives.

Government House,

Wellington, 5th November, 1877.

No. 2.

His Excellency the GOVERNOR to the Hon. Sir GEORGE GREY, K.C.B.

THE Governor requests that Ministers will forward to him their advice as to the answer which he should return to the enclosed address from the House of Representatives.

The Governor is sure that he need not point out to the Government that it is desirable that the reply should be given with as little delay as possible.

Government House,

Wellington, 5th November, 1877.

N.

ADDRESS from the House of Representatives to His Excellency the Most Honorable the Marquis of Normanby, a Member of Her Majesty's Most Honorable Privy Council, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor of New Zealand, &c., &c., &c.

May it please your Excellency,—

The House of Representatives of New Zealand, in Parliament assembled, desire respectfully to acquaint your Excellency that, having taken into their consideration a memorandum of your Excellency, dated the 27th day of October ultimo, in reference to the appointment of Mr. J. N. Wilson to the Legislative Council, and which memorandum was communicated to the House on the 31st day of October ultimo, by your Excellency's command, they have agreed to the following resolution, which they desire may be communicated to your Excellency:—

“That the action of His Excellency the Governor, in noticing a matter in agitation or debate in the House as the reason for refusing to accede to advice tendered by his Ministers, was an infringement of the privileges of the House.”

5th November, 1877.

WILLIAM FITZHERBERT,
Speaker.

The Hon. Sir GEORGE GREY, K.C.B., to His Excellency the GOVERNOR.

MINISTERS respectfully advise His Excellency the Governor to return the following answer to the Address from the House of Representatives:—

“The Governor, from a resolution transmitted to him in an address from the House of Representatives, learns that he has infringed the privileges of that branch of the Legislature. The Governor trusts that, from his unintentional act, and his proceedings in relation thereto, the benefit may result that a precedent will have been established which may be useful in future.”

5th November, 1877.

G. GREY.

No. 3.

His Excellency the GOVERNOR to the Hon. Sir GEORGE GREY, K.C.B.

THE Governor has received the memorandum in which Sir George Grey, on the part of the Government, tenders to him their advice as to the answer which he should give to the address from the House of Representatives; and the Governor must request that the Government will reconsider that advice, for the following reasons, viz.,—

1. That constitutionally it is the Government, and not the Governor, who are solely responsible to Parliament for the acts of the Governor.

2. That, if the memorandum of the Governor to his Ministers on the subject of the appointment of Mr. Wilson to the Legislative Council did contain any breach of privilege, it was in the first instance a strictly secret and confidential communication between the Governor and his Constitutional Advisers, and, if they saw that the Governor had unintentionally in any way infringed upon the privilege of the House, it was their duty, under the oath which they took as Executive Councillors, to have pointed out the fact to the Governor, when he would most readily have reconsidered the answer which he had given.

3. That the presentation of the paper was done solely on the advice in writing of Sir George Grey, and that therefore Ministers are solely responsible.

Government House, Wellington, 5th November, 1877.

NORMANBY.

MEMORANDUM from the Hon. Sir GEORGE GREY, K.C.B., to His Excellency the GOVERNOR.

MINISTERS respectfully acknowledge the receipt of His Excellency's memorandum of last night. The points raised in it are of such importance as to require the most careful consideration upon their part, and they are, therefore, unable immediately to tender advice to His Excellency upon the subject.

Ministers will, however, take care that no unnecessary delay occurs in bestowing that attention upon the Governor's memorandum which its importance demands.

Wellington, November 6th, 1877.

G. GREY.

No. 4.

MEMORANDUM from the Hon. Sir GEORGE GREY, K.C.B., to His Excellency the GOVERNOR.

HIS Excellency having asked Ministers for a reply to his memorandum relative to the advice they offered to him, as to his answer to the resolution of the House of Representatives, Ministers beg respectfully to state,—

1. That they admit their responsibility for His Excellency's acts, when done on their advice.

2. That out of respect for His Excellency they refrained from offering him any further advice, when he had twice rejected that which they had given him; but they do not think that, in refraining from doing so, they committed any breach of the oath which they took on entering office as Executive Councillors; and they feel sure that on a re-perusal of that oath His Excellency will modify his opinion on that point.

3. They admit and accept the responsibility of laying the papers before Parliament; but beg respectfully to point out that the resolution of the House does not say that that proceeding was a breach of its privileges.

Ministers are, however, unwilling to press His Excellency to accept advice upon a matter of this kind with which he does not fully concur; and, therefore, they respectfully beg to advise that the enclosed message be substituted for that previously sent to him.

Wellington, 7th November, 1877.

G. GREY.

Enclosure in No. 4.

THE Governor has received the resolution of the House of Representatives, by which he is informed that he has inadvertently committed a breach of the privileges of that House. The House is constitutionally the guardian of its own privileges.

The Governor having now called Mr. Wilson to the Legislative Council, in accordance with his promise to his Advisers, he does not think it will answer any useful purpose to discuss the question any further, but he will transmit the papers to the Secretary of State for the Colonies.

MEMORANDUM from His Excellency the GOVERNOR to the Hon. Sir GEORGE GREY, K.C.B.

THE Governor acknowledges the receipt of Sir George Grey's further memorandum of this day's date, and he is glad to learn that the Government agree with him, and admit their constitutional responsibility to Parliament for the acts of the Governor when done on their advice. The Governor, however, cannot admit that their responsibility should be so limited, because, if the act of the Governor is such that the Government cannot accept or defend it, it is their duty to resign, in order that the Governor may be able, if he can, to form a Government who would support his views, in which case he would have of course to justify his conduct to the Secretary of State, to whom he is alone responsible. In this present instance the Government, and the Governor thinks rightly, did not consider that his refusal to appoint Mr. Wilson to the Legislative Council was a matter of sufficient importance to induce them to resign, and thereby they accepted his decision and became responsible for his act, and the whole question should have then ended, or they should have further pressed their advice upon him.

Neither can the Governor modify the view which he has expressed—that the Government were, by the oath which they took as Executive Councillors, bound, when they saw that he had unintentionally given reasons which might be construed into a breach of privilege, to have pointed out the fact to him.

The appointment or non-appointment of Mr. Wilson was one thing, and totally different to the question as to whether the Governor had unintentionally infringed the privileges of the House.

The Governor has for too many years held a seat in one branch or other of the British Parliament to wish for one moment to infringe upon the privileges of the House of Representatives; and, could he admit that he is the person responsible to Parliament, he would not for one moment hesitate to express his regret that most unintentionally he had infringed their privileges.

The Governor, however, considers that the constitutional principle for which he contends—viz., "That Ministers, so long as they retain office, are alone responsible to Parliament for the acts of the Governor"—is of such vital importance to the future good government of the colony, and for the position held by Her Majesty's Representative, that he feels that he would be recreant to his duty, and utterly unworthy of the position which he holds, if he permitted the question to drop, and did not try, to the utmost of his power, to have the matter finally and definitely settled.

This question of privilege is now no longer a matter "in agitation or debate" in the House. The Governor has been informed officially by the Hon. the Speaker of the decision of the House, and the official reports of the House are officially before him. He can therefore now refer to the matter in his communications with his Ministers, without any fear of committing a breach of privilege.

The absolute responsibility of Ministers to Parliament for the acts of a Governor is a question which has so often been decided, and is so well understood in England, that the Governor did not expect to find it disputed. The necessity and justice of this rule is obvious. In working out mathematical problems it is not unusual to demonstrate the point by showing the absurdity of any other conclusion, and the Governor would venture in this case to prove his point in that way. As an illustration he will take the case which has just occurred. The Governor refused the advice of Ministers to appoint Mr. Wilson to the Legislative Council. By his instructions, and according to numerous precedents, he had a perfect right to take that course. The Government, as he thinks rightly, did not consider it a case of sufficient importance to necessitate their resignation, and there the matter would have ended. The Governor was not obliged to give any reasons to his Ministers for the course he had taken, but he thought it more honest and more respectful to them to do so. Unfortunately, in so doing, he used expressions which were afterwards construed into a breach of privilege. The Government either did or did not see this. The Governor is perfectly ready to assume that they did not, as he should be very sorry indeed to impute to them any intention of entrapping him: at the same time the Government must have had some reasons for wishing for the production of the papers, and so little did the Governor see any public necessity for it, that he was on the point of refusing his consent, and only refrained from doing so because he did not like for the second time to refuse their advice. The papers were laid on the table of the House, and immediately the question of privilege was raised.

The Governor, by the privilege of the House, was not supposed to know what was going on. He had no voice in the House. He was not in any way allowed to explain his conduct, or to produce evidence or precedent in his favour. He could not employ counsel; and the Government, by whose advice the papers were published, and who are his constitutional defenders in the House, either took part against him, or remained in silence and refused him their assistance.

The Governor was condemned unheard, and an address was presented to him by the House expressing its disapproval of what he had done.

A criminal, on the other hand, no matter what crimes he may have committed, is, in the first place, by the English law presumed to be innocent. He is brought face to face with his accusers. He is present at his trial. He may produce evidence of his innocence, and employ counsel; and even before sentence is passed he is permitted to urge any reasons that he may think fit, in mitigation of his sentence.

The Governor would ask whether these two cases do not prove incontestably the absolute necessity for the constitutional rule which the Governor contends does exist—viz., "That it is the Government, and not the Governor, who must, so long as they remain his Advisers, be solely responsible to Parliament for his acts." Is it not absurd to contend that Her Majesty's Representative should be

condemned unheard, and that he should be put, as to his defence, in a more unfavourable position than that in which the worst criminal in the colony could possibly be placed?

This question as to the extent to which Government are responsible to Parliament for the acts of the Governor is one which cannot possibly be decided in the colony. The Governor has, therefore, decided to forward the whole case for the consideration and decision of the Secretary of State for the Colonies, by whose decision he is bound to abide; and he will have much pleasure in forwarding, at the same time, any representations that the Government may wish to make.

If the Governor has urged his case somewhat strongly, he begs that Sir George Grey will clearly understand that he looks upon it simply as a political and not a personal question, which he is bound to press to the best of his ability, though, he trusts, without the slightest exaggeration.

As regards the answer to the House of Representatives, the Governor proposes to send a message something to the effect of the one he encloses.

In conclusion, the Governor would wish to state that, in reply to a telegram from himself, he has heard from Sir Hercules Robinson that a precedent, which appears very nearly similar, did occur to Lord Belmore, and that his action was approved of by the Secretary of State.

The Governor wishes to place no stress upon this information, as he has not been able to find the case, and does not know how far it may be parallel; but it is his intention, if the case has been published, to request Sir Hercules Robinson to furnish him with a copy as soon as possible.

NORMANBY.

P.S.—Unless the Governor hears that Sir George Grey wishes to make any further remarks, the Governor proposes to send his message to the House of Representatives this evening.

Government House, Wellington, 8th November, 1877.

N.

No. 5.

MEMORANDUM for His EXCELLENCY.

MINISTERS respectfully represent to the Governor that the questions which they have had to consider were—Can the Governor, finding that a notice of a vote of want of confidence in the Government has been given, decline to take the advice of his Responsible Advisers on the ground that such a vote is pending; and was he justified in holding that he could not accept their advice until the decision of the Assembly on that vote had been given? If such is the constitutional law, nothing is necessary but to raise successive votes of want of confidence in the Government, to enable the Governor to act for long periods of time without Responsible Advisers.

Ministers respectfully state that they cannot admit that the Governor is responsible to the Secretary of State in this matter; nor can they admit that the question, as to the extent to which Government are responsible to the Assembly for the acts of the Governor, is one which cannot be decided in New Zealand. On the contrary, they feel it to be their duty respectfully to protest against the points at issue being decided anywhere else, unless the consent of the General Assembly is obtained to the reference of those points to some external authority. The Secretary of State for the Colonies is also, in their opinion, for such a purpose, an authority unknown to the Constitution of New Zealand.

Ministers would respectfully solicit the attention of the Governor to the 32nd section of the Constitution Act, from which it will be found that the words "General Assembly" comprise His Excellency the Governor himself, who is by law a constitutional part of that body.

Ministers respectfully add that they have already advised His Excellency regarding the message they think he should return to the address of the House of Representatives, and they have nothing to add to that advice.

Wellington, 8th November, 1877.

G. GREY.

MEMORANDUM from His Excellency the GOVERNOR to the Hon. Sir GEORGE GREY, K.C.B.

THE GOVERNOR acknowledges the receipt of Sir George Grey's further memorandum of this day's date, and he would point out that the Secretary of State is the only constitutional channel through whom the commands of the Crown are conveyed, and who is responsible to the British Parliament for the advice he may give to Her Majesty; and as the Governor, at any rate, feels bound to obey the command of Her Majesty, whom he has the honor to represent in this colony, he still maintains that it is his duty to submit this case for the consideration of the Secretary of State.

The Governor has referred to the 32nd section of the Constitution Act, to which Sir George Grey has called his attention, and he would point out that it simply places the Governor, as Her Majesty's Representative, in exactly the same position as regards the Parliament of New Zealand, as that which is held by the Queen as regards the Parliament of England.

The Governor must adhere to the determination which he has announced to the Government, and will lay the whole correspondence before Parliament this evening; and by next mail he will forward the whole case for the consideration of the Secretary of State for the Colonies.

Government House, Wellington, 8th November, 1877.

NORMANBY.