

The History of the First New Zealand
Parliament,
Being an Account of the two Houses
of the Legislature, 1854-5.

Thesis submitted as alternative to
Essay in the Examination for Honours
and M.A. in History in the University
of New Zealand, November 1923,

by

~~ALERT.~~

W. A. Pierri.

1. Let us now praise famous men and our fathers
in their generation.
2. Such as have borne rule in their dominions, men
of great power, and endued with wisdom.....
4. And ruling over the people, and by the strength
of wisdom instructing the people in most holy
words.
7. All these have gained glory in their generations
and were praised in their days.
8. And they that were born of them have left a name
behind them, that their praises might be related.
9. And there are some of whom there is no memorial;
who are perished as though they had never been...
10. But these were men of mercy, whose godly deeds
have not failed.
11. Good things continue with their seed.
14. Their bodies are buried in peace and their name
liveth unto generation and generation.

Ecclesiasticus xlv, 1-14.

PREFACE.

Nothing could better remind New Zealand of its debt to the Colonial Reformers than the situation of its noble and imposing, but as yet incompetent Legislative Chambers at Wellington. The main gate faces Lambton Quay; the visitor may also enter from Molesworth Street which fronts the grounds. Formerly the house of Colonel William Wakefield, Principal Agent for the New Zealand Company stood there; close by is the grave of his brother Edward Gibbon.

It is now six years since the old wooden building at Auckland was demolished to make way for street improvements. With it went a great body of sentiment, for it was within its walls that New Zealand's present system of government had its origins. It was there that Wakefield moved his celebrated resolution; it was there that a novel constitutional experiment was tried and failed; it was there that the responsibility of ministers was ultimately won.

If our present stage of constitutional development owes anything at all to tradition, surely a study of the proceedings of the First Parliament will be productive of good. It was there that New Zealand entered on the path that has brought her to the Imperial Conferences. To our parliamentary pioneers, to Durham, Buller,

1. Named after George Lambton, Earl of Durham.

Molesworth and to Wakefield we owe a debt that will never be repaid.

New Zealand did not begin its present "Hansard" scheme till 1867. The volume of the "Parliamentary Debates" which is a principal source for this research, is one of a series of five compiled by Maurice Fitzgerald and published in 1885, to cover the period 1854 - 1867. By laborious comparisons of newspaper reports, by circulars to members to supply memoirs or notes of speeches, and by the aid of the Journals of the Houses, the editor produced as reliable a record as can now be obtained. The difficulty of the task of compilation and the value of the work produced will be made evident by the quotation of a letter from one of Mr. Fitzgerald's correspondents. "You will find a pretty good report in 'The New Zealander.' But these reports give you little notion of the reality. Some members whose speeches are dreary beyond belief, and almost unintelligible as delivered in the House contrive to appear with rounded periods and flowering oratory," while others whose powers of illustration "you well know, are shorn of their fair proportions and the speeches are reduced to mere notes." How the earlier of these reports were made will appear from the text. It is for the reasons noted above that the journal of Henry Sewell is of such great value.

The report of the proceedings of the Legislative Council received but scant attention in the newspapers,

but apparently their meetings were, as now, of much shorter duration than those of the Lower House.

The other sources are noted in the Bibliography.

To Sir George Clifford and to the "Brett" Publishing Company my thanks are due for aid with the illustrations.

~~ALERT.~~ W. A. PIERRE

1st November, 1923.

CONTENTS.

PART I. ORIGINS

PREFACE.

vi.

Page No.

CHAPTER i. INTRODUCTORY.

1

Sec. 1. Social and Economic Development of New Zealand 1840-53.	1.
Sec. 2. Government of New Zealand 1840-53	5
Sec. 3. Agitation for Representative Government in New Zealand 1847-51.	11

CHAPTER ii. ORIGIN OF THE NEW ZEALAND PARLIAMENT.

20

The meaning of Parliament.	20
The form, functions, procedure and characteristics of the British Parliament of 1850 as constituting the model for the New Zealand Parliament.	20
The Meaning of Parliamentary Government.	25
Analysis of the Parliamentary sections of the New Zealand Constitution Act of 1852.	26
Analysis of the debates on the Act in regard to these sections.	34
Summary of influences determining the forms, functions etc. of the Parliament of New Zealand as constituted by the Act of 1852.	41
Was Parliamentary Government intended by the Act?	43
Why was it granted?	47
How was it to be instituted?	47

CHAPTER iii. THE FIRST GENERAL ELECTION.

49

The Proclamation of the Constitution Act in New Zealand.	49
What Law governed the conduct of the First General Election?	49
Provincial Elections. Grey's Action.	55
Grey's Defence.	57
Lack of interest in General Election.	58
Method of conduction electioneering campaigns.	61
Geographical distribution of members, and parties.	63
Results of First General Election.	64
Nominations to the Legislative Council.	75

PART ii. THE FIRST NEW ZEALAND PARLIAMENT.

	Page.
<u>CHAPTER iv. MEETING AND OPENING OF THE FIRST SESSION OF THE FIRST PARLIAMENT.</u>	80
Constitution.	80
Procedure to be adopted at opening.	80
Powers to be exercised by the Houses.	81
First Meeting, Legislative Council.	81
First Meeting, House of Representatives, Election of Speaker, first Debate, first Division.	83
Formal opening of Parliament, by the Acting-Governor	88
Speech from the Throne.	88
House of Representatives, Address-in-reply.	95
<u>CHAPTER v. THE INTRODUCTION OF PARTIAL MINISTERIAL RESPONSIBILITY.</u>	100
Relations between the Executive and the Legislature.	100
Wakefield's resolution.	101.
The three days' debate.	101
Objections to responsible government.	103
Points in favour of responsible government.	105
Division.	107
Address to the Acting Governor.	107
Message from the Acting-Governor.	109
Attorney-General's opinion.	109
Fitzgerald and Monro sent-for.	110
The Fitzgerald Ministry.	110
Its position.	112
<u>CHAPTER vi. THE WORKING OF THE NEW SYSTEM.</u>	114
Policy of the Ministry sketched in ministerial statement.	114
The growth of opposition.	120
Wakefield's first attack on the ministers.	121
The Executive Government Bill.	123
The Select Committee on the New Zealand Company's Auckland Debts.	125
Preliminary discussion of measures, ministry again attacked.	127
Weakness of ministry, resignation of Hon. F. Dillon Bell.	130
Ministerial reconstruction, Waste Lands Bill.	130
Progress of Government Legislation.	137
Election of chairman of Committees.	138
Election Petition.	140
Precedence of Government Legislation shown.	140
Resignation of the Fitzgerald Ministry.	143

<u>CHAPTER VII. THE CONFLICT BETWEEN THE EXECUTIVE AND THE LEGISLATURE.</u>	Page. 147
Ministerial explanations.	147
Wakefield's blunder.	148
Vote of thanks and confidence.	148
An old principle re-affirmed.	150
Message No. 25. A scene.	151
Address-in-reply to the Acting-Governor.	153
A coup-d'etat. Two scenes. Prorogation.	167
The tactics of the Government criticised.	173
Fitzgerald's justification.	174
<u>CHAPTER VIII. RELATIONS BETWEEN THE TWO HOUSES OF THE LEGISLATURE.</u>	180
Unpopularity of the Lords.	180
Legislative Council, address-in-reply.	181
"The Lords want responsible government!"	183
Swainson's position.	183
Dillon Bell's appointment to the Executive Council.	186
Bell's resignation and Bartley's appointment.	187
Bartley's resignation from the Executive Council.	187
Message No. 7.	187
Swainson's conduct.	188
Address-in-reply to Message No. 7.	189
Realisation of unpopularity of nominated Upper Chamber, St. Hill's resolution.	189
Result of responsible government on the proceedings of the Legislative Council.	190
<u>CHAPTER IX. SELECT COMMITTEES OF THE LOWER HOUSE.</u>	192
Survey.	192
Privileges of members.	193
Bribery at elections.	195
Steam navigation.	196
New Zealand Company's Auckland Debt.	197
<u>CHAPTER X. THE FORSAITH MINISTRY.</u>	199
Cabal during the recess.	199
Opening of the Second Session.	202
Acting-Governor's speech. "Clean Shirt" ministry announced.	203
Policy of the Forsaith Ministry.	203
Address-in-reply debate.	207
Fall of the ministry and the system of partial responsibility.	213
<u>CHAPTER XI. THE WORK OF THE SECOND SESSION.</u>	215
Activity of the Lower House.	215
Renewed defiance, and report of select Committee on late prorogation.	216

viii.

	Page.
Feverish activity in the Legislative Council.	217
The Appropriation Bill 1854-5.	217
Relations of the two Houses.	222
Other legislation.	227
Prorogation.	234
Results of the first two sessions.	235
Feeling in the constituencies.	238
<u>CHAPTER XII. THE SESSION OF 1855.</u>	241
A "rump"	241
Wynyard's blundering tactics.	241
Acting-Governor's speech.	244
Address-in-reply.	245
Defeat of the Pensions Bill.	248
Government's financial policy criticised by the Lower House.	251
Advent of Gore-Browne.	253
Prorogation.	255
The opening of a new epoch.	257
<u>APPENDIX.</u>	259
<u>BIBLIOGRAPHY.</u>	261

PART I. ORIGINS.

CHAPTER I.

INTRODUCTORY.

Sec. 1. Social and Economic Development of New Zealand, 1840-53.

It was not very long after Cook's visit in 1769 till New Zealand could boast of some sort of white population. Parts of the coast came to be frequented by whalers and sealers, some of whom actually made their homes in the country. In 1814 the advent of Marsden, and in 1825 the formation of a New Zealand Company, indicated the direction which events were taking.

But it was not till 1839 that the decisive step was taken; on 5th May of that year the New Zealand Company's survey ship "Tory" left London for New Zealand. She was followed after a short interval by the first immigrant ship, which arrived at Port Nicholson Heads on 4th January, 1840.

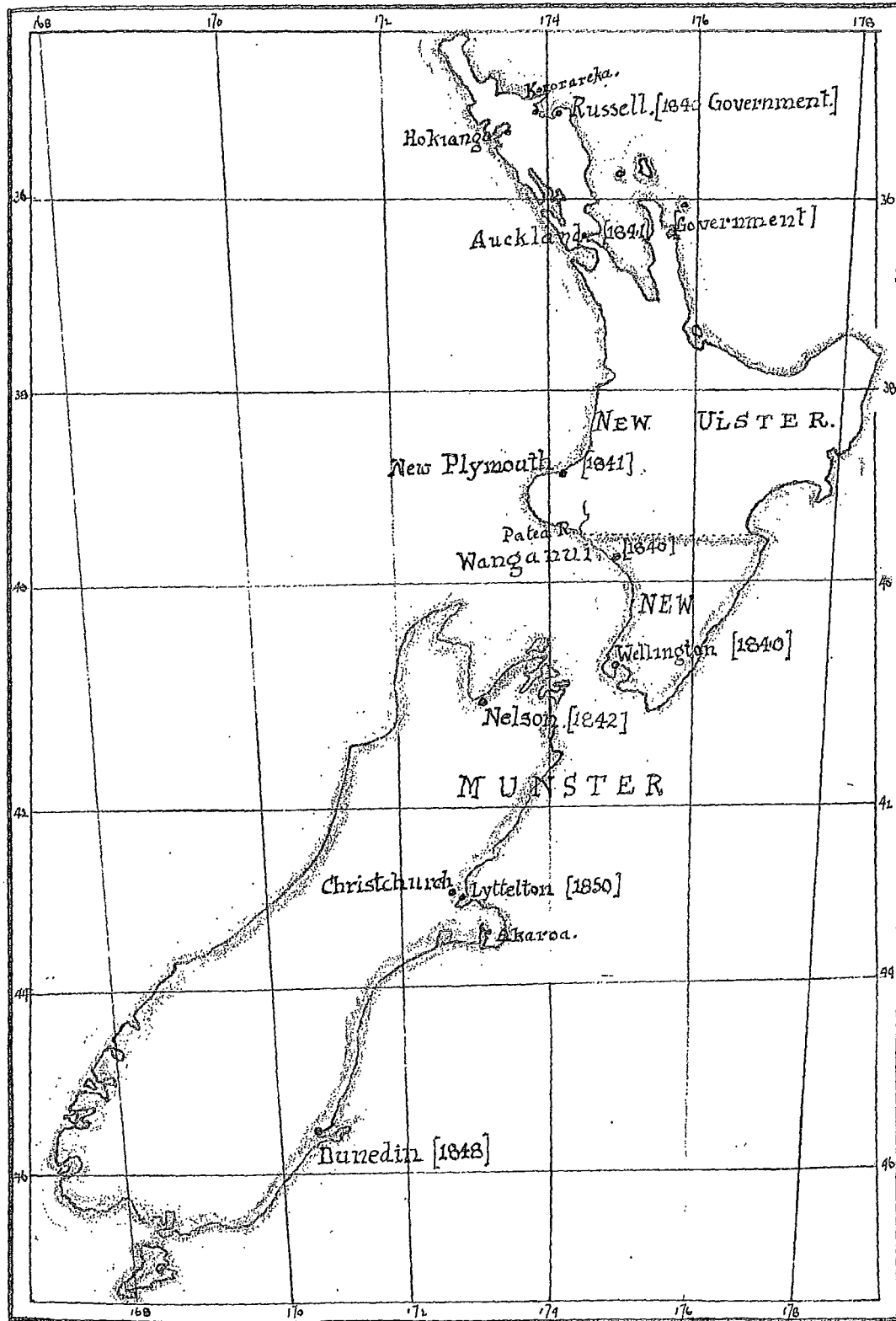
It was on the shores of Port Nicholson that the town of Wellington grew up. From it an offshoot settlement was established in 1840 at Petre, now known as Wanganui, while at New Plymouth in 1841 and Nelson in 1842, the New Zealand Company established other settlements. It was some six years later that the Otago Association, a daughter Association of the New Zealand Company, consisting entirely of members of the Free Kirk, settled the coast fringing Otago Harbour; two years

later, on 16th. December 1850, the "first four ships" of the Canterbury Association, also a daughter Association of the New Zealand Company, but of Anglican churchmen, arrived in Lyttelton Harbour . Two other settlements in which the official and military element predominated, had been founded, the one at Russell, the other at Auckland, each in its turn the seat of government; but with these, of course the New Zealand Company had nothing to do.

The year 1850 marks the death of the New Zealand Company. The Company had rendered inestimable service to New Zealand; the word "colony" was no longer a synonym for "convict-station"; settlements had been very evenly distributed about the coasts; ninety five ships and 11,680 colonists had reached the colony in safety; and 270,073 acres of land had been sold. But without a doubt, the most invaluable service had been the rigid selection of colonists. It had been the aim of the Company to carry out Wakefield's ideal of planting a Colony which might represent socially a slice of old England.

The length of the coast line, and the difficulty of communication between the various settlements, made a certain particularism inevitable. Swainson₁ tells us "there were no roads between any two of the settlements for wheeled carriages. The overland journey even between

The Settlement of New Zealand.



3.

Wellington and Auckland - both on the same island, and not much more than four hundred miles apart, - commonly occupied from three weeks to a month." It was natural that under such circumstances interest should become centred in the settlement, not in the country, and later, in the Provincial, not in the Central Government. "The worst feature of colonial society is its narrow-mindedness" wrote Wakefield to Rintoul². "Everybody's ideas seem to be localised to his own part of the country." The reasons for this he declared were two; - want of communication, and the total absence of popular power and responsibility. Yet it was partly this isolation that made colonists so impatient of Auckland control, and led to such violent agitation for self-government.

Colonial narrow-mindedness had another unfortunate result. All newcomers were regarded with jealousy. This was noticed particularly by Sewall, who could not at first account for the colonial attitude. He thought the colonists rude and disagreeable; "His Oxford and Isle of Wight habits^{of thought} are shocked by the democratic ways of a carpenter here who speaks of him as "Sewell" without the "Mister" and calls a brother carpenter "Mr. Smith"³. He was highly amused by the way a certain servant who opened the door to a gentle visitor apologised for not shaking hands because she was cleaning the tins. In fact, says

2. 16th April, 1853.

3. Wakefield to Rintoul 16th April, 1853.

Sewell, "Colonial manners are mighty republican."⁴ But Wakefield liked "the unwashed" and got on well with them - at first, at least. He thought them "the best set of colonists that have left England in modern times."³ All their faults and failings he ascribed to "double G."⁵

The first six years of the colony were a time of financial distress and economic depression, in a great measure owing to the costly procedure and vexatious delays of a Land Claims Court. Land prices were raised by the speculations of jobbers from Australia. Most of the articles used by the settlers were imported; the lack of exports with which to pay for them led to scarcity of coinage, and Fitzroy's expedient of employing an inconvertible ^{paper} currency had the effect of aggravating the ever-present difficulties.

Grey's advent heralded a new era in the material welfare of New Zealand. When he left the country in 1853 there were on all sides signs of prosperity. "The natives in the neighbourhood of towns and in the remote interior were acquiring for themselves ploughs, flourmills, and other industrial appliances."⁶ Grey's Maori policy had led to the restoration of peace in every district where there had been war. Many natives were the owners of horses, cattle, and sheep; native churches were numerous; and Europeans traversed on foot the length and breadth of the country on tours

3. Wakefield to Rintoul, 16th April, 1853.

4. Journal, 10th February, 1853.

5. Sir George Grey. 6. Gisborne, "New Zealand".

5.

of pleasure or business in perfect security, and were received by natives with kindness and hospitality." ⁶

The white settlements were in just as flourishing a condition. The seven communities could now muster a total population of 32,554. The pursuits of the colonists were mainly commercial, pastoral, and agricultural. Wool, flax, kauri gum, potatoes, and timber, to the annual value of £303,282.⁷ were exported, while imports amounted to £597,827.⁷ From the earliest years each settlement had supported a bi-weekly journal; in 1853 several of the settlements could boast two; public opinion therefore was very well organised. Hence, Gisborne could say that "the country was, at the close of the year 1853, in a state of actual and progressive welfare."

Sec. 2. Government of New Zealand.

1840 - 53.⁸

From the strictly constitutional point of view the years 1840 - 53 may be divided into two periods; the first, 21st May, 1840 to November 1840, during which New Zealand was a dependency of the Crown Colony of New South Wales; the second, November 1840 to January 1853 during which the country was governed as a Crown Colony by a Governor and Legislative Council.

It was news of the Kororareka Association, a vigilance society with a president, vice-president,

6. Gisborne "New Zealand".

7. New Zealand Statistics.

8. For this section continual reference was

secretary, and treasurer elected by the people of the town, which hastened the establishment of the British Consulate in New Zealand. The Executive Committee of this self-constituted body imposed punishments ranging from the imposition of fines to tarring and feathering. The formation of such a body as this seemed to be the first step towards the establishment of an independent republic. The outcome was the appointment of Captain Hobson R.N. as consul, with power to treat with the natives for cession of sovereignty.

But the action of the unchartered New Zealand Company, and fears of French aggression, forced the Colonial Office to take steps "providing for the government of the Queen's subjects resident in, or resorting to New Zealand." Captain Hobson was therefore commissioned Lieut.-Governor of such parts of the islands as might be added to the colony of New South Wales; sovereignty was ceded to the British Crown by the treaty of Waitangi, February, 1840, and proclaimed in Hobson's two proclamations of 21st May, 1840.

Till November of the year 1840, New Zealand was governed by Lieut.-Governor Hobson, who was directly responsible to the Governor of New South Wales. Though matters of detail were left to the Lieut.-Governor on the spot, the direction of general policy was retained

8. made to Hight and Bamford, "Constitutional History and Law of New Zealand."

absolutely in the hands of the New South Wales Government.

"New Zealand was subject to the law of England, both statute and common, in so far as the same was reasonably applicable to the circumstances of the infant state." The seat of Government was established first at Russell, but was in January, 1841, moved to Auckland.

The Charter of the 16th November, 1840, raised New Zealand to the dignity of a separate colony. This instrument proclaimed new boundaries, and authorised the establishment of a Legislative Council of no fewer than six members to be nominated by the Crown. In making laws and ordinances for the government of the colony, the Council was to be guided by the instructions of the Crown. The Governor was authorised to summon an Executive Council.

Following the charter royal instructions further defined the constitution, powers, and procedure of the Legislative and Executive Councils. The former was to consist of the Attorney-General, the Public Treasurer, the Colonial Secretary, and the three senior Justices of the Peace, in the colony. The Governor was empowered to remove any obnoxious non-official member, and was to propose all subjects for debate, though any member was given the right of suggesting to the Governor, questions and bills for debate. Copies of minutes of meetings were to be sent to the Secretary of State, and no ordinance was to take effect until the pleasure of the Crown be known in the colony, except in the cases of annual supplies or where delay would result in

inconvenience or injury. Waste lands were to be offered for sale at a uniform price to be fixed by one of the Secretaries of State.

During this period, there were in all twelve sessions of the Legislative Council. The first ordinance of the first session declared the laws of New South Wales to be in force in New Zealand, in so far as they were applicable. Provision was made too during the first session for the administration of justice. But the second session is perhaps the most important, for it provided a comprehensive body of law rendering unnecessary the operation of laws of New South Wales within this colony. By No. 9. Sess. II a system of land transfer was instituted, providing for the registration of title deeds, and other instruments relating to property.

On Hobson's death the Government was administered by the Colonial Secretary, Lieut. Willoughby Shortland, till 26th December 1843, when Captain Fitzroy was appointed. Fitzroy was a scientist and no administrator; he it was who, by No. 4 Sess. III issued debentures to Government creditors and made the same legal tender within the colony. He it was too, who, in flagrant defiance of instructions proclaimed that by the payment of a commission of ten shillings an acre to the Crown, colonists would be enabled to buy land direct from the natives. He it was who, subsequently lowered this commission to one penny an acre, and he it was who was recalled from New Zealand in 1845.

Captain George Grey, then Governor of South Australia, was appointed to succeed Fitzroy, and began to discharge his new duties on 18th November 1845. He straightway devoted his energies to the remedying of the financial state of the colony, which as a result of Fitzroy's bungling had become deplorable, and re-asserted the Crown right of pre-emption to the waste lands. It was Grey, too, who was responsible for much social legislation at this time; he made provision for education and for registration of births, deaths and marriages.

During these years there began a persistent and general demand for the grant of representative institutions, a demand which was particularly marked in the settlements founded by the New Zealand Company, whose directors in 1846 suggested a plan of local government. But nothing came of the scheme. However, in the same year, Lord John Russell secured the passage of an "Act to make further provision for the government of the New Zealand Islands." The Charter of 1840 was repealed; the creation of municipal corporations was authorised; and provision was made for the division of the island into provinces, and for the establishment in each province of a Governor, Legislative Council and House of Representatives to have full power to make laws not repugnant to those of England or the Colonial Assembly. There was to be a General Assembly consisting of the Governor-in-chief, a nominated Legislative Council and a House of Representatives elected by the Provincial Legislatures from among their own members.

Accordingly, by royal charter of 1846, New Zealand was divided into the two Provinces of New Ulster and New Munster. Along with the charter came instructions "providing for the settlement of waste lands, for the treatment of the aborigines, for the establishment of Executive Councils nominated by the Governor and for quadrennial election by the Provincial Houses of members of bodies to form the Colonial House of Representatives." New Ulster was defined as the "whole of the North Island, except that part adjacent to Cook Strait which the Governor might by proclamation exclude." Hence Grey separated the New Zealand Company's settlements from those of the Government by proclaiming a line drawn due east from the mouth of the Patea River the boundary.

It is now thought that in 1846 New Zealand was, as Grey held, not sufficiently well developed to warrant the grant on the part of the Imperial authorities of representative government. "Land-hungry" colonists could not be trusted to legislate for waste lands, and the New Zealand Company's settlements contained most of the white population, whose votes would support a Company which did not always act in the best interests of the colony. Grey therefore resolved not to put into force the instructions relating to the Assemblies and asked for a modification of the constitution. Though supported by men like Bishop Selwyn and Chief-Justice Martin, Grey was bitterly attacked by the colonists, who fulminated against his autocratic tendencies. Grey's attempt to appease the

prevalent discontent by passing a Provincial Councils Ordinance, providing for a Legislature consisting of the Provincial Executive and other members appointed by the Governor, was heartily ridiculed and met with no success. In 1848 Grey assumed office as Governor-in-Chief of New Zealand, and as Governor of New Ulster and New Munster, while he appointed as Lieut.-Governors, Major-General Pitt and Edward John Eyre. In each province the Lieut.-Governor was assisted by a Provincial Secretary, Attorney-General, Provincial Treasurer and the Chief Military Officer..

An ordinance of the Legislative Council passed in 1852 was another attempt to satisfy the colonists' insistent demand for self-government. By it provision was made for Provincial Legislative Councils with two thirds of the members elected. The first elections were just being held when news arrived of the passing of the New Zealand Constitution Act of 1852, which resulted in the suspension of the proceedings.

Sec. 3. - An Account of the Colonists'
Agitation for Representative Government.

It was the New Zealand Company's policy of scrupulous selection that made possible the grant of representative institutions only twelve years after the acquisition of the colony by the British Crown. It was inconceivable that a body of men, among whom there were so many of great ability and culture, would long submit

to a government of the kind exercised by the despotic Grey; it was inevitable that they would, ere long, demand a share in the shaping and administration of their own affairs.

The war against Grey and absolutism began in 1847 on receipt of the news of the suspension of the Constitution of 1846, and was waged with uncompromising fierceness till victory rested with the popular side and representative institutions were granted. The settlers met, organised, petitioned, and used all legal and constitutional means to obtain the grant of that self-government which they regarded as theirs by right; and the colonial press ably championed their cause. When it was announced that the Act of 1846 was suspended for five years the "Wellington Independent" began a bitter attack on Sir George Grey who had by "his miserable artifices, petty tricks and manoeuvre, succeeded in filching from the Cook Strait settlers those free constitutions which had been conferred upon them by the Imperial Parliament." Nelson joined Wellington in vilifying Grey and his system of Government, which was described as "despotic, -killing as the canker to the rose." In its editorial columns, the "Wellington Independent" on 16th August 1848, asserted that "Englishmen living in these islands, in the absence of representative institutions, (though they are taxed, and heavily, too,) are under the control of robber chiefs, and double-dyed murderers,"⁹

9. Referring to Maori aggressionsof that year.

while at a public meeting held in the following month, Grey was told that his form of Government was "more absolute than that of any other dependency of the British Crown, with the exception of Norfolk Island," and that the colonists were "not so utterly corrupted by the existing prosperity as to be indifferent to the possession of representative institutions." Again, in August, 1848 the "Independent", in a leading article inquired "Why are our recognised rights withheld? Fifteen months ago he (Sir George Grey) stated to the Colonial Secretary that we were fully ripe for these institutions. Here are the very words of His Excellency in his despatch, 'There never was a body of settlers to whom the power of local government could be more wisely and judiciously entrusted than the inhabitants of the settlements to which I am alluding.' Why are they delayed? Have the Southern Settlements become less fit to govern themselves since May 1847? Our present respectable and satisfactory position, and our increasing prosperity will give the indignant negative to that query."

It was now that Grey enacted his Provincial Councils Ordinance (IX No.1.) which provided for nominee provincial councils for New Ulster and New Munster. The measure was greeted with ridicule; Sir George Grey and "his precious nominee boards" became the butt of numerous squibs and satires. The press renewed the struggle; numerous well attended public meetings were held; the

Imperial Parliament and the Queen's ministers were petitioned. This year saw the formation of the Wellington Settlers' Constitutional Association,¹⁰ a body which by its unremitting energy did much for the cause of representative government. Resolutions passed by the Association asserted "the detestation of the colonists towards nominee government as well as to other despotic forms which Sir George Grey has misrepresented." The Wellington Independent¹¹ voiced the colonists' disgust that they, "an offset of that nation which so many centuries ago achieved the freedom which other nations are only now battling to obtain", should still be "doomed for God knows how long, to as vicious, insulting, and debasing a system of government as ever blighted the prospects or crushed the energies of any people." At Nelson the settlers viewed with the greatest satisfaction "the difficulty of Sir George in getting puppets to fill up "the Provincial Council, while those who refused the unenviable positions were hailed as patriots "who had withstood every inducement to betray the cause of freedom and honesty." At a public meeting held in January 1849, the settlers resolved that they, "feeling convinced that the time for introducing representative institutions has arrived..... Now hear with extreme regret that the nominee system which does not possess the confidence of the people of New Zealand, is to be perpetuated." Early in the same

10. 19th December, 1848.

11. 9th September, 1848.

year a petition praying the Imperial Parliament immediately to grant representative government, expressed the conviction of the colonists of New Zealand that "only under representative institutions could any other than a mere ephemeral prosperity be attained in the colony."

By the close of 1849 the struggle had become so bitter that John Robert Godley in a letter addressed to Gladstone asserted that, "whereas the alternative has hitherto appeared to lie between local self-government and the centralism of Downing Street, now it is between local self-government and national independence."¹² Godley was not far from the truth, for in referring to the contemporaneous movements on the Continent, one of the colonial journals threw out an ominous hint: "If we consider the course of the events which have taken place in Europe during the last few months, we shall easily discover the danger of thwarting a people in their progress toward free institutions." Very shortly afterwards, the classic cry was raised, "No taxation without representation."¹³

It was at this stage that the cause of self-government received an accession of strength, by the foundation of the provinces of Otago and Canterbury. Almost immediately these settlements joined forces with the Cook Strait colonists. The Otago settlers¹⁴ asserted that they would "willingly, most willingly, relieve poor

12. Quoted in Hight and Bamford - "Constitutional History and Law of New Zealand." P. 259.

13. Wellington Independent. Editorial 14th March 1849.

14. Otago News, 7th September 1850.

Mrs. Mother Country from all charges connected with the civil administration of the colony, if the dear creature would let us manage our own affairs," while they reiterated their desire to undertake this responsibility in a petition to the Imperial Parliament, (adopted at a public meeting at Dunedin)¹⁵ expressing the belief that "the only means of preventing their being burdensome upon the Home Treasury was to grant them extensive powers of local self-government." They went on to state that they were "mainly induced to proceed to this settlement on the faith of representative institutions and local self government pledged to them by Act of Parliament in 1846 being granted." The regard in which the new settlers held the government was very plainly shown when on 13th May 1851, a meeting was held in Dunedin "to request a certain gentleman not to accept his nomination to be member of the Legislative Council for New Zealand, it being inconsistent with the feeling, and principles of the Otago Settlers.....to have anything to do with a nominee council."

The Canterbury colonists were not a whit less ardent for the cause of representative government. They threw their whole weight into the struggle which had been raging since 1847. In the first issue of the "Lyttelton Times"¹⁶ published twenty-six days after the arrival of the first settlers, their attitude towards nominee government is defined. "We shall adhere to the principles of the

15. 8th December, 1851.

16. 11th January, 1851, edited by James Edward Fitzgerald.

colonial reformers in England..... We shall never cease to oppose the continuance of the present form of government in New Zealand, and to insist upon the introduction of a constitution such as that under which we and our fathers have lived, and in which that great principle of British law shall be recognised to the full, that no Englishman shall be taxed without his consent, signified by his representatives."

It was at this stage that the agitation assumed a new characteristic; it became more positive. The colonists now discussed the form of government most suited to administer to their needs. They demanded "in the first instance, instead of the system of provincial governments, designed only for the sake of the patronage they give, one general government, and that centrally situated". But they had "no idea of a council, even though a representative one, monopolising all the powers of local legislation, which experience has long shown can more efficiently be carried on by the people themselves in municipal bodies."¹⁷ What was needed was a municipal or district council for each settlement, and one general elective council for the whole colony. The resolutions of a public meeting held in Wellington on 3rd February, 1851, were more specific. This meeting was described in a report as "perhaps the largest ever held in the colony," and "was attended by men of every class." Its resolutions there^{fore} embodied the demands of the overwhelming majority of the colonists. It was resolved

that by the term self-government is to be understood the absolute control of all the internal affairs of the colony, without interference whatsoever on the part of the Imperial Government..... To this end it is essential to provide for the RESPONSIBILITY OF THE EXECUTIVE by making their offices dependent on their retaining the confidence of the colonists.....That all legislative power on local matters should be vested in a chamber..... without the presence in it of any nominees of the Crown. That the waste lands of the colony ought to be placed at the disposal of the colonists, to be administered in such a manner as the legislature may from time to time see fit.That the Colonial Parliament should have the full power to alter and amend the constitution in all particulars except those reserved for Imperial jurisdiction." Other resolutions affirmed that Parliaments should be elected triennially, and should be summoned at least once a year. A very short time previously a public meeting at Nelson had made very similar demands, one resolution stating "that the mode of voting should be by ballot."

It is not difficult to imagine the feelings of the colonists when Grey in 1851, proposed the introduction of a measure establishing Provincial Councils of which two-thirds of the members should be elected. "though it was a step in the right direction, it was entirely defective regarded as a measure of responsible government." It was immediately condemned at Wellington as "not

deserving of the colonists' approval or acceptance, inasmuch as it did not confer upon them an effective control over the management of their own affairs." It was "no more than a bad municipal corporation act." The old bitterness is again evident in a leading article of the "Otago Witness" which accused the Governor of having a "bias for arbitrary government," and denounced the measure as a sham, than which nothing more ingenious could have been invented.

It was no longer possible to stem the tide of public opinion. In transmitting to the Crown the Ordinance for creating Provincial Legislative Councils, Grey had outlined the constitution which he recommended as the most suitable to establish at the end of the suspension of the Act of 1846;¹⁸ Among the subjects recommended to the attention of Parliament in the Queen's Speech at the opening of Parliament in 1852 was the new constitution for New Zealand.

18. Dispatch Sir G. Grey to Earl Grey,
30th August, 1851.

CHAPTER II.THE ORIGIN OF THE PARLIAMENT OF
NEW ZEALAND.

In the words of the Interpretation Act₁ the term "Parliament" means both Houses of the General Assembly of New Zealand in Parliament assembled."

The Imperial Parliament of about 1850₂ was bicameral in form, consisting of the House of Lords and the House of Commons. The Upper Chamber consisted of the Lords Spiritual and the Lords Temporal; the Lords of Appeal in Ordinary had not at this date been created. The Lords Spiritual were summoned to the House by writ of summons as were also the Peers of England. Only those Peers of Scotland and Ireland who were elected by their brother Peers, as representatives, could sit in the House of Lords.

From members of the House of Commons a property qualification was at this time required, but evasion was easy₃. The disqualifications of infancy, unsoundness of mind, the holding of a peerage, and the office of clergyman held as they do today.

The qualifications required from electors were those prescribed by the Reform Act of 1832. In the English counties both property and occupation qualifications entitled electors to a vote. Forty-shilling freeholders, £10 long leaseholders, £10 copy-holders, and £50 short lease-

1. 1908, No. 1, Sect. 5.

2. Approximately the date of passing of New Zealand Constitution Act.

holders, could vote along with £50 occupiers, while in the boroughs, forty-shilling freeholders and £10 occupiers could exercise the right to vote.⁴

In Scotland the legislation of 1832 swept away the old franchises and altered the distribution of seats. It created property and occupation franchises in counties and an occupation franchise in boroughs, similar to those of England in character and amount. The old borough qualifications were swept away in Ireland, too, and the occupation franchise was introduced, while the qualification was extended to leaseholders.

As a result of this simplification of the franchise and the redistribution of seats which accompanied it, the electoral power lay, in the counties, in the hands of the landowners, and, in the towns, in the hands of the middle classes, - the merchant, manufacturers and shopkeepers, who were generally satisfied with their new powers.^{4a} The working classes however, were disappointed.

The functions of the two houses were then much as they were subsequently, up to 1911. The House of Lords exercised its legislative and judicial functions. Its power of legislation was equal to that of the Lower House, on all points except that of finance, though in practice its main function was revision, and rejection. Till 1860 the Lords maintained their right to reject money bills.⁵

They exercised too, control over the English courts of

3. Ilbert - Parliament 63. (common

4. Anson - Law and Custom of the Constitution
Vol. I. 104 et seq.

4a. Butler, "The passing of the Great Reform Bill," p 424.

law, by way of appeal.

The House of Commons exercised its legislative power, and controlled the executive. After 1834 a minister, though possessing the royal confidence, could not carry on the administration with a minority in the House of Commons. Both the control of the executive and that of financial policy and public revenue were entirely in the hands of the Commons, while this house also discussed abuses and sought the redress of grievances. Its control of the executive was then much more real and effective than it has been since about 1885, when the introduction of single-member constituencies and the rigid organisation of parties shifted the balance of power from the Commons₆ to the electorate.

The procedure at the opening, prorogation and dissolution of Parliament has not changed greatly since 1850. Both houses met on the day mentioned in the proclamation of summons, each house assembling in its own chamber. The Commons were summoned to the Lords' chamber where the Chancellor desired them to choose a Speaker. The election completed, the Lower House returned to its own chamber, and evidence of membership was given, titles to sit perfected, and oaths administered. The Commons were then summoned to the Lords' chamber where the King, or Chancellor in the absence of the latter, read the speech from the throne. Adjournment then took place and the consideration of the

5. Anson 269. *Lyttelton Times*, 11th Jan., 1851.

6. Anson Vol. II Pt. I p. 130-6.

Low, "Governance of England," Ch. IV, V.

King's speech, after which the address-in-reply was presented.

Prorogation brought the session of Parliament to an end, and took place by Royal Prerogative while dissolution brought a Parliament to an end and was effected either by royal prerogative or efflux of time. About 1850,⁷ the existence of Parliament was affected by demise of the Crown. 7 and 8 William III c 15 enacted that Parliament should last for six months after the demise of the Crown, if not sooner dissolved by the new sovereign.

Legislative procedure was the same in most particulars as it is today except for the alterations made by the Parliament Act of 1911. Public bills went through three readings, but at this time the expedients of the closure, and the guillotine were not used to check debate.⁸ The procedure in the Lords was much on the same lines. In the event of amendment in the House of Lords the bill was sent back to the Commons with a message. The Commons then returned the bill with a message signifying their agreement or disagreement. In the event of disagreement, conferences were held or more generally the reasons for disagreement were given by the dissentient house.

Money bills then, as now, could be introduced only on the recommendation of the Crown, and were always initiated in the Commons in committee of supply. This had been so

7. Till 1867. 30 and 31 Vict., c.102 51 provides that "a Parliament in being shall not be dissolved or determined by a demise of the Crown.
8. Not till 1881.

since 1678 when the Commons adopted a resolution that all bills granting supplies "ought to begin" with that house. Since 1670 too, the Commons had refused "to consider bills in which the Lords had inserted or amended financial provisions, and though the Lords had never expressly admitted the claim they had in fact submitted to it."⁹ Till 1860, however, the Lords asserted their claim to reject financial measures. In 1850, then, the House of Lords could not initiate or amend money bills but claimed the right to reject them.

Parliament subsequently to the passing of the Reform Act exhibited certain well defined characteristics. The conventions associated with party government and ministerial responsibility were faithfully observed, and the responsibility of the government for the initiation of legislation was recognised.¹⁰ Hence legislation covered a wider field than it had done, and the amount of private members legislation steadily diminished. Privilege played its part as the defensive weapon of the House. The character of the Lower House at the time of which we are speaking may be given in the words of Sidney Low; "At no time in its career has the House of Commons been more powerful and more efficient than it was during the first three decades of Queen Victoria's reign."¹¹

At this time a remarkable feature of the House of Lords was its unobtrusiveness. The conduct of this body was

9. Lowell - Government of England.

10. Ilbert - Parliament p. 52

11. Governance of England p. 229

"marked as a rule, by a natural timidity and a shrinking desire to avoid forcing itself upon the hostile notice of those still dreaded and unfamiliar legions whom the Reform Bill.....had brought into the field."

12

Parliament does not govern directly. "Parliamentary government" then is not immediate government by Parliament. The administration of state affairs is carried on by the cabinet, which is a party committee, selected by the leader of the party with the majority in the Commons from among the members of his own party. It meets in secret and its proceedings are informal; no records or minutes are kept.¹³ The Prime Minister is the chief member of the cabinet, and to him the other ministers are subordinate. The outstanding characteristic of the cabinet is the collective responsibility of its members to the Lower House of the legislature. Though ministers of the Crown, members of the cabinet are also members of the legislature, and are liable to be called upon to defend their policy in Parliament. Once a cabinet forfeits the confidence of the house, it resigns control of the administration. As members of the Lower House, ministers are responsible to the electorate.

12. Low - Ib. 227 - 8.

13. This was so till Dec. 1916 when Mr. Lloyd-George took office at the head of the reconstructed coalition, and the former system was superseded. A War Cabinet was set up of the Prime Minister and four or five others, all without other administrative duties, and distinct from ministers in charge of Departments of State. They were rarely in Parliament, only to answer very important questions. Some e.g. Smuts were not even members of Parliament. Minutes were kept, hence the old

Conventions or tacit understandings have played a large part in the growth of the British Constitution; not the least important of these are the rules associated with the practical working of the principles of responsible or parliamentary government. For all that legal theory knows of it, parliamentary government is non-existent, and "no statute, no rule of common law, no resolution of either House of Parliament, has yet recognised the cabinet."¹⁴ The "Act to grant a Representative Constitution to the colony of New Zealand" received the royal assent on the 20th June, 1852. It provided (sections 2-31) for the establishment of six provinces, in each of which there was to be a Superintendent and a Provincial Council of not fewer than nine members. The maximum duration of a Provincial Council was to be four years. Sections 32-72 dealt with the General Assembly, which was to consist of a Governor, a Legislative Council, and a House of Representatives. The members of the Legislative Council ~~were~~ were to number not fewer than ten, and were to be nominated by the Crown, for life, while the members of the House of Representatives were to be elected for a period not exceeding five years. The powers of the

13. secrecy was gone. The meetings were attended by a Secretary, and a special Prime Minister's secretariate. was instituted as was also a Standing Committee on Home Affairs consisting of all ministers outside the War Cabinet. In October 1919, the War Cabinet was replaced by a full cabinet of twenty members. Permanent results upon the cabinet system were thus produced. The Prime Minister rarely attends in the House of Commons, while a secretary now attends cabinet meetings and keeps minutes. There is also a greater use of committees within the cabinet on special questions, e.g. Ireland, Local Government and Finance.

14. Sidney Low. Governance of England. p.10. (quoted).

General Assembly were detailed in sections 5, 53, 54, 61, 68, 69, and 72. It should be lawful for the General Assembly to make laws for the peace, order, and good government of New Zealand, such laws being not repugnant to the laws of England.¹⁵ Legislation of the General Assembly was to supersede laws or ordinances repugnant thereto made by the Provincial Council. No duties were to be levied on supplies for troops, nor any ~~laws~~ contrary to treaties concluded by Her Majesty with any foreign power. Section 68 provided, "It shall be lawful for the said General Assembly, by any act, or acts to alter from time to time the provisions of this act and alter any laws for the time being in force concerning the election of members of the said House of Representatives, and the qualification of electors and members, provided that every bill for any such purposes shall be reserved for the signification of Her Majesty's pleasure thereon, and a copy of such bill shall be laid before both Houses of Parliament for the space of thirty days at the least, before Her Majesty's pleasure thereon shall be signified. Sections 69 and 72 empowered the General Assembly to constitute provinces, to alter the provisions concerning the election of members, and to regulate the sale of waste lands.¹⁶ It was enacted

15. "Repugnance" was defined in the Colonial Laws Validity Act of 1865 to mean repugnance "to the provisions of any Act of Parliament extending to the colony to which such law may relate," or "to any order or regulation made under authority of such Act of Parliament or having in the colony the force and effect of such act. No colonial law should "be deemed to be void or inoperative on the ground of repugnance to the Law of England unless the same should be repugnant to the provisions of some such Act of Parliament, order, or regulation, as aforesaid."

by section 54 that it should not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to any bill appropriating to the Public Service any sum of money from, or out of her Majesty's revenue within New Zealand, unless the Governor on Her Majesty's behalf should first recommend to the House of Representatives to make provision for the specific Public Service towards which such money should be appropriated, and (save as therein otherwise provided) no part of her Majesty's revenues within New Zealand should be issued except in pursuance of warrant under the hand of the Governor directed to the Public Treasurer thereof. Until provision should otherwise be made, (section 45) the House of Representatives should be judges without appeal of the validity of the election of each member thereof.

The Governor was empowered, for the purpose of constituting the House of Representatives, to summon and call together that House, from time to time as occasion should require. He might also by proclamation appoint the place of meeting within New Zealand, and the time at which the Assembly should be held, and might at his pleasure prorogue or dissolve the General Assembly. He could assent to, refuse assent to, or reserve bills, and was to conform to instructions transmitted by Her Majesty. Her Majesty's disallowance of a bill assented to by the Governor might be declared within two years of receipt of same, by the Secretary of State, and no reserved bill was to have any force until assented to by Her Majesty.

16. The first Colonial Constitution Act in which this power was conceded.

Sections 41 and 43 of the Act made provision for the first elections in New Zealand, while section 42 laid down that on every man owning land to the value of £50, or leasing a house of the annual value of £10, or occupying a tenement of the value of £10 in a town or £5 in the country, should be conferred the right to vote.

The procedure to be adopted in the House when they should meet, was also in part defined in the Constitution Act. No member of the said Legislative Council or House of Representatives should be permitted to sit or vote therein until he should subscribe to an oath prescribed, or should make an affirmation or declaration in lieu thereof. The House of Representatives should, immediately on their first meeting proceed to the choice of one of their members as their Speaker during the continuance of the said House, which choice should be confirmed by the Governor. Resignation of a seat in the Lower House might be effected by intimation in writing to the Speaker to that effect. When and so often as a vacancy should occur as aforesaid in any seat in the said House of Representatives it should be lawful for such House to address the Governor, stating the existence of such vacancy and the cause thereof, and the Governor upon receiving such address should cause a writ to be issued for supplying such vacancy. Section 52 read:- "The said Legislative Council and House of Representatives at the first sitting of each respectively, and from time to time afterwards as there shall be occasion, shall prepare and adopt

such standing rules and orders as shall appear to the said Council and House of Representatives, respectively best adapted to the orderly conduct of the business of such Council and House respectively, and for the manner in which such Council and House respectively shall be presided over in case of the absence of the Speaker and ^{and House} for the mode in which such Council, shall confer, correspond, and communicate with each other relative to votes and bills passed by or pending in such Council and House respectively, and for the manner in which notices of bills, resolutions and other business intended to be submitted to such Council and House respectively at any session thereof may be published in the government Gazette or otherwise for general information for some convenient space or time before the meeting of such Council and House respectively and for the proper framing, entitling and numbering of the bills to be introduced into and passed by the said Council and House of Representatives, all of which rules and orders shall be by such Council and House respectively be laid before the Governor and being by him approved shall become binding and of force, but subject nevertheless to the confirmation or disallowance of Her Majesty in manner hereafter provided respecting the Acts to be made by the Governor with the advice and consent of the said Legislative Council and House of Representatives; provided that no such rule or order shall be of force to subject any person, not being a member or officer of the Council or House to which it relates, to any pain, penalty,

or forfeiture." The procedure to be adopted in the case of money bills was defined in section 54, which has been quoted in another connection.¹⁷

It is worthy of note that the term "Parliament" does not occur in the Act with reference to the New Zealand Legislature, but always the old term, "General Assembly," which had been applied to colonial legislatures since their establishment in the American Colonies in the seventeenth century.

"Such was the constitution the grant of which freed New Zealand from the domination of the Colonial Office." In many respects it was experimental. In asking leave to bring in the "New Zealand Government Bill," Sir John Pakington, Secretary of State for the Colonies, warned members of the House of Commons that the Government "in shadowing out a scheme of this kind, though sanctioned by the best authority," could not hope to look upon it as a final and permanent settlement of the difficult question as to the manner in which the residents of a distant colony could best govern themselves and look after their own affairs. The constitution could be regarded only "as the commencement of a system;" a clause had been introduced into the bill "fully enabling the Legislature of New Zealand from time to time to propose and enact such changes in the institutions of the colony as they might think proper."¹⁸ These alterations of course were to be

17. P. 28.

18. Hansard, Parliamentary Debates, Vol. 121, P. 118.

reserved for the ultimate consent of the Crown. As Gladstone so well said, "the Right Hon. Gentleman (Sir John Pakington) does not attempt to exempt any one of the clauses of the bill from the touch of the profane hands of the Colonial Legislature."¹⁹

It cannot be denied that the Constitution Act was a liberal measure. The Colonial Parliament was to consist of two chambers, one nominee, it is true, but the other elected on a very liberal franchise. The powers of the Assembly were very wide, embracing as they did the right of altering the constitution, and the control of the waste lands of the Crown. The customary restrictions were, of course, imposed. Laws of the Colonial Legislature must not be repugnant to those of England, nor must such subjects as trade, military forces and native control come within the cognisance of the Colonial Parliament. Then the Governor exercised the right of veto. Though the Executive was not specifically responsible to the House of Representatives, the way was left clear for cabinet government.

The system of provincial government was "designed to carry out in each province the work of subordinate legislation and administration.....Though the machinery was faulty the system was a sound one and well suited to the circumstances of the young colony. The centres of population were distinct and isolated, and

19. Hansard, Parliamentary Debates, Vol.121,p.964.

the difficulties of transit and communication great." Wakefield had recognised this when he wrote "Evil happens when the area of the colony is so large and its means of communication so deficient, that the seat of government is what London has been.....to many remote dependencies. In such cases the benefits of government.....are confined to the seat of government and its immediate neighbourhood. The rest of the country is neglected and stagnates almost without government."²⁰

The Constitution Act, however, did not provide for the institution of that form of government called a federation. As will be seen below, this question received much attention both from the framers of the Act and from members of the House of Commons interested in Colonial affairs. "In a federal government the central and local authorities derive their power from an anti-source cedent/and neither is legally competent to defeat the other,"²¹ but in New Zealand this was not so. The provincial bodies, though called into existence by Act of the Imperial Parliament, existed by tacit recognition of the central government, which had power to terminate their existence, a power which was actually exercised in 1875, when the central government secured the passage of an "Act for the Abolition of the Provinces"(1875, No.21). Though thirteen subjects were specifically placed beyond the jurisdiction of the Provincial

20. Hight and Bamford - "Constitutional History and Law of New Zealand", p.264

21. Leacock, Elements of Political Science, p.118.

Legislatures, there were none of purely local significance upon which the Parliament could not legislate, while laws of the General Assembly might control and supersede any ordinances of the Provincial Councils repugnant thereto. Then, too, it was within the power of the Governor, within three months, to disallow the election of a Superintendent, and to dissolve a Provincial Council.

The Constitution Act therefore established a government of the unitary type.

An analysis of the debates on the Parliamentary sections of the Constitution Act, in the Imperial Parliament, is of the utmost value in revealing the influences which determined the form and functions of the New Zealand Parliament as constituted by the Act of 1852.

It was generally agreed that, as far as possible, the colonial constitution should be modelled upon that of the Home country. Hence there was no question as to whether the Legislature should be uni-cameral or bi-cameral; it was taken for granted that a bi-cameral system would meet the needs of the colonists.

There were two problems to solve, the constitution of the Legislative Council, and the respective powers and functions of the central and provincial Legislatures. It was around these two questions that most of the debating, both in the Lords and in the Commons, centred.

Fakington, in asking leave to bring in the Bill, sketched its main provisions. Earl Grey had thought the Upper Chamber should be elected by the Provincial Councils, each of which should return three members. But for this there was no precedent; the Government thought, the Councillors should be nominated for life.

Even at this early stage, protests were heard against an Upper Chamber constituted on the nominee principle. Sir William Molesworth prophesied that the Right Hon. Baronet would find that nominees of the Crown would not command any respect, influence, or weight with the inhabitants of New Zealand; C. B. Adderley characterised the provision a "great blot in the measure, for honourable members knew very well how these nominees stunk in the nostrils of every colony in which the system had been tried." Nominees were not independent; they were tools of the Crown; their Chamber was a caricature of the House of Lords. In Lord John Russell's opinion, a nominated Upper Chamber was justifiable as it imaged the British constitution, though of course it did not involve an hereditary peerage. Yet it seemed not to command the respect it ought.

To the motion for second reading Molesworth and Gladstone spoke very energetically against the principle of the nominated chamber. The latter favoured Earl Grey's plan, and referred to the desire prevalent in Canada and Nova Scotia for elective Upper Chambers.

He affirmed most vehemently that there was no necessity to "represent the interests of Great Britain in the colony by a nominated body, because the interests of the homeland were those of the colonists."²²

Pakington's objection to an elective Upper House at this stage seemed to be the difficulty of finding a mode of election whereby a chamber could be constituted to act as a check upon the Lower Chamber. When the House went into Committee, expedients were suggested; Mowatt, member for Penryn, advised the simple plan of raising the qualification, either of electors, or candidates for election, or both. Molesworth suggested election by "the people," for a long period, say eight years.

It was in committee that many of the smaller fry of the House attacked this provision of the Bill. Carter, member for Tavistock, characterised it "an attempt to establish a bungling imitation of the House of Lords in a new settlement." Forster asserted the nominated chamber would be "merely a screen for the exercise of the Governor's authority." But the member for Leominster, Peel, made a masterly analysis of the question. The advantages of the second chamber were two; it provided a check on haste by virtue of the necessity of a second consideration of measures; it prevented the representative of the Crown from coming into direct collision with the will of the people, which would be the case with a single chamber when the Governor vetoed a bill. Now the House

22. Hansard, P.D. Vol. 121, p.979.

of Lords was qualified by the possession of inherent force and vitality, to resist public opinion while yet commanding the respect of the country. This was because it was composed of persons with big territorial possessions, and persons who had been ennobled for services they had rendered, or services which had been rendered by those who stood in the direct line of their ancestry. But what resemblance would a nominated chamber bear to the House of Lords? The Governor might select whom he pleased for membership irrespective of territorial possessions or any other condition of eligibility. A body so constituted could not command colonial respect. Being appointed for life its members would form a close oligarchy which would rather impede the progress of measures conducing to the advantage of the whole colony. In the event of RESPONSIBLE GOVERNMENT developing the Council would be still further depressed in public estimation because it would become subservient to party interests.

Adderley it was who appealed to history. New England had an elective Upper chamber; the Senate in the United States was elected; now Canada was agitating for an elective Upper House, and it was the conservative party in that country which was leading the agitation. Anstey and Vernon Smith brought forward a new principle. By whom was it desired, queried the former, that the constitution of Great Britain should be imitated as far as possible in the colonies? Was it by theorists on their side of the ocean or by the colonists

themselves? He had never been able to satisfy himself that there was any need for a second chamber at all!

Lord John Manners looked to the future. He would ask whether the results from the nominated Legislative Council would be the same as those from the House of Lords. He thought they would. Then "they had the germ of a New Zealand House of Lords!" Today the Legislative Council is disrespectfully dubbed "the Old Men's Home" by more than one respectable citizen in this country, and every session we hear clamours for its abolition. Our New Zealand House of Lords!

The Government position was defended by Sir John Pakington. It was the duty of the House to see that the institutions of the colonies were assimilated as closely as possible to those of the mother country. The only way to obtain the closest possible analogy to the House of Lords was to give to the Crown the right to nominate members of the Second Chamber; the only difference between the Upper House in Great Britain and that in New Zealand would be that in the latter case the dignity would not be hereditary.

This was not the first time Pakington had spoken of making the colonial constitution a reflection of the constitution of the mother country. More than once he had objected to "drawing a precedent from the United States." His croquet he defended by declaring his unalterable opinion that "the revising function

would be much more efficiently discharged by an independent body of men than by an elected chamber."

The division list showed 132 for the clause as it stood, 89 against. New Zealand was to have a "House of Lords."

In the Lords this clause was again attacked. The Duke of Newcastle protested that a body of nominees would never be found in New Zealand, "to pay that attention to Government business, which was required from a House of Assembly." The idea was "an old fashioned notion." The Government was "pursuing the shadow and not the substance of the conservative principle." "Talk of a House of Lords being made in the colonies out of the nominee elements of the Crown! - why it was laughable!" Why give the Governor another power of veto - that which he might exercise through "swamping" the Assembly with new nominees? Let them insist on a higher qualification of electors or elected; give them a longer tenure of seats; make the local Legislatures themselves the electors of the central Upper Chamber. So said Earl Grey. But in committee Newcastle's motion for omission of the clause was defeated.

It was generally agreed that some machinery for local government should be set up for New Zealand, but the relative powers to be exercised by the central and provincial legislatures presented a problem for solution by the Government. Should the provinces be treated "as independent colonies forming a federal colony with one

general legislature governing the whole, after the model of the United States," or should those detached communities be regarded as "portions of one colony having each a local legislature, not exactly in the nature of a municipality but still approaching that character, with one central Government exercising a general superintendence over all?" Pakington decided on the second plan; he preferred the unitary constitution.

When the motion for second reading was being debated, Adderley and Gladstone protested against the "concurrent powers of legislation" possessed by the General Assembly and the Provincial Councils. Adderley considered it a blot on the measure. The desired end would be obtained if a definite set of subjects could be given to the central Legislature and if matters of purely local concern were left entirely to local bodies. He favoured the federal principle. Gladstone feared that the absence of a division of power meant "uncertainty, conflict and confusion..... It must ever lead to annoyance and angry feeling." Peel on the other hand defended the Government's scheme and asserted that as the General Assembly could over-ride provincial legislation there could be no conflict. He considered the merit of the scheme was its elasticity.²³

In committee Pakington defended the system of "concurrent powers." The plan of dividing powers would lead to very great confusion. To define the boundary

23. Hansard. Vol. 121, p 950.

between the powers of the Central and Provincial Legislatures would be a matter of extreme difficulty.

Molesworth, however, proposed the omission of cl. 2-32 (those providing for provincial legislatures), and in their stead the insertion of a clause empowering the General Assembly to set up municipalities with councils to have power to make orders and by-laws subject to the control of the General Assembly. He doubted the wisdom of establishing "a hexarchy in New Zealand." The amendment was defeated.

In the Lords too, Adderley's complaint was voiced by Lord Lyttelton, but no amendment was forthcoming.

From the foregoing analysis of the debates on the parliamentary sections of the Constitution Act it is evident that Sir John Pakington was greatly influenced by the English Constitution. The measure was not his, however. He admitted in introducing the Bill, that it "would have been impossible for him to have attempted the settlement of the question had it not been for the assistance he had derived from the preparation of a measure which was left in the office by his predecessor, Earl Grey."²⁴ Again in a dispatch to Sir George Grey of 16th July 1852, he stated, "When the seals of this department were committed to me.....I found the heads of a bill for the same purpose already in preparation under the directions of my predecessor, Earl Grey, and

24. Hansard, Vol. 121, pp 103-4.

did not hesitate to adopt the general outlines of the measure thus originated."²⁵

But Earl Grey was greatly indebted to Sir George Grey. In a dispatch of February 1852, he acknowledged Sir George's dispatch of 30th August 1851, explaining the latter's views with respect to the system best adapted to the existing condition of New Zealand. "It has been of great service in preparing the enclosed heads of a bill which it is the intention of Her Majesty's Government to introduce into Parliament this session." Sir John Pakington too, acknowledged this, when he wrote in a dispatch of July 1852 to the Governor of New Zealand, that the measure "owes its shape in a great degree to your valuable suggestions."

It was the desire of Sir George Grey to follow, as far as possible, the English Constitution. In the dispatch of 30th August, 1851, just quoted, he informed the noble Earl that "the main feature of the plan now submitted to your Lordship's consideration is that it is an attempt to adjust the English constitution, and its balance of powers, to the particular circumstances of this country." He recommended a bicameral legislature, but he recognised, as Pakington did not, that the Upper House should not resemble the House of Lords. He suggested that it should be elected, and here he appealed to the constitution of the United States, wherein the election of the Federal Upper Chamber by the State

25. N. Z. Gazette, in which the dispatch is printed.

Legislatures is provided for.²⁶ But this particular provision, though approved by Earl Grey, was rejected by Sir John Pakington, who desired to make the constitutions of the colonies reflections of that of the Mother Country.

Though Grey was influenced by the constitution of the United States, he was careful to ensure the subordination of the Provincial Councils to the Central Government, by giving an over-riding legislative power to the central Legislature, and the power of dissolution to the Governor. Yet he did not err on the side of allowing the central Government opportunity of aggression toward the Provincial Councils. This was the reason for his recommending the election of the Upper House by the Provincial Councils, an expedient which would have tempered the control exercised by the General Assembly. But Pakington, having in mind the precedent of Canada in 1840, preferred the nominated Council. His view was that an elected Council would be too powerful, a circumstance which would give rise to an undue number of disputes between the two Houses.

Was parliamentary government intended by the Constitution Act? We should not expect to find reference to it in the Act, for "the principles on which that form of government rests, would not be found in colonial constitutions any more than the identical principles of cabinet or parliamentary government in the United Kingdom

26. Collier, Life of Sir George Grey p 81. W.L. and L. Rees, Life and Times of Sir George Grey, p 138.

are to be found in any Act of Parliament."²⁷

It is significant that in the debates on the Act in the House of Commons, one member, Peel, for Leominster,²⁸ was alive to the probability of the establishment of responsible government in New Zealand.

But what were the opinions of men more closely connected with the Bill? "Earl Grey was possessed of the idea that it was practicable to give representative institutions and then stop without giving responsible government."²⁹ His notion of colonial constitutions was "something like the English constitution under Elizabeth and the Stuarts."²⁹ He once referred to "the inexpediency of adopting the suggestion which has sometimes been made, that the system of government in all the colonies possessing representative institutions should be assimilated to that which now exists in Canada."³⁰ He considered that the parliamentary system would not work satisfactorily in the colonies at that time because of the small number of the representatives in the Lower Houses. But this difficulty would disappear with subsequent development, and we find him writing that parliamentary government "may therefore be regarded as the form which representative institutions, when they acquire their full development, are likely to take in the British Colonies."³¹

27. Ilbert *op.cit* p 243.

28. See above p 36, and Hansard, Vol. 122, p 50.

29. Lord Blanchford, quoted in Childe-Pemberton, *Life of Lord Norton* p 71.

30. Earl Grey, *Colonial Policy of Lord John Russell's Administration*, Vol. 1. p. 53.

In 1849, the Society for the Reform of Colonial Government was formed in England. This Society promoted an entire change of policy in colonial affairs, and had many representatives in the House of Commons, chief among whom was Mr. C. B. Adderley, afterwards Lord Norton. "Responsible government of the colonies by themselves under the banner of imperial unity and fellowship," may be said to have been the ideal of the first organisers of the new society.³² "The general object of the society," in the words of the prospectus, was "to aid in obtaining for every dependency, which is a true colony of England, the real and sole management of all local affairs by the colony itself, including the disposal of the waste lands and the right to frame and alter its local constitution at pleasure." Here, then, was a powerful body of opinion making for the establishment of liberal institutions in the colonies.

At the time of the passing of the New Zealand Constitution Act, the views of the Durham School were still very fashionable, and Edward Gibbon Wakefield, Durham's unofficial adviser, through his activities outside Parliament, played some considerable part, according to Childe-Pemberton, in securing the passage of the Bill. Now the first article in Wakefield's political creed was responsible government.³³

31. Earl Grey, op. cit. Vol. I. p 33.

32. Childe-Pemberton, op. cit, p 79.

33. See Wakefield's Letters, esp. to Rintoul 16th April, 1853.

Almost the first business of the General Assembly of New Zealand was the consideration of Wakefield's now famous resolution in favour of responsible government. It is inconceivable that the authors of an act which was "framed in the broadest spirit of the Durham Report" should not have contemplated the ultimate establishment of responsible government.

Other circumstances must be considered. The persistent agitation in the New Zealand Company's settlements had been for full self government.³⁴ Then, during the period of Earl Grey's administration of colonial affairs the instability of representative government had been recognised, when responsible government had been established in Canada, New Brunswick and Prince Edward Island, and although the Secretary of State for the Colonies might think it inexpedient to allow the institution of this form of government in other colonies possessing representative institutions, a precedent had already been established.

Although the New Zealand Act might "not on its face ^{have} contemplated responsible government,"³⁵ it was the intention of the authorities in the Colonial Office to raise no objection to the establishment of this form of government, when the colonists so desired.

If the grant of responsible government were contemplated by the Act, it must be attributed for the

34. See Chapter I.

35. Egerton, *Short History of British Colonial Policy*, p 318.

most part, to the desire of the Liberals whose champions were Durham, Buller, and Wakefield, for the closer union of the New British Empire, and for the greater goodwill in Imperial relations. Yet it is possible that it was owing on the part of some, to that "lurking contempt for empire, or even to that definite hope of separation which was soon to prevail so strongly in England."³⁶ Nevertheless the grant of representative institutions was the outcome of a sturdy national movement in the colony, which was not satisfied until ministers responsible to the Colonial Parliament composed the Executive Council.

How then was responsible government to be instituted? A precedent had already been established in Canada, in 1848, when it sufficed to instruct the Governor, Lord Elgin, that he was to select his advisers from among those who commanded a majority in the Legislature, and that he was to be guided by their advice in all matters except those of Imperial moment. Elgin's instructions were very similar to those issued to the Lieut.-Governor of Nova Scotia, which stated that "responsible government was to mean a change in the position of the Governor. The transfer of power from one party to another was to be made to appear as the result of the wishes of the people; the Executive Council was not to be changed arbitrarily, but only when it was clear

36. Hight and Bamford, Constitutional History and Law of New Zealand, p. 266.

that it did not possess the confidence of the Legislature. The Governor was not to identify himself with any particular party, and was in general to act the part of mediator between extremes. The power to forbid certain acts of the colonial Executive in matters of high Imperial interest was indeed recognised, but was to be exerted 'sparingly', and only on matters of very grave concern."³⁷ In the same way responsible government was, as will be shown in detail later, instituted in New Zealand, in 1856.

37. Lord Elgin conformed to the spirit of these instructions when he assented to the "Indemnification Act" in 1848. See Cambridge Modern History, Vol XI p 760.

CHAPTER III.THE FIRST GENERAL ELECTION.

The steps to be taken to give effect to the Constitution Act in New Zealand, were indicated in the Act itself, section lxxxi of which stated that the Act should "be proclaimed in New Zealand by the Governor thereof, within six weeks after a copy of such act, should have been received by such Governor," and save as therein expressly provided should "take effect in New Zealand from the day of such proclamation thereof." Section 82 laid down that "the proclamation of the Act and all proclamations to be made under the provisions thereof, should be published in the New Zealand Government Gazette." Accordingly, Sir George Grey published in the Gazette, under date 17th January 1853, a proclamation which announced that he had received a copy of the said Act, and that it should take effect immediately.

The arrangements to be put in train for the conduct of the first General Election, were recited in the Constitution Act, sections 41 - 43 which read as follows:-

"It shall be lawful for the Governor by proclamation to constitute within New Zealand convenient electoral districts for the election of members of the said House of Representatives, and to appoint and declare the number of such members to be elected for each such

district, and to make provision (so far as may be necessary beyond the provision which may be made for the like purposes in relation to the elections for Provincial Councils) for the registration and revision of lists of all persons qualified to vote at the elections to be holden within such district, and also provision for the appointment of returning officers, and for issuing, executing and returning the necessary writs for elections of members of the House of Representatives, and for taking the poll thereat and otherwise for ensuring the orderly, effective and impartial conduct of such elections; and in determining the number and extent of such electoral districts, and the number of members to be elected for each district regard shall be had to the number of electors within the same so that the number of members to be assigned to any one district may bear to the whole number of the members of the House of Representatives as nearly as may be, the same proportion as the number of electors within such district shall bear to the whole number of electors in New Zealand."

Section 42 recited the qualifications for electors as they appeared in the Constitution Act.

"The Governor shall cause the first writs for the election of members of the said House of Representatives to be issued at some time not later than six calendar months next after the proclamation of this act in New Zealand, and upon the expiration of the said

period of the continuance of the House of Representatives or upon the previous determination of such house by the dissolution of the General Assembly, the Governor shall cause writs to be issued for the election of members of the ensuing House of Representatives."

In accordance with section 41 of the Constitution Act, the Governor, on 16th March, 1853, issued a lengthy proclamation to take effect immediately, providing for the division of the country into electoral districts, declaring the number of members to be elected, and regulating the preliminaries for, and conduct of, the General Election. The first paragraph proclaimed that, the House of Representatives was to consist of thirty-seven members, and the second that for purposes of the election of these members there were to be twenty-four electoral districts.¹ Following this, details were given of the number of Members of the House of Representatives to be elected for each electoral district. The voters' qualifications were recited as they appeared in the Constitution Act, and directions given for the enrolment of electors. No person was to be qualified to vote unless he should prefer a claim, and unless such claim were enrolled in a manner prescribed.

1. The following were the electoral districts constituted and the number of members (in brackets) to be returned from each:-

- | | |
|------------------------------------|--|
| 1. City of Auckland (3) | 9. The Omata Districts (1) |
| 2. Suburbs of Auckland (2) | 10. City of Wellington (3) |
| 3. Pensioner Settlements (2) | 11. Wellington Country District (1) |
| 4. Northern Division (2) | 12. Hutt District (2) |
| 5. Southern Division (2) | 13. Wairarapa and Hawke's Bay Districts. (1) |
| 6. Bay of Islands (1) | |
| 7. Town of New Plymouth (1) | |
| 8. The Grey and Bell Districts (1) | |

Claims were to be in writing, were to state the name of the district in respect of which they were preferred, the place of abode and calling or business of the claimants as well as the qualifications in respect of which the claims were made, and were to bear the signatures of the claimants. Lists of claims were to be prepared by Resident Magistrates or some other fit persons appointed for that purpose, who were to call a special meeting of the Justices of the Peace residing within their districts, to hear and determine objections to the inclusion of the names of any persons on the list. From this list was to be compiled the electoral roll, the names of all persons to whom no objection should have been made being retained, and also the names of persons objected to, unless the party objecting should have appeared to support the objection made. Proof of qualification was required from those persons objected to as electors. Copies of the electoral roll were to be published for general information; polling places were provided for, and the conditions of the appointment of returning officers laid down. Returning Officers for the electoral districts were to be Resident Magistrates residing in the district, or such other persons as the Governor or persons deputed by him might appoint, while principal returning officers of the

- | | |
|---|---------------------------------------|
| 1. (Cont.) | 19. Town of Christchurch (1-) |
| 14. Wanganui & Rangitikei Districts (1) | 20. Christchurch Country District (2) |
| 15. Town of Nelson (2) | 21. Town of Lyttelton (1) |
| 16. Waimea District (2) | 22. Akaroa District (1) |
| 17. Motueka Massacre Bay Districts (1) | 23. Town of Dunedin (1) |
| 18. Wairau District (1) | 24. Dunedin Country District (2). |

capital towns in provinces were to be the Resident Magistrates of the district in which such capital town might be situated. Writs for the election of Members of the House of Representatives, (Superintendents, and Provincial Councillors) were to be issued by the Governor under his hand, were to be directed to the returning officer for the district, and were to state the number of days within which they should be made returnable to the Governor. Provision was made for fixing the days of nomination and voting, and directions given as to the conduct thereof. On the day of nomination, the returning officer should preside at a meeting to be held at noon at the chief polling place for the district and should declare the purpose for which such meeting was held, If at such meeting there should be no more candidates proposed than the number of members to be returned, the returning officer should declare such candidate or candidates to be duly elected, and make his return accordingly. In the event of there being more candidates than the number to be elected, the returning officer should call for a show of hands separately in favour of each candidate, and after such show of hands should declare the person or persons on whom the election had fallen and should return the same accordingly unless a poll be demanded by some one of the candidates or by not less than six electors on his behalf.²

2. In these matters the Governor followed the English practice, in vogue before 1872, Anson - Law and Custom of the Constitution Vol. I pp 137-8.

Should such a demand as aforesaid be made for a poll, the poll should be taken, the voting to commence at any time after nine o'clock of the said day and to close at four o'clock in the afternoon of the said day.

The polling should take place before the returning officer or his deputy and the voting should be conducted in the following manner, that is to say:-

Every election for the district might vote for any number of persons not exceeding the number of persons then to be chosen, by delivering to the returning officer or his deputy a voting paper containing the Christian names and the surnames of the persons for whom he votes, together with their place of abode and description, and signed with the name of the elector so voting, and setting forth his own place of abode and description.³

As soon as conveniently might be after the election, the state of the poll and the person or persons elected were to be declared. In the event of the number of votes being found to be equal for any two or more candidates, the returning officer was by his casting vote, to decide which of the candidates should be elected, but otherwise no returning officer was permitted to exercise a vote at an election at which he was returning officer. The names of persons elected Members of the House of Representatives were to be inserted in the writ which should then be returned to the Governor within a given time.

3. Voting by ballot was not practised till 1869.

Swainson in commenting on the Constitution Act, wrote, "It was not thought expedient for the sake of a few weak and worthless characters to introduce into New Zealand the doubtful principle of the secret vote.

Paragraph fifty-four of the Proclamation defined the procedure in case of disputed elections. All complaints of the undue return of members should be addressed to the Governor in the form of petition, stating the ground of objection, and should be signed by a candidate at the election or by not less than one twentieth the number of qualified electors in the district. Petitions should be delivered to the returning officer within twenty-one days of the election. The Governor should then refer the petition to the House of Representatives, who should decide the validity of the return complained of.

4

When Sir George Grey had made provision for the first elections, he straightway set in motion the provincial machinery, and the election of Superintendents took place on 20th July. These proceedings evoked the greatest interest from the colonists, who gave convincing proof of their ability to make a success of representative government. Well might they "confidently, and in no vain spirit of boasting, point to the first elections as clear proof of their fitness to enjoy those rights and privileges which as free-born Englishmen, they were accustomed to exercise in the land of their birth." Though in Auckland and Otago the proceedings were marked by somewhat violent party spirit, the first

4. This was in conformity with contemporary practice in England. It was not till 1868 that disputed elections were referred for decision to the judges.

elections were not generally the occasion for display of bad feeling, notwithstanding the fact that they evoked the liveliest interest. The official party at Auckland secured the return of Colonel Robert Henry Wynyard, while William Cargill was elected by the party seeking to maintain the impracticable principle of exclusive class settlement in Otago. Wellington province elected Dr. Isaac Earl Featherston who had taken a prominent part in the agitation for self-government, and Canterbury James Edward Fitzgerald, the editor of the "Lyttelton Times," and a prominent member of the original band of Canterbury settlers. Nelson chose as its superintendent Edward William Stafford, and Charles Brown was returned for the Province of New Plymouth. Some little time after, during August and September, the members of the Provincial Councils were elected and provincial government was set a-working. Simultaneously with the election of members for the Provincial Councils, were conducted those for Members of the House of Representatives, but the General Assembly was not summoned before Sir George Grey sailed⁵ for England on 31st December 1853, leaving Colonel Robert Henry Wynyard, as Officer Administering the Government, to summon the first Colonial Parliament. For acting thus, Grey has been severely criticised. Gisborne⁶ considers that "the

5. It is recorded by Sewell that the official members of the Executive Council declared that Sir George never meant to call the Assembly. "It was an arranged plan between them all that Sir George Grey should go and that none of the officials should attempt to hold seats in the Legislature."

reasonable course would have been to summon first the New Zealand Legislature and to leave to the representatives of the people in Parliament assembled to determine the colonial policy in relation to the provinces financially and in other important matters. Instead of doing this, he took on himself to make land regulations of a sweeping character, to bring first the provincial portion of the constitution into active existence and to make financial and other arrangements tending to throw as much power as possible into the hands of the superintendents and provincial councils. Whatever may be the merits of that policy, it was, I conceive, clearly wrong in him to forestall the action of the House of Representatives, the constitutional exponent of the wishes of the people."

In Grey's defence, however, it has been urged that "in the then condition of the colony, local government affected the colonist much more intimately than central government,"⁷ and as the process of election to the General Assembly was much longer than in the case of the provincial elections,⁸ there would have been serious delay in introducing local government had the inauguration of provincial government been deferred until after the first meeting of the Assembly. Nevertheless there is no doubt that the course pursued by Grey resulted in the complication of the task of the General Assembly, and in the aggravation of those party feelings which continued to

6. New Zealand Rulers and Statesmen - p.48.

7. Mulgan and Shrimpton. - "Maori and Pakeha."

8. Some of the members of the House of Representatives.

divide the colony until the triumph of Centralism, in 1875.

It is doubtful if as much importance were placed upon the General Elections by the colonists, as upon the elections for members of the Provincial Councils, nor were the majority of the candidates for seats in the House of Representatives anxious to seek election.⁹ It had been noised abroad that the Colonial Parliament was to be summoned at Auckland, and this prospect alone caused the retirement of some of the southern candidates from the contest. Again the spirit of some of the provinces was extremely provincial. "At Wellington, so exclusively provincial was the tone of feeling even at the time of the elections, that seats in the House of Representatives went begging, and the eight members were returned, almost without exception, unopposed." Perhaps the most prominent of the questions at issue at the time of the elections was that of the control of the waste lands of the colony. In every province candidates expressed opinion that the General Assembly should cede to the Provincial Councils the greatest possible power, including, of course, the management of the waste lands and the administration of the land revenue. For many this was part of a general scheme of decentralisation such as that advocated by Dr.

9. "There were many leading men in the province of Auckland who from the first considered the constitution of this House a great sham, but if the constituencies had known that their representatives would be called to a share in the administration, would they not have been more careful in the selection of their men?"
Forsaith - Member for the Northern Division in New Zealand Parliamentary Debates 1854-5 p55.

Featherston, candidate for the Wanganui and Rangitikei electorate. The election addresses of the majority of candidates for political honours contain reference to the desirability of the greatest possible measure of local government. Another question of the day was the site of the capital, and of the place of meeting of the General Assembly. There was a fairly insistent demand from members of the southern provinces - Wellington, Nelson, Canterbury and Otago, - that the Assembly should be summoned to the most central and convenient place, meaning of course, Wellington or Nelson, so that members from the more remote districts might be enabled to attend without hardship.¹⁰ Many of the candidates who came forward with an election programme stressed the necessity of enforcing the most rigid economy in the public expenditure, while others drew attention to the unsatisfactory state of the postal arrangements, consequent on the absence of regular steam communication with the other provinces. The majority of candidates, however confined themselves to nothing beyond the vague assertion that they would "advance by every legitimate means, the prosperity of the Colony in general and of this or that province in particular;" their principles would be the fearless and independent support of all such measures

10. This demand was consequent in the irregular and extremely inefficient state of communication between the various provinces. "The difficulty of communication with the seat of government has been so great that to my knowledge, during the whole period of the settlement of Otago, some six years, there has been no direct means of communication excepting the occasion of the arrival of the government brig when my colleagues and

as they might think "most likely to conduce to those ends." In fact, parties as we know them did not exist at the time of the first General Election. "Parties were not as yet clearly defined, from want of any strong political motives."¹¹ Consequently we find many men believing that their unbiassed opinions, their maturer judgment, and their enlightened consciences, ought not to be sacrificed to any set of men living," and asserting that they like Burke, would go to Parliament as "free and independent candidates, not fettered and hampered by pledges." As far as parties existed, they were in a transition state. The old "anti-government" party of the days before representative government was gradually breaking up, and in its place were slowly but sensibly forming the Provincial and the Central parties. This became still more apparent as time went on, when, the Provincial Councils of Auckland, Wellington and Taranaki in their first flush of youthful vigour, began their rapacious policy of obtaining "the largest possible powers of every kind," and the dividing line became increasingly clear during the three sessions of the first Parliament. The old "government" or official party of Auckland however, still survived, and figured prominently

10. myself embraced the opportunity of coming to Auckland, and that journey occupied upwards of eight weeks; and this, too, in the nineteenth century."

Cutten, member for Dunedin Country District
New Zealand Parliamentary Debates 1854-5 p.56.

11. Fitzgerald - Meeting at Lyttelton 19th May, 1853

in the first few sessions of the newly-constituted Parliament.

Electioneering in New Zealand was by no means uninteresting; it was "very like English electioneering, except for the bribery which candidates could not afford." The candidates usually began their campaigns by addressing "the gentlemen" of the electoral district through the columns of the newspaper, announcing that they had been requested by a number of electors to contest the seat. During the following weeks addresses appeared in every issue of the weekly or bi-weekly journal, announcing the candidature of the gentlemen concerned, their opinions, if they professed a political creed, and their pledge to represent their constituencies as well as lay in their power. The last week before the nomination was usually employed in conducting a personal canvass of the district - a proceeding deemed expedient for many reasons. As Sewell remarks, in his journal,¹² "Voters at all events like the compliment of being asked, and canvassing has this good effect, that it throws the candidate and constituents into direct personal, individual contact with each other, stirs up the mind of the constituency, makes them feel the importance of their privilege and compels them to take an interest in public affairs. If we must needs have a democratic government which is inevitable, personal canvassing is a 'sine qua non'. The alternative

12. Entry 12th August, 1853.

is that political power will fall into the hands of cliques and cabals."

As the nomination day drew near the colonists gathered together in public meeting, to hear expressions of political opinion from the candidates. Each candidate spoke in turn, and the electors usually ended by voting their explanations satisfactory, and in appointing a committee to secure their return. Canvassing continued till the day of nomination, when the electors gathered at the hustings to witness the proceedings, which were enlivened by the presence of some few "men on horse-back, and processions of small boys with a few tattered flags," - and usually old coloured shirts - "a big drum, a tin kettle and a fife." After the prospective members were proposed and seconded in commendatory speeches, they again explained their political views, and a show of hands was demanded if the election were contested. The few days intervening between the nomination and the day appointed for polling were taken up by the candidate and his committee "discussing good, bad and doubtful votes," and in arranging for bullock waggons and other conveyances in which to bring wavering electors to the polling place. The campaign was usually brought to a close shortly after four o'clock on the polling day, when the successful candidates acknowledged their indebtedness to their constituents, and those less favoured expressed their thanks to their supporters for their unavailing efforts.

13. At the same meeting. Sewell's Journal, Entry
12th August, 1853,

The number of electoral districts as defined by proclamation, was twenty-four, and from these were returned thirty-seven members. In the Province of Auckland there were six districts, returning twelve members, Thus Auckland with approximately one-third the population of the colony returned approximately one-third the total number of members to the Lower House. The three electoral districts of the Province of New Plymouth, each returned one member. The Province of Wellington in which there were five electoral districts, returned eight members, Nelson Provincial District, which was subdivided into four electoral districts was allotted six members. The newly founded Province of Canterbury, which contained four electorates returned five members, while Otago returned three members from its two districts. The New Zealand Company's Settlements, represented by the Provincial Districts of New Plymouth, Wellington, Nelson, Canterbury and Otago were thus represented by twenty-five members, but these were divided among themselves, and could not combine against the official or Auckland party. In fact, as was soon shown in Parliament, political cohesion was lacking to such an extent that we find Southern members like Edward Gibbon Wakefield joining up with their former opponents, the Northerners.

15

15. On the question of the New Zealand Company's Debt.

"Undoubtedly, the principal member of the first New Zealand House of Representatives when it first met, was Edward Gibbon Wakefield."¹⁶ Born in 1796 in London, he soon showed signs of an intractable disposition, and left Edinburgh High School in 1812. In 1826 occurred his celebrated abduction escapade which in a measure explains his conduct for the rest of his life. Barred from good society he was obliged henceforth to work in the capacity of wire-puller. Wakefield was in 1838 sent as unofficial adviser to Canada with Lord Durham, who bore the strongest testimony to his wisdom, declaring privately that he never erred except when he rejected Wakefield's advice.¹⁷ During the year 1843, he took part in Canadian politics, both as a member of the colonial Parliament, and as secret adviser to Sir Charles Metcalfe. The rest of Wakefield's life was devoted to the colonisation and political development of New Zealand, a task which so taxed his powers that in 1846 he suffered paralysis of the brain. In 1849 he was obliged for health reasons to resign his directorship in the New Zealand Company. After joining Lyttelton and Godley in founding the Canterbury settlement he decided, in order to recruit his failing health, to emigrate to New Zealand and there joinⁱⁿ the new representative institutions for the securing of which he had done

16. Gisborne, New Zealand Rulers and Statesmen, pp 62-3

17. Dictionary of National Biography, art. Wakefield, Edward Gibbon.

so much. He arrived at Port Cooper in February, 1853 aboard the "Minerva", on which ship Sewell had been a fellow passenger. Subsequently in the same year he was elected to the Wellington Provincial Council, and, as one of the two members for constituency of the Hutt, to the General Assembly of the colony.

In Parliament Wakefield was not a fluent speaker, but his repetitions and hesitation probably impressed his fellow members more than mere fluency. But he was no¹⁸ Parliamentarian. "His great defect was untrustworthiness..

....His deceptiveness was ineradicable.....Always plausible and often persuasive he was never simple and straightforward....He had no particle of chivalry in his nature. Skilful in handling puppets in high places, he was the last man to draw together a political party and inspire it with enthusiasm and with confidence in himself as a leader. Had it not been for these fatal faults, he would have taken first place in the ranks of local statesmen in New Zealand and would not have brought on himself discreditable failure."¹⁹ It is however, probable that age and infirmity impaired the vigour of his intellect.

Another distinguished member of the first House of Representatives was James Edward Fitzgerald. "His distinction was not owing to what he had already done, but to the promising ability which those about him could

18. Sewell, Journal 11th June 1854.

19. Gisborne op. cit. Sewell says the same of him. "What a marvellous power of sophistry he has!" Journal, 3rd September, 1853

not fail to recognise." ²⁰ Fitzgerald was born at Bath on 7th March, 1818, of Irish parents, was educated at Christ's College Cambridge, and later, in 1844 joined the British Museum as a clerk. He became infected with the colonising germ, and joined the Society for Colonial Reform, of which he was secretary, but in 1850 emigrated to Canterbury, where he arrived on 16th December aboard the "Charlotte Jane," one of the "first four ships." Fitzgerald took a prominent part in the public life of the new community. He became editor of the "Lyttelton Times", in which capacity he directed the agitation in the Canterbury settlement for representative government. In 1853 he was elected to the honourable position of first Superintendent of Canterbury, and as member for Lyttelton Town to the General Assembly, against a "cheap-land" opponent by 55 votes to 45. "Short as the time had been since his arrival in New Zealand, Fitzgerald had proved himself no ordinary man. He wrote very well and his speeches were those of a real orator." Sewell says of him, "He was a man of brilliant talent, one of the best speakers I have ever listened to, and generally accomplished. He was at the same time a good debater and had considerable power of humour and pathos. His speeches were "able, statesmanlike and eloquent." ²² "A thorough Irish gentleman, he was like his countrymen, quick, impulsive, witty and winning in conversation. There was

20. Gisborne. op.cit. pp 63-4.

21. Sir Robert Stout in a lecture at Wellington, 31st July, 1906.

22. Gisborne, pp 63-4.

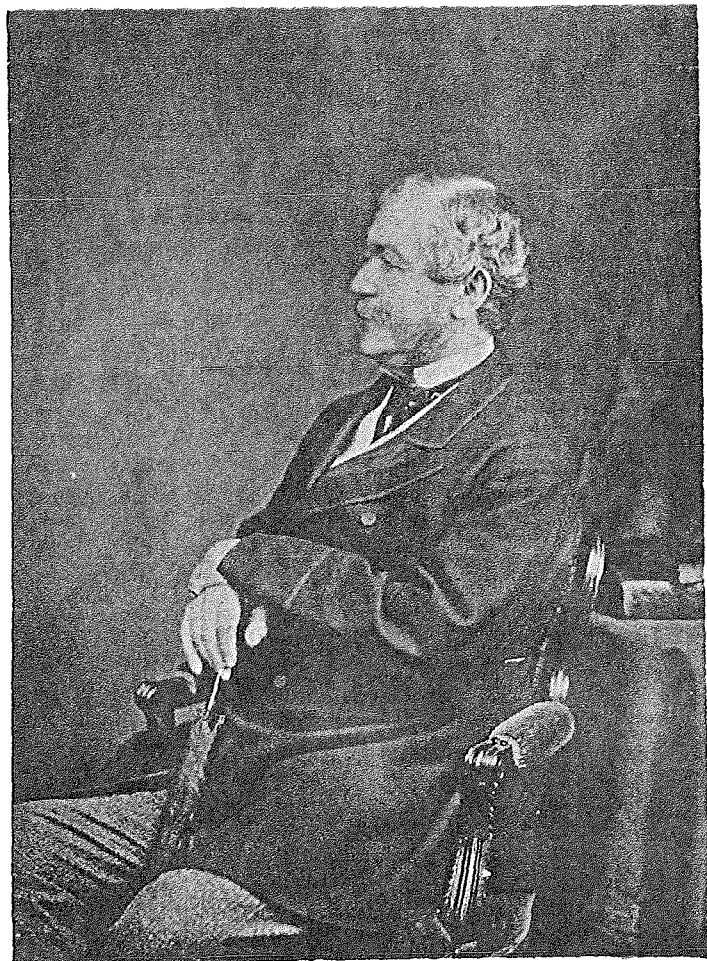
no rising statesman of whom greater expectations were formed".²² Fitzgerald was certainly a very brilliant man, as Sewell said later, "but it is a kind of fireworks; it blazes and dies out."²³

Christchurch Town returned Henry Sewell.

Sewell was born in 1807 in the Isle of Wight, was educated at Hyde Abbey School near Winchester, later qualified as a solicitor and joined his father's firm. In 1844 he went to reside in London where he became interested in the Canterbury Association, ultimately becoming secretary and deputy-chairman in 1850. In 1852 he was sent out to wind up the affairs of the Canterbury Association and to transfer its functions and affairs to the newly constituted Provincial Council. In 1853 he resolved to contest the election for the House of Representatives in order to support the handing over of the waste lands to the provinces and so facilitate the assumption of the liabilities of the Canterbury Association by the Canterbury Provincial Council.²⁴ "Sewell was a man of culture and ability; his conversation sparkled with cleverness and wit. With aptitude for official administration, he combined good debating power..... His speeches though occasionally eloquent and effective often had the flavour of forensic insincerity. His nature was supple and pliant; it was not robust enough to stand alone but clung to natures of firmer fibre and stronger growth... He was fussy, too easily impressionable and full of

23. Journal 13th August, 1862.

24. Journal 12th August, 1853



— Charles Clifford. —

Speaker of the House of Representatives.

1854 ~ 61.

false alarms. Probably this natural disquietude taught him to be what he certainly was, fertile in resource and skilful in evasion."²⁵

Frederick Aloysius Weld, returned for Wairau, was born in 1823, was educated at Stonyhurst College, and at Freiburg in Switzerland. In 1844 he emigrated to New Zealand in order to devote himself to cattle and sheep grazing. He soon attracted public notice, and in 1848 was offered a seat in the nominee council of New Munster, which however he declined. In the agitation for representative institutions Weld took a prominent part, and was during the years 1850 and 1851 in England. He returned to New Zealand to carry out some explorations and in 1853 was elected to the House of Representatives. Weld did not attend the session of 1855; in that year he resigned his seat and returned to England. He was a man of ability and culture; he was straightforward and chivalrous; but on occasions showed lack of tact and discretion.²⁶

Charles Clifford²⁷ was born at Mt. Vernon, Liverpool, educated at Stonyhurst, and entered the engineering profession. Being informed by George Stephenson after the completion of the London and North Western line that railway construction in England had come to an end, Clifford determined to emigrate, and arrived at Port Nicholson with the early settlers of the New Zealand

25. Gisborne op.cit. pp. 69-70

26. Dictionary National Biography, art. Weld, Frederick Aloysius.

27. Information derived mainly from interview with Sir George Clifford, his son, and checked by reference to various biographical articles.

Company aboard the "George Fyfe" in 1842. After conducting some explorations in the Wairarapa Valley, he visited England in 1850, when he took a prominent part in the agitation for the constitution, coming into close contact with Gibbon Wakefield. In 1852 Clifford returned to Wellington where he was in the following year elected to the Provincial Council of which he was Speaker. As member for Wellington City he was elected to the House of Representatives, of which he remained Speaker till 1861.²⁸

The three-member constituency of Auckland City was at first represented by Thomas Haughton Bartley, James O'Niell, and Loughlin O'Brien. Bartley was a well known Auckland barrister, "a quiet gentlemanly old man, but wanting in firmness." He was Speaker of the Auckland Provincial Council. O'Niell, born in County Leitrim, Ireland, in 1819 had come to New Zealand when a youth. He, too, was a member of the Auckland Provincial Council. O'Brien, a lawyer, born in Dublin, had emigrated to New Zealand in the early 'forties. On Bartley's elevation to the Legislative Council, William Brown, a Scotchman, and a lawyer, who had contested the election for Superintendent against Wynyard, was returned by the adherents of the anti-official party, in whose newspaper "the Southern Cross", he had a leading interest.

The two members representing the Suburbs of Auckland were Frederick Ward Merriman and William Field Porter. Merriman was an Englishman born in Wiltshire in 28. Sir Charles Clifford's journals are lost.

1818. He had studied law and in 1844 arrived in Auckland where he commenced practice as a solicitor and notary public. Porter had once been Mayor of Liverpool and a merchant of high standing. In 1841 he arrived in Auckland where he entered business but he shortly retired and commenced farming. He was elected to the Provincial Council in 1853; but his views never extended beyond the boundaries of his province.

Those "rotten boroughs," the Pensioner Settlements, were represented by two officers, Major Greenwood, "the best of the Aucklanders," and Staff-Surgeon Bacot, both of the New Zealand Fencibles.

Thomas Spencer Forsaith and Walter Lee were returned for the Northern Division. The former arrived in New Zealand in 1838 and went to Hokianga where he remained till he removed to Auckland. He was a wealthy linen draper, whose shop-front was "worthy of Regent Street;" Sewell suspected him from his mode of speech, of being a preacher on occasions. Lee was a doctor.

Robert Gray and John Charles Taylor (Southern Division) were seldom heard in the House, but Hugh Carleton (Bay of Islands) was one of the many brilliant classical scholars whose erudition graced the debates of our first Parliament. He could not forbear an apt quotation from the heathen authors, and on one occasion in particular turned his knowledge of Latin verse against Wakefield with startling effect.

New Plymouth Town sent Francis Ullathorne Gladhill to the General Assembly. The member for New Plymouth was a native of Halifax, England, and on arrival in New Zealand entered business as a merchant and auctioneer. Thomas King, (Grey and Bell) and William Morgan Crompton (Omata) were the other two members from the Province of New Plymouth. King was a farmer who had arrived in New Zealand from London in 1841, while Crompton who arrived some ten years later was a teacher.

Beside Clifford the City of Wellington returned Hart and Kelham. The former was a Londoner born in 1814, and educated at University College. He studied law and became a member of the Law Debating Society which during his time included many famous public men of England, notably Lord Macaulay. In 1843 Hart arrived in Wellington where he commenced practice as a lawyer. He was a convincing speaker and played an important part in the first Parliament. Of Kelham little is known.

William Barnard Rhodes represented Wellington Country District. Born at Epworth in 1807 he entered the East India Company when very young and remained at sea till 1828 when he settled in Australia. In 1839 he visited New Zealand in command of a whaling ship, was favourably impressed with the country and again took up land in various parts of the colony. In 1853 he was elected to the Wellington Provincial Council, and also to the General Assembly.

Alfred Ludlam was with Edward Gibbon Wakefield

member for the Hutt. He played an important part in the proceedings of the House on responsible government, and was, as Sewell tells us, a very agreeable person.

Samuel Revans represented the electorate of the Wairarapa, containing fifty-nine electors. He was a member of the Wellington Provincial Council, and an irreconcilable enemy of Wakefield with whom he had come in contact while employed by the New Zealand Company in England.

Wanganui and Rangitikei sent Isaac Earl Featherston to Parliament. Dr. Featherston was one of the early settlers in Wellington and for several years before the establishment of free institutions he fought strenuously in the public press and on the platform for the great cause of constitutional freedom. As the leading public man in the town of Wellington, he was in 1853 elected first Superintendent of the Province, a post which he held for eighteen years. Featherston was a coming provincialist. He arrived in Auckland late in the first session of the first Parliament, consequently did not take a prominent part in the proceedings.

The Town of Nelson was a two-member constituency. William Thomas Locke Travers was an Irishman born in County Limerick in 1819. After the completion of his education in France, he joined the British Legion of Spain in the Carlist War of 1835-1838. He then began the study of law, and after a brief period of practice in England he came to New Zealand in 1849. He soon resigned

the seat of Nelson and was elected for the Waimea on the resignation of William Oldfield Cautley. In his stead Samuel Stephens was returned for Nelson. Stephens was a surveyor, who had come to Nelson as principal officer of the New Zealand Company's survey staff on one of the expedition ships. He became subsequently chief surveyor for the New Zealand Company in which capacity he conducted the survey of the Motueka district. James Mackay the other member for Nelson was a Scotchman and a banker who had come to New Zealand, in 1845, to commence farming.

The Waimea* was most efficiently represented by David Monro, a Scotchman born in Edinburgh in 1813. Monro was educated in his native city where he gained his M. D. degree in 1836. He studied in medical schools on the Continent and came to the colony as one of the New Zealand Company's settlers. In 1849 he accepted nomination to the unpopular Legislative Council of New Munster, but in 1853 was elected to the Nelson Provincial Council where he adopted a centralist policy.

Alfred C. Picard, an Englishman by birth, and a convincing speaker, was member for Motueka and Massacre Bay.

Edward Jerningham Wakefield and James Stuart-Wortley were returned for the Christchurch Country District. These men contrasted strangely. Wortley was a man of means and an accomplished gentleman. He spoke seldom, but when he did his speech was marked by eloquence

* A two-member constituency.

and culture. His first speech in the House, on the subject of responsible government, Sewell tells us, "earned him great 'kudos'." Jerningham Wakefield was a demagogue. He spoke much and often. He had come to New Zealand with his uncle, Colonel William Wakefield, but in 1844 returned to England, and played some part in the foundation of the Otago settlement. Later he returned to New Zealand where he plunged into politics with disastrous results.

Akaroa was one of Gibbon Wakefield's "rotten boroughs". William Sefton Moorhouse, its first member, was a native of Yorkshire, who had been educated for law. In 1851 he left England for Canterbury where he intended practising, but the goldfields of Victoria proved too strong an attraction for him. He returned to Canterbury in 1853 however, and became a member of the Provincial Council. In Parliament he had little to say; it is recorded that he spoke twice during the first two sessions; from the third he absented himself.

From the distant province of Otago were sent three members of the House of Representatives. James Macandrew from Dunedin Town was a merchant. He was born in Aberdeen in 1829 and went as a youth to London. Later he became interested in the scheme for settling members of the Free Church of Scotland in Otago, and ultimately emigrated in 1850. In 1853 he was elected to the Provincial Council. John Cargill and William Henry Cutten were members for Dunedin Country District. Cargill

was the son of the Superintendent, Captain Cargill, and Cutten a son-in-law of the founder of the settlement. Cutten was Commissioner of Crown Lands, a member of the Provincial Council, and editor of the "Otago Witness." He had emigrated in 1848 and at first had entered business as an auctioneer. All three were political opponents of Sir George Grey.

Nominations to the Legislative
Council.

"William Swainson, the first Attorney-General of New Zealand was an able lawyer but an indifferent politician." He was a native of Lancaster and became a member of the Inner Temple. In 1841 he was appointed to the Executive Council of New Zealand." He was very skilful in drafting laws in simple and effective language but as a statesman he was not a success. He had a prudish horror of publicity and of the profane crowd. He liked to sit behind the throne and pull the strings. Sinuous and secretive in nature he worked unseen. He prided himself on being a safe man and yet was often a dangerous counsellor in public affairs. He almost persuaded Acting-Governor Shortland to renounce the Queen's sovereignty over part of New Zealand. He allowed Governor Fitzroy to issue illegal grants of land, and to waive the Crown right of pre-emption. He induced Acting-Governor Wynyard, in 1854 (as will be shown), to play fast and loose with responsible government, and to commit

grave absurdities." It was "on his advice that the Acting-Governor strained at the gnat of entire responsible government in the absence of official instruction, and yet at the same time swallowed the camel provided by Edward Gibbon Wakefield in the shape of a programme submitted to the Legislature revolutionising the Constitution just then granted to New Zealand by the Imperial Parliament." 29

In 1855 Swainson was given leave of absence 30 and Frederick Whitaker acted in his stead as Attorney-General and Speaker of the Council. Whitaker was born in Oxfordshire in the year 1812, and early in 1839 was admitted to practice in the English Courts of law. Towards the end of the same year he left for Australia landing in Sydney in 1840. After a short stay in New South Wales he came to Kororareka then the seat of government, where he took up his abode and began to practice. In 1841 he removed to Auckland, where in 1842 he was appointed a county judge. In 1845 he was appointed senior non-official member of the Legislative Council and sat in the last Council held by Fitzroy and the first held by Grey. When Heke's War broke out, he served in the New Zealand Militia in which he held a major's commission. In 1852 Whitaker was elected to the Provincial Legislative Council³¹ for Auckland City, but the Council never sat; a year later he was elected to

29. Gisborne, op.cit. pp 10-11.

30. Votes and Proceedings Legislative Council. 1854-55

31. See p. 11, 18.

the Auckland Provincial Council and became a member of the Provincial Executive acting as law officer.

Francis Dillon Bell was born in 1822 and educated in France. In 1839 he joined the New Zealand Company of which he became assistant secretary. Shortly after the Wairau massacre (1843) he came to New Zealand in the Company's service, and for several years went to and fro among the settlements. In 1847 he was appointed resident agent for the Company at New Plymouth where he purchased lands from the Maoris. Late in 1848 he was called to the Legislative Council of New Munster in which he resigned his seat in 1850 owing to a difference with the Home authorities as to the powers of members of the Council. When the New Zealand Company surrendered its charter, Bell was appointed Commissioner of Crown lands for the Wellington district, and deteriorated, if we may believe his cousin Gibbon Wakefield, from "the nice, clever, well-conducted fellow" he had been, to "a brazen-faced trickster in jobbery and corruption - perfectly irreconcilable." In 1853 he was elected to represent the Wairarapa and Hawke's Bay District in the Wellington Provincial Council, Representative institutions must have had a reforming influence on his character for Sewell writes of him in 1854 as "clever, a good man of business, and of a very plastic mind," and welcomed his inclusion in the ministry.

Major Mathew Richmond C.B. was in 1836 resident of Paxo, Ionian Islands, where he displayed conspicuous

administrative skill. He proceeded in 1838 to Canada and was appointed deputy-judge-advocate at St. John's New Brunswick. In 1840 he came to New Zealand, and received a commission to examine and report upon claims to grants of land. While engaged in this duty the Wairau Massacre occurred, and Richmond was sent to re-establish order and confidence. As chief police magistrate of the Southern Division of New Ulster and as resident magistrate at Nelson he rendered yeoman service to the colony and was in 1853 nominated to the Legislative Council by Sir^{George} Grey.

Of Edmund Hooke Wilson Bellairs little is known. He seems to have had some connection with the Canterbury settlement; Sewell describes him as a coxcomb, "who used, in England, to talk prodigious nonsense about the tide of democracy."

John Anderson Gilfillan was a native of Fifeshire. When sixteen years of age he entered the office of an English-firm of merchants, but in 1845, owing to ill-health he emigrated. Four years later he began business in Auckland with his brother as a commission agent, and in 1852 was appointed a Justice of the Peace. In 1853 he was elected to the Auckland Provincial Council.

William Henry Kenny came of a military family. In 1828 at the age of sixteen he entered the 73rd. Regiment and served in Canada during the rebellion. In 1847 he brought the first detachment of the New Zealand Fencibles to the colony.

John Salmon, born at Aberdeen in 1808, was at the age of fourteen apprenticed to the sea. About 1840 Captain Salmon visited Auckland, and on the death of his brother at Bay of Islands, he succeeded to the business and transferred to Auckland.

Henry St. Hill's name was affixed to the burgess roll of the borough of Wellington for 1843, where he is described as an architect resident in Hawkstone Street. He was resident magistrate at Wellington in 1853.

PART II.CHAPTER IV.MEETING AND OPENING OF THE FIRST SESSION
OF THE FIRST PARLIAMENT.

The Constitution Act established a bi-cameral Legislature, and it was in that form that the first New Zealand Parliament met in 1854. The date of meeting, which was "to be as soon as conveniently might be after the return of the writs for the election of members of the House of Representatives," was fixed by proclamation of the Officer Administering the Government for 24th May 1854, and the place of meeting was to be Auckland.

The procedure to be adopted was in part described in the Act¹. Both Houses at their first sitting were to "prepare and adopt standing orders," which should regulate the conduct of business in each, respectively. The question of procedure was thus left in a great measure, in the hands of those immediately concerned, as was that of the relations which were to exist between the two branches of the Legislature. Section 54,² however, defined the procedure to be adopted in the case of money bills, but neglected to state the powers of the Legislative Council in this matter, which subsequently became a subject of debate, when the first

1. See p 29.

2. See p.28.

Appropriation Bill was sent up from the House of Representatives to the Legislative Council on 15th September, 1854. As will be seen later, the Secretary of State for the Colonies, to whom the question was finally referred, declared in favour of the English practice. In general however, the procedure adopted in the Imperial Parliament was adhered to.³

The functions to be exercised by the respective Houses were laid down in the Constitution Act, but as has already been seen, were not definitely enough stated with respect to money bills. By a curious oversight, too, the House of Representatives did not, in the first session, possess the power of stopping supplies; for section 66 of the Act stated that "after and subject to the payments to be made under the provisions" thereinbefore contained, "all the revenue arising from taxes, duties, rates and imposts levied IN VIRTUE OF ANY ACT OF THE GENERAL ASSEMBLYshould be subject to be appropriated" to the specific purposes prescribed by Act of the Assembly. "The whole of the ACTUAL revenue was, in fact, unaffected by the Constitution and left as before at the disposal of the Crown; what was really made subject to the appropriation of the Legislature was the prospective revenue only."

The first session of the first Parliament of New Zealand opened at twelve o'clock, noon, on the Queen's Birthday, 24th May 1854, when, pursuant to proclamation

3. See p. 88.

of the 18th January 1854, by His Excellency, the Officer Administering the Government, the Legislative Council and the House of Representatives met in their respective chambers. The Chief Justice, William Martin, who was authorised by commission from His Excellency, accordingly attended in the Legislative Council, and administered the oath, whereupon the councillors took their seats. The Speaker, William Swainson, Attorney-General, then addressed the Council, informing them that he had been appointed to the office of Speaker of the first Legislative Council. He then read the commission authorising him to assume the duties of that office, and went on to say with what diffidence he undertook the duties associated with the chair. He prayed the councillors that, should he express opinions with which they could not concur, "they would believe him to be at all times influenced by a sincere desire, faithfully, impartially, and to the best of his ability to discharge the duties of the office." He then read the proclamation calling the meeting of the General Assembly.

The Hon. F. Whitaker then moved the appointment for the session, of a "standing orders" committee, whose duty it should be "to prepare rules for the management of the business of the Council and for such conferences and communications with a committee of the House of Representatives as might be necessary." After the motion had been duly seconded by the Hon. J. A. Gilfillan, the Hon. F. Dillon Bell objected that the Council was not

duly constituted until the Assembly had been formally opened by the Officer Administering the Government, and on this account should not then transact any business. The Speaker, however, quoted the fifty-second section of the Constitution Act, which required the Council to proceed to the formation of standing rules at their first sitting, whereupon the motion was agreed to, and the Council adjourned till three o'clock in the afternoon. On resuming, there being no business before the Council an adjournment was made until Saturday 27th May, at two o'clock p.m.

On the same day, "in piteous weather - thick heavy rain," a preliminary meeting of the Lower House was held, when the oath was administered to the members. Hugh Carleton, as first elected member took the chair, and on the motion of Rhodes, seconded by Cutten, it was resolved that a deputation from the meeting wait upon the Officer Administering the Government to request the postponement of the opening of the General Assembly till the Friday following. On their return the deputation stated that His Excellency was prepared to open the Assembly, whenever the House should notify him of the election of their Speaker, whereupon an adjournment till Friday 26th May, was resolved upon, the election of Speaker to take place then.

In the meantime there was much talk among the members as to who should be the first Speaker. "The northern men would have liked a Speaker of their own....."

Both northern and southern men complimented each other in the usual way," but it ended in the southerners fixing upon Charles Clifford. At the same time, too, "an understanding was come to that the Speaker would not object to prayers being read by a member of the Church of England," though, as Sewell⁵ remarks, there was a⁴ general determination not to recognise the ascendancy of any religious body.

On the House meeting at 11 o'clock the Friday following, Carleton was called upon to take the chair, and the election of Speaker took place. Bartley rose and said that he had much pleasure in proposing for the honourable office of Speaker of that House, a gentleman who was well known to each and to all the members; a gentleman of high standing and station, who possessed much property in the colony, and who was strongly bound to it by every tie of honour and of interest"⁶ Charles Clifford. Fitzgerald in seconding Bartley's motion, referred to the "love which Mr. Clifford entertained for the institutions under which they had met," and stressed the advantage of having in the chair one with Clifford's experience in public affairs. The motion was carried unanimously, whereupon it was proposed that, the Speaker, being duly elected by the House, should be led to the chair by his proposer and seconder. Upon the propriety of this, some doubt was expressed, it being said that as the Governor had not confirmed the election, it was not

4. Charles Clifford being a member of the Roman Catholic Church.

5. Journal.

6. New Zealand Parliamentary Debates 1854-5. p 2.

complete, while on the other hand, precedents were quoted from the proceedings of the House of Commons and the Legislative Council of New South Wales, supporting the view that enough had been done to entitle the Speaker to take the chair. Clifford, however, rose and expressed his sense of the honour proposed to be conferred on him, "and assured the House that he felt deeply gratified in placing his services at their disposal." On the motion "that the present chairman do leave the chair, and that Mr. Clifford be conducted thereto," being put and carried, Carleton after congratulating Clifford, and the House on his appointment, vacated the chair, and Clifford after being led from his place by Bartley and Fitzgerald, took his seat as Speaker-elect. A deputation, consisting of the mover and seconder, thereupon waited upon the Officer Administering the Government, to inform him that the choice of the House had fallen upon Clifford.

After an adjournment, the House re-assembled at one o'clock in the afternoon when two messages from His Excellency were announced, the one confirming the choice of Clifford as speaker, the other appointing the following day, 27th May, as the occasion of the official opening of the session.

Since as yet there were no standing orders for the House, it was proposed by Macandrew, and seconded by Mackay, "that the first act of the House of Representatives be a public acknowledgment of the Divine Being, and a public supplication for His favour on its future

labours." almost immediately Lee moved as an amendment "that the House be not converted into a conventicle, and that prayers be not offered up, "which, being seconded, resulted in the first debates in the newly-constituted House. Most of the members who spoke recognised their "obligation to the Divine Being," but some expressed the fear that the favouring of any particular church might seem that the House favoured the establishment of a state religion, the very appearance of which would retard rather than forward the cause of religion, and should be avoided. One or two members expressed the opinion that such procedure as that proposed would "lead the House away in a retrograde direction, from the free spirit of the Constitution, which appeared to have been framed so that the colonists of New Zealand should be exempt from the causes of heartburning on religious questions, which being interwoven in the old institutions at House, could not be so easily got rid of."

Lee's amendment was at the suggestion of several members, soon withdrawn, whereupon Weld moved a further amendment that the House, whilst recognising the importance of religious observances should not commit itself to any act which might subvert the religious equality recognised by the Constitution, and therefore should not open with prayer. The amendment was put and the House divided for the first time, ten voting for, and twenty against the amendment, which was consequently negatived. The original motion was then put and carried but immediately after it

followed another to the "that in proceeding to carry out the resolution of the House to open its proceedings with prayer, the House distinctly asserts the privilege of a perfect political equality in all religious denominations, and that whoever may be called upon to perform this duty for the House, it is not thereby intended to confer or admit any pre-eminence to that Church or religious body to which he may belong." Prayers were accordingly read by the Rev. F. J. Lloyd,⁷ a clergyman of the Anglican church.⁸

In accordance with the provisions of the Constitution Act,⁹ the House then proceeded to set up for the session a standing orders committee to define the procedure to be adopted by the House, and "to regulate the mode in which the House and Legislative Council should confer, correspond, and communicate with each other." Until the committee should report,¹⁰ it was to be a standing order that the Speaker regulate the proceedings of the House.

One other incident, illustrative of the temper of the House, occurred before the adjournment, when Revans moved that a certain gentleman "be appointed Clerk of the House of Representatives." Immediately the

7. The question of prayer was finally settled when on 7th June, Macandrew moved the setting up of a committee to discuss the matter. On 16th the Speaker intimated that a form of prayer which would in future be used each day at meeting, had been decided upon.

8. The first clergyman met in the street.

9. Section 52. v.p. 292.

10. 2nd June.

question was raised as to whether the House or the Officer Administering the Government was empowered to make this appointment. Carleton affirmed most positively that the right belonged to His Excellency, and quoted in support of his statement, the principle adhered to in the House of Commons, where the Clerk was appointed by the Crown,¹¹ and his Commission given as "Clerk of the Parliament to wait upon the Commons." He urged the House to remain true to the Constitution which empowered the House to elect its Speaker, but there stopped. The opinion was expressed, on the other hand, that the right to elect the Speaker implied also the right to appoint the subordinate officers. As it was thought that the subject should be brought before the House in a formal way, Revans, agreed to give notice of motion for the following Monday. Revans's motion remained on the order paper till 15th June, when Sewell gave notice to move that the Officer Administering the Government "be respectfully requested to appoint a Clerk and Sergeant-at Arms of the House of Representatives, a motion subsequently agreed to by the House.

At two o'clock on Saturday 27th May, both Houses assembled in the chamber of the Legislative Council on the occasion of the formal opening of Parliament by the Acting-Governor. "The room was of moderate size, plain, and with no architectural pretension what-

11. This of course in reality made the office one in the gift or at the disposal of the ministry in power at the time of the vacancy, but there was no responsible Government in New Zealand.

ever." New Zealand's first Parliament House was indeed "a great wooden, barn-shaped affair, of the most undecorated style, which might have served for a hospital, a jail, or a barrack."¹² The internal appointments were very incommodiously arranged, and provided very small comfort during long debates. "The seats were a hardship beyond joking to men of heavy weights."¹³ In the construction of the buildings the principles of acoustics seemed to have been entirely disregarded, so much so, that the best seats for hearing would have been on the cross beams of the roof, which, notwithstanding their discomfort, would not have been harder than those provided for the convenience of members.

¹⁴

Both Houses assembled "together higgledy piggedy, - an unseemly arrangement. The Commons ought to have met first, and then have been summoned DOWN to the chamber of the UPPER House, "which by a strange inversion of order sat on the ground floor, with the Commons above. Shortly after the hour the Officer Administering the Government¹⁶ marched down to Parliament House with troops, band and aide-de-camp, - as Sewell remarks - "all very fine." He entered "in an

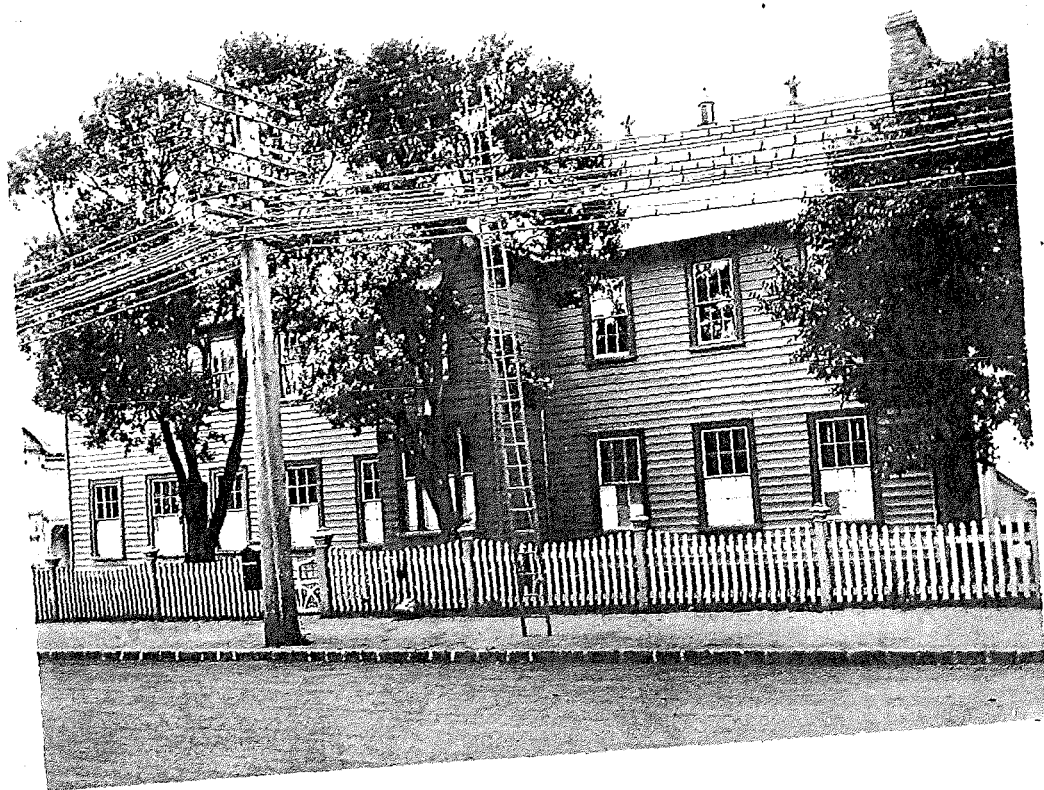
12. Sewell's Journal. Entry concerning the Opening of Parliament.

13. E. G. Wakefield. Parl. Debates, 1854-5 p 15.

14. Parliamentary Debates 1854-5 p.15. The state of the buildings was such that a committee was set up on 27th May, to consider the best means of improving the accomodation with a view to the convenience of members.

15. Sewell's Journal. Entry 27th May, 1854.

Note. The old Parliamentary buildings survived this occasion for sixty years, for more than



Brett. Photo.

Parliament House,

Auckland.

upright soldierly way as if about to give a word of command, took his seat at the head of the table, then stood up, and requesting the members to be seated," began to deliver a long and earnest address, in which he outlined his reasons for summoning the assembly, dealt with principles which might govern apportionment of power between the Central and Provincial Legislatures, and mentioned problems arising from the provisions of the Constitution Act. "Holding office but temporarily;" he said, "feeling myself bound not to embark in any measure which may embarrass the policy or affect the duties of the permanent Governor of the Country; and believing that statesmanlike qualities of a high order are needful for conducting to a successful issue the experiment in constitutional government about to be attempted in New Zealand, I might well have shrunk from the responsibility of calling together the first and most momentous meeting of the General Assembly.¹⁷ But, possessing the necessary legal authority, and seeing that Her Majesty's subjects in New Zealand have a right

15. thirty of which they served as part of Auckland University College. They disappeared when that dilapidated block was pulled down to make way for a road.

16. Lieut. Colonel Robert Henry Wynyard, Officer Administering the Government, Superintendent of Auckland, Senior Military Officer, and Officer Commanding the 58th Regiment.

17. These words are significant in the light of subsequent events.

to the exercise of the powers conferred upon them by the British Parliament, I felt that I ought not to allow considerations personal to myself to disappoint their expectations and to delay them indefinitely in the enjoyment of their constitutional privileges; and trusting that, under the circumstances under which the government of the country has devolved upon myself, I may rely upon your friendly co-operation and cordial support, I determined to summon, and I have this day been allowed the memorable privilege of opening, the first Parliament of New Zealand."

He then went on to suggest that in consequence of the powers conferred upon the provincial governments being "coexistent with, yet subordinate to, and liable to be controlled and modified by, the power of the General Assembly," it might be desirable that, at the outset of their proceedings, some guiding principle should be adopted by which it might be determined on which of the subjects within their common jurisdiction the superior authority should take the initiative in legislation, and to what extent it should over-ride provincial legislation. It would rest with the General Assembly whether "New Zealand shall become one great nation exercising a commanding influence in the Southern Seas, or a collection of insignificant, divided, and powerless petty states." In order that the New Zealand Islands might ultimately become one great country, it would be necessary, while maintaining harmonious relations with

32.
the local governments to strengthen^{EN} and extend the power of the Central Government, and to restrict that of the provincial Legislatures. Here, then, was the great problem stated.

The need for improvement of communication between the parts of the provinces, and for the introduction of steam, was dealt with at length, and commended to the members as an object toward which some portion of the public funds might be appropriated. The Acting-Governor recognised the satisfaction of the colonists at the provision made by the Constitution for the disposal of the waste lands, and suggested the delegation to the Provincial Councils of the General Assembly's power in this respect. A discordant note, however, was struck when the Acting-Governor commented on the question of the New Zealand Company's Debt,¹⁸ a very vexed subject among the colonists, and one of questions at issue between the northern and southern members. Wynyard descended from his position of impartiality and was on controversial ground when he stated, "It cannot be a matter of surprise that the extension of this charge to the northern district of New Zealand, widely separated as it is from the field of the New Zealand Company's operations, and which has not at any time acknowledged any benefit from that body, or any advantage from any of their proceedings, should have been made the subject of repeated remonstrance by the colonists of the north."

18. The Constitution Act had enacted that "in respect of all sales of any waste lands of the Crown in New Zealand, one fourth of the sum paid by the purchaser shall be paid to

Other problems arising from the provisions of the Constitution Act were mentioned, including the difficulty of appropriating revenues arising from ordinances of the old Legislative Council. The solution recommended by the Acting-Governor was the passing of a bill providing that revenue arising from duties levied in virtue of any colonial ordinance should be deemed, for purposes of the Constitution Act, to be levied in virtue of an act of the Assembly, or that a fixed proportion of the general revenue arising in each province should be paid over to the provincial treasury and be subject to appropriation by the Legislature of the province. The unsatisfactory state of the marriage law, which rested on an ordinance of 1851, was commented upon, as was also the difficulty which had arisen "in carrying into effect the punishment of transportation owing to the want of some convenient penal settlement" to which convicted felons might be sent.

The address concluded in noble and eloquent strain. "A great work, then, gentlemen, now lies before you. To confirm, by your prudence and moderation the fitness of our countrymen for representative self-government, and representative institutions; to preserve and to advance in the scale of civilisation the native inhabitants of these islands; to develop the resources of a country rich in all the elements of future national

18. the New Zealand Company," towards its debt
£268,370:15: 0.

greatness;to lay the foundations of its religious, political and social institutions..... will be the rare privilege and noble duty of the newly-formed Parliament of New Zealand. Entering then, as we are about to do, on the discharge of important and responsible duties, believing that our example, and that the character of our proceedings will be influential in after times, and on those who shall succeed us, and seeing in this assemblage the germ of what will one day be the Great Council of a great nation, I cannot conclude my address on opening the first session of the General Assembly of these islands without the expression of an earnest prayer that the Divine Blessing may direct and prosper all our consultations and that all things may be so ordered and settled upon the best and surest foundation that peace and happiness, truth and justice, religion and piety may be established amongst us for all generations."

When the Acting-Governor had concluded the Address, which he read with some nervousness, he shook hands with the Speakers of the two Houses, gave them copies of the speech, and marched out again. The Address was worthy of the great occasion; but how soon were events to occur which, so far from being a confirmation of the fitness of the colonists for representative institutions, and an example to posterity, should bring upon the House scorn and ridicule!

Dr. Garnett, in his "Life of Wakefield" raises the question of the authorship of the Acting-Governor's

speech, when he ventures that Wakefield was in part responsible for it.¹⁹ This is improbable, It is more likely that Swainson, the Attorney-General, wrote it, for both internal and external evidence favour this view. The style is distinctly that of the pompous Swainson - not that of the subtle Wakefield as Garnett asserts. Moreover the Attorney-General was a minister of the Crown, on whom Wynyard would naturally rely, especially in the circumstances under which he was then placed. Indeed for this we have Reeves's assurance.²⁰ As yet Wakefield had not established that ascendancy which he was to enjoy over the Acting-Governor as unofficial adviser, and which brought him into such disfavour with the House of Representatives; this is shown by his tactics in introducing the question of responsible government.²¹ Neither Wakefield nor any other member of the House knew whether this all important matter was to be mentioned in the Address or not;²² in fact he was at this time admired as a bold and skilful political general, directing his forces against nominee government. Under these circumstances it is difficult to see how Wakefield could have been consulted by the Acting-Governor.

It was on 1st June that the adoption of the Address-in-reply was moved, by J. E. Fitzgerald. In consequence of the non-existence of responsible

19. "An address assuredly not composed by the gallant officer from whom it professedly emanated and which seems to bear traces of Wakefield's pen." p 350

20. Reeves, Long White Cloud p.253, see p. 109 infra

21. See p. 101.

22. Sewell - Journal, Saturday 27th May, 1854.

ministers, a private meeting of members was held on the previous Sunday evening, at which the questions of the form of the Address, and the selection of the person to move its adoption were decided, much to the disgust of one of the northerners who regretted that members had deemed it expedient to observe the Sabbath in such an unseemly fashion. The Address was a short document, couched in general terms, expressing the thanks of the House for His Excellency's speech, and its gratitude at his calling the General Assembly together, so soon after the assumption of the duties of Government. But the House was not disposed, in its then anomalous position, to enter upon a lengthy Legislative programme, and the Address concluded, "We feel that it would be premature at so early a period of the session to enter upon all the various subjects to which Your Excellency has been pleased to direct our attention; but we desire to express our earnest wish to co-operate in the most cordial manner with Your Excellency in carrying into effect whatever policy may ultimately be determined on as most beneficial to the colony at large, and to the several provinces of which it is composed; and to assure Your Excellency that whatever measures may be submitted to the House by Your Excellency's Government shall receive their most respectful and patient consideration."

In speaking on the motion, Fitzgerald delivered some weighty and sound judgments. He drew the attention of members to the fact that, when the normal relations,

peculiar to constitutional government, obtained between the Legislature and Executive, it was the duty of the ministry to propose the terms in which the Reply should be drawn up, and to provide for its consideration by the Lower House. He went on to stress the importance of the form of the Address, and prayed the House not to deem the utterance of words of ceremony a matter beneath their most patient attention. For expressions sometimes became of State importance, and the language which the House used would in some measure determine whether its energies would be expended in fruitless recrimination or purchase.. in dangerous collision with the Executive. The proceedings of the New Zealand Parliament would be watched with most anxious attention and ardent hope both by the colonists themselves and by the very many far off friends, and noble statesmen through whose political influence New Zealand that day enjoyed liberal institutions. In the prattling of the child they would fondly strive to catch some promise of the greatness of the man. It was therefore necessary that the first act of the House should be to express their common loyalty to the Queen, and their desire to support Her Majesty's representative in his efforts for the good government of the country, however they might differ subsequently, as differ they would, for was not party the price they paid for freedom!

After touching upon several constitutional points, such as the Acting-Governor's departure from the usage whereby the Lower House was addressed separately

in the matter of finance, and ascribing such omissions to the attempt to continue the forms and usages of a government consisting solely of an irresponsible executive to a constitutional government, Fitzgerald spoke of the question of responsible government.

"There is nothing more certain than this; that to introduce representative government and not to recognise all those consequences which constitutionally flow from it, is to create a system necessarily and unavoidably discordant, and certain to produce collision."

23

The conclusion of his speech was an eloquent appeal to maintain national feeling in the country, and a warning to the ultra-provincialists, who were clearly becoming a party opposed to any centralisation of power. His words were prophetic. "I know well that in local free institutions is the cradle of all the civic virtues which strengthen and ennoble a nation capable of enjoying them.....but I know too, that in a nation which is capable of greatness, the strength and energy which are cultivated and matured by free local institutions must be knit together by the firm will, and organised and welded by the powerful arm of a Central Executive, lest the body politic should fall to pieces by the very weight of the materials of which it is composed. I believe the time may come - and in these days of wars and rumours of wars no man knows how soon the time may not come -

23. With regard to the introduction of responsible government Fitzgerald expressed the opinion, afterwards confirmed by the British Government, that a new law was not necessary, but only a

when the very existence of this colony will depend upon the vigour and energy of the Central Government."

Monro, the member for Waimea District, in seconding the adoption of the address, spoke on lines similar to those of Fitzgerald, but referred specially to the relations of the two Houses with regard to financial measures. While he recognised the advisability of following the procedure of the House of Commons, he urged the House to keep within the provisions of the Constitution Act, which, he thought, implied the power of the Legislative Council to deal with money questions. However the section seemed ambiguous, and deferring to the views of older and more experienced members, he begged leave to withdraw his remarks on the subject. This question remained for solution on a subsequent occasion.²⁴

23. simple act on the part of the supreme executive power.

24. See p. 227 *infra*.

CHAPTER V.THE INTRODUCTION OF PARTIAL MINISTERIAL
RESPONSIBILITY

At this stage of its development, the Government of New Zealand exhibited admirably the weaknesses inherent in that much vaunted separation of powers, which according to Montesquieu and his followers was so conducive to the liberty of the subject. Between the Legislature and the Executive there was no medium of communication, and each was "quite in the dark" as to the meaning or intention of the other. The principal member of the government was Speaker of the Council, "and therefore speechless." ²⁵

The inevitable result of such a state of affairs was clearly seen by Wakefield, in whose political creed, responsibility of the Executive figured as a necessary feature of Colonial Government. By his connection with Lord Durham in Canadian affairs, and in his "View of the Art of Colonisation" ²⁶ he had distinctly affirmed his belief in the principle, and New Zealand he considered eminently suitable for the introduction of ministerial responsibility ²⁷ - nay, he prescribed it as a remedy for

25. Garnett - Life of Wakefield.

26. E.g. p 317.

27. "I am sure that there is a good foundation to work upon, in the best set of colonists that have left England in modern times" - Wakefield to Rintoul, 16th April, 1853.

existing political ills.

28

Accordingly after the Acting-Governor's speech, which of course made no reference to the Government's attitude towards responsible government, Wakefield organised meetings, public and private, with the object of putting the overwhelming weight of public opinion into the scales on behalf of his dearest project, and on the day following the adoption of the Address-in-reply, he moved²⁹ pursuant to notice, in committee of the whole House, "That amongst the objects which this house desires to see accomplished without delay both as an essential means whereby the General Government may rightly exercise a due control over the provincial governments, and as a no less indispensable means of obtaining for the General Government the confidence and attachment of the people, the most important is the establishment of ministerial responsibility in the conduct of Legislative and Executive proceedings by the Governor."

The subject was discussed "in a debate of three days' continuance, if debate it may be called in which no essential differences of opinion were expressed." Had it not been that Forsaith moved an amendment, which

28. "The evil in question (colonial narrow-mindedness) has another cause; the total absence of popular power and responsibility. Why should anyone care about New Zealand in general, still more about political economy, jurisprudence, or constitutional politics....when all are without the least means of giving effect to such opinions and desires as they would form if they had those means? - Ibid.
29. Garnett thinks this move was preconcerted with the Acting-Governor, "for nothing else could have given constitutional government a start." - Life of Wakefield p. 351.

gave some little point to the discussion, the proceedings must have been inexpressibly dull. He it was who proposed to refer the matter to a select committee which should consider and report upon the expediency of introducing the principle of responsibility, and the time and mode in which it might best be brought into operation. In the meantime, instead of occupying the time of the House by speeches in some cases displaying "more enthusiasm than knowledge," members would do better to proceed with measures of practical and immediate importance to the colony. This amendment was seconded, pro forma, by Sewell.

Wakefield introduced his motion in a speech of considerable lucidity and power. As he had been informed by some few members that his business was that day to "teach as a lecturer some unknown branch of political science," he began by reciting the A.B.C. of the British system of government, giving a review of the origin and development of the ministerial system. He then noticed its working in Canada, New Brunswick, Nova Scotia and Prince Edward Island, and summed up by pointing out that responsibility did not consist of "the liability of the advisers of the Crown to impeachment and afterwards to decapitation for giving dangerous advice to the Crown," as the celebrated Victorian Acting-Solicitor-General had it. Far from it. "When the ministers differ from the representatives of the people, instead of a conflict between the people and the Sovereign, instead of angry

passions of political strife, ending perhaps in revolution, some half-dozen gentlemen walk out of a room, and another half-dozen walk in, when peace is restored, and the people throw up their hats for the Crown and the Constitution."

The long debate revealed the fact that not a single member objected to the principle of responsible government; the only opposition offered was regarding the time of its introduction, the only argument was for delay. It was urged by Forsaith, the mover of the amendment, that there was as yet no line of party cleavage. He observed that, as parties then were, it was almost an impossibility for a ministry continually to command majorities on important questions, and the country must consequently be prepared for frequent changes of government. This was at first, as experience proved, a very present difficulty, but Wakefield, ever anxious for the establishment of his darling project, replied that absence of party had nothing to do with the matter!³⁰ He must undoubtedly have recognised that party was the sine qua non of the successful working of responsible government, and significantly added that rival parties would, no doubt, grow out of events; perhaps there would develop a Conservative and a Movement Party, perhaps a Central and a Provincial Party.

30. New Zealand Parliamentary Debates 1854-5 p.30. Yet he had written that "government by party, with all its passions and corruption is the price that a free country pays for its freedom" - View of the Art of Colonisation, p. 317.

Another argument for the postponement of responsible government was the difficulty of finding members from distant provinces whose circumstances would allow them, under the uncertain tenure of office to neglect their ordinary avocations in order to remain at the seat of government; But this objection was effectively disposed of, when the Hon. J. Stuart-Wortley remarked that if his memory served him aright, the same argument had been used against the establishing of the assembly in which they were then deliberating.

Even at so early a stage in the proceedings, certain members of the House gave evidence of that provincial spirit which was later to be so prominent. Forsaith urged in all seriousness that Auckland province, which preponderated in importance, was in the House reduced to a state of political insignificance, and would be tyrannised over by the southern majority! "If honourable members were determined to adopt a course which must exclude the province of Auckland from a due share of power and privilege there would be no alternative - the cry of "Separation" must be raised."

31

One more question of vital importance was propounded, but no solution found. How would the natives be affected by responsible government? When they had consented to the establishment of British Authority, "they voluntarily agreed to rely upon Her Majesty as their

31. This cry was raised later and received its strongest support from the South.

guardian and defender. Would they be satisfied with such an arrangement as that which proposes to transfer this power from the hands of the Queen to those of a party?"

32

Notwithstanding the difficulties in the way of the introduction of responsible government, it seemed certain to the majority that these would not outweigh the benefits it would confer. There was, as Monro pointed out, a great want of completeness in the government machinery. The only mode of communication between the Executive and the Houses was the clumsy method of address and reply. This defect might in part have been remedied had the plan been adopted of giving certain ministers of the Crown ex officio seats in the Lower House; "it would have been a natural transition from the old to an improved order of things; and as the country developed there would have been no difficulty in gradually altering and expanding the system, until....it grew into a complete condition of parliamentary government."

The urgent need for some intermediate machinery had already been brought under the notice of the House when Picard moved on 27th May for a return of money received as rents from the Nelson Native Trust Lands. Sewell drew the attention of members to the fact that there was in the House no responsible person representing the government who could intimate whether such returns could or would be granted. It was probable that

so large an amount of work would accumulate on the Executive by members calling for returns that the Government, though ever so willing to grant them, might be driven to refuse many, and perhaps some that might be of the greatest importance to the House. He then moved as an amendment that a committee be formed to ascertain if returns asked for would be really useful, "and then if they could be conveniently supplied by the Government." This however was negatived, and Sewell was accused by Forsaith of dragging the question of responsible government before the House.

As a consequence of this lack of communication between the House of Representatives and the Executive, various impediments to the conduct of business manifested themselves. As the Government did not send down any bills, members were obliged to draw up their own; it was found on enquiry that often bills of identical nature were being prepared independently by several members. Bills once drawn up, must then be carried through the House.³³ Again members wished to put questions to the ministers, but they were not in the House. Even on such details as the provision of a wash-stand and towels for the Speaker, and sherry and sandwiches for exhausted debaters, the Acting-Governor must be approached. So

33. Compare the complex and confused procedure in the United States House of Representatives, where there is no ministry to introduce legislation, to pilot it through the House, and generally lead the House in debate. See Finer, "Foreign Governments at Work" pp. 65-6, 68-9, 71, 2.

Carleton asserted, "The framers of the Act never could so far have stultified themselves as to send us out a complicated piece of machinery without sending the key to wind it up, and set it in motion, unless they wished that we should forge the key for ourselves."

The adherents of the principle won the day. Forsaith's amendment was decisively defeated, by twenty-eight votes to one, whereupon the original motion was put and agreed to.

On the following day Wakefield moved an address to the Acting-Governor, respectfully praying him to take the resolution into his "serious and early consideration." But O'Brien and Forsaith returned to the attack with an amendment, "that this House feels that there exists reasonable doubts, whether under the royal instructions of 13th September, 1852,it be competent to the Officer Administering the Government, immediately to introduce without the previous sanction of the Crown a system of ministerial responsibility." Hence instead of following Wakefield's course, they proposed to address the Queen praying for the establishment of responsible government, and in the meantime, to form a means of communication between the House and the General Government, by adding at least two of the members of the House to the Executive Council. Debate now ensued, between the two lawyers, Sewell and O'Brien, as to whether there was anything in the royal instructions or in the Constitution Act which bore out the amendment. Sewell, in his

eagerness, asserted that the instructions distinctly enabled the carrying into execution of the resolution of the House, by authorising the Governor to add to his Executive Council any number of persons, whom he might think fit. But this was just what the amendment proposed. He was on surer ground however when he examined the circumstances attending the passing of the Constitution Act. Earl Grey's proposed constitution, embodied in the heads of a bill of 1851 had contained a provision enabling the Executive Councillors to hold ex officio seats in the House of Representatives, without voting. But the Constitution Act contained no such provision. Could it be supposed that the framers of the Act were so ignorant of their work that they did not know what they were about?

O'Brien's reply was that in interpreting Acts, members must be solely guided by the acts themselves. He overlooked the fact if, indeed, he were acquainted with it, that a Prime Minister is not known to law. Wakefield then quoted Gladstone, who had said in the House of Commons, regarding the Constitution Act that the measure permitted the colonists to pass bills for the purpose of altering every political arrangement that might be made for them by the British Parliament, only providing that such bills as dealt with organic changes should be remitted Home. But, urged Wakefield, the organic changes such as the alteration of the franchise, were mentioned in the Constitution Act; this was not one of them. A bill was therefore all that was

necessary according to that view. On the House dividing, the amendment was defeated by twenty-five votes to two; the motion was put and agreed to.

On 7th June, the Acting-Governor, by message, assured the House that he would "approach the consideration of the subject with a sincere desire to give effect, as far as it might be in his power to do so, to the views of the House," embodied in the resolution. But Colonel Wynyard was in a difficult position. Responsible government was then something new in the colonies,³⁵ and he had not been authorised to supersede ministers of the Crown. Moreover "he was merely the Officer Administering the Government, in the absence of the Governor, and it was a serious step to remove the the councillors who had till then been quite naturally regarded as permanent officials."³⁴

"Wynyard was," says Reeves, "wax in the hands of Swainson."³⁶ While the subject was still under discussion in the House of Representatives, he consulted the Attorney-General, whose opinion was given in a lengthy memorandum dated 5th June. "Neither by the Constitution Act", opined that official, "nor by the instruments under the authority of which he administers the Government, has any provision been made for enabling the Governor to establish ministerial responsibility in the conduct of Legislative and Executive proceedings

34. Hight & Bamford - Constitutional History and Law of New Zealand. p. 277.

35. See Above p. 47

36. W. P. Reeves - "The Long White Cloud", p.253.

by the Governor.'" However it would be "competent for the Officer Administering the Government, under the authority of the royal instructions, at once to add to the Executive Council such other persons as 'he may deem qualified and capable to advise him.'" Hence the Attorney-General recommended the provisional appointment of two or three members "having seats in the Assembly" to the Executive Council, without specific offices, such members to conduct Government business through the two chambers of the Legislature. They should be adequately paid, and one of their number should be an able and experienced lawyer. In the meantime the three official members of the Council should continue to hold their offices.

The subject was then brought under the consideration of the Executive Council who "were unanimous in their opinion that the Officer Administering the Government would exercise a sound discretion in meeting the views of the House of Representatives, to the extent and in the manner suggested."

On Wednesday 7th June, the House met and went into committee of the whole, on the standing orders, when presently there was a slight sensation. Fitzgerald and Monro, the mover and seconder of the Address were walking to Government House. There was to be a communication. "The House went on with its work, as men do drudging at an uninteresting task, whilst they are on the tiptoe of expectation. In about half-an-hour, Fitzgerald and Monro entered, stately and nervous." After some

conversation with Wakefield, Fitzgerald rose and announced to the excited House that he had a communication to make, whereupon the committee broke up and the House resumed. He then informed the members that Monro and he had been sent for by the Acting-Governor, who had acquainted them of his intention of introducing responsible government as far as was in his power, and had requested them to join the Executive Council and form a ministry. Fitzgerald then asked for a week's adjournment to mature his plans. This was agreed to but the House was to complete its work on the standing orders. Immediately Fitzgerald and Monro found that they did not possess that unanimity of opinion which would justify their undertaking to act in concert. Upon certain questions of policy, notably waste lands, the two had different inclinations, Monro being more centralist in tendency than his colleague. Accordingly, as seconder of the Address, he formally resigned, and Fitzgerald was charged by the Acting-Governor to find two other members who would be willing to join him on the Executive Council, one of whom must be a lawyer. He then approached successfully Weld, and Sewell, but in consideration of the position taken up by Auckland in the late debate, recommended the addition of a fourth member, who should represent that province on the Executive; for though Fitzgerald did not consider it important that any particular PROVINCE should be represented, he did think the state of affairs demanded that the House should command the confidence of as large a portion

of the colonial community as possible. However the Acting-Governor replied that he did not approve of the addition of a fourth member, partly because of the possible embarrassment of his successor, and partly because of his conviction that the Auckland province was adequately represented by the official members.

The responsible ministers took the oath, and were gazetted, on 14th June 1854. Wakefield ecstatically exclaimed, "not only is the principle admitted without reserve, but as a principle of government it has been carried into real and full effect.....The fullness of the success almost makes me share in the consternation of those to whom this revolution comes as a stunning blow!" But how far had the principle been carried "into real and full effect?" The arrangement was provisional only, until the pleasure of the Crown should be made known, and this the "ministers" knew full well. But they had made it a condition of their accepting office, that the Government should at once introduce a bill into the House of Representatives for securing to the holders of the offices of Colonial Secretary, Colonial Treasurer, and Attorney-General, fair and reasonable compensation, and that they should resign as soon as the public service required. To this the official members of the Executive had agreed, and the Acting-Governor had given a qualified assent.

As we know it, the cabinet is politically homogeneous, the ministers are collectively responsible; there is submission to a common head, and dependence on

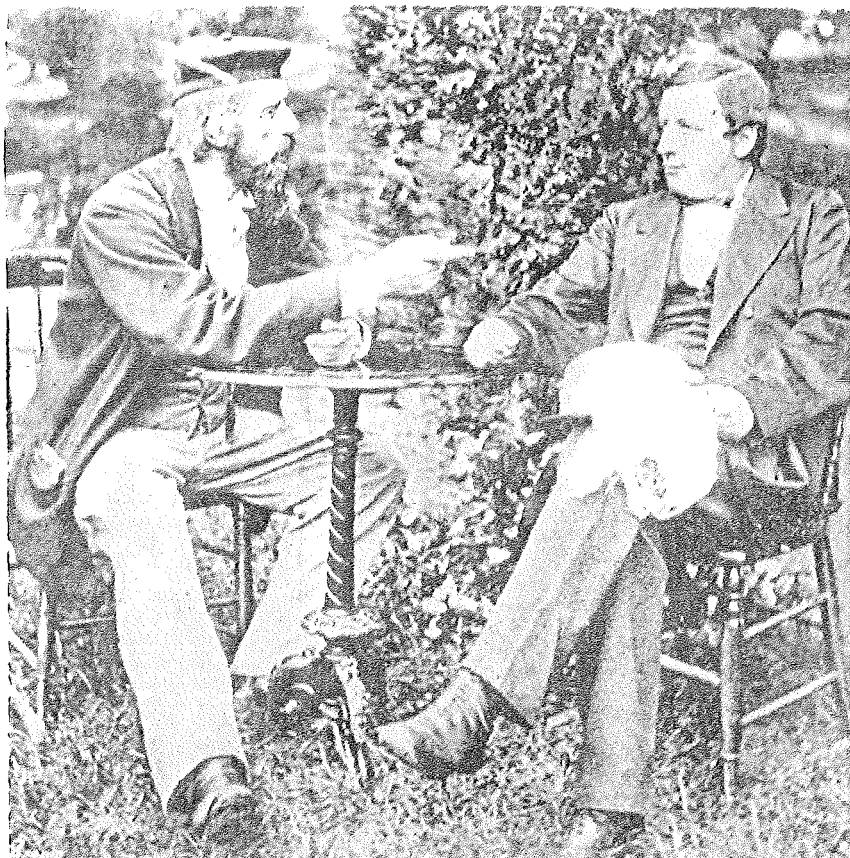
a majority in the popular House. How many of these characteristics did the new Government exhibit? It was certainly not politically homogeneous, nor were the ministers collectively responsible, for, of them three were responsible to the Crown, and three - the unofficial members - to the House of Representatives. Thus half the Executive Council depended upon a majority in the Lower House; half were secure in their seats whatever might befall in Parliament.

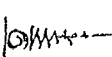
The situation presented several apparently insoluble problems. How was unanimity to obtain between men holding office under the nominee principle, and men possessing the confidence of the representatives of the people? In the event of disagreement, would the Acting-Governor accept the advice of the Crown officials, or of the Parliamentary ministers? It would then be found that the Executive Council had two heads, which were not necessarily better than one. The Parliamentary ministers must consequently resign, but who would then occupy the Treasury Benches in the House? The majority certainly would not - the minority assuredly could not, maintain themselves in office. Could such an arrangement have proved practicable, it would indeed have been a miracle; only a policy of "quieta non movere" could have ensured the successful working of the new system, but this from the nature of things was impossible. Responsible government must either have fully realised itself, or have given place to the government of the Crown and its nominees.

CHAPTER VITHE WORKING OF THE NEW SYSTEM.

On 15th June, at noon, the Speaker took the chair; Fitzgerald, Sewell and Weld were seated in the red-cushioned Treasury Benches, that stood opposite those of the private members. The strangers' gallery was full, for this was the day on which the responsible ministers were to make their début.

Fitzgerald opened in a clear, gentlemanly, and very agreeably delivered speech, in which he explained the steps leading to the formation of the ministry, and outlined the Government policy which had been framed during the previous week. It was the intention of the ministry first to introduce a bill to fix the form of the Executive Government, and the several departments by which the general Government should be administered.. This bill would repeal the provision in the Constitution Act for the maintenance of the civil establishment, would set up certain offices, to which certain salaries would be permanently attached, payable out of the public revenues. The heads of the Government offices, appointed by the Acting-Governor and holding office during his pleasure, could then at any time be removed to admit others whose policy would be in accordance with



(Left) Hon. James E. Fitzgerald. 

the Houses of the Legislature; responsible government was to be introduced by means of legislation.

The next subject which was to be dealt with was that of the powers and jurisdiction of the Provincial Governments. The Government intended first to repeal all the empowering ordinances, which had been passed by the several Provincial Councils before the meeting of the General Assembly, - not with the object of curtailing their powers, but of creating a uniform system throughout the colony. The powers of Government would then be divided into three classes, the first of which would be exercised solely by the general Government; the second would be retained in the hands of the general Government, but would be delegated to the Executives of the provinces at discretion; the third would be vested in the provinces alone.

Perhaps the most important matter claiming the attention of the ministry was the administration of the waste lands. In March 1853, after receiving and proclaiming the Constitution Act, Grey had reduced the price of Crown land to ten shillings an acre, whereupon much jobbing ensued. It was the aim of the provinces to assume control at the very earliest possible moment, and so put an end to these practices, for, in the South especially, owing to the influence of Wakefield,¹ Sewell and others there was a reaction against "cheap land."

1. Who had denounced Grey's ten-shilling an acre proclamation in his letters, especially to Rintoul, 22nd June, 1853.

In the north there prevailed an insatiable land-hunger, so great that there was talk in some quarters of making direct purchases from the natives. The new ministry, however, were determined to maintain the Crown right of pre-emption ; they were therefore resolved upon a policy of extensive and immediate purchase from the Maoris, in whose estimation the value of the land was daily increasing. Fitzgerald made it understood that in a few years the Government would probably extinguish by purchase the native title to eleven or twelve million acres of land in various parts of the colony.

The Ministry recognised the popular demand, and were agreed that the disposal of the waste lands should virtually be given over to the provinces. By the Constitution Act, the provinces were specially prohibited from dealing with the waste lands; the course now proposed was that they should be handed over to the Governor. Each Provincial Council should introduce in the form of resolutions, the regulations desired, which should then receive the approval of the Superintendent. It would then be competent for the Governor, with the advice of the Executive Council, to issue regulations for that province. The advantage claimed for thus referring the proposed regulations to the Central Government, was the minimising of the danger of sudden alterations in the systems of land sales, which might eventuate if, in times

of excitement, the small bodies of men of which the Provincial Councils consisted, were strongly moved by local influences. As to price the provinces should be restricted; in no case should land be sold at less than five shillings an acre, but no limitation should be placed upon the maximum price. Provinces might also sell in whatever manner was deemed expedient, whether at a fixed price or by auction.

The ministry was also prepared to advise the Acting-Governor to delegate to the Superintendents of the provinces the authority to make appointments, and to transact the whole business of lands, provided they acted in all cases in accordance with the advice of the Provincial Councils. The public reserves were also to be vested in the Superintendents, and were to be held in trust for the purposes for which they had been reserved, but they might be alienated, or put to purposes other than those originally specified, by ordinances of the Provincial Councils to that effect. This, however, related only to reserves made for local and municipal purposes; the general Government retained the power to reserve lands on which to build government offices, customhouses and the like.

At this time, had it wished to refuse supplies, - and it was soon to do so, - the New Zealand Parliament would have been powerless, for by a defect in the Constitution Act, only the prospective revenue was made subject to appropriation by the General Assembly. The

first financial act of the new Government, then, as Fitzgerald pointed out, would be to introduce a declaratory bill stating that certain existing revenues be deemed raised in virtue of an act of the General Assembly. It was proposed that, instead of distributing the revenues according to the Constitution Act,² certain revenues might at once be passed into the provincial chests and declared not to be Her Majesty's revenues within the meaning of the Act, the reason for this being that, for nearly a year, the Provincial Councils had appropriated certain revenues,—an arrangement that had worked well. A bill should then be introduced enacting that all revenues collected through the departments of customs, lands, supreme court and post office, should be deemed general revenue, while all other revenues should be deemed provincial revenues. All subsequent taxes or imposts would be directed into either the general or provincial treasuries by the special act imposing them.

Together with these permanent measures, certain temporary laws were necessary. Since 30th September, 1853, no revenues had been appropriated to the service of the general Government, though public funds had been expended subsequently partly in accordance with permanent enactments, but partly without legal sanction. It was therefore the intention of the ministry to ask the House to pass an Indemnity Bill for the expenditure incurred

2. i.e. Dividing among the provinces, in proportion as the proceeds should have arisen, that part of the revenue not appropriated by the General Assembly.

during the six months subsequent to 30th September 1853, to include that incurred since the end of this period in the estimates for 1854, and to legalise them by providing for their inclusion in the Appropriation Act of the same year. In the event of the retirement of the officers of the Executive Council responsible to the Crown, in order to permit the introduction of ministers responsible to the House, it would be necessary to provide them with retiring allowances for life, and these would be asked for early in the session.

The development of the internal communications of the colony would be effected by improvements in the postal service, to which the Government proposed to vote a considerable sum. The need of reorganising the Supreme Court was also recognised. In the more remote provinces there was no means of obtaining redress for any causes beyond the jurisdiction of the magistrate. Though no definite plan had been made, as the question would be dealt with later in the session, various expedients had suggested themselves, the most practicable of which was the sending of the judges on circuit at least twice a year. The Supreme Court officers were to be placed under the control of the central Government, as provided by the Constitution Act.

Various additional topics were touched upon in Fitzgerald's speech, topics which needed no further notice at the time. With certain other questions the ministry was not prepared to deal, until furnished with

detailed and arranged information by the select committees to which these subjects would be referred, but objection was raised to the constitution of the Legislative Council. "The Upper House should consist of men who had for the longest time, and in the greatest degree, enjoyed the confidence, the esteem, and the respect of their fellow-colonists," and should therefore be elected. Beyond this the Government were not prepared to express opinions as to the constitution of the Upper House.

The essential principles upon which the policy of the new Government rested were aptly summed up by the "Lyttelton Times"³ as the "strict responsibility of the Government to the representatives of the people; the independence of the provinces in matters of local interest; the power of the general Government to deal with general interests and to enforce unity of action whenever danger may arise of clashing legislation in the different provinces; the provincial management of waste lands; and finally, the destruction of that last vestige of a bad system, the nominee composition of the Legislative Council."

If the existence of an opposition party were a condition necessary to the successful working of responsible government, as indeed it was and is, the ministerial party was destined in a very short time to encounter that party, under a leader, who, it might have

been supposed, would have been the last to take up arms against his honourable friends, the occupants of the Treasury Benches.

Delicate problems had arisen when Fitzgerald had been charged with forming a ministry. Wakefield regarded responsible government as his own child, and quite naturally, wished to nurse it into being. But when the question arose as to who was to "be the tutor and manager of the young bantling," who was to be the leader of the Government party, Fitzgerald, "with nothing like the power, but with higher social claims," took precedence. Then came into play all the dislike and distrust mutually felt between the two; Fitzgerald would not work under Wakefield, and with difficulty with him for he was "too politic, too diplomatic, too secret, too powerful." Wakefield on the other hand distrusted and depreciated Fitzgerald. Hence Wakefield was excluded from the ministry,⁴ and keenly sensitive of his importance and position in the late movement, felt himself affronted. Sewell rightly predicted that if his boundless energy could not help, it would be sure to employ itself in marring the work of the new ministry.

Wakefield's first opportunity presented itself on 20th June, when fretful and dangerous, but restrained by the reflection that the time was not yet ripe for open attack, he rose to move an Address expressive of the

4. Sewell - Journal, 13th June 1854.

This is also evident from Wakefield's letters.

satisfaction of the House at the Acting-Governor's action in giving recognition to the principle of ministerial responsibility. In almost the same breath as that in which he uttered his ecstatic words about the timely escape of the country from fearful danger, he covertly compared the House to "the young captain who receives at his club the astonishing information that Her Majesty's Government consider him to possess the high qualities which fit him to represent the Crown in one of Her Majesty's colonies, and who, after a night of sleepless enjoyment, looks at himself in the glass, and asks his image how it happened that his great capacity for governing remained so long undiscovered." The whole speech was, so far from being in support of the motion he brought forward, a series of complaints and criticisms interspersed with apologies and professions of political friendship. He went on to point out the original mistake on the Acting-Governor's part of sending for Fitzgerald, who had been selected to move the Address-in-reply, simply because he was the only Superintendent in the House, and not because he enjoyed the confidence of the House. Then in the selection of the ministry the Legislative Council had been neglected, and such disregard of that chamber, because its composition was disliked, would bring that House into discredit. But a most monstrous criticism was levelled at the ministry for the way in which it had framed its policy. Wakefield avowed that the Government should have submitted its propositions to the

House for discussion, ^{declaring} before them as policy; in other words that they should shift the responsibility on to the House, instead of placing their measures before the House and standing or falling by the result. This in support of a motion proposing an Address to the Acting-Governor, in recognition of his compliance with the wishes of the House with regard to ministerial responsibility! The incident was important as giving some indication of the probable course of party development; as between Whig and Tory early in the eighteenth century, party was to be based on personal animus and thirst for power.

Responsible government was to be introduced by act of the General Assembly. On the 22nd June the Executive Government Bill was read the first time, and on 27th June Fitzgerald rose to move the second reading.

The mover gave a more detailed exposition of the contents of the bill, developing the outline given in the preliminary statement. The bill was intended to give full scope to the principle of responsible government. Instead of having the Executive offices filled by persons nominated by and responsible to the Crown, and holding office during good behaviour, it was proposed that the Executive should be responsible to the House and should hold office only so long as they could command the confidence of the House. As the salaries of the three official members of the Executive Council were provided for on the Civil List, it would be necessary, together

with the alteration of the tenure of the offices, to make an alteration in the Civil List providing a fresh sum to be applied to the payment under the new system. Having provided for this alteration, the bill went on to state what offices were to exist in the colony, it being intended to create two new offices, - those of Solicitor-General and Secretary for Native Affairs. Finally, it was proposed to grant retiring allowances to the official Executive officers; this was a necessary condition of the passing of the bill, a condition from which there was no escape.

Wakefield in a short speech affirmed his intention of voting for the second reading, but could not forgo reminding the ministers that they should have brought their views before the House in the form of resolutions which could have been discussed in committee of the whole. Forsaith, however, "who admired the principle (of responsible government) but liked to contemplate it at a distance", opposed the bill because it did not contain a clause suspending its operation till the Crown's consent be received. He contended that the bill contemplated one of those organic changes to the Constitution which made the Queen's assent imperative. Again, he objected to the inclusion of the clauses relating to pensions which, he considered, appeared an inducement to the official members of the Executive to retire. "In short the bill first took the bread out of the mouths of those officers if they chose to be faithful,

and then, as an inducement to unfaithfulness, it provided a pension if they quietly retired." But Forsaith was mistaken as to the purpose of the provisions regarding the pension, which removed, as far as the Crown was concerned, all objection to the retirement of the officers.⁶ Forsaith overlooked the fact, too, that the Acting-Governor could, if he considered it expedient, reserve the bill for the Queen's assent. Accordingly he moved as an amendment that the bill be read that day six months.

Lee, (Northern Division) in seconding the amendment brought forward a new objection. He denied that the officers if they retired, would have any claim on the colony; the Imperial Parliament should provide for them. Though this view was not supported by any other member, it was representative of opinion in certain quarters.

The House had not lost any of its enthusiasm for responsible government, as the division showed, the amendment being defeated by twenty-five votes to three; nor had the contrary voters any dislike of the principle. The opposition was not organised or compact, and voted against the bill from widely different motives.⁷

The next move in the party game was played by Wakefield who on 29th June made a bid for the support of

5. By striking off the Civil List the sum of £4,700, the amount of their salaries.
6. This was pointed out by Sewell, and was, as events proved, correct.
7. O'Niell (City of Auckland) objected to "Wasting money in rearing a large central Government, with the hope of keeping the six provinces one, when we

the Auckland members by moving the appointment of a select committee to decide the justice of charging Auckland with her portion of the New Zealand Company's Debt. Such a move could not fail to provoke jealousy on which Wakefield no doubt hoped to found an anti-ministerial party. As this was a question which really concerned the Committee appointed to enquire into the "origin, nature, extent and just claim" of the Company on the colony, the ministers, though not wishing to obstruct the progress of preliminary enquiry, yet suggested that this subject should be held over, pending the report of the committee first formed, when considerable light would be shed on the subject. Weld, in speaking, happened to mention that the question was not regarded as a ministerial question, whereupon Wakefield savagely retorted that open questions were a symptom of weakness and shrinking from responsibility in the Government." The position of the ministers resembled that of the benches upon which they sat, which was so fixed that it could not be pushed down except by the mismanagement of those who sat on it!

Shortly after six, when the House resumed, Jerningham Wakefield, son of Edward Gibbon, returned to the attack. On the morrow, Fitzgerald was to move the second reading of the Waste Lands Bill, which the Wakefields planned to overthrow, and with it^o the ministry.

So Jerningham moved that, as the first session of the New Zealand Parliament exhibited the characteristics of a Constituent Parliament, following the usage of the

7. see that nature has intended them for two!"

House of Commons the introduction of a measure involving great change in the institutions of the country would best be effected by resolution in Committee of the whole House. That the object of this manoeuvre was the overthrow of the ministry on the Waste Lands Bill, is vouched for by Sewell, and borne out by the circumstance that, replying to Fitzgerald's suggestion for postponement, Jerningham Wakefield affirmed that it should be discussed before the second reading of the Waste Lands Bill.

The professed object of the scheme was the preliminary discussion of measures, to acquaint members with their underlying principles. We can hardly state that the Wakefields were unacquainted with the practice of the House of Commons, where the principles of a bill were debated when its second reading was under consideration, and where particular discussion, clause by clause, took place subsequently in Committee of the whole House. They affected to consider that Fitzgerald was bluffing the Waste Lands Bill through the House. The truth is that members, almost without exception, knew the principles of the bill, for the majority of them, being inclined towards local control, had advocated handing over the waste lands to the provinces, - most of all the Wakefields themselves. The Wakefields must, with their knowledge of Parliamentary practice, have recognised that following such procedure would subvert the fundamental principle of responsibility, and

consequently be interpreted by the ministers as a vote of censure. One is forced to the conclusion that personal objection to Fitzgerald was the motive underlying the attack. Edward Gibbon Wakefield had characteristically counted upon having some influence with the ministry through Sewell,⁸ whom he had called his "alter ego;" the disappointment of his hopes must have led him to this motion of no-confidence, for it was nothing else.

The ministers were hard put to it. Explanation by Fitzgerald availed nothing against appeal to credulity. The proposal was negatived by only thirteen votes to ten, so effectively had Wakefield camouflaged his intention with plausible talk about full discussion and ample information. "Some simple-minded members, thinking 'that's all right,' and not knowing much about the matter, had swallowed his statements about the invariable usage" of the Imperial Parliament, but most of the opposition were Auckland men caught by the bait held out to them earlier in the day.⁹

The ministers were to have one more brush in the House with Wakefield, before meeting him in fierce and undisguised opposition. On 7th July there occurred a scene between Sewell and Wakefield, the matter in dispute being the accuracy of a press report alleged to have been a trifle "coloured up" by the latter, who was making a serious bid for public favour in Auckland, before staking his influence in a battle-royal with the

8. Sewell and Wakefield had in England been intimately acquainted with each other and had voyaged to New Zealand together on the ship "Minerva".

ministry. The result of an unseemly wrangle was the acceptance of the offender's explanation, but feeling rose to a high pitch, and an oppressive atmosphere pervaded subsequent proceedings.

It will be remembered how Fitzgerald in forming the ministry, had recommended the inclusion of an Auckland member. At the time he had actually approached certain Aucklanders, but the Acting-Governor had restricted the number of Parliamentary Executive Councillors to three. Difficulty in communication with the Executive Government soon led the Legislative Council to request the addition of one of their number to the Executive, and on 30th June the Hon. F. Dillon Bell of Wellington, was sworn in. This led to an outburst of provincial feeling in Auckland, an opportunity of which Wakefield was not slow to avail himself.

It was on the 30th June too, that Fitzgerald moved the second reading of the Waste Lands Bill, but after considerable debate the House adjourned. Weld subsequently gave notice that he would move for the resumption of the debate on 11th July. Wakefield who had before fretted and chafed outside the House, now set to work assiduously to defeat the ministry. Rumours were about Auckland that a cabal was formed of which he was the head; that he was going to attempt a "coup" on the 11th; that he was sounding members as to a new Government; that the Auckland members, bought with Wakefield's promise to relieve them of the debt, and with feelings

9. Six of them.

raised about the exclusion of Auckland from the Executive Council, would vote together against Fitzgerald; that certain southern members were expectant of office under Wakefield; in short that the days of the ministry were numbered.

At this stage ministers encountered a new difficulty. Dillon Bell hurriedly departed to Wellington leaving a gap in the Legislative Council, and a vacancy¹⁰ in the ministry. Of such an opportunity Wakefield would not be slow to take advantage, especially as he was suspected of backstairs influence with the Acting-Governor. At a Sunday afternoon council-of-war on 9th July, Fitzgerald's plans were prepared for the future. It was resolved, if beaten on the Waste Lands Bill, to press for a dissolution, and to appeal to the electors, for a new Assembly to be held at Wellington; and to fill the vacancy in the Executive by requesting Bartley to accept office, in which event he would be nominated to the Legislative Council. Thus Auckland and the Council would be in some measure pacified.

Success attended the ministerial plans; on Tuesday 11th, Bartley walked down to the House with Fitzgerald, Sewell and Weld, and took his seat on the red-cushioned benches; the Waste Lands debate was resumed.

The opposition came from two sources, from Monro, and from the Wakefields and their partisans.

10. Having tendered his resignation.

Difference of opinion between Fitzgerald and Monro on the waste lands had been the reason for the latter declining to accept office on 15th June. Monro was decidedly ^{de}centralist. He feared that principles such as those that governed the bill would rob the General Assembly of all dignity. "It would meet, not as representative of New Zealand, but as a congress of ambassadors from so many petty and jealous little states, dealing only with such crumbs of power as the over-riding provincial element might allow it to pick up." It was not the function of the General Assembly to endorse provincial laws, to register provincial edicts. Again he regarded the intrusion of direct interest, which Fitzgerald had put forward as one of the salient features of the bill, with suspicion and distrust. Finally, the passing of such a measure, altogether opposed to the Constitution Act¹¹ would constitute a breach of confidence with the Imperial Parliament. He urged that the waste lands be kept in the hands of the General Assembly.

The members of the Wakefield faction posed generally as saviours of an endangered Constitution. They were in favour of the transfer of power if legally executed, but would not trample upon their own liberties. One of the number, in true provincial spirit, craved pardon from the ministers if he reminded them that they had not on previous occasions shown such a degree of consid-

eration for Auckland province as would favour the idea of placing, in their hands¹² as much power as that proposed in the bill, though from the presence of Bartley on the ministerial benches he thought them sensible of the maxim "that the way to good manners was never too late."

One argument, put forward by Macandrew, and justified by events, redeemed the opposition. Though objecting to a transfer "effected by sleight of hand,"¹³ he would rather see control in the hands of the provinces than in those of the General Executive, more especially as that body was not in such a responsible position as he could desire. The passage of the bill would surrender to the Governor and Council the power of approval of regulations put forward, but in the event of the collapse of the system then in vogue, that power would be exercised by a Council responsible only to the Crown. The House would be surrendering functions with which it was invested, perhaps to an irresponsible government.

Again meagre explanations on the introduction of the bill were complained of, but perhaps the most flagrant disregard of fact was the assertion of Jerningham Wakefield that the checks on provincial extravagance were of a less fixed nature than desirable. Yet, as Weld reminded him, in a telling speech, these were three in number; central control was to be maintained by means of

12. The Governor with the advice of the Executive Council would issue the regulations. See p116

13. As Carleton said.

instructions to be issued to the Superintendents, by exercise of the power of refusal to act upon the recommendations of the Provincial Councils, and by power of revocation of the delegated administrative powers.

Wakefield's speech deserves special mention. In a long harangue, into which he "imported a variety of topics wholly irrelevant to the question," he disregarded all his old principles of the "Art of Colonisation." Wakefield who stood then not as a theorist, but as a colonial politician, gave a most disappointing and unconvincing set of reasons for voting against the second reading. The bill was "in defiance of the very principle of free institutions." It laid down no law but the minimum price. It left everything to the caprice of the Governor and his Council. It was an evasion of the Constitution Act. It placed upon the shoulders of others a troublesome responsibility. It degraded the House, and the General Assembly, by setting aside its functions. It would lower the credit of New Zealand in the money-markets of England and Australia. This declamation against the measure was followed by a tirade directed upon the men. They had forfeited his confidence. Their measures and the condition in which they left the government he feared more than a ministerial crisis. So far as His Excellency and the House were concerned he feared not at all. He had observed "an elastic step and a beaming eye", which told of no repentance for an action done, and which led him to believe that His Excellency would not draw back from his

own great performance. (Had he been behind the backs of the ministers?) He had not lost confidence in the House; he believed (having sounded some of them!) that they would not be found incapable of furnishing His Excellency with a Government. If the "noes" had it, he presumed the ministry would retire. He would therefore not vote for the second reading of the Waste Lands Bill.

Sewell replied and crushed him. The division list showed a majority of twenty to ten for the ministry.

One week later Wakefield definitely abandoned, as far as New Zealand was concerned, his theory of the sufficient price - the price varying with circumstances, sufficient to deter speculation in land, and sufficient to ensure a supply of labour for hire by compelling every labourer to work for wages until he had saved the means for obtaining land. When the Waste Lands Bill was in committee, he proposed amendments for a working settlers' plan. His object was to enable this class to obtain land, notwithstanding the operations of speculators. To this end, one-third of the waste lands should be set aside for settlers, and to prevent competition, should be sold at a known fixed price, the lowest price in force at the time. To one person should be sold no more than two hundred acres. As a deterrent to speculation settlers should not obtain a selling title till they had proved themselves by bona fide occupation of the land for five years.

The amendment was defeated by twenty-one votes

to ten. It was regarded by the ministers as a bid for the support of the working classes, and circumstances favoured this view. Wakefield had strenuously opposed the Waste Lands Bill; he had hoped to defeat the ministry on it. The adoption of the scheme proposed in the amendment would undoubtedly have lessened the supply of labour, for which squatters were crying out at all times. Yet it is possible that Wakefield was acting in good faith. He asserted that "he was only pursuing an idea which took possession of him some five or six and twenty years ago, when he first thought on the subject of the disposal of waste lands in colonies."¹⁴ Then it must be remembered that the theory of the sufficient price could not in 1854 have been re-applied, for Sir George Grey had in March, 1853, lowered the price of land to ten shillings an acre, and since that date landsharking had been in such great vogue that working-settlers were being excluded from the land. The sufficient price theory was then inapplicable. Now Wakefield had at no time stated that land was only for speculators; hence this scheme might have been advanced with the intention of offering opportunities to labourers. If so it was a much more efficient plan than that adopted by Grey in 1853.

In view of the opposition offered in the House of Representatives to the Waste Lands Bill it

14. New Zealand Parliamentary Debates,
1854-5, p.234.

might be asked if the ministers were justified in introducing it. From the arguments of the opposition one was valid. The Executive was only partially responsible; the new system was not stable; it would either develop into full Parliamentary responsibility or revert to responsibility to the Crown. Hence the executive should not for the present be vested with the power of refusing to promulgate provincial recommendations. This should be kept in the hands of the General Assembly. The general contention among the northerners that the bill was in contravention to the Constitution Act, was not upheld by the Attorney-General.¹⁵ Of considerations influencing the ministry there were many. The agitation for representative government had taken on rather a provincial character. The settlers required local government. Subsequently to the receipt of the news of the passing of the Constitution Act and before the first elections, there had grown up an influential body of opinion in favour of provincial control of waste lands, so much so that candidates for the House of Representatives had made their approval of this demand a leading feature of their addresses both in the newspapers and on the hustings. Subsequently to the meeting of the General Assembly, the Provincial Councils of Canterbury and Nelson had addressed petitions¹⁶ to the House of Representatives praying that the control of the waste lands be

15. New Zealand Parliamentary Debates 1854-5, p.213

16. Received 27th and 30th June respectively.

vested in the provinces. Then the prospect of an Executive at Auckland being responsible to the electors say of Otago for the administration of lands in that province seemed rather ridiculous, when the means of transit were considered. All that was necessary was efficient control on the part of the central Government, and this was provided for by the bill. Finally, if ever the measures of a responsible ministry are justified by successful passage through the House, the Waste Lands Bill was. With slight amendment it went through committee, and was placed for third reading on the orders of the day for 3rd August.

Other Government measures went through the House with very little opposition. The Public Reserves Bill, "a sort of pendant to the Waste Lands Bill," aimed at the beneficial administration of the public reserves, by constituting the Superintendents corporations, regulated by the advice of the Provincial Councils. This bill was ^{through} passed/~~its~~ third reading on 7th July.

The Revenues Bill declaring that certain existing revenues be deemed raised in virtue of an Act of the General Assembly, and certain others¹⁷ be deemed provincial revenues, was read for the third time on 25th July.

The Empowering Bill was introduced to deal with conditions arising out of Sir George Grey's action in calling the Provincial Councils together before the

General Assembly. ¹⁸ As there had seemed no reasonable security for the calling together of the General Legislature, the Provincial Assemblies had, by means of Empowering Ordinances taken upon themselves powers (such as legislating for the Post Office, and the Resident Magistrates' Courts,) reserved by the Constitution Act to the General Assembly. The object of the Empowering Bill was to reduce the powers of the provinces to uniformity.¹⁹

One Government measure brought forward, received the hearty approval of even the most rabid partisans of the opposition. On 5th July a unanimous House suspended six standing rules to enable Sewell to bring in and pass through all its stages a bill empowering Mr. Henry Nicol "to sell wine, beer, brandy and soda-water to members" within any building "used for the purpose of the meeting of the General Assembly."

A most interesting sidelight on the working of the new system of partial ministerial responsibility, was afforded by the steps that led up to the appointment of the Chairman of committees. As an act of courtesy for the graceful manner in which the representatives of the north had conceded to the southern members the privilege of the Speakership, the southern members were anxious that the appointment of Chairman of Committees should be conferred upon one of the representatives of the north.

18. See p. 56 - 57

19. See p. 115. The Empowering Bill was read for the third time on 27th July.

On the order paper for 15th June appeared a motion in the name of Wakefield, proposing Carleton for the honour, while following it was notice of an amendment to be moved by Greenwood, that Merriman be appointed. When Fitzgerald, Sewell and Weld had been added to the Executive Council and had formed a ministry,²⁰ Wakefield withdrew the motion, conceiving the appointment now to rest with the ministry. But on the order paper for 21st June, there appeared a motion in Greenwood's name, proposing Merriman, and in Bartley's an amendment proposing Carleton.

Greenwood accordingly rose to propose Merriman, and his motion was seconded by Forsaith. Wakefield rose to explain why he had withdrawn his motion, and Bartley rose to move as an amendment that Carleton be appointed Chairman of Committees. O'Niell seconded the amendment. As some debate ensued, Wakefield, to relieve the House from a delicate and disagreeable position, moved that in accordance with the usages of ministerial responsibility, the proposal for appointment of Chairman of Committees should come from the advisers of the (Acting-)Governor. This amendment was carried but the comedy was not played out. The ministry were apparently hard put to it to choose between the two members proposed in the House. Outside the house various expedients were suggested, the most practicable being that the two should fight it out. Fitzgerald jocularly proposed that they should "toss up" for the honour, a suggestion which Carleton interpreted

seriously and accordingly relieved the ministers from the embarrassment of the situation by withdrawing. On 30th June Fitzgerald moved, and Carleton himself seconded the appointment of Merriman, who proved acceptable to the House and was consequently elected.

In those days one of the most exciting tests of party strength lay in the decision of an election petition, for the House was judge without appeal of the validity of the return of its own members. There was nothing to disturb the dignity of the House in the hearing of the first election petition in New Zealand. On 6th July the Acting-Governor sent enclosed with a message to the House of Representatives, a petition against the return of William Thomas Locke Travers for the Waimea district. A week later on the motion of Sewell the House went into committee for consideration of the petition which objected that Travers was not a registered elector of the district for which he had been returned. After a long discussion the committee resolved that Travers had been, and was declared to be, elected to the seat for Waimea, a resolution adopted by the House. Under this temporary arrangement, the presence of members of the Government in the House was thoroughly appreciated by private members, who ensured the responsibility of ministers by frequent questions on matters of policy. Questions might be asked any day the House was sitting after prayers and before proceeding to the orders of the day.

As reference to the appended table and to the

Journal of the House will show, Government legislation had precedence over that of private members. It was only after the Government measures had reached an advanced stage that private members' motions could assume first place on the order paper. Carleton was very fortunate in obtaining leave to bring in his Pre-emptive Land Claims Bill on 21st June, but it did not progress as far as Travers' Land Claimants' Estate Bill introduced some three weeks later. Of the private members bills perhaps the most important was Forsaith's Marriage Bill. In 1847 Grey had passed an ordinance which favoured the two episcopal churches in the colony with certain privileges, mainly the issue of licenses, which was denied the non-episcopal organisations. In consequence of persistent agitation Grey amended his previous ordinance by another enactment in 1851, but this was disallowed. Forsaith who had figured largely in this agitation, was, now that the General Assembly was elected, entrusted with the introduction of a measure into the House of Representatives, to remedy the unsatisfactory state of affairs. While the bill was before the House, no fewer than eight petitions were received from various non-episcopal organisations, praying that it be passed. Unfortunately for Forsaith, responsible government proved more engrossing to members than Marriage Bills, and this measure with the others was cut short in its career by the subsequent prorogation.²¹

²¹. See p. 142.

Summary of Proceedings on Bills, Session I.
(Votes and Proceedings of House of Representatives.)

	Titles of Bills.	Member bringing in the Bill.	Date of Leave Given.	Date of Introduction from Legis. Council.	First Reading.	Second Reading.	Date of Going into Committee.	Report Brought up.	Third Reading.	Date of Passing.	Forwarded to Legislative Council.
1.	Waste Lands Bill.	Fitzgerald	20th June		20th June	11th July	18th July	26th July			
2.	Executive Government Bill.	Fitzgerald	21st June		22nd June	27th June					
3.	Public Reserves Bill.	Sewell	23rd June		23rd June	29th June	4th July	6th July	7th July	7th July	7th July
4.	Revenues Bill.	Fitzgerald	4th July		4th July	13th July	21st July	21st July			
5.	Licensing Amendment Bill.	Fitzgerald	5th July		5th July	5th July	5th July	5th July	5th July	5th July	6th July
6.	Empowering Bill.	Fitzgerald	4th July		4th July	12th July	14th July	19th July	27th July	27th July	
7.	Pre-emptive Land Claims Bill.	Carleton	21st June								
8.	Land Claimants Estate Bill.	Travers	11th July		11th July	27th July					
9.	Marriage Bill.	Forsaith	12th July		12th July						
10.	Law Practitioners Bill.	Carleton	18th July		19th July						
11.	Powers of Attorney Bill.	Hart		18th July	18th July						
12.	Nelson Native Trust Bill.	Monro	19th July		19th July						
13.	Land Registration Bill.	Merriman	19th July		19th July						
14.	Dower Bill.			25th July	25th July						
15.	Interpretation Bill.			25th July	25th July						
16.	Naturalisation Bill.			1st August	1st August						

On 2nd August Fitzgerald, Sewell, Weld and Bartley placed their resignations in the hands of the Acting-Governor. The compromise had proved impracticable.

From the very first Sewell had recognised that it was "not a case for ecstasies." From the beginning trouble was apprehended from Wakefield; to strengthen the hands of the ministers co-operation with the officials was imperative. But Swainson "kept himself aloof, Attorney-General still," but not with Fitzgerald and his colleagues as part of the Government. Certainly he was always ready to afford them "cold and decent help" so far as he could, but would not assume responsibility for general measures brought before the House. As time went on he found himself thus "at liberty to obstruct and oppose the measures of the responsible ministers, while still he was their colleague in the Executive Council, and, with them, co-adviser of the Acting-Governor. We have a picture of Swainson at the first meeting of the mixed Executive Council.²² "Enter the responsible ministers; the Acting-Governor and the old officials all there. We go through several of our proposed bills, to which the Council assents and after some talk about odds and ends we separate. The Attorney General keeps aloof, civil, decently communicative, but evidently not meaning to be one of us. He makes small criticisms and unimportant suggestions, leaving us to bear the brunt of it all, he

sitting above like an empyrean Jupiter."²³

This state of affairs continued till 2nd. August, when the composite Executive gave way. The immediate cause was a confidential memorandum presented to the Acting-Governor by the responsible ministers. As the session advanced there grew among the members of the House a feeling of distrust of the Government. When a statement of the public accounts since the expiration of the last Appropriation Bill²⁴ was placed before the House a select committee was appointed to examine it, and the result of the proceedings of this committee materially lessened confidence in the Government, even among its own supporters. The feeling increased on the reflection that certain bills passing through the House entrusted the Executive with very considerable powers, and it was argued, not without reason, "that the Legislature would not be justified in granting such exclusive administrative powers unless ample guarantee were afforded that those powers would be exercised under the constitutional control of the Legislature." When it became known that the estimates were about to be placed before the House for consideration, members began to ask, "where is the Government?" Murmurings were heard against the unsatisfactory position of the four unofficial members. Hence Fitzgerald would not place the estimates on the table, and he informed the Acting-Governor that there

23. Sewell has "Epicurean;" it is hard to see the significance of his word. "Empyrean" is surely meant.

24. September 1853.

existed a determination in the House "not to grant the supplies necessary to carry on the service of the Government unless upon the constitutional security that the administration of the Government would be conducted in accordance with the will of the Legislature." The ministers now advised the Acting-Governor that the official members of the Executive should place their resignations in his hands, and that as soon as the Executive Government Bill should have passed, he should accept their resignations and should appoint in their stead persons possessing the confidence of the Legislature.

The Acting-Governor now consulted Wakefield whose advice is embodied in a reply to the memorandum, of 1st August. The Colonial Treasurer, to smooth the way, had already placed his resignation in the hands of the Acting-Governor. Wynyard now replied that beyond accepting the Colonial Secretary's resignation, and filling the position with a member of the House of Representatives, he could not think of going. He had sanctioned the link between the Legislature and the Government by the introduction of four members into the Executive Council, but he was not prepared to disturb the officers of the Crown, or in any way to establish a new form of Government in the colony without reference Home. If the formation of an entirely responsible government were in keeping with the views of the authorities in England the arrangement would be only a matter of time, a few weeks, but if it were not the wish of the Home Government, it was the more necessary

that he should await instructions for his further guidance.

On the following morning Sewell, Weld and Bartley handed their resignations to the Acting-Governor, and at an Executive Council meeting in the afternoon, which produced no result, Fitzgerald tendered his. At five o'clock in the evening he apprised the House of what had occurred, whereupon an adjournment was made till six the following evening. Wakefield, who in the House had vainly attempted to procure the fall of the ministers had accomplished his object.

CHAPTER VII.THE CONFLICT BETWEEN THE EXECUTIVE AND THELEGISLATURE. 3rd August - 17th August.

Pursuant to adjournment, the House¹ met on Thursday 3rd August. No sooner had prayers been read than the Speaker announced a message from the Acting-Governor,² apprising the House that in consequence of the resignation of the ministers, he was preparing a message fully explaining his views and wishes with regard to the relations of the Executive towards the two Houses of the Legislature. Sewell promptly moved that Message No. 24 be read and taken into consideration. The motion was put and carried whereupon he moved, seconded by Weld, that the usage of the House of Commons should be adopted whereby ministerial Explanations were made by the mouth of ministers who represented or had represented the Government. It was easy to see who was behind the scenes. Jerningham Wakefield, the mouth-piece of his father, asserted the Acting-Governor's right to send messages to Parliament on various subjects, not less on the occasion of a ministerial crisis. Fitzgerald expressed his surprise at the message, having received permission of the Acting-Governor to make a statement. The House divided.

1. 34 members.
2. No. 24.

The Wakefield faction constituted an insignificant minority of eight. Twenty-six members wished to hear the minister, not the message.

Fitzgerald gave an able account of his stewardship, thoroughly explaining the terms on which the ministry assumed office, and the circumstances which led to the resignation. No sooner had he taken his seat than Stuart-Wortley moved the suspension of the standing orders to allow him to bring on a motion without notice. In a brief, polished speech he proposed a vote of thanks, and confidence in the late ministry, particularly as regards their action in resigning when they found it impossible to carry out the principle for the establishment of which they had accepted office. Picard rose to second.

Wakefield followed, in characteristic vein. He committed the gross indiscretion of announcing himself as the unofficial adviser of the Acting-Governor. He had, he said, been sent for, and his counsel had been invited, "to avert or repair the present downfall of responsible government;" he had replied that on certain conditions he would undertake - "although without a confident hope of much ultimate success," - to devise "some means of accommodating the existing difficulties." One condition was that, under no circumstances, would he accept office under the Crown in New Zealand; another was that the Acting-Governor should not expect him to undertake to form a government. He could only try "whether it would be possible for him to act usefully between His Excellency

and the House in attempting to restore such responsible government as they had had for the last eight weeks." However, after repeated assertions that he would not accept office under the Crown in New Zealand, he came round by degrees to intimating that if he thought the colony in danger, he would accept. This was received by the House with derisive laughter. Chagrined beyond endurance he drew from his pocket a copy of the Acting-Governor's reply to the ministers' memorandum of 1st August, a document which that gentleman had placed at his disposal. This he read and concluded an irritating speech with an admonition to the House to reflect.

It fell to Weld to reply. He denounced the knave behind the throne. He perceived the subterfuge of the member for the Hutt. While the House was sitting he would act merely as irresponsible go-between; when the House was prorogued he would take office. Forsaith rose next. He was on the horns of a dilemma. He was not prepared to vote against the motion, because he had not altogether lost confidence in the members of the late ministry. He was not prepared to vote for the motion, because by so doing he would not only be expressing his full concurrence in the propriety of the step they had taken, but also be conveying a censure on the representative of the Queen. He then proceeded to show that the ministers had resigned "because they wanted to wrest from his Excellency's grasp, that full measure of power and authority, which he from the first had told them the

Acting-Governor could not and would not relinquish. He then stated he would leave the House before the question was pressed to a division.

When the House had given evidence of its temper by passing the vote of thanks and confidence, it proclaimed its defiance anew. Feeling was plainly assuming dangerous proportions. Featherston solemnly moved "that the House deems it necessary to reassert the principle that amongst the objects which this House desires to see accomplished without delay, the most important is the establishment of ministerial responsibility in the conduct of legislative and executive proceedings by the Governor. That in the opinion of this House the time has arrived when the safety of the colony demands the full recognition of that principle by the appointment to the principal offices of the Government of those who possess both the confidence of His Excellency and of both the Houses of the Legislature." Wakefield's old motion had acquired a new significance. As of old it had been directed against irresponsibility, so now, but the demon of irresponsibility had taken possession of another body. The mover trusted that the House had "nailed its colours to the mast" on this question. He would support the resolution by refusing to vote supplies. This motion came not inappropriately from Featherston. He had been the first to agitate for ministerial responsibility - even before Wakefield came to New Zealand. He had moved the resolutions at Wellington on 3rd February 1851.³

3. See page 17.

The seconder, as on the former occasion was Carleton. In his enthusiasm, he shouted, "Whichever of us accepts a seat in the executive at the present juncture and in defiance of the well-known opinions of an overwhelming majority of this House, is a betrayer of the colony."

The following evening at six o'clock, Ludham in the absence of Featherston, moved an address embodying the resolution of the previous day. Carleton again seconded. Little more was said for the opposition members left the House, before the question was put.

At two o'clock on the afternoon of 5th August, the Speaker announced the promised message⁴ indicating the Acting-Governor's wishes with regard to the relations between the Executive and the Legislature. The Speaker proceeded to read. A page was missing. "Quos Deus vult perdere, prius dementat." Wakefield, the go-between, rose, took the message out of the Speaker's hand, and was proceeding to alter it, when stopped by Fitzgerald. He only wished as he said, "to correct a clerical error, three or four words."⁵ The Speaker continued.

The house was furious. Merriman moved that the message as read be printed. O'Brien seconded. Wakefield made some remarks. But the curiosity of the House was not

4. No. 25.

5. "The expression, though it does not tally with the missing sheet, was of course connected with it. But we were not prepared for anything so monstrous as an attempt, even by the member for the Hutt, to alter a Vice-regal address." - "Southern Cross", 8th August 1854.

satisfied. Fitzgerald moved, Sewell seconded, an amendment that the House adjourn till six o'clock, then to consider the motion for printing. Adjourn the House did - its majority, twenty-eight in all, to King's boarding-house, taking with them a copy of the offending message.

The document, plainly Wakefield's, was most impolitic. It was merely an expression of party defiance, the purpose of which was to embroil the ex-ministry irretrievably with the Acting-Governor.⁶ While urging moderation, it mocked the House by its partisan character. It began by begging the House to consider the Acting-Governor's position when first the House met, and continued to narrate the occurrences of the subsequent eight weeks. It accused the ex-ministers of attempting to coerce the Acting-Governor. The memorandum of 1st August was alleged not to be in strict conformity with fact. Fitzgerald was singled out for special attention. Although it was settled on 1st August that the difficulties that had arisen should be composed at a meeting of the Executive Council on the following day, Sewell, Weld, and Bartley had resigned previous to the hour of the meeting, (as a threat presumably) and "it was only when the Officer Administering the Government declared that his opinion was unchanged, thereby showing that the successive resignations of Mr. Sewell, Mr. Weld and Mr. Bartley had not affected his judgment, that Mr. Fitzgerald then and there

6. As was perceived all over the colony.

wrote and presented his own resignation. "The above statement of facts will, the Officer Administering the Government trusts, satisfy the House that it is not their duty to sustain the late ministry in their difference with him", (as if it were a personal matter.)

Noticing the disinclination of the House to heed him, and their preferment for the explanations of the ministers, Wakefield makes the Acting-Governor say that he was guided by the precedents of Lord Metcalfe in Canada who had on a similar occasion, acted in precisely the same way.

Finally he declared to the House "his unaltered adherence to the principle of responsible government," and his forlorn hope that his message would so calm the ruffled feelings of the House, that they would not reject what little morsel of ministerial responsibility he could afford them. Appended were the various official documents concerned.

But if the paternal Wynyard thought thus to placate his spoiled children, the Parliament, he was greatly in error. On resuming at six o'clock for consideration of the motion to print Message No. 25, Fitzgerald, more with the eloquence of a fallen minister than with the peevishness of a petulant child, denounced the mean, tricky and contemptible mind from which issued the innuendos and insinuations of the offending message - "that party

speech", and met every personal attack and diversion from the truth with an explicit refutation. The Acting-Governor had at first referred to the inexpediency of disturbing the tenure of office of the old officials; now he quailed because of the illegality of so bold a step. Yet the Attorney-General had expressed his belief in the strict legality of the Executive Government Bill, - which would virtually have destroyed the old offices, by erasing the salaries from the Civil List, and which would have empowered the Acting-Governor to choose his advisers from the majority in the Legislature.⁸

Wakefield spoke by the indulgence of the House. He openly avowed that the Attorney-General had nothing to do with the preparation of the message and asserted that he himself "would not be held responsible for any past, present or future opinion of that gentleman." Indeed no member of the Executive had either act or part in it! Ignoring the continued existence of the old Executive, and the circumstance that he had refused office, he queried; "Why has my advice been described as unconstitutional? — There is nothing in the Constitution Act against it!" he taunted. As was his wont he rambled on, "drawing out the fine thread of his verbosity" accusing Fitzgerald of desiring to obtain all the seats in the Executive for his own party, and being met with a flat denial, affirming that such a desire was perfectly legitimate - one which

8. New Zealand Parliamentary Debates, 1854-5, p. 275.

would actuate him in like circumstances. He ended a speech calculated to inflame the already sullen temper of the House with a final jibe. He moved that the discussion end, as its continuance would have a tendency to increase the difference between the ministry and His Excellency - into a difference between His Excellency and the House.

The House was not with Wakefield. He, who had two months previously written in a transport of joy that "a little child might lead them," now found them singularly obstinate and intractable. Travers moved adjournment but the House would not adjourn.⁹ Four of the Wakefield faction decided they would beat a retreat before Sewell directed his invective upon them. After vindicating his past conduct Sewell announced that the message could not be broadcasted throughout the country without its reply. He would therefore employ the weapon which Wakefield knew so well how to use - the statement through the press. Wakefield's vigorous protests were of no avail, - no more effectual were his appeals to the Speaker. At 11.10 p.m. a tired House agreed to the printing of the message with enclosures, and adjourned.

Three days later, the House again met, this time to receive Message No. 26, the Acting-Governor's reply to its resolution of 4th August. That gentleman was made to reiterate his sympathy with the wishes of the House, and to tender "his unqualified assistance by

9. Five members rose simultaneously to second the motion of Travers, the first of whom to speak was

assenting to, and most earnestly requesting the Imperial Government to give effect to the provisions of any bill which might be brought in for the purpose "of establishing complete ministerial responsibility. In the meantime the House was referred to Message No. 25, The Acting-Governor only awaited its reply "in order to devote himself to the business of forming an administration as responsible to the two Houses of the Legislature as can be without infringing the Constitutional Law by which the House and he were equally bound". An hour sufficed to dispose of the day's business.

Wakefield's influence in the colony was now at an end. He and his son, and with them Travers, Mackay, Macandrew and the others of the clique, were denounced from one end of the country to the other. The ministerial party now became popularly known as the "Constitutional Party", while Wakefield assumed the place that Grey had formerly occupied in the hearts of the freedom-loving public. In the editorial columns of the colonial journals he was roundly condemned as an apostate.¹⁰ Contributors assailed him in political doggerel and facetious prose.¹¹ Colonists' societies passed resolutions in favour of the ex-ministers' conduct, and speeches given drew attention to the divergence between Wakefield's political opinions in "The Art of Colonisation," and his political practice

9. Sewell, who seconded in order to be allowed to speak to the motion for adjournment.

10. "Lyttelton Times".

"Wellington Independent".

"Nelson Examiner".

"Southern Cross" (Auckland).

in New Zealand. Wakefield had clearly asked too much of an intelligent public. He did, however, make feverish attempts to retain public confidence, by thoroughly dispersing his propaganda matter. In his capacity of parliamentary correspondent to various journals he stuffed their columns with fictions concerning the Wakefield exploits in the House. Copies of the Wynyardite "New Zealander" found their way into the hands of hundreds of the electors of Canterbury who had never seen their sender. Letters and circulars were received from the same source by every mail. In Nelson every "second person we meet has a copy of the Acting-Governor's Message No. 25, and is now wondering why he for the first time should have earned this consideration."¹² Through the press Travers, Mackay, and Jerningham Wakefield addressed neatly turned propaganda speeches to their "fellow colonists and brother electors;" but their conduct was "damned with faint praise." The drift of opinion was shown by two almost simultaneous events; Brown, a ministerialist, was returned against the Wynyardite Williamson, at the City of Auckland by-election,¹³ while at Nelson, Travers was handsomely defeated by another gentleman for a seat on the Provincial Council.

11. A contribution to the "Wellington Independent" is particularly scurrilous but highly amusing. Entitled "The Wakefield Creed" it enumerated the extravagant articles of belief in no covert way, and embodies the current rumours of his projected plan of action e.g. I believe I will be Prime Minister, and that Jerningham will be Colonial Secretary.

12. "Nelson Examiner."

It was now considered high time "to put Wakefield in his place." All sorts of schemes were attributed to him. He was making an irreparable breach with the Acting-Governor in order to procure a dissolution. He was in league with the old officials whom he was using to further his plans; perhaps to pass the Executive Government Bill, and then, after a dissolution, to form a Government with his son as Colonial Secretary, Travers as Solicitor-General, Forsaith as Prime Minister and he himself as stage manager, and motive power of the automations.

On Wednesday, 9th August, on the motion of Monro the House resolved itself into committee of the whole for the consideration of an address to the Acting-Governor, acknowledging receipt of Message No. 25, drawing his attention to the boasts of Wakefield in the House, and praying him "at this crisis to have recourse to the advice of his Executive Councillors", who were "sworn to advise him rightly." The subject of the message was "of such importance as to be unfit to be confided to an unofficial and irresponsible adviser, but rather demanding recourse on his part, to his sworn constitutional advisers."

So moderate was the tone of the address that when Monro had given notice Wakefield, "inimitable man" had acquainted him of his intention to second it, "to impeach himself."¹⁴ In speaking to the motion, Monro ex-

13. In place of Bartley who had been elevated to the Legislative Council.

14. Sewell, Journal.

New Zealand Parliamentary Debates, 1854-5, p. 285.

pressed his jealousy and alarm that affairs should be managed by an irresponsible person; one who had but a very feeble party in the House, and whose first object would be therefore, to gather a party round him. Wakefield would say his position was constitutional, that it was perfectly competent for the Acting-Governor to send for anybody in or out of the House. This, no doubt, was true, but the message of His Excellency went on to indicate a line of policy, and Wakefield had screened himself behind the representative of the Queen.

Wakefield did not impeach himself as he had intended. Instead he attempted to vindicate himself. He compared his position to that of the responsible ministers before they had been sworn into the Executive Council, and moved as an amendment "that in the opinion of this committee, according to the usage of the British Constitution, every act of the Crown, with a single exception, must be performed by and with the advice of cabinet ministers, being sworn members of the Privy Council, and that the only exception to this rule is the absolutely free and independent discretion of the Sovereign alone in doing whatever pertains to the choice and appointment of cabinet ministers," - all of which might or might not be true, but did not bear on the question before the House. Wakefield had refused office, yet had advised the Acting-Governor to send a message down to the House; and this was one of the acts which "must be performed by and with the advice of cabinet ministers being sworn members."

But according to the usages of the British Constitution did the Crown exercise that free and independent discretion in the choice of ministers? Wakefield was merely trying again to "bluff the more simple-minded of the members," to give some ground of resistance to his satellites. Certainly the Acting-Governor had the power to add to his Executive Council, but Wakefield had not been added. If Wakefield applied the party argument, he could not justify his "faux pas", for he had a miserable following of, at most, nine, and did not enjoy the confidence of the House. In any case England and New Zealand could not be compared in this respect, because of the continued presence of the official Councillors.

The House however would not swallow such plausible argument as Wakefield put forward and held that his position was unconstitutional. Undoubtedly much personal feeling was involved, but Wakefield himself provoked it by his attitude towards the House. Jerningham Wakefield, on rising to repeat, for the sake of emphasis, some of his father's platitudes and precedents, was greeted with cries of "Divide!" but he spoke on, as did Forsaith. The address, agreed to by the committee, was adopted by the House, by twenty-three votes to ten, and ordered to be transmitted to the Acting-Governor. Wakefield had deceived himself as to his real strength.

For six days no business was done inside the House. After prayers on 15th August, a message from the Acting-Governor was announced - his reply to the prayer

of the House for the removal of the obnoxious Wakefield. That gallant gentleman believed that under the Royal Instructions he would have been justified in treating the critical state of affairs as one of those occasions on which it was competent to the Governor to act independently of his Executive Council, and "to avail himself of any advice or assistance at his free discretion, bearing himself alone the entire responsibility of any act performed by him." But "happily in every step taken by him," he had "enjoyed the unqualified concurrence and support of his constitutional advisers." Very courteous indeed! A rebuke to a presumptuous House! He was still awaiting a reply to Message No. 25, "in order to add some members of the Assembly to the Executive Council, with a view to turning the already protracted, yet fruitless session to some good account for the people of New Zealand."

If nothing had been done inside the House, King's boarding-house had been the scene of great activity. There the ex-ministers, with Monro and others, had been in conclave on the address in reply to Message No. 25. It had been positively agreed that a second trial should not be given to the semi-responsible system, and that on this question the House should separate itself from the ex-ministers and take up its own ground. By Saturday 12th August, the address, which had been drafted by Sewell,¹⁵ had been settled in "full conclave of the

members at King's and put into the printers' hands," and by the following Monday, had been distributed among the members.

Accordingly after the receipt of the Acting-Governor's message, the long desired reply came before the House for discussion. In accordance with the plan adopted at King's, Fitzgerald in whose name the address had originally stood, gave place to Hart. A smart skirmish provided an overture to the debate. To ensure unlimited license of reply the "Wakefieldites" wished for discussion in committee of the whole House. The "Constitutionalists" however were not willing to submit to Wakefield, Forsaith and Faction which they might be pleased to harangue and declaim, to reply and retort. An amendment moved by Travers was ruled out. As it was the debate continued for five hours.

The address itself was a very long document betraying "the fine old Roman hand"¹⁶ of its author. It began by expressing the sincere regret of the House that the Acting-Governor's "resolution and opinion (on the subject of the tenure of the old officers) had not at first been made known to the House in a more clear and distinct form. Had reference to England been intended as a condition precedent to the concession of complete responsible government, it would have affected and probably reversed the whole course of the proceedings of the House, as the disclosure of it must do even at this late

16. As Wakefield said.

period of the session." It continued by acquainting the Acting-Governor with the fact that the legislative measures brought before the House by the late ministry were of such a character that "the House would not have acceded to them except in full reliance upon the complete establishment of ministerial responsibility, a reliance resting not only upon published and official documents, but on assurances given to us by Your Excellency's representatives in the House that such would be the case.

"The necessity of such change has been made apparent, from the actual state of the various departments of the Executive Government, and the condition of public affairs as disclosed in the business of the session. The whole organisation of the Government has appeared in a state of weakness and disorder, demanding strong and immediate measures, both for restoring it to vigorous and healthy action and for adapting it to recent constitutional changes.

"Permit us to assure Your Excellency that the interests of the colony desire an immediate change, and we pray you not to interpose any obstacle in the way of the accomplishment of so desirable an object." To facilitate this change the House was very willing immediately to pass "a measure securing to the officers pensions when they should retire."

In conclusion the House craved His Excellency's pardon for their importunity. It had ventured to address him in such unreserved terms, because it had been

announced by the member for the Hutt, in his place, that the message to which they were replying, had been prepared and presented under his advice. It now begged His Excellency to accede to the reiterated prayer "for the immediate establishment of the Executive Government on a basis of complete ministerial responsibility."

Forsaith had the temerity to introduce a short address as an amendment, thanking the Acting-Governor for the information afforded by the messages, and declaring that he had carried out the original contract.

In the debate that followed the chief parts were taken by Fitzgerald and Forsaith. The latter proceeded to give a very detailed justification for the Acting-Governor, based on the official documents. He held that in the message to the House in reply to the first address on the subject,¹⁷ the words "as far as may be in his power to do so" implied the Acting-Governor's inability to grant complete responsible government. When the misunderstanding with the late ministry occurred it became necessary for him in Message No. 25, to state more explicitly that the instructions absolutely precluded him from disturbing the tenure of office of the Crown officials, until he had received the Queen's permission. He held that the ex-ministers had been informed of the Acting-Governor's opinion, which the address then before the House denied, and that these gentlemen, not consciously but in excess of zeal for their cause, had deceived

17. See p. 111, also 108.

the House. Working his speech up to a climax he characterised the supporters of this threatening and immoderate address as:

"Halting on crutches of unequal size,

One leg by truth supported, one by lies."

After some other speakers had trespassed on the patience of the House, Fitzgerald rose in defence of the ministerial position though it had not been his intention to speak. He reviewed the whole position and gave what proved to be the correct opinion. Using the words of Wakefield himself, he showed how, "without reference to whether the Acting-Governor was legally authorised to make the required changes or not, he would impress the House that the General Assembly could bestow that power on him." This was to have been done by the Executive Government Bill, when it had passed. BUT THERE WAS POSITIVELY NO LEGAL DIFFICULTY. Sir John Pakington's instructions pointed out that the General Assembly could

19

19. Sir John Pakington to Sir George Grey, dispatch transmitting Constitution Act 16th July 1852.
 "There is no restriction upon those powers introduced into the (Constitution) Act on which I think it necessary to make any observation, except the reservation of certain sums for specific purposes, ordinarily called a civil list, which reservation however, by no means withdraws those services from the control of the Legislature, but only renders it necessary that this control should be exercised by way of permanent act instead of by annual appropriation, and in certain cases with the consent of the Crown.

The extract will more fully explain my meaning."

Extract from a dispatch addressed to Governor Sir C. A. Fitzroy by Earl Grey, 30th August 1850.

"The effect (of certain sections of these instructions) is to give the Legislature an increased control over that part of the colonial

deal with the office holders, as soon as retiring allowances had been provided. In the absence of legal difficulty the whole question was reduced to one of policy. The colony needed responsible government.

Many other speakers followed, conspicuous among whom was Travers who seconded Forsaith's amendment, in a "speech of considerable ability - what might in fact be called a very smart speech, but more suited to a Court of Quarter Sessions." ¹⁸ It consisted of a vulgar and immoderate denunciation of the ex-ministers, especially Sewell, who when he had occupied the red bench - which was just a little too high for him, - had walked as lightly and gingerly as if he were treading on eggs. His countenance had been radiant with smiles and happiness. In those palmy days he had smoothed away opposition by rising, smiling blandly and in a soft and pleasant voice exclaiming, "Ah! Ah! Yes! Yes! It is very true - but you know - responsible government!" But now he danced about as if sitting on a red-hot ploughshare - anger and disappointment were in his looks. Travers' induction from this was that proceedings of the ministry had been marked "by haste, by anger, by independence, and by menace to the head of the Government." In another place, ²⁰ shortly

19. expenditure now charged upon what is called the civil list. THE LEGISLATURE WILL HAVE THE POWER TO ALTER BY ACTS PASSED FOR THAT PURPOSE ALL OR ANY OF THE SUMS MENTIONED IN THE SCHEDULES."

20. At King's.

18. So Monro said.

before, Travers had denounced Wakefield as "a toad that ought to be squashed," and had vowed he would "spend his last shilling and pawn his shirt in support of the ex-ministry. Members perceived that "the rat" had been caught by Wakefield's bait of the Solicitor-Generalship with £1,000 a year. The rumour was confirmed.

After much more speaking but little debating, Hart's address was adopted by the House and ordered to be presented to the Queen's representative.

Wynyard now sought to reduce his obstreperous Lower House to submission. On 17th August the House again met. Sewell was about to rise when, open the door and enter - His Excellency's messenger, with Message No. 32, which was immediately read by the Speaker. If the House had defined, once for all, in reply to Message No. 25, its attitude with regard to responsible government, Wynyard now defined his, at least, for the time being. He replied, soldier-like, that he was positively forbidden by his sense of duty from taking so bold a step, without the permission of the Queen's ministers. "It is therefore plain," he continued, "that a difference has taken place between the House of Representatives and the Officer Administering the Government, which is at this moment irreconcilable.²¹ The present address from the House, coupled with his own unaltered sense of duty to Her Majesty and the colony, leaves him without a hope of being able to restore for the present, that kind of ministerial

21. Plainly Wakefieldian language.

responsibility which recently gave so much satisfaction to himself and apparently to the House and the public. He is painfully convinced that as regards legislation for the service of the colony, the session has come to an end."

He went on to state that in this condition of deadlock, his ordinary duty would be to prorogue the Parliament indefinitely, and submit the whole question to the Imperial Parliament, but under the circumstances in which he was placed, he would "prorogue them for a short period." In the meantime he would endeavour to add to the Executive Council, some members of the House of Representatives, who would give to the provinces an effectual voice and influence in the administration of affairs. He would also refer the whole question Home.

When the message had been read, Sewell again rose, this time to move that the address be taken forthwith into consideration. It was plain that a prorogation was imminent, and that the session would last only a few moments longer. No sooner had he opened his mouth, as he says, than - re-enter His Excellency's Messenger with a sealed envelope.²² The Prorogation! In desperation Sewell again sprang to his feet. He would move that Message No. 32 be at once taken into consideration. Travers and Jerningham Wakefield rose to order. By the

22. The messenger had been instructed to wait outside the door and listen, and the moment the first message was read, to re-enter with the second. The messenger afterwards informed Fitzgerald of these details.

standing orders all business before the House must be suspended on the announcement of a message from the Governor. "That the standing orders be suspended," was promptly moved by Fitzgerald. Forsaith rose to order. This was business before the House. Sewell seconded the motion. A message had been received and it was competent for the House to consider it before proceeding to read the next message. A fierce debate ensued, in which it was maintained by the majority that the Speaker was in the hands of the House.

Forsaith again rose to speak but was greeted with loud cries of "Order!" and "Spoke!" Mr. Forsaith wished to move an amendment. Mr. Speaker ruled that he might proceed. Forsaith read his amendment, "That the discussion that had taken place, including the motion before the House, is irregular and unprecedented and a direct breach of the standing orders." Fitzgerald would second the amendment. Forsaith, in moving an amendment had stultified himself - his amendment was business before the House. Forsaith would explain - "Divide! Divide!" stentorian voices called, amid uproar and confusion.

The House went to division. The Wakefield men rose in a body and made an incontinent rush for the members' door. The House would be left without a quorum! "Lock the doors!" cried a member. With military promptitude the Sergeant-at-Arms turned the key. Foiled in this direction, the whole of the Wakefield party bolted over the bar of the strangers' gallery, intending to make

their exit through the strangers' door, whither they were followed at close quarters by Sewell, and some others, who prevented their escape in this direction. They now all stood in the gallery - outside the House, of course. Very correctly, the Speaker declined to take the vote until the doors were opened; ²³ the division bell rang, the dissentients left the House, and the doors were again locked. On the vote being taken it was found that there was not the quorum present. Talk against time ensued while a member went to gather in the absentees. At length amid loud cheers two more members were brought in, when Revans moved that the House be counted. Twenty-five members were present; Fitzgerald again moved the suspension of the standing orders; the standing orders were suspended.

The House now proceeded to take Message No. 32 into consideration. Sewell read a series of resolutions which, he hoped, the House would pass without delay. He might have made them more complete by asking the House to impeach the Acting-Governor, or to address Her Majesty, praying for his removal. A resourceful member bethought himself that these might well be considered in committee, and moved accordingly, supporting his contention by a bitter, piercing, and painful attack upon the unworthy Wakefield - "the coward felon". Fitzgerald seconded, but prayed the House to resume its deliberation

23. The irregularity was that the division bell had not been rung before the doors were first locked.

with dignity and calm. The strangers' gallery was now packed.

Mephistophles was abroad. The House had been in committee but a while, when a detachment of the Wakefield clique burst in through the members' door. Mackay, with his hat on his head, and very much excited - he had been lunching in the mess - walked up to the Chairman, flung a paper down on the table, and shouted to the Committee, "You are no House, you are prorogued. I have as much right here as you." To cries of "Order! Order!" and "Turn him out!" Mackay paid but scant attention; he marched up and down the chamber, flourishing his umbrella over his head, and in a loud voice, defying anybody to turn him out. As he passed near Rhodes and Sewell, the latter, breaking all bonds of self-restraint, seized him round the waist, while the former grasped him by the shoulders, and bundled him towards the door, which unfortunately was closed. Escaping from his captors, Mackay now met the charge of the committee, and beat an honourable retreat over the rail into the stranger's gallery waving defiance to his assailants with his trusty umbrella.

The committee now reported progress, and Mackay to the Speaker. Fitzgerald moved Mackay's expulsion, but more moderate counsels prevailed, and it was proposed that he be adjudged guilty of contempt. "Gross contempt," suggested Revans. "Gross and premeditated contempt," Merriman would have it.²⁴ Accordingly Mackay was adjudged

24. Merriman was the insulted Chairman of Committees.

7 We proceeded farther with business. (Division during which the Wakefieldites escaped from the House in order if possible to prevent two thirds of the House from being present to enable a suspension of the Standing Orders. They fled in confusion over the Bar of the Gallery upon the announcement of "Lock the doors" as for a division. They succeeded, however, in reducing our numbers to 23. — 25 were necessary to suspend Standing Orders. Talk, against time, — 2 missing members went for incense, who at length returned. There being now the full complement the Standing Orders are repealed. The fourth message is proceeded with, having the sealed envelope on the Speaker's Table suspended. House goes into Committee. Resolution of all sorts passed (vide newspapers) the burden of the whole being to maintain the rights of the Commons. (Resolution: "That each again.") During this business break in 2 or 3 of the Wakefieldites to disturb this assembly. One, as Mr. May, marched into the Council room with his hat on, insulting the Chairman of the Committee & clapping any body to turn him out. I & a Mr. Charles a member for Wellington, happening to be nearest to him, intervened & rather indelicately proceeded to eject him, which made a stir, which however, soon subsided. Order restored. The business of the Committee ended. The resolutions passed. House resumed. Committee reported progress. Resolutions adopted. The sealed message opened & read. It contained a printed Gazette with a Proclamation, proposing us for a fortnight. The Sultan's cup of coffee — or something to a similar favorite. Intense indignation — but the House accepts & submits to its doom. The Council room is cleared — and we proceed to consider, out of doors, what next to do. Imagine a train of boxes turned forcibly out — whilst the honey comb is being ransacked. Imagine any case of

A page of Henry Sewell's Diary.

— 17th August, 1854. —

guilty of gross and premeditated contempt.

The committee resumed; Sewell's ten resolutions were reported to the House and adopted. They protested against the prorogation of the Assembly without the granting of supplies, and asserted that the expenditure of the public funds without permission of the House was contrary to law and would be visited with the strictest penalties. This the Speaker was to publish and circulate throughout the colony. A respectful address should be presented to His Excellency praying him to remove Wakefield from his councils, and one to Her Majesty praying her to establish responsible government in the colony. The House was of the decided opinion that the Executive Government should conform to the wishes of the Provincial Governments during the threatened suspension, and protested that the convocation of Parliament at any short period, if such were contemplated, would deprive five provinces in the colony of their representation in the General Assembly. The Speaker and eight members should, during the recess, prepare addresses embodying these resolutions. The House would now hear what His Excellency had to say. The sealed envelope which had, all this while remained on the Speaker's table, was now taken up and opened. On Sewell's motion the message was read. It drew attention to a proclamation in an enclosed copy of the Gazette. The House was prorogued for a fortnight; members left the building like "a hive of bees, turned out forcibly, whilst the honeycomb is ransacked."

Wynyard had blundered. Swainson in transports of official joy, hailed the prorogation as a great government victory; victory it was, but the shade of Pyrrhus might have cried from "Elysian Fields", "Another such victory and you are undone." If the Government were "prepared to incur the responsibility of applying the public revenues to the maintenance of the public services," the House had stated its fixed intention of punishing receivers of the revenue. But such indecorous defiance and counter-defiance evoked scant respect from the Provincial Governments.

The fiasco had been brought about by Wakefield's unconstitutional conduct. The House by petitioning His Excellency to have recourse to his sworn advisers had not abated one whit its demand for responsible government. But semi-responsible government it would not have. Nor would it have Wakefield behind the scenes. It was his presence that had led to the threat to stop supplies. It had been resolved "to drag along with the present miserable team, passing some measures absolutely needed, then biding our time."²⁵

The prorogation was unjustifiable. It was the outcome of the tactless Message No. 25, and the intrigues that preceded it. The ministry had done all in its power to ensure the success of the new system. Its policy had been well adapted to administer to the needs of the colony. It had been perceived by the gentlemen

conducting the Government policy in the Lower House that "centralism and provincialism, like most other principles that influence the minds of men, have both much of truth in them; it is only in extremes that they are erroneous."²⁶ Featherston, provincialist, had opposed the Empowering Bill, but had given his unqualified assistance to the passage of the Waste Lands Bill; Monro centralist, while disapproving the Waste Lands Bill, had yet concurred in the Empowering Bill. Wakefield had attacked every measure alike; upon him and Swainson must be visited the sins of the first session of the first Parliament.

The ministry had not broken faith with the Acting-Governor as its detractors said; nor had it attempted to coerce the head of the Executive as its slanderers alleged. Fitzgerald's attitude towards responsible government has been detailed. But it might be asked "Why did Fitzgerald press the Acting-Governor to grant full ministerial responsibility before the Executive Government Bill had passed into law?" Some of his reasons he gave in the House; they have already been described.²⁷ The opposition accused the ex-ministry of greed of power. But Fitzgerald was Superintendent of Canterbury, and as he had time after time stated, he could not neglect his provincial business to remain in the Government at Auckland. Nor could Sewell be accused.

26. Weld, in speaking to the second reading of the Waste Lands Bill.

27. See pp 144-5, 163.

He was not a permanent resident in the colony; he desired to return to his law practice in England as soon as he had wound up the affairs of the Canterbury Association. Weld alone might be indicted.

But the immediate cause of the resignation Fitzgerald could not divulge in the House. Fortunately Sewell recorded it in his Journal, after the prorogation, when he wrote what he believed to be a true history of the relations between the responsible ministers, the official members of the Executive, and Wakefield.

"When first we southerners arrived," he writes, "and after our three days' debate upon responsible government, the officials were fairly frightened, and really meant to surrender at discretion, saving to themselves pensions. I do not believe that at the time they meant to play us false. When however we had fairly begun to work, and things seemed to be going on smoothly, they plucked ^{us} at heart, and bethought themselves that it would be very pleasant, to get through the session with the help of us three, to pass some measures getting rid of all difficulties, no responsibility being with them and no trouble; and after the session was ended, to make their bow to us, and wish us good morning, they keeping their old places, and going on "sine die." Sundry incidents confirm me in this opinion. It is clear that they never anticipated any change of persons, but then Fitzgerald, as Superintendent of Canterbury had

declared his intention of leaving, so soon as the session was over. I had said pretty much the same. And as to Weld, Colonel Wynyard said one day to him at dinner, something about his return to the South by the steamer. Weld pricked up his ears, it having been understood between him and me, that we two would stay behind after the session to set matters in order. This was evidently not in Colonel Wynyard's contemplation. He and the old officials amused themselves at the three greenhorns play-at office, and doing their work in the Legislature. This was very humiliating, but I have no doubt it is the true version of the case.

"When therefore we all came to the conclusion of making responsible government a reality instead of a sham, they were all taken aback. Then it was found out that we had made a solemn bargain not to ask anything so unreasonable; it was a breach of agreement. At all events, there was an end of our term of office. Thereupon I have no doubt, Wakefield was called in, privately at first. He was sounded and being found ready they joined in cabal against us. This caballing was going on for several days, before we knew the determination of the old officials not to budge. I believe it was set on foot on the day when Fitzgerald had a serious talk with the Governor and told him all about our views and the necessity of change. Then I believe Wakefield was applied to. Meanwhile Colonel Wynyard professed to Fitzgerald that he was ready to give way, only wanted

pressure to justify him, so leading Fitzgerald to tighten rather than relax the screw.²⁸ So it was that at the suggestion of Wynyard, and the officials we put out views in writing in the form of an official memorandum describing vividly the difficulties of the case. Some alterations were made in this memorandum at the request of Wynyard and Swainson; we took out some passages which seemed to reflect on the old officials. We all thought this was honest, and in a right direction till the next Executive Council meeting when the official memorandum was brought up for discussion. No doubt the matter had been fully understood; Wynyard and the officials would not give way an inch. So the matter was left till the following day when we resigned and Wakefield was summoned into council, he having been in readiness, anticipating the result some time before. Then comes the denouement. The official memorandum prepared at the instance of Wynyard and Swainson as a justification of concession is made the ground of offence and treated as coercion."²⁹

That this statement is true there is not the slightest doubt. Fitzgerald in making his defence in the Lower House, 5th August mentioned these conversations, but could not divulge what passed. Wakefield's actions

28. These were the conversations Fitzgerald referred to in the House, and the subject matter of which, he could not divulge.

29. "There is a pretty piece of political intrigue," he concludes.

confirm Sewell's assumptions. Nor had Swainson played a straightforward part. He had on 10th June signified his willingness to retire.³⁰ On 1st August in a note on the confidential memorandum he wrote: "If in the opinion of the Legislative members of the Executive Council, it would tend to facilitate the conduct of the public business through the Legislature during the present session, the Attorney-General will place them in a position to state to the Assembly that he has already forwarded to the SECRETARY OF STATE THROUGH HIS EXCELLENCY, the resignation of his office, in order that.....a full and fair trial may, as early as possible, be made of the principle of ministerial responsibility." He would, he added, be prepared to retire whenever the Head of the Government might assume the responsibility of relieving him of the discharge of his duties. Yet on 15th August at his post he must remain until Wynyard should cease to act merely as Officer Administering the Government. The *arriere pensee* vitiated the pledge of 10th June.

Circumstances confirm Sewell's view. On 28th August Greenwood admitted that there had been a plot against the ministry from the start, and that Swainson had been at the bottom of it! On 18th September the Attorney-General, while walking to Onehunga with Fitzgerald who was leaving for the South, "confessed that if he had been in the Governor's place, he would have conceded responsible Government at once, but professional timidity prevented him from advising the Governor to that effect." Sewell

³⁰. See p. 189 *infra*.

discounts the motive.

The prorogation was the direct result of the finesse of Swainson and Wakefield - Metcalfe and Canada again.

CHAPTER VIII.RELATIONS BETWEEN THE TWO HOUSES
OF THE LEGISLATURE.

In marked contrast to the proceedings of the House of Representatives were those of the Legislative Council, which were conducted with that dignity and solemnity becoming an Upper House. To it was not vouchsafed the excitement of animated debates; upon it was not visited the disgrace of a Donnybrook Fair. In its lower chamber it debated little, and quarrelled less.

The "Peers" or "Lords" as the Council was derisively called, was jeered at and flouted by the populace₁. It was constituted on that archaic principle of Nomineeism; and Nominee was anathema to the colonists, even at Auckland. No one troubled about its proceedings, nor would they display much enthusiasm for the deliberations of "a kind of old Chelsea Pensioners" as Sewell dubbed them.

So the Legislative Council was left in peace. Swainson the Attorney-General occupied the Speaker's chair, "where he had run to earth,"₂ and also that of the Chairman of Committees. By standing orders he could not take part in the debates in the Council, but could in debates in committee.

On 27th May, after the Acting-Governor had

1. Sewell - Journal.
2. As Fitzgerald had it.

delivered his opening address, the subject of prayer came before the Council, when Kenny moved that proceedings be opened by an acknowledgment of the Divine Being. The motion was seconded by Richmond. Then it was that Bell, though he did not propose an amendment as did Lee in the Lower House, expressed the opinion that religious equality in the colony would be subverted by such proceedings. When St. Hill moved the introduction of a minister of the Church of England, Bell reiterated his opinion with renewed emphasis. The problem was happily solved on the adoption of Kenny's amendment, that the Speaker read prayers, a decision ultimately come to by the House upstairs.

The House of Representatives unkindly saddled Fitzgerald with the task of preparing their Address-in-reply, and he was obliged to work on the Sabbath day; the Legislative Council, apparently despising King's as the scene of the informal deliberations on a reply to the Acting-Governor's address, entrusted the onerous duty of preparation to a select committee of four, Whitaker, Bell, Kenny, and Richmond. The document they brought forward was brief and courteous. Its adoption was moved by Bell on 2nd June. It offered to the Acting-Governor the congratulations of the Council that the privilege had fallen upon him of placing the people of New Zealand in "full enjoyment of their constitutional rights," stressed the importance of the maintenance of friendly relations with the Maoris and expressed the hope that they might very

shortly enjoy the constitutional privileges possessed by the pakeha. It concluded by reiterating the earnest prayer of the Acting-Governor that it might please Almighty God to direct and prosper the counsels of the first Parliament of New Zealand to the honour of the Queen and the happiness of her people. A motion to add a clause expressing the regret of the Council that the subject of education had not been mentioned in the Speech from the Throne was negatived, and the Address-in-reply was presented to the Acting-Governor on 5th June.

Little business was done in the Council till 15th June when the Speaker (the Attorney-General) explained the steps which had led to the addition of Fitzgerald, Sewell and Weld to the Executive Council. No sooner had Swainson concluded than Whitaker asked whether the Speaker was to be regarded merely as Speaker or as Attorney-General, representing the Government in the Upper House, and charged with the introduction and carrying through of its measures. The Speaker replied that he was Speaker, and speechless he intended to remain. As long as he held office indeed he would continue to be Her Majesty's Attorney-General, but as Speaker he was precluded from taking part in the debates of the Council. He hoped that it would not be difficult to find honourable gentlemen willing to pilot Government measures through the Council.

Whitaker was not satisfied. He proceeded to call attention to the fact that there was no representative

of the Government in the Council which was in a more isolated condition than before. Formerly the Acting-Governor might be addressed; but who was to be addressed now?³ He had expected that the Attorney-General would form a link between the Executive and the Council. He then gave notice of a motion which would bring the subject under consideration. "The 'Lords' want responsible government!" exclaims Sewell.

Now the Speaker changed front a trifle. As Speaker he would not take part in debates; as a member of the Government he would "make statements, answer questions, and afford such explanations as might be necessary." He would be a minister sometimes! It was unfortunate for the Council that these two gentlemen, the Attorney-General and the Speaker should be so closely related.

Swainson was in a ridiculous position. On 26th June Lloyd asked the representative of the Government a question. The Speaker pedantically replied that he was not a responsible minister in the ordinary sense of the term. In answering the question he would, he hoped, not be understood as intending to controvert that position. Then when the Council went into committee, Swainson metamorphosed himself into the Chairman, and on resumption of the Council would report to the Speaker. One might well wonder how even an Attorney-General could in such

3. The Acting-Governor still, of course.

ludicrous circumstances maintain his official dignity.

On 26th June Whitaker brought forward his motion "that this Council feels that the fact that no responsible member of the Government holds a seat in the Legislative Council, establishes an invidious distinction, is detrimental to a fair trial of the new form of Government, and cannot fail to operate injuriously to the public service." As Sewell remarked, "when they get together in their Legislative Council with all their functions and powers in full force, they show signs of restiveness, and if they are to be legislators they desire to be treated as such." Whitaker took upon himself the task of defending the dignity of the slighted Council. Every opportunity, he said, had been afforded the ministers to take of their own accord, a step which in the end they would be compelled to take, and which he could have wished them to take without being driven to it by a resolution of the Council. The Council had been told it was the duty of the Government to introduce legislation and that private members were to bring bills forward only in exceptional circumstances. Ministers seemed to think they might engage a member as they would a job-horse, and dismiss him as soon as he had done his work. Every man who wished the Council to be more than a court of record for the edicts of the ministers must vote for the motion.⁴ The division resulted in a majority for Whitaker by seven to one.

4. Compare the motives actuating the two Houses on this matter.

Richardson, the dissentient, considered the ministry had not been given sufficient time to mature their arrangements.

Indeed, it appeared, as St. Hill said, that Fitzgerald in forming his ministry had overlooked the existence of the Legislative Council. Sewell makes an admission; "We perhaps, I mean the Lower House, have unwisely and rather improperly overlooked them as part of the Constitution." From the comment it would appear as if the ministry too, had never previously thought of the Council. Fitzgerald apparently considered Swainson as a representative of the Executive, for it appears that, when the question first came before the notice of the ministers, they mention him, in private conversation with some of the Councillors as fulfilling requirements.

It will be remembered how, when Fitzgerald had recommended the addition of an Auckland member of the House of Representatives, as a fourth responsible minister, Wynyard had refused to make the appointment. The responsible ministers now advised Wynyard that Swainson should resign the chair of the Upper House, and that he should, as was the duty of an Attorney-General, take part in helping to carry the measures of the Government through the Legislature. But this Swainson would not do. He would, as he said, rather give up his Attorney-Generalship than his Speakership.⁵

5. New Zealand Parliamentary Debates, 1854-1855, p.274.

Hence it would appear that it was Swainson who was responsible for the anomalous position of the Legislative Council.⁶ He, as a member of the Government should certainly have taken charge of Government business in the Upper House. It would appear that he was intrigued more with the glamour of the chair, than actuated by a desire to facilitate the smooth operation of responsible government.

It was now incumbent on the Acting-Governor to appoint a member of the Legislative Council to the Executive Council, and this he proposed to the responsible ministers, who accordingly advised the addition of Dillon Bell, the mover of the Address-in-reply in the Upper House. On 30th June that gentleman took his seat at the ministerial bench in the Legislative Council chamber and made a ministerial statement, explaining the steps by which he assumed office, and adverting to the statement of policy made by Fitzgerald in the Lower House on 15th June.

Only one voice was raised against the presence of the responsible minister in the Upper House; that was Lloyd's. This honourable and gallant gentleman moved that the "Council regards with disapprobation the conduct of the late Executive Government, before and since the meeting of the General Assembly, with reference to the granting of responsible government." In speaking to his

6. New Zealand Parliamentary Debates, 1854-1855, p. 274.

motion, he exhibited more conservative enthusiasm than constitutional knowledge. It would perhaps have been wise, he ventured, if the government had submitted "the question of responsible government for the consideration of the Council!" His views were received in cold and stony silence. As the record of the proceedings has it, "there being no seconder, the motion lapsed."

On 10th July, Dillon Bell resigned his seat and hurriedly departed for Wellington, owing to sickness in his family. The position of the ministry was now precarious.⁷ On 11th, Bartley was sworn into the Executive Council, and as the Legislative Council was not sitting, took his seat in the ministerial benches of the Lower House, till he was sworn into the Council on 13th July.

If Lloyd disliked the presence of a minister in the Council, he must have rejoiced on 2nd August, when Bartley announced the resignation of the responsible members of the Executive Council. Two days later Wakefield's message⁸ was read in the Council, informing that august body of the Acting-Governor's wishes with regard to the relations between the Executive and the Legislature. It was respectfully listened to and without debate ordered to be printed. On 10th the Council went into committee to take it into consideration. The proceedings were marked by the utmost dignity - no fierce debate, no violent personalities. Seymour moved the reply, than which

7. See p. 130 supra.

8. Same as Message No. 25, to the Lower House.

nothing more respectfully servile could have been prepared. Wakefield's efforts to gull the Council had been attended with the utmost success; it sincerely believed that there was a personal difference between the Acting-Governor and the ministers. It regretted the resignation of those gentlemen, but could not refrain from feeling that "his Excellency had conferred upon the colony the greatest measure of responsibility in the conduct of the legislative and executive proceedings of the Government which, under the circumstances, his limited authority enabled him to bestow." The Council was most anxious that responsible government should be continued in the colony but that the full measure should not be conceded until Her Majesty's pleasure be made known. Various speakers solemnly accused the ministry of greed of power, and mistook their own intellectual supineness for lack of explicitness in the Government measures. Councillors to a man took up the argument advanced by Forsaith in the Lower House; the ex-ministers had in their ardour unconsciously broken faith with the Acting-Governor. But argument was not, as in the Lower House, supported by vulgar personal animus. Nevertheless, as in the House of Representatives, feeling, not reason, carried the day. When the motion was put, Bartley's "still small voice" called a solitary "No!"

But during the debate, Mr. Chairman made an



— *William Swainson.* —
Attorney-General 1841~56. Speaker of the Legislative Council 1854.

explanation for Mr. Attorney-General. That gentleman did not desire to hold office; he desired to retire; under existing circumstances he could not. "Nothing at the moment retained him in office but a point of honour, that so long as Colonel Wynyard continued only Officer Administering the Government, he at his post must remain."⁹ It is interesting to compare this admission with his note to the Acting-Governor of 10th June. "The Attorney-General, having been appointed by the Crown, conceives himself to be an officer of the Crown. But that, either with or without any retiring provision whatever, if the representative of the Crown shall intimate to him that the interests of the public service, or of Her Majesty's colonial subjects, would be promoted by his retirement, he will be ready to retire at any time.- William Swainson."

The adoption of this loyal address was the last act of the Legislative Council before the prorogation. The closing scenes in the Upper House compared curiously with those in the Lower.

While responsible government was engaging the attention of the Lower House, the members of the Legislative Council were debating¹⁰ upon a motion for an address to the Acting-Governor, embodying the opinion of the Council that its constitution "should be amended so as to accord and harmonise with the spirit and intention" of those provisions respecting the composition of the House

9. New Zealand Parliamentary Debates, 1854-5, p.294
10. 6th June.

of Representatives, and praying His Excellency to adopt "such measures as might remedy this defect."

That even Legislative Councillors were sensitive to public opinion was shown by the arguments brought forward in support of St. Hill's motion. It was urged that no effort of the Council, composed as it then was, could impress the public mind with its utility as a legislative power. "There might be wisdom, judgment, position, character and every other requisite character in all its members;" "yet nomineeism stared the colony in the face." It was a political blunder to set an institution at work, which at the threshold of its existence, could neither command respect nor attachment, and must submit to be treated with indifference. It was a political blunder to call into existence an institution from which its members could not even receive social distinction and from which the best men in the country would hold aloof.

Though the motion was negatived and the matter dropped for the time being, there was unmistakable evidence of a large and influential body of opinion in favour of an elected Upper Chamber.¹²

That the presence of a member of the Government was as much a boon to the Upper House as it was to the Lower, is proved by a glance at the table of bills, introduced into the Council.¹¹ Till 6th July only two private members' bills were brought forward; in the succeeding nineteen days no fewer than five Government bills were put through all their stages. Of them, two were intro-

¹². See Appendix.

¹¹. See table, p. 191a.

duced from the House of Representatives, but only one received the assent of the Acting-Governor. The passage of the Licensing Amendment Act ensured more efficient work during the next session despite the absence of responsible ministers.

191a.

Note 11.

Name of Bill.	By whom introduced.	First Reading.	Second Reading.	Date of Committal.	Third Reading.	Assent Given.	Remarks.
Powers of Attorney Bill	Whitaker	27th June	29th June	3rd July	6th July		
Interpretation Bill	Gilfillan.	29th June	30th June	30th June	4th July		
Licensing Amendment Bill	Dillon Bell	6th July	6th July	6th July	6th July	7th July	Introduced from House of Representatives.
Naturalisation Bill	Bartley	13th July	18th July	20th July	21st July		
Dower Bill	Bartley	20th July	21st July	21st July	24th July		
Public Reserves Bill	Bartley	17th July	18th July	24th July	27th July		Introduced from House of Representatives.
Secondary Punishment Bill	Bartley	20th July	24th July	25th July	27th July		

Note 12 see page 190 and appendix.

CHAPTER IX.SELECT COMMITTEES OF THE LOWER HOUSE.

During the first session of the first Parliament, no fewer than eighteen select committees were appointed by the House of Representatives to deal with the various subjects which presented themselves to the notice of the Assembly. Of these thirteen presented reports, only four of which were adopted. The remaining eleven had been placed in the printers' hands, but their consideration was prevented by the more interesting though less dignified faction fights which followed on the resignation of the responsible portion of the ministry.

Two of the committees set up dealt with matters of procedure within the House; standing orders, and form of prayer. Other subjects dealt with concerning the House or its members were Privileges of Members, and Bribery at Elections, the reporting of debates, the printing of the votes and proceedings, and the improvement and completion of the building. One committee set up was charged with examining and reporting upon the statement of accounts laid before the House by the Government, and with considering and reporting whether an Indemnity Bill should not be passed to liquidate liabilities incurred by the General government without sanction of law, while another was instructed to prepare addresses embodying the nine resolutions of 17th August. Two committees were

appointed to report on the New Zealand Company's Debt, the one to enquire into the "origin nature and extent of the just claim, if any" on the colony, and the other to determine the share that the Province of Auckland should contribute to the payment of the debt. Of the others two dealt with public works, (beacons and light-houses, and steam communication) two with financial and fiscal subjects, (customs duties and bank of issue), one with public health (vaccination of natives), one with transportation, and one with the Land Claimants' Estates Bill which had passed its second reading.

Perhaps the most interesting report from the constitutional point of view, was that brought up by the committee to enquire and report on what ought to be the privileges of members of the House.¹

After consulting with a committee of the Legislative Council at work on the same subject, it was decided "that the House of Representatives in New Zealand has no inherent rights or privileges similar to those asserted by the British House of Commons, who claim their privileges by prescriptive and immemorial usage, and as a court of judicature, upon neither of which grounds can the House of Representatives assert a similar claim."²

1. The committee was appointed as the result of a question of privilege being raised on 16th June, when Carleton had objected to Bacot's asking leave of his commanding officer (Lieut.-Col. Wynyard!) to attend the House.
2. The Only judicial function which could be exercised by the House of Representatives was that of deciding petitions against the return of its own members.

The only ground upon which the House could assert privileges was that it had the right of protecting itself from all impediments to the due course of its proceedings;³ and the privileges must be limited strictly by the purpose in view. To this end it was recommended that an Act be passed asserting the power of the House to preserve order within its own precincts, to call for witnesses and papers under the authority of the Speaker's summons, and to punish disobedience by a fine not exceeding £20, or imprisonment for a term not exceeding fourteen days. The privileges to be enjoyed by members should be exemption from serving on juries and in the militia, and liberty of speech and protection from the law of libel, a privilege which should extend to persons publishing papers under the authority of the House.⁴

Though the committee appointed to consider the best means of obtaining accurate press reports did not bring up any recommendations, yet some light was shed upon the manner in which these were procured, by the scene between Wakefield and the ministers which occurred on 7th July, when Wakefield was taxed with tampering with the press. As there were no practised shorthand writers

3. As decided by the Privy Council. See Thomas, "Leading Cases", p. 40, Note.

This power was conferred in the Constitution Act Section 52, wherein the House was empowered to make standing rules and orders.

4. The privileges claimed by the Imperial Parliament in 1854 were:-
 1. Freedom from arrest;
 2. Freedom of speech;
 3. Regulation of constitution of the House by
 - (a) declaration of incapacity to sit;
 - (b) expulsion for unworthy conduct.
 - (c) trial of disputed elections.

in Auckland, certain members formed themselves into a reporting club, and took notes of the speeches delivered. These notes were then handed to the member who had spoken and were by him put into form for printing, when they were handed to the press.⁵

It is perhaps surprising to find a committee appointed to consider the expediency of bringing in a bill to prevent bribery at elections, especially at a time when seats were worth so very little. There could have been no bribery practised at the general elections in 1853, for it was the prevalent opinion that Grey - despot supreme - would never call the General Assembly, which soon became forgotten,⁶ and at mention of which people laughed.⁷ Perhaps Porter, who was so enthusiastic about making candidates and electors honest by Act of Parliament, feared a slight appreciation in the value of seats; this indeed did occur in the second elections, when responsible government was assured but not to any alarming

4. 4. Exclusive cognisance of matters arising within the House.

5. Punishment for violation of privilege. - Medley English Constitutional History, pp.264-81.

The Views expressed by the committee were correct, and in 1865 in virtue of its general legislative power, the General Assembly passed the Parliamentary Privileges Act, which gave the two Houses the same privileges as those enjoyed by the House of Commons on 1st January 1865, insofar as they were not inconsistent with the Constitution Act. As other legislation followed the law was consolidated in 1908, No. 101, ss. 242-71.

5. In 1854 (and till 1908) the Imperial Parliamentary Debates were reported in "Hansard", which was "at its inception, and for many years continued to be, a purely private venture, supported by annual subscription from members of Parliament and others, having no special reporters of its own, and deriving

extent, for as Sewell assures us, candidates could not afford too free largesse. Nevertheless, Porter's committee came to the unanimous opinion₈ that a "concise bill" was necessary, but the subject received no more attention till, in the second session he introduced a private "Bribery and Treating at Elections Bill", which lapsed after its first reading.₉

The steam communication committee, after examining the master and engineer of the steamer "Nelson", strongly recommended that provision be made by way of a moderate bonus out of the general revenue for the establishment of steam communication between the provinces. The Nelson Provincial Council had arranged with the agents of this steamer in consideration of the sum of £6,000, to maintain a frequent inter-provincial service for twelve months; Fitzgerald on 26th July intimated that he would consider the adoption of the report equivalent to a resolution that the general Government should secure the services of the "Nelson", and Wakefield rejoiced at finding the central Government about to take the matter out of

5. its materials from a collation of reports prepared for "The Times", "The Morning Chronicle" and other leading newspapers, a collation which was often aided by the corrections of the speakers." Ilbert - Parliament 191- 2.

New Zealand Parliamentary Debates. p.184.

6. In the enthusiasm of the colonists for Provincial Government.
7. Sewell - Journal, New Year's Day, 1854, "No news of the General Assembly which is now almost forgotten. People laugh when it is mentioned."
8. How much evidence was called is not recorded, but five meetings were held.
9. The alleged necessity for this bill was probably owing to a desire to copy the Old Land.

the hands of the provinces. The report was adopted, and during the second session the £6,000 was appropriated to the inter-provincial postal service.

The only other committee that claims our attention is that appointed on the motion of Wakefield to enquire into the question whether or not in justice, the Province of Auckland ought to be relieved from bearing any portion of the New Zealand Company's Debt. After examining three witnesses, the Hon. F. Dillon Bell, the Hon. F. Whitaker, and the Attorney-General, the committee, of which Wakefield was chairman, brought up a concise report, stating the injustice of charging any part of the debt upon that province. This opinion rested upon the fact that the New Zealand Company had never conducted any colonising operations in New Ulster nor had it any relations with that part of the colony except "jealousy, repugnance and hostility" to it. The benefits of the Company's operations were not supposed to have accrued in any degree to the northern province, but exclusively to the south; it was not considered that the operations of the Company had benefited the colony as a whole, and not merely those provinces that had been founded by it. Wakefield's partisanship must have blinded him to the fact, once so clearly perceived by him, that it was chiefly owing to the activities of the New Zealand Company's settlements that Auckland, in common with the rest of the colony was enjoying the privileges conferred by the Constitution Act; therefore she should meet the correlative obligations.

That the debt was unjust is admitted, - but not only to Auckland, - to all the colony. Happily, prorogation prevented the adoption of the report. Such benefits as were conferred upon the colony by the adoption of the steam navigation committee's report would speedily have been neutralised by the acceptance of such principles as that underlying this report.

CHAPTER X.THE FORSAITH MINISTRY.

Only two days had elapsed since the memorable 17th August, when Wakefield ceased to act as unofficial adviser. It soon became bruited abroad that Wakefield had been disgraced, presumably as a result of the resolution of the House. But it is established beyond doubt that he retired voluntarily. In conversation with Swainson on 19th August, he found that his views differed¹ from those of the Attorney-General. He writes in a memorandum² of that date, "I now found myself in danger of having my advice still received, but counteracted by the Attorney-General's influence, and what was of more importance, in danger of leading my political friends into the distressing position of accepting office on conditions which might not be realised."

Now that Wakefield was merely the member for the Hutt, the House had no objection to voting supplies when it should be called upon to do so. It now became the intention of members when Parliament should again assemble, "to pass some useful measures and endure the government of the old officials till relieved of them in

1. On whether the General Assembly should assemble at the end of the fortnight for which it was prorogued.
2. Which Swainson (New Zealand and its Colonisation p. 341) describes as a graphic account of what passed.
3. Sewell, Journal.

due course,³" but no sooner was this their resolve than rumour had it that the Government was considering the indefinite prorogation of Parliament without asking for supplies. This really was the proposal of the adroit Swainson, who considered that the time had gone by for doing any good with the General Assembly," and that the scenes of 17th August justified the reference of the whole matter to the Home Government, and temporary reversion to the state of affairs which existed before the Assembly met.

To this plan of action, Wakefield had of course objected.⁴ He must assume control again by putting his minority government in office. For several days the question of the indefinite prorogation of the Assembly was in abeyance, till Wynyard asked "Monro, Featherston, Whitaker and Forsaith to meet him and advise him whether the House would vote supplies. Monro did not go. Forsaith and Whitaker tried to make out a case for indefinite prorogation. Featherston told Wynyard plainly that nothing could excuse his not calling the Assembly together at the time fixed; the House would vote supplies."⁵

Swainson pleasingly paints with a Government pen the effect of the Government victory. "The majority of the Representative body were taken completely by surprise. At first members could hardly realise the powerless con-

4. Wakefield memorandum, Swainson op. cit.
p. 341 - 8.

5. Sewell, Journal.

dition to which they had been suddenly reduced by having the doors of the House closed against them. The most influential portion⁶ of the Press denounced their violent proceedings; the community by which they were surrounded was indifferent, if not actually hostile to them; not a single expression of public sympathy was given in their favour, nor was a single public meeting got up in their behalf; and with reflection came the unwelcome conviction that the Government were in fact masters of the situation; that the revenues of the colony were neither de jure or de facto subject to the appropriation of the General Assembly, and that if the Assembly refused to proceed with the business of the session the Government were prepared to incur the responsibility of applying the public revenues. "Swainson erred. Even in Auckland there was an anti-Government Party. But we could not expect the Attorney-General's view to extend as far south as Canterbury.

Nor were private and personal considerations without their weight. As no supplies had been voted, members were still without their expenses, and the prospect of returning to their constituencies, at their own cost and without being able to point to a single useful measure as a result of their deliberations was not without its sobering effect.

6. I.e. The Government organ, the "New Zealander", which characterised the conduct of the majority as "very ridiculous" and "utterly disgraceful", to be regarded by true lovers of New Zealand with feelings of sorrow and shame. It also condemned the "imperious dictation" of the ex-ministers.

But we may also believe that when the tumult and the shouting died, Wynyard too began to commune with himself, as well as with Swainson, on the expediency of summoning a second session. Deadlock would rob him of all éclat; thought for his reputation would convince him of the folly of playing the Grey; the settlement of a difficulty would reflect great credit upon an Officer Administering the Government, perhaps indeed lead to his confirmation as Governor.

Whatever his motives, the Acting-Governor, "having ascertained through various channels, that if allowed to meet again, the House would vote the necessary supplies," determined that the General Assembly should meet at the end of the fortnight.

The Houses met in their respective chambers for the dispatch of business at twelve o'clock on 31st August. For the first time, the correct formalities were observed. The House of Representatives was summoned down to the Legislative Council chamber. "Down we came trooping and scrambling amongst the crowd," says Sewell. The ladies, strangers, and members were there. Shortly after the hour the Officer Administering the Government came too, with guard of honour and band. He delivered the Speech from the Throne. A very odd speech from a Queen's representative!

"Honourable Gentlemen of the Legislative Council and Gentlemen of the House of Representatives," he began, "my anxiety to promote beneficial legislation for

the colony, notwithstanding the circumstances by which that most desirable object has been impeded, induces me to abstain entirely from alluding to the differences which have taken place between myself and the House of Representatives, except for the one purpose of declaring to you my sincere wish that the whole subject may henceforth be buried in oblivion."

The second session would assume an unusual character. It was taking place rather for the purpose of disposing of a few matters of great and urgent importance than of carrying into effect a comprehensive policy.

A new Government was then announced. Had not the House signified its intention of having no more of "mixed Executives?" It had, but the Acting-Governor had endeavoured by appointments to his Executive Council "to give all the provinces an effectual voice and influence in both the legislative and executive proceedings of the Government." Though the extent to which he had been able to accomplish this laudable object was not satisfactory to him, especially with regard to the Legislative Council, he was in hopes of being able, ere long, to complete the good work "in a manner altogether unobjectionable."

Notwithstanding the peculiar character of the session, a brand new policy was now set out in detail. An Executive Government Bill would be introduced! His Excellency still was kindly disposed to responsible government. A Waste Lands Bill would transfer to the Provincial Councils the powers vested in the General

Assembly. Public opinion in the colony would be gratified by the intelligence that nomineeism was ultimately to disappear into oblivion. A bill would be introduced empowering the General Assembly to "alter the composition of the Legislative Council in such a manner as to bestow upon that body the popular yet conservative character of an elected Senate." There followed a motley array of measures which would receive the attention of honourable gentlemen; one would equalise the representation in the House of Representatives, another would empower Superintendents to legislate with respect to currency; one would empower the provinces to establish provincial post offices and to manage beacons and light-houses; yet another would empower Superintendents to dissolve Provincial Councils. But to drive a coach-and-six through the Constitution, he must ask Her Majesty's permission - this sheaf of bills would be transmitted Home for the Queen's assent. Then came a kind of Place Bill. Holders of office under the general Government would be prevented from holding seats in the General Assembly, always excepting of course, members of the Executive Council. To complete a long tale of proposed measures were a Marriage Bill, a Nelson Trust Fund Bill, a Land Claimants' Estate Bill, a Tariff Reform Bill, and a Bribery and Treating at Elections Bill.

The Acting-Governor had still to learn that it was "Gentlemen of the House of Representatives" to whom he should address his financial proposals. The revenue would be divided as the Constitution Act provided. Members

of the Legislature would be pleased to hear that sum would be placed upon the estimates to meet the expenses they had incurred in attending the General Assembly.

After expressing his hope that each province would find the means of securing attention to its particular needs, by having a representative in the Executive Council, he went on to preach the needs of Auckland and the gospel of separation. Any question as to the seat of Government should be with the ministers and their supporters an open question, but if at any time the seat of Government or meeting place of the General Assembly were changed, it would be to the best interests of Auckland to have a Lieutenant-Governor and exclusive powers of legislation, except on certain specified subjects. In such a case, with a view to preserving intact the unity of the colony, certain questions concerning New Zealand as a whole would be dealt with, by laws passed from time to time by both Southern and Northern Legislatures, or by an assembly or convention of a certain number of members of both Legislatures. Federation would be the remedy for the particularism of a unitary state. New Zealand would thus become "one great nation."

The waste lands of the colony would, after authority should be received from the Secretary of State be handed over to the provinces, but since the Superintendent and Provincial Councils had been elected at a time when the electors had had no conception that such powers would be granted, the Acting-Governor would dissolve those

bodies so that the people should be enabled to exercise afresh their right of choice. That nine out of every ten provincial councillors in the colony had made this an article in their faith on the hustings a year previously signified nothing. In the meantime the Acting-Governor would issue regulations for setting apart in every district of each province, a considerable portion, not less than one-third of the waste lands for bona fide occupying settlers. These regulations would be administered in each province by a board of commissioners to be appointed by the Governor and to be bound by stringent instructions for securing impartiality and publicity in all their proceedings.

A long and disagreeable harangue ended, "Let me express my earnest hope and trust that by patience and industry, even in the brief session which is now compatible with the desire of the southern members to return to their provinces, to give so much effect to this policy as shall be immediately felt by the people in the form of valuable practical improvement of their condition." This was the Speech from the Throne, - a strange medley of propositions from one who had refused to grant responsible government: in it unmistakeable signs of the "fine Roman hand of the member for the Hutt."

The Officer Administering the Government withdrew with guard-of-honour and band, and the House of Representatives returned to its own chamber. The gallery was crowded. Business was opened by Forsaith announcing

himself as the exponent of the new policy, and asking for an adjournment till the following day.

The opposition or constitutional party withdrew to King's lodging house, there to take counsel. Proceedings were opened by Sewell who perceived the object of the Address. The plan evidently was to drive the House by an extravagant policy into some violent demonstration which would justify a dissolution. What better trump card for the hustings than the working settlers' plan?

Sewell accordingly drafted an appropriate Address-in-Reply, extremely moderate, avoiding all irritating matter. This, it was agreed, should be moved by Monroe. Another address, also drafted by Sewell, praying the Queen to remove the old officials and to grant responsible government, would be moved by Stuart-Wortley. The necessity for an executive government bill would thus be obviated. The meeting broke up; plans were mature; Wakefield would be ousted. The adroit propagandist, however, was all this time assiduously engaged in spreading the notion that dissolution and the hustings would follow ministerial defeat.

On the following day when the House met, Forsaith rose to make his ministerial statement and move an Address-in-Reply. He explained how on the previous Tuesday, while engaged at his business, he had been surprised to receive a summons to His Excellency's counsels, and how, "like Cincinnatus called from the plough," he forthwith had changed his shirt and had proceeded to the

work of the state. But he did not occupy the position of head of the Government in that House - he was not Prime Vizier. His colleagues were his equals; no one of them was greater than another.

True! a remarkable Government! Four pretty puppets, worked in unison from the master hand of the intriguing Wakefield. One puppet from each of the provinces, except Taranaki and Wellington, from which no simpletons could be seduced. The retention of the seat of Government (or separation) were the alternative strings working the Auckland puppet; provincial paper money for Otago synchronised the movements of Macandrew with those of the group; place and pay as Solicitor-General insured the due response of Travers, while Jerningham Wakefield assumed position as understudy to his father. The rotten planks of the rickety platform on which the mummers were set were working settlers' plan, electoral reform,⁸ and provincial supremacy.

That Wakefield at first intended to go to the country if defeated is almost established beyond doubt. Gledhill reports a jubilant observation made by one of the Government before the Acting-Governor's speech was put into the printers' hands.⁹ "We have them now: they can neither speak nor vote against this." Swainson in his book of 1859 informs us that if the ministerial

8. In the sense used in Major Greenwood's Bill.

9. This was before they assumed office. They were sworn in on 31st August, the day on which the Assembly met.

policy failed, it was the intention of its authors still to remain in office, and to appeal to the electors "on the strength of their popular programme." Wakefield himself in the address-in-reply debate posed critic by informing the occupants of the Treasury Bench that if, in case of defeat they did not advise His Excellency to dissolve, they would fail in their duty to the colony.¹⁰ But he reckoned without his host. The Acting-Governor and the official members of the Executive Council were not prepared to retain an unpopular minority in office. The ministry had been appointed on the condition that, immediately it was out-voted, it should retire.

The ministerial explanations were meagre and unsatisfactory. Not one of the newly constituted ministers would disclose on what terms he had accepted his seat in the Executive Council, Macandrew had joined to carry out the views of His Excellency. Otago might be forgotten unless it were represented on the Executive Council. He would look after the interests of New Zealand in general and of Otago in particular. Merriman wished to know on what principle the ministers had entered the Executive Council. Would they go out at the end of the session? Macandrew replied that they had accepted seats "on the usual terms of ministerial responsibility." Sewell rejoined that there was a certain ambiguity in the answer.

10. This, however was probably bluff.

Travers had taken his seat "on the terms explained by Mr. Forsaith." As he was satisfied with the policy of the Governor he had joined the Executive Council.

Merriman rose to explain the meaning of his question.

"Spoke!" snapped Jerningham Wakefield.

"I will not be put down," retorted Merriman. "I ask distinctly the duration of time you are to be members of the Executive Council."

"The honourable member may ask that question as many times as he likes," chuckled Jerningham, "but we can give him any answer we please!"

Forsaith's Address-in-Reply was short but not to the point: an assurance that the House concurred in the liberal principles and popular sympathies indicated by His Excellency's speech; a promise that the House would give its prompt and diligent attention to every measure which would be laid before it by His Excellency's advisers; a reminder that the House could not spend time on controversial questions or unnecessary legislation; a hope that the service of the people might be the single object and motive of every member of the Legislature during a brief session; and a reiteration of the wish of His Excellency that the past might be buried in oblivion.

Monro's amendment to the Address-in-Reply was likewise short, but intensely pertinent. The House would

respectfully draw His Excellency's attention to the fact that the members representing the southern constituencies had been absent from their homes for upwards of three months and a half - some for upwards of five months, and would be obliged to leave Auckland by the next steamer¹¹ which would sail in a few days. Hence many of the measures recommended to the attention of the House could not be dealt with: they involved questions of policy of such magnitude that they ought to be submitted to a session with ample time before it for deliberation, and then executed by "a Government enjoying the confidence of the Legislature and responsible to it" for the proper administration of affairs. The most urgent and imperative duty of the House was to vote supplies to the public service; the House humbly prayed His Excellency to lay before it the estimates, at the earliest moment. It was a matter of regret that His Excellency had not been able to grant complete responsible government but during the interval that must elapse before this boon be conceded, a mixed Executive must be a failure; the existing ministry drawn from a small minority of the House, and constructed upon the "delusive theory of representation of provincial interests" lacked absolutely the confidence of the House. Till complete responsible government should be granted, the Government should be continued under the exclusive management of public officials responsible only

11. There were at this time two steamers in the colony, the "Nelson" and the "Zingari".

to the Crown. Though the House had already acquainted His Excellency with its conviction of the expediency of the change, it deemed it best "as a choice of two evils," to submit for a short time to the inevitable.

Forsaith moved and Cargill seconded the Address-in-Reply; Monro moved and Carleton seconded the amendment; the debate began.

The mover would not occupy the time of the House; he would not go into the details of the Acting-Governor's speech. The Address-in-Reply had been framed to permit the House to declare that it was ready to proceed with a small amount of legislation on popular lines.

Nor would Monro occupy the time of the House. A few remarks on His Excellency's speech, which "threw out a tub for every whale," would suffice. He would leave the amendment in the hands of the House.

Carleton in seconding displayed some enthusiasm for the amendment which did not follow out the Governor's speech, but set it aside. His Excellency's address was an electioneering address, framed for the hustings, where it might most fittingly be answered. To hear a representative of the Queen giving parrot-like utterance to such wild and dangerous schemes, not in the least knowing what principles they involved or where he was being led to, reading on in the fulness of simplicity, altogether unaware that he, an officer of the Crown, was undermining the power of the crown, was a matter of sadness rather

than for feelings of political animosity. "Ah! Yes! Yes!" he might have reflected, "but you know - responsible government!" The remedy was in the hands of the House.

After much discursive talk, and a passage at arms between Fitzgerald and Wakefield, the Speaker put the question, "That the whole of the words proposed to be omitted stand part of the question." The division bell rang, the Sergeant-at-arms locked the doors. To the "Aye'." lobby went ten, to the "No!" twenty-two. "Amendment carried," announced the Speaker. The House adjourned.

On the following day, Saturday, 2nd September, Stuart-Wortley moved the Address to the Queen, submitting the humble prayer of the House that Her Majesty would be pleased "to give effect to the principle of ministerial responsibility in the conduct of legislative and executive affairs by instructing the Officer Administering the Government to remove from their offices the gentlemen filling the offices of Attorney-General, Colonial Secretary, and Colonial Treasurer. Ludlam seconded; the Address was adopted, and the Speaker was instructed to transmit it to the Secretary of State, with copies of all documents laid before the House having reference to the question of ministerial responsibility.

On the following Monday the resignation of the "Clean Shirt" ministry was announced in the House by Jerningham Wakefield. After a precarious existence of three days, it had followed its predecessor. From the

first it had commanded confidence and respect neither within the House nor without. An observation of "The Lyttelton Times" reflects current opinion; "Our readers will understand how well the members (of the ministry) represented their provinces, when they remember that Mr. E. J. Wakefield represented Canterbury." Wakefield was in such disfavour in the country that he could not hope to maintain a party or a platform.

With the ministry there fell a principle. The composite Executive was a thing of the past.

CHAPTER XI.THE WORK OF THE SECOND SESSION.

Now that all fear of a Wakefield government was past, and that the dissolution bogey had vanished, the House began the work of the session. Legislation was the prime necessity and the House legislated. On only one occasion was time spared for trivialities; only once did Wakefield claim an opportunity to make a personal explanation. The "Southern Cross" had, in an "on dit" stated that Wakefield had been dismissed from the position of unofficial adviser in disgrace, and that he had subsequently solicited a letter of thanks for his services from the Acting-Governor. He had done no such thing, and the truth he wished to be known.

As the session wore on sittings became longer and longer, till on the day before prorogation, the House was sitting for thirteen and one-half hours. It was usual to commence business at mid-day and continue till half-past four in the afternoon when an adjournment was made till six; the House then resumed, to adjourn again at three o'clock in the morning. After midnight members would begin to leave; in the small hours there might be seen within the gloom of the House a small group of long-faced men scattered about the benches; here and there a nodding member; here and there a sleeper; a House in

grave danger of being counted out; a House lazily and drowsily calling "Aye!" and "No!", scrambling through its business with the standing orders suspended. Thus the business was transacted.

The report of the select committee set up to consider the late prorogation claims our attention. Following the usage of the Imperial Parliament, the committee deemed it inexpedient to define the exact limits of the power of the Queen's representative in the colony, and therefore confined its attention to observation of the British practice. It found that "during the time when Parliament is not actually sitting whenever Her Majesty the Queen is pleased, by the advice of her Privy Council, to issue her royal proclamation, giving notice of her royal intention that Parliament shall be prorogued, and shall meet for dispatch of business not less than fourteen days from the date of prorogation, the Parliament is prorogued to the day and place therein declared (37 Geo. III., c.126, sect.i.); and a like power exists when both House stand adjourned for a period exceeding fourteen days. (39 and 40 Geo. III., c.14)."

"But when Parliament is sitting, prorogation is effected by the Sovereign attending in person the House of Lords, or by Commission under the Great Seal, both Houses of the Legislature being in attendance. To secure this attendance, previous notice of the royal intention is usually given in the Government Gazette, whereby the Houses of the Legislature are enabled to complete such

bills in progress as are in a position to become within the time limited sufficiently advanced to receive the royal assent."

This seemed to the committee a convenient mode of procedure and one which provided against the great inconvenience arising from a sudden prorogation without notice, whereby the labour of the Houses on bills which had not received the assent of the crown was rendered nugatory. Another lesson in Parliamentary Procedure for Wynyard!

The Legislative Council had likewise conducted its business with feverish haste. On the day following the opening of the session, an Address-in-Reply, framed by a committee of five, was agreed to assuring the Acting-Governor that measures brought before the Council would receive its most careful attention. Before the adjournment that afternoon the Address-in-Reply had been framed and adopted, and seven bills had been passed through certain stages. Two had been read a third time, two had been committed, and three had been read a second time.

The Appropriation Act was, of course, the central point of interest during the session.

In New Zealand the procedure in voting supplies is as follows. The Crown in the Speech from the Throne, demands from the Lower House the supplies for the year, and after the Address-in-Reply is agreed to, the estimates are submitted to the House by the Minister of Finance.¹

1. Who is usually the Prime Minister.

The sittings of the committee of supply then begin₂ and are continued till all the proposed votes are dealt with. The resolutions of the committee are then reported to the House, and adopted, after which they are embodied in the Appropriation Bill for the year, which is introduced into the Lower House, goes through the ordinary stages, and is sent up to the Legislative Council which cannot amend it. It is then returned to the House of Representatives, in whose custody it remains till that House is summoned to the Legislative Council chamber immediately before prorogation, when it is taken to the Upper House by the Speaker, there presented to the representative of the Crown, and assented to.

This was not the procedure followed in the case of the first Appropriation Bill passed by the New Zealand Parliament. In the Acting-Governor's speech at the opening of the session supplies were demanded, not from the "gentlemen of the House of Representatives," but from the "Honourable Gentlemen of the Legislative Council, and Gentlemen of the House of Representatives," and this in spite of the fact that Fitzgerald in moving the Address-in-Reply in the first session, had drawn attention to this ancient usage. Some doubt however may have existed in Wakefield's mind₃ as to whether the powers of the two Houses in New Zealand were co-ordinate in matters of

2. There is no committee of ways and means in the House of Representatives.
3. As Wakefield was the unofficial leader of the ministry.

finance. But Wakefield should have known.

In the absence of responsible ministers, the estimates were sent down to the Lower House by message (No. 5) on 4th September, but on the following day the Acting-Governor transmitted by Message No. 9. "the draft of a bill to provide for the appropriation of the public revenue of New Zealand," which was on Sewell's motion read a first, and ordered to be read a second time. Later in the day the bill went through its second reading⁴ and after a brief space on the motion of Fitzgerald "the Speaker left the chair, and the House resolved itself into committee of the whole for the Appropriation Bill." When the House resumed, progress was reported and leave given to sit again.

Curiously enough the committee of supply on 6th September began its sittings, which were continued till 14th September when, the Speaker being in the chair, the chairman "reported that the committee had gone through the various items contained in the estimates for 1854-5, as laid before the House, together with those additional items in the supplementary estimates contained in His Excellency's messages Nos. 14, 15, 22, 23, 24 and 25," and had brought up thirty-one resolutions which were adopted by the House.

At the six o'clock sitting on the same day the Appropriation Bill was recommitted, when for the sum

4. The votes and proceedings do not record the second reading of the Appropriation Bill, but a table of the bills introduced shows that it was read a second time on 5th September.

£48,590:18: 8 to be appropriated, was substituted the sum £36,497: 7: 0. On 15th September the Bill was read a third time and passed.

The proceedings of the committee of supply require some notice. At the first sitting, in order to ensure adequate explanation, it was resolved to request the attendance of the Auditor-General who attended all subsequent occasions on which the House went into committee of supply. The attendance of the collector of customs at Auckland was also requested while the estimates for the customs department were under the notice of the committee.

It is only since 1857 that it has been regarded as unconstitutional to vote more for certain purposes than what has been estimated by the Government. It is not surprising, therefore, to see a committee of supply in 1854 on the resolution of a private member, increasing a vote to the post office at Auckland to £1300, when only £1200 was demanded. Nor is it surprising to see indirect legislation carried on, and provinces grasping for power over certain government officers. On the estimates there stood an item, "Resident Magistrates Department, £1591: 5: 0." It transpired that there was no estimate for the Nelson resident magistrates court, whereupon the Auditor-General explained that Sir G. Grey had transferred the court to the province. The provincial cupidity of other members was now aroused; from various quarters of the House it was loudly proclaimed that the

system should be uniform throughout the colony, and when Macandrew's motion to strike out the item was put, the resident magistrates courts ceased to be under the jurisdiction of the General Government.

It is amusing to see how, though technically not in receipt of any salary, the members of the House of Representatives recompensed themselves for the inconvenience of attending the General Assembly. An item on the estimates, "Expenses of members" was left blank, both for the Legislative Council and the Lower House. When this item came under consideration, Wakefield moved "that the expenses of the members of the House of Representatives be paid at the rate of £1 a day calculated from the day of the opening of the session to the day of the closing of the same." Sewell moved an amendment that ten shillings per day be allowed. To supplement his powerful appeal to their acquisitive instinct, Wakefield ministered to the reason of members by pointing out that inadequate payment of expenses would narrow the choice of electors. It were needless to add that the words proposed to be omitted stood part of the question, and that Fitzgerald's amendment that fifteen shillings per day be allowed, suffered the same fate as Sewell's. The members resident in Auckland of course, received nothing.

It is still more amusing to observe how Wakefield paid an expensive compliment to the members of the Upper House. When Sewell moved that they be provided for at the same rate as members of the House of Repres-

entatives, the member for the Hutt proposed an amendment, "that it is inexpedient to fill up the blank left for expenses of the members of the Legislative Council, because the distinction of performing their duties gratuitously is one which rightly belongs to a nominated body." This time the words proposed to be omitted did not stand part of the question.

On 15th September, the Appropriation Bill went up to the Legislative Council where Bartley took charge. After it had been read a first time, the standing orders were suspended to allow its passage through all stages. The second reading was moved.

The nominated branch of the Legislature entertained great solicitude for its privileges and powers. Kenny thought that the Council should agree to a resolution that the estimates on which the Appropriation Bill was based, should be called for, and until they were placed on the table, the Council should not proceed further with consideration of the bill.

It was clear that members of the Council were unacquainted with the exact nature of their powers over supply bills. As even the Speaker (Mr. Attorney-General) said, "This is a question still to be settled." Dillon Bell opined that the question as to the right of the Council to deal with the estimates should be referred to the Home authorities. Meanwhile the Council should not interfere with supply bills; it was not elected by the people; it was not responsible to the people. It would

be expedient and proper to say at the outset, that it would not interfere with the House of Representatives in matters of expenditure.

Whitaker hoped that Kenny would forego proposing his resolution. But a few hours remained before prorogation, and the result of making amendments to the bill would be that it would not be passed.

Seymour then moved that the Appropriation Bill be read that day three months, but the amendment not being seconded, the bill was read a second time and committed. It was now that Whitaker moved an amendment to the first clause, in which a parenthesis declared all the revenue raised under all the ordinances of the old Legislative Council to be raised under act of the General Assembly. This had been one of the provisions of the Revenues Bill which had been rejected by the Upper House. It was undoubtedly a barefaced attempt at tacking; a breach of privilege. Whitaker's motion to strike out the parenthesis was carried; the bill was reported to the Council as amended.

The Speaker now raised another point. If the estimates which had been passed by the House of Representatives were neither embodied in the Appropriation Bill nor annexed to it, and if they were neither submitted to nor passed by the Legislative Council, would they be law? Might not the Acting-Governor be able to distribute the vote of a certain department as he thought fit? At this Dillon Bell took fright, and expressed his astonish-

ment that the bill in the form in which it was sent to the Legislative Council should have been passed by the House of Representatives. As the bill stood the Acting-Governor might divide the sums voted in such proportions as he might think fit. He could never consent to vest such large powers in an irresponsible Executive. He probably did not remember that the estimates originated from the Government which must expend the votes in the manner proposed.

Before the bill passed its final stage Whitaker rose to move resolutions which would preserve intact the powers of the Council if such existed. It was a question of importance as to what was the proper course for the Upper House to pursue in respect of bills of supply sent from the House of Representatives. From analogy with the British Constitution, the second chamber was not enabled to make amendments in money bills, but the New Zealand constitution rested entirely upon an Act of the Imperial Parliament. To guard against that instance being taken as a precedent, Whitaker proposed four resolutions to be embodied in an Address to the Acting-Governor.

"1. That as the bill for appropriating the public revenues was not introduced into the Legislative Council till 15th inst., and as the Assembly is to be prorogued on 16th inst.; this council has no alternative but either wholly to reject the bill or to agree to it in the form in which it has been transmitted to them from the House of Representatives.

"2. That in consenting to pass the Appropriation Bill for 1854-55, without alteration of any of the sums voted by the House of Representatives, the Legislative Council have regard solely to the maintenance of the civil establishments of the colony, and desire in no way to prejudice any right to alter or amend the annual Appropriation Bill or any other measure for raising or disposing of the public revenues.

"3. That.....the question has been raised whether the Legislative Council would be justified in making any alteration to a bill of supply, or whether, by analogy to the British Constitution the Legislative Council of New Zealand must not either wholly accept or wholly reject every such measure.

"4. That.....all doubt upon the subject should be at once and authoritatively set at rest; and that His Excellency the Officer Administering the Government be respectfully moved to bring the question under the consideration of Her Majesty's Imperial Government."

The bill was then read a third time and passed. On Kenny's motion it was resolved that the member bearing the message with the Appropriation Bill inform the House of Representatives that the detailed estimates had not accompanied the bill and that the Legislative Council was desirous that it should be understood that the course taken was not to be considered a precedent. On Dillon Bell's motion it was resolved that under these circumstances the Legislative Council had agreed with extreme reluctance to

an act which places large sums of money at the absolute disposal of the Executive Government, the particular mode of appropriating this not having been prescribed by the act. This resolution, too, was transmitted to the Lower House with the bill.

In a short time Sewell was introduced as a deputation from the House of Representatives, and requested a conference on the amendment made in the bill by the Council. The amendment was adopted by the conference the proceedings of which were confirmed by resolutions in each House.

The bill consisted of five clauses. The sum of £36,497: 7: 0 was to be paid out of the land and general revenue for the support of the civil establishments of the General Government; the several sums were to be paid out by the Treasurer under the Governor's warrant, in such proportions as the Governor should from time to time direct; the surplus of the revenues was to be divided among the provinces as provided for by the Constitution Act; and the Treasurer was to be allowed credit for all sums so paid.

It was on the last day of the session that the Appropriation Bill was assented to. In the Acting-Governor's speech at the prorogation the Lower House was gently admonished for transferring the control of certain of the Government officers from the service of the General Government to that of the various provinces. "The apportionment of legislative and executive power between

the General Government and the subordinate local authorities ought rather," the Acting-Governor affirmed, "to be by a permanent enactment, to which all three branches of the Legislature should have given their deliberate assent."

On 25th March, 1855, one of the Secretaries of State replied as follows to Wynyard's dispatch relative to the powers of the Legislative Council over supply bills. "The question raised by your dispatch is one of great importance in itself, and touches on the very first principles of English Constitutional law.....It is quite true that the New Zealand Constitution Act contains no provision to the same effect, but it appears to me that the analogy of the English Constitution ought to prevail, the reason being the same when the Upper House is not elected by the people. And in Canada where the Constitution Act is similar in this respect to that of New Zealand, the Lower Assembly has hitherto exercised without dispute the same privilege in regard to money votes as the British House of Commons."

Of twenty-four bills introduced during this^o session twelve were passed and assented to, one was reserved for Her Majesty's assent, four lapsed in the Lower House, one was negatived in committee of the Lower House, one was disposed of by question of that day six months, three were discharged on report of select committees, and two were negatived in the Legislative Council.

Changes in the constitution were contemplated

by two of the bills introduced, the Revenues Bill and the Provincial Waste Lands Bill. The former was negatived in the Legislative Council; the latter was reserved. The Revenues Bill which had been passed through several stages in the first session was again brought forward by Fitzgerald in its old guise. We have seen how, when it had been negatived one of its provisions was inserted in the Appropriation Bill.

The provincial Waste Lands Bill, brought in by Lee, reached the Legislative Council without opposition on 14th September, and on the following day was passed through all its stages almost without debate. The bill would authorise the General Assembly to empower the Superintendents, on the advice and with the consent of their Provincial Councils, to make laws for the regulation of the Waste lands of the Crown, (subject to such limitations and restrictions as might be imposed by the General Assembly), and to defray all costs incident to their management. Finally the Act should not come into operation till Her Majesty's assent had been granted.

But it was necessary, in the opinion of the Lower House that, before this Act came into operation, the Acting-Governor should be prevented from issuing regulations setting apart working settlers' land. To this end Fitzgerald brought in a Waste Lands Bill, differing widely from his old measure of the first session. It passed not without event. When its second reading was moved, Travers attempted to dispose of it by moving its reading that day

six months. When it was about to be committed Wakefield adopted the same tactics; and when he had failed, he again endeavoured to insert his working settlers' clauses. His poor plan died hard. His amendment was negatived, the bill was read a third time, passed, and sent down to the Legislative Council, where it was passed with amendments which were agreed to by the Lower House. All land regulations then in force were confirmed, and it was enacted that, if at any time the Superintendent and Provincial Council of any province should recommend land regulations to the Governor, it should be lawful for the Governor on the advice of his Executive Council to gazette these.

The Public Reserves Bill, under Sewell's charge, was introduced as it had been in the first session, passed uneventfully through both Houses with but slight amendment, and was assented to on 14th September. By its provision the Government might grant to Superintendents Her Majesty's interest in demesne lands and in lands reclaimed from the sea. For purposes of the bill, Superintendents were to be deemed corporations, which should hold land on trust for the public service of their provinces. The management and administration of reserves was to be carried on by Superintendents and their Executive Councils; lands were not to be alienated for periods exceeding three years.

Five other land bills were brought in, but all lapsed in the House or were negatived in the Legislative Council. These were Merriman's Land Registration Amendment Bill, Carleton's Pre-emptive Land Claims Bill, Traver's

Land Claimants Estate Bill, Picard's Native Reserves Bill, and the New Zealand Company's Land Claimants Amendment Ordinance Bill, introduced in the Legislative Council by Dillon Bell.

Neither of two bills to provide for elections reached a third reading in the Lower House. Porter's Bribery and Treating at Elections Bill was still-born; it was read a first time, and passed out of the ken of the House. Greenwood's Electoral Districts Bill, however, was much more important and evoked a storm of opposition from the southern members. It was read a first time on 5th September, and three days later Greenwood opened the best debate of the session when he moved its second reading. After giving a comparative table which purported to show the relative number of electors in each province, he went on to state that, if justly represented, Auckland should send twenty members to the House of Representatives Wellington nine, Nelson six, Canterbury six, New Plymouth and Otago three each. The ire of the south rose at such an attempt to transfer the weight of popular influence to Auckland, the home of officialism, and some facts were brought forward which told heavily on Greenwood's Bill. Carleton, himself a representative of an Auckland constituency, objected that this was not a question for a short session; it opened up a broad field of enquiry. It embraced the native question; it included the question of the constitution of the Legislative Council which had not yet been settled. Cutten made a brilliant attack on

Greenwood's statistics. The mover had based his statistics not upon numbers of electors but upon numbers of votes cast by electors. A man who exercised a vote in each of six districts could not be called six electors. In Auckland it might be possible for one elector to vote in each of six electoral districts; in Otago no elector could vote in more than two. Again on one of the Auckland electoral rolls, out of 911 electors there were 160 dead men. On another there were the men of the fifty-eighth regiment; if officers solicited their votes, how many would dare to refuse? If the plea of the supporters of the bill was that Auckland was not fairly represented, he would contend that it was. He would move as an amendment that the Electoral Districts Bill be read that day six months.

Revans had only a word to say - the bill was an electioneering placard.

Gibbon Wakefield rose -

"That is all I wanted," cried Revans, "I have drawn him out!"

Wakefield went through the constituencies of the country and classified them. Some were rotten boroughs, some were not. Revans's constituency, the Wairarapa, Weld's constituency the Wairau, and Moorhouse's constituency, Akaroa were the rotten boroughs.

This was too much for Sewell. Wakefield had spoken of rotten boroughs. Would he not recollect that when he and Sewell had written a certain letter to the

Duke of Newcastle, the pensioner villages had been described as the only rotten boroughs in the colony. The pensioners were now the people.

Well after midnight Greenwood replied, but could not deal with certain criticisms beyond dismissing them with a reflection upon the intelligence of those who passed them. "Ne sutor ultra crepidam." Greenwood was an army officer. At half-past one in the morning the House divided; by eighteen votes to nine the bill was committed to the waste paper basket.

Mackay's Duties of Customs Bill also lapsed; It proposed the simplification of the tariff by the abolition of all ad valorem duties, and the levying of duties on a few articles at fixed rates. Though there was real need for tariff reform, as is shown by candidates' addresses, by letters and by petitions, this bill perished miserably in committee, on 14th September.

From the point of view of its originator, the Chief-Justice, the English Acts Act was a most useful piece of legislation. This measure enacted that the provisions of some seventeen Acts of the Imperial Parliament relative to the administration of justice be taken to apply to the colony of New Zealand.

"Whereas by reason of the difficulty of transporting offenders beyond the seas," it had become expedient to make temporary provision for the substitution of other punishment in lieu of transportation, it was enacted by the Secondary Punishments Act, which originated in the

Upper House, that penal servitude within New Zealand should be substituted for transportation. The Act also provided that the management of convicts might be delegated by the Governor to the Superintendent of a province.

That very necessary piece of legislation, the Marriage Bill, was fortunately passed during the session. The bill under Forsaith's care passed the Lower House with slight amendment and under Bell's charge successfully negotiated the Legislative Council. The primary feature of the Act was that it relieved the non-episcopal churches of the disabilities under which they had previously laboured. Ordinance No. 7 Session VIII (1847) of the Legislative Council was repealed, and in forty-nine clauses the solemnization and registration of marriages, and the appointment of officiating clergymen were provided for.

The 16th September 1854 was a Saturday, and the last day of the session. At mid-day the Speaker took the chair and the House proceeded to adopt addresses to the Queen, the two Houses of the Imperial Parliament, and the Officer Administering the Government, embodying nine resolutions of the previous day, relative to the New Zealand Company's debt, and founded on the report of the select committee of the House of Representatives on that vexed subject. The resolutions complained of certain of the transactions of the Company, and asserted that vigorous efforts should be made to bring the matter before the Imperial Parliament; that, should any amount be fixed on as ultimately due to the Company, the distribution

of the burden should be left to the General Assembly; and that an act should be passed by the Imperial Parliament to ensure relief from the abuses complained of.

To ensure the desired attention to its complaints, it was deemed necessary that the Assembly appoint as agent a member of the House of Commons. Accordingly it was resolved by a conference of representatives of the two Houses "that it is desirable that Mr. Adderley be recommended as such an agent." The resolution was adopted; the business of the second session of the first Parliament was over.

At three o'clock a message was received by the Speaker of the Lower House from the Officer Administering the Government, commanding the attendance of honourable members in the Legislative Council Chamber.⁵ Accordingly "Mr. Speaker, accompanied by members, and preceded by the Sergeant-at-Arms bearing the mace," proceeded to the Council chamber, where the Acting-Governor, in uniform, with guard of honour and band, was present, as was also the small gathering of ladies and strangers which usually graced these occasions. The Speech was "moderate, sensible and in good form." The Acting-Governor could not bring the business of the Assembly to a close without congratulating members on the amount of legislation they had accomplished, during the brief period of the session. He

5. There is no trace of any preliminary notice of prorogation in either the votes and Proceedings of the House or in the Parliamentary Debates.

proceeded to mention the various bills to which he had assented, and concluded by thanking the members of the Assembly, on behalf of the country, for the time and attention they had given to the discharge of their public duties, and by expressing his earnest hope that the measures they had passed, might by the Divine blessing, be found to promote the progress of the country and the contentment of the people.

The Assembly then stood prorogued till 5th July, 1855.

A certain pathos attaches to the prorogation of the second session; there is an atmosphere of failure of disappointment, of discord.

Wakefield, sad to say, had proved a grievous failure in practical politics. This is the more pathetic as he had reached the end of his public life. Never more was he to sit in a New Zealand Parliament. The excitement of the two sessions had told heavily on his mind. He returned to Wellington, was stricken with the old malady, and recovered only to linger, a melancholy man, till 1862 when his earthly labours ended.

Wakefield had been a brilliant political theorist; his services to Greater Britain are inestimable; his services to New Zealand are incalculable. But he was not the stuff of which parliamentarians are made. His domineering nature was fatal to party organisation; his insatiable thirst for power made him impossible as a

leader of opposition; his animal impatience could brook no rival. If he could not be pre-eminent in Parliament, he would be out of it; he would wreck a ministry by backstairs influence; by intrigue he would defeat a whole House of Representatives. A man of such Machiavellian finesse, of such unfailing resource, of such genius for working puppets in high places, could not but be regarded with jealousy and aversion by those who pinned their faith to responsible government. His was the realm of the Crown Colony, where, as an Executive Councillor of a mediocre Governor, he would have been a brilliant success. New Zealand was no longer a Crown Colony; the months of 1854 are a bitter disappointment.

Provincialism had received an impetus.

Particularism was a natural condition in a country consisting of a number of widely-scattered settlements, visited at irregular intervals by the Government brig, or some stray trader. True, in 1854 Nelson papers circulated in Canterbury, and Auckland journals were to be found in Wellington.. Exchange went on between the provinces, and £6,000 had been voted to an inter-provincial steam postal service. But the post was badly managed, and the steamer "Nelson" was withdrawn. The impotence of the General Government and its quarrels with the House of Representatives, lowered it in the estimation of the provinces. The failure of the compromise by which the Fitzgerald ministry assumed office still further accentuated the evil. When men like Forsaith, who measured the value of

a responsible ministry by the benefits it showered, or did not shower on Auckland, took their places on the Treasury Benches, there was little hope for an efficient central government. It was fortunate for the colony that a ministry with the separation taint should last but two days.

The inevitable reaction to provincialism was complete when the "constitutional" party failed to get responsible government. Sewell complained bitterly at the end of the first session that Stafford, "who is really the man best fitted to lead the colony, goes away full of indignation against Wakefield and the old Government, and ready perhaps to wage provincial war against the General Government, the thing most to be dreaded." Even Monro and the more extreme centralists were agreed that, for a time, power must be thrown into the hands of the provincial councils. Thus it was that the control of the resident magistrates passed from the General Government. Thus it was that Fitzgerald, addressing the electors of Lyttelton admitted that "for the present we must look to our Provincial Councils. What would become of us but for our Provincial Councils?" he queried.

One gleam of hope pierced the gloom; "Ah! Ah! Yes! Yes! responsible government." Wynyard had written home for the Secretary of State's permission to supersede the officials. Though the semi-responsible government of Forsaith and his friends had been so hastily cast out

the House was more determined than ever to obtain the concession of complete ministerial responsibility. The facility with which the legislation of the second session had been passed did not show that business might be satisfactorily transacted without the presence of ministers in the Houses. It was due to exceptional circumstances. Of six acts originating in the Lower House, four had been introduced as bills in the first session; and half of the legislation was carried through by members of the old Fitzgerald ministry.

The news of the scenes amid which the first session ended, was not received in the southern settlements until the return of the members after the second session. Then it was that the arch-propagandist made a bid for the public favour, but with scant success. The passage south was for the ex-ministers a triumphal progress. At Nelson they had perforce to submit to a political dinner; at Wellington they were received likewise. At Lyttelton a public breakfast was arranged for the reception of the members for Lyttelton and Christchurch Town.⁷

The meetings of the Constitutional-party were a success all over the colony. At Lyttelton, Jerningham Wakefield attended Fitzgerald's meeting as an elector, and in a long speech loaded imprecations on the heads of the ex-ministers, who were as he said, responsible for

6. Superintendent of Nelson, who had been in Auckland, and who was elected to the second Parliament. He became subsequently Prime Minister.

7. "Lyttelton Times", 11th October, 1854.

the scenes of 17th August, and for the failure of the Executive Government compromise. From time to time he was heckled, and reminded of the lateness of the hour. When the motion of confidence in the member was put, it was carried unanimously. A motion of confidence in the ex-ministry was carried with but one dissentient, Jerningham Wakefield. Sewell's meeting at Christchurch was no less successful. Jerningham was there circulating with the usual industry the highly coloured stories of the prorogation. But his failure was complete. For him one hand was counted; that was held up by an inebriated townsman.

At Christchurch Jerningham was thoroughly out of favour. At his own meeting, Sewell observed that he spoke for four hours, with the result that his constituents left him an empty room, while his own creation, the Colonists' Society, censured him severely on his conduct at Auckland.⁸

In the other provinces the Constitutionalists were no less successful than at Canterbury. At Nelson Travers was informed that his electors would be happy to meet him to hear his explanations, but that to ensure their hearing the other side, they would request the attendance of Monro. Thorough satisfaction with this gentleman's political conduct was expressed, particularly with regard to responsible government, while one of his opponents,⁹ afterwards prominent in politics, reminded the meeting just before the usual motion was put, that the testimony of a

8. "Lyttelton Times", 11th October, 1854.

9. Alfred Saunders.

political opponent was of more value than the adulation of a political friend.¹⁰ He would vote for the motion. Again, in Otago, Macandrew's constituents refrained from judging his conduct till they had heard Cutten, whose address was voted entirely satisfactory.

The Wakefield party were thoroughly out of touch with public opinion. Even in Auckland, the stronghold of officialism, there was a section of the community against the official influence; the "Southern Cross", would refrain from mentioning Edward Gibbon, for "his name is not ornamental to the columns of our journal." Little wonder then that Canterbury regarded him as "a traitor to the South,"¹¹ and that the "Lyttelton Times" so bitterly complained that "but for the 'ratting' of the man who claimed to be its author and protector, responsible government would have been won by the resignation of the (Fitzgerald) ministry."¹²

So much for Swainson.¹³

10. "Nelson Examiner," 18th October, 1854.

11. "Lyttelton Times," 4th November, 1854.

12. "Lyttelton Times," 30th August, 1854.

13. See pp. 200 - 1.

CHAPTER XIITHE SESSION OF 1855.

It was a rump of the New Zealand Parliament that met for a third session on Wednesday 8th August, 1855.

During the recess, Wynyard had received the long looked-for dispatch from the Secretary of State on the subject of responsible government. Under date 8th December 1854, Sir George Gray wrote,

"I have taken the earliest opportunity of informing you that Her Majesty's Government have no objection whatever to offer to the establishment of the system known as 'responsible government,' in New Zealand..... Nor have they any desire to propose terms, or to lay down restrictions on your assent to the measures which may be necessary for that object, except that of which the necessity appears to be fully recognised by the General Assembly, namely the making provision for certain officers who have accepted their offices on the equitable understanding of their permanence, and who may now be liable to removal. The only officers mentioned in your dispatches as likely to fall within this category are the Colonial Secretary and Treasurer, and the Attorney-General..

"Should the arrangements made for this purpose be in your judgment satisfactory, you are authorised to

admit at once the new holders of office under the responsible system, reporting their names for confirmation in the usual manner."¹

Parliament had been prorogued till 5th July, 1855, for on 30th June, the Appropriation Bill for 1854-55 would expire. Wynyard had circularised members that on 5th July the General Assembly would re-assemble, but the circulars reached Wellington on 30th June, and Canterbury on 9th July. A saving clause had, however been added; if members from the south could not arrive in time, he would prorogue for a convenient season. Accordingly on 4th July, the New Zealand Gazette announced that the session would open on 8th August.

The Acting-Governor's circular, as events proved, had a peculiar importance. It announced that the Government would submit to the Legislature only two bills, the one the Appropriation Bill for the year, the other a Pensions Bill to secure retiring allowances to the old officers, and thus make way for the introduction of responsible government. But who would journey all the way to Auckland merely to vote a supply bill? As to the proposed Pensions Bill, Wynyard's procedure was entirely disapproved. After the passage of this measure, he would establish a responsible ministry, then dissolve. The cart

1. Wynyard's opinion expressed in the address of the Acting-Governor to the Assembly on the occasion of the opening of the second session was roundly criticised as unintelligible. "Legislation seems uncalled for except for the very simple purpose of securing their pensions to retiring officers..... And if uncalled for, such legislation is objectionable; because the laws so enacted would

before the horse! From a mere fragment of the House, how could a ministry responsible to Parliament be formed? Rather go to the hustings; then, with a full House specially chosen, establish responsible government. This it would seem was the opinion of the majority of members; their conduct bears out the supposition. Indeed it would seem that there was an attempt at a general combination of the southern members to nullify the session by their absence. Sewell asserts that this was so, and that Featherston was at the bottom of it; Carleton in the House related how he had received letters urging him not to attend.² No better-merited retribution for the treatment to which the House had been subjected, could overwhelm the old Government.

Hence, when Parliament met, only nineteen members of the Lower House, exclusive of the Speaker, took their places. When the session advanced, it was found that six of the remaining eighteen had tendered their resignations to the Speaker; some of the others subsequently asked and received leave of absence. Under such circumstances it is not surprising that the session of 1855 was comparatively unimportant. Fifteen members was a quorum; the absence of five members would leave no House. For the expeditious dispatch of business it

1. probably stand in the way of the various partial changes which it might be necessary to adopt in the details of a system in its nature liable to much modification."

2. Sewell - Journal; Carleton, New Zealand Parliamentary Debates, 1854-5, p. 463

was necessary that no question of the first magnitude should be raised, for the small minority possessed the power of suspending proceedings.

Nor did the diligence of the members of the Legislative Council exceed that of the members of the Lower House. The session opened with six members present and eight absent, among the latter being the Speaker.

The opening of the session took place at two o'clock in the afternoon of Wednesday, 8th August, when the Acting-Governor delivered his speech, which was comparatively short and dealt with but few topics. The first subject was, of course, "responsible government; His Excellency was able to inform the House that whatever remained to be done by him for the complete establishment of ministerial responsibility, would most cheerfully be performed.

The relations between Maori and Pakeha was the burden of the succeeding section of the speech. During the recess, trouble had broken out in the Province of New Plymouth, where two parties had ranged themselves in hostility to each other, though as yet the settlers had not been directly involved. Yet such was the state of affairs, that the Officer Commanding the troops had ordered a force to the town of New Plymouth "with the object of assuming a position to insist on the neutrality of the European population being respected, and to afford the Government an opportunity of negotiating with greater effect for the purpose of bringing about friendly relations.

between the parties now engaged in hostility."

In the then transition state of the government, "legislation on certain important subjects, not at the same time urgent," would not appear desirable. The Secretary of State for the Colonies had communicated to the Acting-Governor that he might shortly expect his successor,³ who had been placed in possession of the views of the Imperial Government on several of the most important subjects which had engaged the attention of the Legislature during the previous sessions. Consequently only two measures would be submitted to the Houses, the Appropriation Bill and the Pensions Bill.

Sewell, who was the senior member present, was asked to assume the leadership of the House. Accordingly, he it was to whom the framing of the Address-in-Reply would be entrusted. Nevertheless, Forsaith hoped for a committee, but no other member was disposed to follow. After an adjournment of two days, Sewell on 10th August moved the Address. The debate began with a round of criticism of His Excellency's impolitic circular, and a recital of its unfortunate results. As members were not disposed to be party to what would in effect be a smuggling of bills through the House, the session would be lost for legislation; all that could be done was to devote the time to committee work. Then responsible government could not now be introduced. It was perfectly

3. Dispatch, 8th December, 1854.

impossible, as Sewell said, that, while a dissolution was pending, a new government could be formed. He could not conceive that any man would be bold enough to take office without the assurance of having the confidence of the House about to meet, for no one could say what would be the composition of the new House, or what its views. To pass the Pensions Bill that session would be premature, for pensions were the price the colony had to pay for the boon of responsible government; the House should not pay up till the goods were delivered. Carleton and Travers also held this view. Forsaith and O'Niell were enthusiastic for a responsible ministry immediately. Porter, indeed, was pleased to find that responsible government was likely to be postponed for a time, for he trusted that the provincial governments would soon assume so much control "that there would be so little to do that responsible government would become not worth the price" that was to be paid for it.

In fact, the respective positions of the members seemed to have been completely reversed. The conservative Forsaith, once a confirmed reactionary, was now most ardently constitutionalist; the ex-minister Sewell, once so warm a supporter of ministerial responsibility, now urged postponement. The volte-face of the member for Christchurch Town seemed unintelligible. But his motives are quite clear. It was imputed to the northerners, and not without reason, that, once the Pensions Bill was through, they would endeavour to form a

ministry of Aucklanders, - the names actually mentioned were Forsaith, Whitaker and Greenwood - who would meet the new assembly with a policy. An Auckland ministry was anathema to the southerners.

One other matter, the native disturbances at New Plymouth, claimed attention during the debate. King, in common with others, was convinced that the Acting-Governor had not informed the House of the gravity of the situation in his province. He went on to give an account of the whole affair, and concluded by moving as an amendment, the addition of a paragraph to the Address, an amendment agreed to without division.

The Address as adopted, was merely a formal document; it meant nothing, hence pleased everybody. It conveyed to His Excellency the acknowledgment by the House of his efforts obtaining from the Imperial authority the establishment of responsible government. It expressed regret at the outbreak of the native disturbance at New Plymouth, and trust that the Acting-Governor's measures would result in the restoration of tranquillity. However, until the House should have had the opportunity of certain correspondence and information promised by His Excellency, it could not express any opinion on his policy.⁴ Last of all was the inevitable paragraph praying the Acting-Governor so to expedite business that the session might be brought to a close in time to enable members

4. This was the amendment.

from southern constituencies to return to their homes by the next steamer.

Except upon the two measures submitted by the Government, the proceedings of the House during the session need not claim our attention. There was an attempt to introduce another Electoral Reform Bill, but it was nullified by the discovery at division that there was no House. There were some few bills of only local importance introduced but their progress was short. The resolutions of a committee of the House on the New Zealand Company's Debt, re-affirming the excessive nature of the charge, were adopted, and C. B. Adderley, the agent for the colony, was thanked for his exertions and requested to continue them.

It was on the day after the adoption of the Address-in-Reply that Message No. 3 was received from the Acting-Governor, and with the draft of a law for granting pensions to Andrew Sinclair, William Swainson and Alexander Shepperd, on their ceasing to hold offices as Colonial Secretary, Attorney-General, and Colonial Treasurer respectively.

The object of the bill of course, affirmed His Excellency, was to prepare the way for responsible government. Copies of the Secretary of State's despatch had already been placed in the hands of members. The Acting-Governor would propose no specific amounts for the pensions, but would draw attention to the scales of compensation which had been adopted in the other colonies, where

responsible government had been conceded, and would intimate that a somewhat similar scale would make such provision as the retiring officers might reasonably expect, would meet with the approval of the Imperial Government, and would relieve him of any difficulty in at once giving his assent to the measure.

The resignations of the crown officers would be asked for only after the dissolution of the Assembly, and the election of a new House. The Acting-Governor considered, however, that the passage of a Pensions Bill would be the surest means of securing at the earliest convenient period the introduction of responsible government.

Sewell would have nothing to do with the Pensions Bill. It was Forsaith who took it up and endeavoured to galvanise it into life. On 14th August the member for the Northern Division moved its first reading in a speech occupying only four columns of Hansard. He had now, since his scruples as to the legality of the establishment of responsible government had been removed, come round to the opinion once expressed by Fitzgerald to an excited House, that the question was merely one of time. He apprehended that the chief objection to the introduction of the bill would be the revelations made by the committee investigating the public accounts, and this he gathered from what he had heard both in the House and out of it. Assuming the discontent with their administration to be well founded, he would urge this as an additional reason

for passing the bill; if the crown officers were so bad, would it not be better to be rid of them at once. Again, as the inhabitants of the colony were as anxious as ever to secure the responsibility of the Executive, the postponement of the consideration of this bill would prevent for a long period, the realisation of the boon. From the tone of the public press, he gathered that the composition of the next House would not be so favourable to the settlement of the question as the present; he feared the presence in it of a number of red republicans, whose cavils might lead to the reference of the whole matter to the Imperial Parliament.

The motion for the first reading was duly seconded by Mackay, who concurred with all that had been said by the mover; it was supported by Greenwood.

Carleton rose first to speak against the bill, which he would oppose on the principle "no song, no supper." His Excellency proposed the voting of the pensions during the session, but could not concede responsible government till the next. As the mover had affirmed,

"Tempora mutantur, nos et mutamur in illis."

The colony was now on the eve of a war, the actual outbreak of which would take place under a new government; the old Government would wash its hands of it, and charge the new with setting the country in a blaze. But what seemed most to amuse Carleton was the "sanguine trustfulness, the innocent naïveté, the verdant simplicity" of the belief of the old officials that they would escape without

rendering an account of their stewardship. It quite refreshed him. Now, had they taken their pensions during the first session, when they could have had them, they had been wise, but the house had its consistency to preserve. The Queen had since then been petitioned to remove them.⁵ This, and the right of the country to decide on the eve of dissolution, were grounds enough to throw out the bill.

If Carleton had dashed cold water on the Pensions Bill, it was now deluged by Sewell. After reiterating his old arguments, he concluded by moving "that seeing it is intended to defer responsible government until after dissolution and re-election of the assembly, the House is of opinion that it is desirable to defer the question of compensation for the retiring officers till the next Assembly."

The amendment was supported by Taylor⁶ who harked back to the circular and the thin state of the House. Indeed he carried the criticism of the Government a stage further and expressed his belief that by the terms of the dispatch of the Secretary of State for the Colonies it was incumbent on the Executive on receiving the same to have introduced responsible government at once, seeing that the necessity of granting pensions had already been recognised by the House. The granting of pensions at that time could not expedite the introduction of responsible government, as it would be impossible for a new ministry

6. Member for Southern Division.

5. See above p. 213.

to be formed until the new members had become acquainted with each others views.

Forsaith's solicitude for His Excellency's Bill was of no avail. It was read not even a first time, for the amendment was agreed to by the handsome majority of thirteen to three. The Pensions Bill must wait a season.

The Appropriation Bill, together with the financial statement, and the estimates, was sent down to the House of Representatives with Message No. 14 on 14th August, when the supply bill was read a first time.

Though the estimates were considered, and embodied in the Appropriation Bill without much discussion they were severely criticised by a committee of the House appointed "to consider the state and management of the public finances." Of the four voluminous reports brought up, the last contained twelve resolutions which the committee recommended should be embodied in an address to the Governor. Of these the seventh affirmed that the House, having been compelled to appropriate the revenue without the guidance of responsible ministers, could not be justly held answerable for the propriety of the proposed expenditure. The eighth asserted that, though the House had made provision in the Appropriation Act for an excess of expenditure incurred during the year, it recorded its emphatic protest against exceeding the appropriations and estimates, the effect of which was to take from the General Assembly its legitimate control over the public expenditure. In the opinion of the House, the revenue

for the year 1855-6 had been estimated at an amount which was not likely to be realised, a circumstance which gave rise to fears that the total sum appropriated, including the surplus revenue applicable to the provinces, would be found to exceed the actual revenue. The House trusted, therefore, that His Excellency would exercise the utmost degree of economy in the application of the funds placed at his disposal.

These resolutions were adopted by the House on 14th September, and on the same day a resolution of the Committee of Ways and Means, also subsequently adopted, asserted that, in case His Excellency should find it necessary before the next meeting of the Assembly to borrow a sum not exceeding £30,000, the House would undertake to sanction and make provision for the amount which might be borrowed.

One week before the prorogation of the Assembly, Governor Sir Thomas Gore Browne arrived in the Colony, and immediately assumed control of the Government. The new Governor was "not tall, was good-looking, and had a very agreeable expression." He had "the bump of firmness" as the phrenologists said, - "a good thing if true," remarked Sewell.

Gore Browne came to New Zealand armed with the opinion of the Imperial Government regarding certain matters which had been mentioned in Wynyard's speech at

7. Votes and Proceedings of the House of Representatives.

the opening of the second session. An elective Upper Chamber could not be constituted according to the Constitution Act, and any act passed for that purpose would therefore remain in-operative. But should the Assembly apply for power to make the change, Her Majesty's Government would propose to Parliament a measure for carrying their wishes into effect.

The changing of the seat of Government could be effected by the General Assembly if such a course should be thought proper, and a Lieutenant-Governor might be appointed for Auckland province if it should be desired, and if it should appear to the Governor to be conducive to the welfare of the colony.

That the agitation for an elective Upper Chamber did not continue to claim the interest of the colony must be attributed to the outbreak of the Maori wars which distracted attention from constitutional questions. Again the introduction of responsible government gave such a preponderating importance to the Lower House that the Upper House was in a measure forgotten. The subject has never ceased to be mentioned, however, and there is now on the Statute Book an Act, the operation of which is postponed, establishing an elective Upper Chamber.¹⁰

Opportunity was found however to debate the question of the seat of government, for in 1864 Wellington became the capital. Though an attempt was made by the offended northerners to separate, it came to nothing. "The wisdom of the change was generally recognised, and cannot

10. See appendix.

now be seriously questioned."⁸

After prayers on 15th September, a message announcing the prorogation of Parliament at three o'clock in the afternoon was received. To the Council chamber at the hour the Lower House adjourned.

His Excellency entered and proceeded to an elevated seat near the Speaker's chair, where he declared his assent to the four bills that had been passed during the session.⁹

He then delivered the prorogation speech.

Responsible government first claimed remark. A communication which the Governor had taken first opportunity to lay before the two Houses, would convince members that it was the desire of Her Majesty's Government that the colony should enjoy the fullest measure of self-government which was consistent with allegiance to the British Crown. Animated by the same feeling, the Governor was prepared to carry out in its integrity the principle of ministerial responsibility, being convinced that any other arrangement would be ineffective to preserve harmony between the Legislature and the Executive.

It would therefore be his object to secure as early as possible, the introduction of this form of government, which had been so earnestly solicited by the popular branch of the Legislature. Indeed the public

8. Hight and Bamford, Constitutional History and Law of New Zealand, p.287.

9. Naturalisation Bill, Land Claimants Ordinance. Amendment Bill, English Acts Bill, Appropriation Bill.

interest demanded that the state of transition should be allowed to continue no longer than circumstances required.

Under the peculiar circumstances of the session, legislation had not been of an important character. Questions of great public interest had not been dealt with; they had rightly been deferred until they could be considered by a Legislature more fully attended, and assisted in its deliberations by a responsible ministry.

In the position in which the Governor then was, it was impossible to deal satisfactorily with many subjects of importance. He would therefore defer all such matters not requiring immediate attention, until the contemplated change in the Government should have taken place.

The Assembly would be dissolved without delay. It was the earnest desire of the Governor that the several constituencies of the colony would exercise their important functions in the way best calculated to secure the services of representatives who would aid him efficiently in his endeavours to develop the resources of the country, to elevate the social and moral condition of its inhabitants, to preserve that civil freedom and religious equality which was enjoyed by all classes of Her Majesty's subjects, and to promote the happiness and increase the prosperity of a favoured colony.

Thus the curtain dropped on the proceedings of the first Parliament of New Zealand. The Assembly which stood prorogued till 1st October 1855, was subsequently dissolved by a proclamation of 15th September, 1854.

Responsible government was all but an accomplished fact. The proceedings of Parliament had shown its necessity, and the feeling of the people had favoured its establishment. Responsibility of the executive had been demanded even as far back as 1851,¹¹ and when the Provincial Councils came into being some of them established an Executive depending upon the confidence of the majority of the Council. In Parliament member after member had testified to the popular demand, Even Forsaith, at first its sole opponent, had admitted its popularity. Clifford observed that it was "not the cry of a faction but the demand of a united people," while even Swainson himself who states in his book¹² that it was granted in anticipation of the wishes of the people, declared in the Legislative Council that "for a considerable period before the meeting of the General Assembly it was obvious that an opinion was generally entertained that, in order to give full effect to the recent measure for granting a representative constitution to the colony, it would be essential that the principle of ministerial responsibility should be recognised and adopted in the conduct of the Executive Government."¹³ Swainson probably based this statement upon an opinion expressed by the Auditor-General, who immediately prior to the convention of the General Assembly in May 1854, returned to Auckland from a tour of the southern provinces impressed by the

12. New Zealand and its Colonisation, p. 377

13. New Zealand Parliamentary Debates, p. 81.

11. See p. 18.

demonstrations he had witnessed in its favour.

The opening of the second Parliament opened a new epoch in the history of the colony. The elections held at the end of 1855 brought forth a House among the members of which was "the man best fitted to lead the colony," Edward William Stafford. The new Assembly met in April 1856; on 7th May Sewell took office as Prime Minister. After thirteen days he resigned and gave place to Fox, whose tenure of power was also very brief. On 2nd June Stafford assumed the direction of the Government. "With the appointment of Stafford a condition of equilibrium was achieved; Parliament entered seriously upon its proper functions, and the most exciting chapter in the purely political history of New Zealand was closed."¹⁴

14. Hight and Bamford, op. cit. p.284.

APPENDIX.

Agitation for an elective Legislative Council which began in 1854, culminated sixty years later in the Legislative Council Act (No. 59), 1914. The "Act to alter the constitution and to define certain of the powers of the Legislative Council" is a long document containing forty-two clauses. Part I of the Act defines certain of the powers of the House and Council respectively; Part II provides for the elective constitution of the Council and details the franchise and the electoral divisions; Part III defines the method of election. It was originally intended that the Act should come into force on 1st January, 1916, but No. 22, 1915 postponed its operation till 1st September 1917. By No. 17, 1916, the Amendment Act of 1915 was repealed, and it was enacted that the Act of 1914 should commence to operate on 1st January, 1920. In 1918 the Legislative Council Amendment Act (No. 15) enacted that the date of commencement of the original Act should be appointed by proclamation, but should not be within the period of twelve calendar months immediately following the publication of the proclamation. Accordingly under date 23rd December, 1919 it was proclaimed that the Legislative Council Act of 1914 should commence to operate on 31st January 1921, but No. 32, 1920 again postponed the operation of the Act, which is to commence on a day to be appointed by a further pro-

260.

clamation, in accordance with sec. 4 of the Legislative
Council Amendment Act (No. 15) of 1918.

BIBLIOGRAPHY.

PRIMARY SOURCES.

New Zealand Parliamentary Debates, 1854 - 55.
 Votes and Proceedings of Legislative Council, 1854-55.
 Votes and Proceedings of the House of Representatives,
 1854-5.
 Statutes of New Zealand.
 English Statutes, 15 and 16 Vict. c 72. British Hansard.
 New Zealand Gazette.
 Journal of Henry Sewell, 1854 - 1857.
 Various colonial newspapers especially "The Lyttelton Times"
 Wakefield's Letters.

CONSTITUTIONAL HISTORIES AND PARLIAMENTARY PRACTICE.

Hight and Bamford,
 Constitutional History & Law of New Zealand.
 Reid, Constitution & Government of New Zealand.
 Sidney Low, Governance of England.
 Anson, Law and Custom of the Constitution.
 Medley, English Constitutional History.
 Lucas, Introduction to the Durham Report, Vol. I.
 Grey, Colonial Policy of Lord John Russell's Administration.
 Ilbert, Parliament.
 May, Parliamentary Procedure.

BIOGRAPHIES.

Collier, Sir George Grey.
 W. L. and L. Rees, Life and Times of Sir George Grey.

Garnett, Edward Gibbon Wakefield.

Gisborne, New Zealand Rulers and Statesmen.

C. Pemberton, Life of Lord Norton.

NEW ZEALAND HISTORIES.

W. P. Reeves, The Long White Cloud.

Swainson, New Zealand and its Colonisation.

Gisborne, New Zealand.