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1877.

SESSION IV.

TASMANIA.

HOUSE OF ASSEMBLY.

THE PREMIERSHIP.

MEMORANDUM OF HIS EXCELLENCY THE GOVERNOR.

Laid upon the Table by Mr. Fysh, and ordered by the House to be printed,
November 28, 1877.



Government House, 2nd October, 1877.

MEMORANDUM FOR MINISTERS.

IN compliance with a wish expressed by the Premier, the Governor will shortly record his views upon the subject of their yesterday's conversation.

Theoretically the Crown has power to make any one of its subjects Prime Minister: that power is, however, practically limited by the necessity of selecting a Prime Minister who can carry on business in Parliament and possess its confidence.

The Crown, within these limits, has the full and unfettered power of choosing a new Prime Minister, and requesting him to form an Administration. The Crown is not bound to ask, nor to follow, the advice of outgoing Ministers; still less of any other gentleman, or gentlemen, who may have been sent for and have declined or failed to form a Ministry. In the one case the responsibility of the outgoing Minister has virtually ceased as an Adviser; and in the second case he or they are not Responsible Advisers at all. But, as some one must be responsible for every act of the Crown, this responsibility, as that of any other act of the Crown acting by itself, (such as an answer to an Address from the Legislature whilst a Ministry is in the course of formation) must be assumed by the new Minister himself and his colleagues, and is so assumed by the fact of his taking office.

It is an admitted principle that the Prime Minister's resignation involves that of his colleagues *ipso facto*, and leaves the Crown free to ask any one who may appear most fitted, under the existing circumstances, to form a new Government or to reconstruct the late one. This appears to be in some cases a valuable and useful constitutional principle to hold by. It may, doubtless, be frequently advisable for the Crown to request a Member of the late Government, in such cases, to form a new Ministry; but if so, it will be most desirable that he should have the fullest latitude in the selection of his Colleagues and in the distribution of the various Offices. On the other hand, the unquestionable right of the Crown to go outside the circle of the late Government to seek a new Premier may often promote the public service, and substitute a good working Administration for one which, bereft of its original head, might be without cohesion or leading mind, and only capable of dragging out a lingering and unprofitable existence: for it is clear that a Premier may have Colleagues strong and united under him, but that not one amongst them could supply his place; and this is the more evident, because not only ability but tact, and many other yet higher personal qualities, are requisite to make a good Prime Minister.

It has been observed that in this Colony the practice has been on the resignation of a Premier to allow the same Government to remain in office. Practically it may most often be convenient to do so; but it should be done in the manner above indicated: and the Crown cannot be held to have divested itself of its constitutional right freely in such cases to choose its new First Minister without the limits of the late Administration, because its Representatives in this Colony may have frequently found it inconvenient or unnecessary to do so. English precedents occur of either course being adopted.

With regard to the question as to whether a Prime Minister can hold that position without a portfolio and without pay, the Governor would begin by remarking that the objection is equally strong in principle, and in regard to expediency is only less in degree, in its applicability to any Minister who sits an Adviser in Cabinet and Executive Council,—more especially should he represent the Government in either branch of the Legislature.

First, treating the question as one of principle or constitutional law, the Governor will then say a few words upon the point of expediency.

The written Constitution of Tasmania is silent upon the subject: no law defines that the office of Premier can be held only by the holder of a portfolio or paid office. In a country possessing a written Constitution, non-exclusion amounts to admission; but, to go further: in the absence of any written law, two guides remain,—constitutional analogy and local precedent: the former is the more valuable in itself, but in this case the latter is strengthened by an express decision of the House of Assembly; and, moreover, both analogy and precedent lead to the same conclusion. A Prime Minister, or any other Minister without a portfolio, can, upon general constitutional principles, hold office as such without standing a popular election; because a Prime Minister or other such Minister may in England be a Peer, or in a Colony a Member of a nominated Legislative Council. In neither of these cases does he present himself to a Constituency; and, as no Tasmanian Act obliges him to do so, the analogy must stand, especially as holders of paid offices are by law obliged to seek re-election, on the principle, presumably, that pay, not the public interest, may have induced them to accept office; and, in this case, the exclusion (failing re-election) from Parliament, and consequently from office, of the one is the admission of the other.

Nor can it be held that a Prime Minister or other Minister must necessarily hold a portfolio. The First Lord of the Treasury in England is virtually a Minister without a portfolio,—the Chancellor of the Exchequer being the Finance Minister. A Prime Minister's influence and power of useful work may, as his duties embrace all Departments; be greater from the very fact of his time not being occupied too exclusively by any one of them. If it be objected that pay and responsibility go together, and that in this Colony a Minister without a departmental office has no pay, it may be admitted that it is desirable that every public servant should be paid; but responsibility does not consist, as some persons in colonies seem to imagine, in liability to be turned out of office, and loss of pay: else, where would be the responsibility if all offences were condoned by resignation, voluntary perhaps,—the evil first being accomplished? There is a moral responsibility, and a responsibility to punishment. Responsible Government has been built up and become in England a reality on that foundation. Ministers are not now-a-days attainted or impeached, because their personal liability is thoroughly established, and consequently such strong measures are never needed; but they remain in the back ground, nevertheless. The Governor once heard a deep thinker and writer, whose bust has been lately erected in an English Government public building, say, in a set prepared speech on Responsible Government, that the foundation of Responsible Government was "the power of cutting off heads." Mere loss of pay and office it cannot be: such a loss would be no punishment to many men,—their end once attained. Under such a system, the measure of responsibility would be poverty; and it might be next seriously argued that none but the needy should be called to the highest offices of State.

Tried by the test of local precedent, the question is a simple one. The Governor found the custom fully established in Tasmania. Mr. Weston was Premier without a portfolio, many years ago. Mr. Chapman held the same position; and, what is of the greatest importance in his case,—the question being brought before the House of Assembly, that branch of the Legislature, formally and by vote, supported the position taken. On the arrival of the present Governor, he found Mr. Kennerley Premier without portfolio or pay. More recently, Dr. Crowther has not only been a Responsible Adviser of the Crown, but has even represented the Government in the Legislative Council.

As the question of expediency does not come within the Governor's special province, he will only say regarding it, that there is something to be said on both sides: for, whilst the principle that all public servants should receive pay is a good one; and, whilst it may fairly be argued that it would be more desirable to pay existing offices well rather than to create additional paid offices, it may also seem unwise to restrict too closely the already not very large field of selection, and enhance the difficulty of obtaining fit men: for, Responsible Government is apt to become a sham, if there be but few men available to conduct the business of the country.

FRED. A. WELD.

NOTE.—The Governor thinks that this Memorandum should not be laid on the Table of the House before or during the discussion on Mr. Reibey's motion. The House must know the Governor's view, from his action; and he does not think it right that he should appear to desire to influence the course of debate.—F.A.W.