

No. 7.

(No. 38.)

MY LORD,—

Wellington, 8th August, 1892.

I have the honour to forward herewith a memorandum from my Ministers, dated the 5th August, calling your attention to a difference which has occurred, to my deep regret, between myself and them regarding appointments to the Legislative Council. I addressed a confidential despatch (No. 31/92) to the Secretary of State for the Colonies on the 22nd day of June, giving all information on the subject up to date, and I annex a schedule containing a list of papers bearing on the subject. The papers themselves accompany this despatch.

I submit that the memorandum contains something more than a statement of the difference between us; it is also an expression of opinion that greater powers should be given to Ministers than they at present possess.

I would now respectfully offer a few remarks upon the result of granting the powers Ministers think should be given them.

Let it be supposed that in a colony possessing representative institutions Ministers resign, appeal to the country, are defeated, and replaced by the Opposition. On coming into power the new Ministry introduces—as Ministers are not unlikely to do—a measure which it thinks will be popular, besides that which they were returned to carry out. The Legislative Council throws it out. The Ministry advises the Governor to appoint sufficient Legislative Councillors to overcome opposition in the Chamber. The people have not been consulted, and support the arguments advanced in the Council. But, supposing the Ministers have the power they think should be theirs, the Governor must grant the appointments asked for. The result would be that the Council is coerced, the measures are passed, and the people come under a law to which they may object, and on which they have not been consulted.

The two Houses of the New Zealand Parliament possess each at present absolute liberty of speech; but under the proposed change the freedom of the Legislative Council would be at the mercy of the Ministry. The consent of both Chambers is now necessary before a measure can receive the Governor's assent. Should a measure be thrown out, it is open to Ministers to appeal to the country. Thereafter, if the Legislative Council were to disregard the wishes of the electorate as expressed at the polls, sufficient emergency would then have arisen to justify the Governor in granting Ministers a sufficient number of appointments to bring the Upper House into harmony with the country.

This is, I submit, the constitutional practice; and it is more in accordance with the principles of freedom that the people should be the ultimate Court of appeal in any difference between the Chambers than that the power should rest with Ministers.

In a despatch dated the 19th October, 1839, Lord John Russell says, "Every political Constitution in which different bodies share political power is only enabled to exist by the forbearance of those among whom this power is distributed." I would add that if the constitutional checks which experience has placed on the power of the different bodies is swept away the result will be a distinct loss of liberty to the colony, and almost absolute power to the Ministry.

The late Lord Granville, in a despatch to Lord Belmore dated the 2nd October, 1869, writes as follows: "When writing that despatch I was fully aware that the number of the Upper House was unlimited; I was also fully aware that on certain critical occasions it may become not only expedient, but indispensable, to bring the two Houses into harmony by creating, or threatening to create, a number of Legislative Councillors sufficient for that purpose; but it is not the less clear that the value and character of the Upper Chamber will be destroyed if every successive Ministry is at liberty, without sufficient occasion, to obtain a majority in the Council by the creation of Councillors."

I respectfully submit that this extract and the one foregoing breathe as much of the spirit of the Constitution at the present day as when they were written, and that they are opposed to the view held by my Ministers.