

and it certainly appears to me not only reasonable, but essential, that in the event of their being supposed to deviate from those Instructions, they should at least explain whether they have done so or not; and I consider that in the mere question of the change of title of the senior member, it would have been fully competent in me to have refused to recognize him by the appellation they have adopted. The Council having, however, declined to afford any explanation as to their proceedings, it remains for me to do so in the most accurate manner my information will permit.

It appears that on the opening of the third Session, Mr. Boulton offered certain rules and regulations for the guidance of the Council, and one of which is, "that four members with the Speaker shall constitute a quorum." He also informed the Council, that they might elect their Speaker, and that he was willing to submit to any choice they might make. But it is rather singular to say that I cannot, from the members of Council individually, ascertain whether they did actually elect a Speaker or not. From one I learn that no election took place; from another, that none actually but one virtually did; and from a third, that he considered an election had taken place; but the facts of the case I believe to lie between them, and that after Mr. Boulton had acquainted the Council with the extent of their right, and their not proceeding to elect any one else in conformity thereto, he took possession of the chair.

It is, however, of minor consequence whether they actually made an election or not, if they consider that power to be vested in them; and that they do so, or rather that Mr. Boulton, the proposer of these alterations, does so, I had from himself; as he explicitly stated to me, that had the House elected another person he would have yielded up the chair; which would go to establish a right exceeding that of the Assembly, who must first be directed to elect their Speaker, and then have him approved, before he can take the chair.

Having drawn your attention to what I consider a decided infringement of His Majesty's Instructions, and an unconstitutional act, even if in other respects an advisable one, I shall have the honour to explain to you the present inconvenience that arises from this arrangement.

By His Majesty's Instructions any three members of the Council, as therein named, can form a quorum, which we found, during the first and second sessions, to be a great convenience when circumstances, on many occasions, prevented the attendance of the senior member. Under the existing rule, however, should the Speaker be unwell, absent on a circuit, or elsewhere, it is impossible to proceed to business, because the Council have placed it out of their power, if they adhere to their own rules, to assemble without him. On stating this difficulty to the chief justice, he considered I might nominate one, as His Majesty would in the absence of the Speaker of the House of Peers; but this power I altogether disclaim, as there is not a vestige of such authority conferred on me by His Majesty's Instructions, consequently the services of the Council might be rendered altogether nugatory.

Having had the honour to lay before you the infringement, on the part of the Council, of the King's Instructions, and the inconvenience arising from it, I may observe that, considering that the Council has been increased to nine, it might possibly be advisable to add one or two to the quorum; nor do I conceive there is any objection; on the contrary, it may be very proper there should be a Speaker whose presence should be necessary on all ordinary occasions to conduct the proceedings; as, although it must be desirable that the public business shall not be obstructed by a continued absence on the part of the presiding member, it may be attended with some inconvenience to the general regularity of their proceedings to have frequent or daily changes of the presiding officer. But any alterations which may be deemed advisable in the constitution of this body must, I apprehend, originate with His Majesty, and be sanctioned by a similar instrument, and under the same forms, as those Instructions which I have the honour at present to hold from His Majesty for my regulation and guidance.

I have, &c.

(signed) *Thos. Cochrane.*