

DESPATCHES

FROM THE

COLONIAL SECRETARY

TO

SUPERINTENDENTS OF PROVINCES

RELATIVE TO THE

DISALLOWANCE OF PROVINCIAL LAWS.

Presented to the House by command of His Excellency, 13th May, 1858, and ordered to be printed.

AUCKLAND:
1858.

Colonial Secretary's Office,
Auckland, 14th July, 1856.

SIR,—

In acknowledging the receipt of your Honor's letter of the 26th May last, covering an authentic copy of an "Act to provide for the efficient branding and marking of Cattle," (Session 3, No. 7,) passed by the Provincial Council of the Province of Nelson, and assented to by you on behalf of the Governor; I have the honor to inform you that His Excellency is advised that the 16th Section of this Act purports to extend the jurisdiction of the Supreme Court, in contravention of the 19th Section of the Constitution Act.

The 18th Section of the "Summary Proceedings Ordinance," (No. 5., Sess. 2.,) as amended by the "Summary Proceedings Amendment Ordinance," (No. 15., Sess. 3.), limits the right of appeal to the Supreme Court on summary convictions, to cases in which the sum adjudged to be paid exceeds five pounds; whereas the Section above referred to purports to confer such right of appeal in cases where the sum so adjudged to be paid exceeds forty shillings.

His Excellency regrets that for this reason he is under the necessity of disallowing this Act of the Provincial Council of Nelson.

I have &c.,
(Signed) C. W. RICHMOND,
Colonial Secretary.

His Honor
The Superintendent, Nelson.

Colonial Secretary's Office,
Auckland, April 9th, 1857.

SIR,—

I have the honor to acknowledge the receipt of an Ordinance passed by the Local Legislature of the Province of Otago, transmitted in your despatch of the 18th of December last, but only received on the 26th ultimo, entitled, an "Appropriation Ordinance 1856-7."

The fourth section of this Ordinance directly contravenes the provisions of the Constitution Act, by purporting to empower the Superintendent's Deputy or the Speaker of the Provincial Council to issue warrants for the payments of money;—a power which the General Assembly carefully excluded from the Superintendent's Deputy Act; as being beyond the authority even of that Legislature to confer.

Under these circumstances, I need scarcely observe that it became the duty of His Excellency's Ministers to advise the Governor to disallow, and His Excellency is accordingly pleased to disallow this Ordinance.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Otago.

Colonial Secretary's Office
Auckland, April 9th, 1857.

SIR,—

In acknowledging the receipt of your Honor's despatch No. 47, of the 18th December last, enclosing copies of certain Ordinances, passed by the Local Legislature of the Province of Otago, I have the honour to acquaint you, that having laid before the Governor the undermentioned Ordinances, intituled respectively,

Provincial Councils Ordinance Amendment Ordinance, 1856.

Loan Ordinance, 1856.

Towns Cattle Trespass Ordinance, 1856.

Cemeteries Ordinance, 1856.

Ferries Ordinance Amendment Ordinance, 1856.

Sheep Ordinance, 1856.

His Excellency has been pleased to leave the same to their operation.

I have at the same time to direct your attention to the following objections which apply to three of these Ordinances. Your Honor has already been informed that, with reference to the imposition of penalties, the limit, viz.,—One hundred Pounds specified in the Provincial Council's Powers¹ Act of the General Assembly, should not be exceeded. The Town Cattle Trespass Ordinance, and the Sheep Ordinance, virtually, though not expressly, exceed that limit, by imposing penalties for a number of Cattle, per head, which may according to the number, amount to more than One Hundred Pounds.

These Ordinances therefore contravene the terms of the Act, referred to above, which has been reserved for Her Majesty's assent ; and will probably become law in a few weeks.

I have also to point out that the fifth Section of the Cemeteries Ordinance cannot legally be construed as extending to Crown Lands, as in such case it must, in accordance with the provisions of the "Waste Lands Act, 1856," have been reserved for the Governor's assent; but the Ordinance will apply to all other cases, which it is presumed, was the intention of its framers.

I have &c.,

(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Otago.

Colonial Secretary's Office,
Auckland, April 10th, 1857.

SIR,—

His Excellency's Ministers have had under their consideration an Act passed by the Local Legislature of the Province of Wellington, intituled "An Act to provide against certain persons leaving the Province clandestinely."

This Act is of a most objectionable tendency ; and, if not repugnant to the letter of the Law of England, is most certainly at direct variance with the spirit of the British Constitution.

I am aware that in some Colonies persons are prohibited from leaving them without giving notice; but even this restriction has been confined in this hemisphere at least, to those Colonies in which the safe custody of convicts has rendered such a restriction advisable ; and to guard, under such circumstances, against persons clandestinely departing from a Colony altogether is widely different from obstructing their passing to and fro within the limits of the Colony itself. Her Majesty's subjects are not prohibited from passing from one part of Great Britain to another, nor does any free community in the British Dominions afford a precedent for such a law as that under consideration, which resembles only the passport system maintained by the Despotic Governments of the Continent of Europe. Nor can it be overlooked that such a law on the part of one Province would tend to the enactment of laws of a similar, possibly of a still more, restrictive character, in other Provinces,—to the mutual irritation, annoyance, and inconvenience of the inhabitants of the Colony generally. Having regard, therefore, to its unconstitutional character, to the feelings of ill will between one portion of the Colony and another which it would engender, and to the absence of any appeal, (whatever might be the emergency or circumstances, of each case,) from the arbitrary decision of a particular Officer; His Excellency's Ministers have advised the Governor to disallow this Act ; and His Excellency has been pleased to disallow it accordingly.

I have &c.,

(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Wellington.

Colonial Secretary's Office,
Auckland, April 11th, 1857.

SIR,—

In acknowledging the receipt of an Act passed by the Local Legislature of the Province of Wellington intituled an "Act to authorise the raising of a further sum of Twenty five thousand pounds," I have to point out that the Loan intended to be raised under this Act is for the express purpose, amongst others, of constructing a Lighthouse ; while the 19th section of the Constitution Act prohibits any Provincial Legislature from making any law for the erection or maintenance of Lighthouses, His Excellency's Ministers had therefore to advise the Governor to disallow this Act, and His Excellency has been pleased to disallow it accordingly.

With reference, however, to the erection of a Lighthouse for the Port of Wellington, I have to assure your Honor that the Government will at all times most willingly act in concert with the Provincial Authorities of Wellington for this object,—where not prevented by legal obstructions. Possibly it might in this matter be advisable to act in accordance with the mode specified in the enclosures accompanying my despatch No. 498, of 2nd December last.

I have &c.,

(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Wellington.

Colonial Secretary's Office,
Auckland, April 17th, 1857.

SIR,—

I have the honor to state that in giving the Governor's assent to the Acts quoted in the enclosed Schedule, passed by the Provincial Council of Wellington, your Honor has contravened the provisions

of the "Waste Lands Act 1856"; by which it is required that every Bill for regulating the sale, letting, disposal, and occupation of the Waste lands of the Crown, should be reserved for the signification of the Governor's pleasure thereon.

Both these Bills purport to dispose of portions of the Waste Lands by means of scrip; and should therefore have been reserved;—and as the 53rd section of the Constitution Act provides that any Provincial Law or Ordinance which is repugnant to, or inconsistent with, any Act of the General Assembly shall be null and void, they could not lawfully be acted upon.

Under these circumstances it became the duty of His Excellency's Ministers to advise the Governor to disallow these Acts; and His Excellency has been pleased to disallow the same accordingly.

I have at the same time to express the regret of the Government that it has been unavoidably compelled, in fulfilment of the law, thus to postpone measures which recognized the claims of those affected by them to redress; and I have to state, with reference to the Land Scrip Act, that it is contemplated to introduce, in the next Session of the General Assembly, a Bill which would extend a greater measure of relief to the persons concerned than could have been effected by that Act.

I have &c.,

(Signed) E. W. STAFFORD.

His Honor

The Superintendent Wellington.

SCHEDULE.

Session IV.

No. 2.—"An Act to extend the time for adjudication on certain Claims to Scrip."

No. 15.—"An Act to authorise the Superintendent to issue Land Scrip to satisfy awards of Commissioners under Act Sess. II., No. 12 of the Provincial Council."

Colonial Secretary's Office,

Auckland, July 27th, 1857.

SIR,—

Referring to your letter No. 23, of the 1st instant, I have the honor to inform you with respect to the Bills referred to below, passed by the Nelson Provincial Council, which were reserved for the signification of the Governor's pleasure, that owing to your Honor not having furnished the authentic Bills, it has been incompetent to the Governor to signify his pleasure in the manner required by law to what purports to be the copies of these Bills.

It is obvious that it is especially necessary with respect to Acts to which the Governor is made a party in making them Law, that no provision should be omitted which certifies that the actual Bill, as it passed the Provincial Council, has been transmitted for His Excellency's consideration. In the case of the Bills now under notice, no single provision has been complied with. Neither have the Bills themselves been forwarded, nor has your Honor yourself certified that what purport to be copies of them are so; and on one of them it was even omitted to record that your Honor had seen and reserved it; as it did not bear even the copy of your signature.

In my Despatch of even date herewith,—No. 366, the mode which it is desired to observe for the future in this respect is specified; and I have to request that the Bills now referred to may be transmitted in that Form.

At the same time I have to state for your information and guidance that on the assumption that the copies forwarded were correct, they have been considered by the Advisers of the Crown, with a view to the advice to be furnished to His Excellency with respect to them when the Bills arrive, and that there appears to be no reason to prevent the Governor from assenting to the Education Amendment, Education Loan, Debentures, Public Reserves, Motupihou Public Reserves, and Coasting Passengers Acts; although the latter is drafted in such a way as to render its beneficial operation very doubtful, yet, as some legislation was desirable until the General Assembly can pass a general law on this subject, it will not be objected to.

But the Waste Lands Act is open to the most serious objections. The Government is now in the market borrowing money on the security of the Land fund of the Colony, as well as that of the Ordinary Revenue; which have been expressly pledged by the General Assembly for that purpose. The Governor could not therefore in good faith, assent to a Bill which would alter the nature of the security offered to the public creditor. If the financial arrangements of the Government, adopted in the last session of the General Assembly should not be carried out, the liabilities, imposed on the Land Fund by the Constitution and other Acts of the Imperial Parliament, will be revived; and the General Assembly will have to prescribe in what manner that fund is to be appropriated.

In addition to the direct opposition to the existing laws which would thus result from assenting to a Bill which by anticipation appropriates the land revenue of the whole Province of Nelson, it would be most impolitic to ignore the extensive existence of Gold in that Province, as is virtually done by this Bill; in as much, as under its provisions, the whole, or the greater part, of the Gold Fields are liable to be, and

certainly would be, monopolised by a few speculators, and no revenue derived therefrom ; while a heavy tax on that account would be imposed on the Province of Nelson, and the question of the beneficial management of the Gold Fields of the Colony, seriously embarrassed for the future.

I have &c.,

(Signed) E. W. STAFFORD.

His Honor
The Superintendent Nelson.

Colonial Secretary's Office,
Auckland, July 27th, 1857.

SIR,—

I have to acknowledge the receipt of your Honor's letter, No. 275, of the 20th ultimo, transmitting for the consideration of the Governor an authenticated copy of the "Roads and Bridges Ordinance," passed by the Provincial Council and assented to by you on the 13th of the same month.

In reply, I have to state that this Ordinance is, in several particulars, in contravention of the Constitution Act of New Zealand. The 51st Section of the Ordinance, especially, is in opposition to the 12th Subsection of the 19th Section of the Act ; and several of the other clauses contravene the 2nd Subsection of the same Section.

The Powers of the Provincial Councils in respect of the creation of new offences, and interference with proceedings in Courts of Justice were defined by the General Assembly in the last Session ; and after the termination of the Session, a circular was addressed on the 18th of September last to the Superintendents of all the Provinces, requesting that the future Legislation in the Provinces should be confined within those limits. If that circular had been kept in view, it would have been seen that this Ordinance is, in many respects, opposed to its terms.

Under these circumstances, it became the duty of the Ministers to advise His Excellency to disallow this Ordinance ; and a Proclamation, notifying that disallowance, will be published forthwith.

In coming to this determination, the Government is aware of the fact that similar clauses to those deemed objectionable are contained in the "Provincial Public Works Ordinance,"—which the Roads and Bridges Ordinance repeals.

I have &c.,

(Signed) E. W. STAFFORD.

His Honor
The Superintendent, New Plymouth.

Colonial Secretary's Office,
Auckland, July 28th, 1857.

SIR,—

With reference to the Ordinance noted in the margin, (Inwood Mill Ordinance, Session VIII., No. 4.) transmitted in your Honor's letter No. 95, of 15th ultimo, I have to inform you that as this Ordinance affects to regulate the occupation of a portion of the Waste Lands of the Crown, it ought, in conformity with the provisions of the "Waste Lands Act 1856," to have been reserved for the signification of the Governor's pleasure thereon, consequently your Honor's assent to it having been accorded in opposition to the Law, renders it a nullity.

If it should be deemed that the powers and privileges conferred by the Ordinance are not such as are comprised in the words the "sale, letting, disposal, and occupation of the Waste Lands of the Crown," recited in the Waste Lands Act, it will be recognized that the Provincial Council was debarred by the Constitution Act from legislating at all as to the lands affected by it. Under these circumstances it became the duty of the advisers of the Crown to recommend the Governor to disallow this Ordinance ; and His Excellency has been pleased to disallow it accordingly.

It was with regret that the Ministry were constrained by Law to adopt this course with respect to a measure, which presumed, if legally enacted, would have been for the public benefit ; and if another Bill to the same effect is passed, and reserved for the Governor's assent, His Excellency will be advised to give his assent to it.

I have, &c.,

(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Canterbury.

Colonial Secretary's Office,
Auckland, September 28th, 1857.

SIR,

I have the honor to inform you that as, by the "Waste Lands Act 1856," it is required that every Bill passed by the Provincial Councils for regulating the sale, letting, or disposal of the Waste Lands of the Crown is to be reserved for the signification of the Governor's pleasure, your Honor has contravened the provisions of that Act by giving the Governor's assent to the "Public Reserves Ordinance, 1857," passed by the Provincial Council of New Plymouth as the lands to which that Ordinance refers, never having been granted, are Waste Lands of the Crown.

I have also to observe that the second Section of this Ordinance professes to deal with the lands, in anticipation of their being granted under the "Public Reserves Act, 1854"; while by the seventh Section of that Act, no land granted under its provisions can be sold except by authority of an Act or Ordinance of the Provincial Council, the operation of which is suspended till the time in which such Act or Ordinance may be disallowed by the Governor has expired.

For either of the above reasons it became the duty of the Advisers of the Crown to recommend the disallowance of this Ordinance.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, New Plymouth.

Colonial Secretary's Office,
Auckland, September 28th, 1858.

SIR,—

I have to acknowledge the receipt of your letter of the 8th ultimo, transmitting two Ordinances passed by the Provincial Council of New Plymouth, and assented to by your Honor on behalf of the Governor, entitled respectively the "Dog Registration Ordinance, 1857;" and the "Licensing Amendment Ordinance, 1857."

The first of these Ordinances would be productive of most dangerous consequences to the peace of the Province; when it is considered that a large number of Dogs are the property of Natives residing in the Province, who would not, (with but few exceptions, if any) be induced to register their dogs, which would consequently be liable to be destroyed, either from motives of personal hostility to the owner, or from mere caprice and wantonness.

If it had been provided that the Provincial Government, as in other Provinces, where Laws of this kind have been enacted, should possess a control over the persons who were authorised to destroy unregistered Dogs, as by limiting the power of so doing to the Police or other persons duly appointed for the purpose; or if a provision had been made for giving up Dogs to the owners in certain cases, the Ordinance would not have been so objectionable; although I believe your Honor will agree with me that it would be infinitely preferable to avoid,—in a place where the European and Native population are in such intimate contact as at New Plymouth,—the possibility of exciting those angry feelings between the races which would inevitably result from the destruction in any manner of Dogs belonging to the Maories.

With respect to the "Licensing Amendment Ordinance," I have to inform your Honor that it is intended to introduce a Bill on the subject to the General Assembly in its next Session, with a view of regulating the issue of Licenses in Native Districts, where for the most part, the inhabitants are strongly opposed to the introduction of spirits.

The Governor has, therefore, under the above mentioned circumstances, been advised to disallow those Ordinances, and His Excellency has been pleased to disallow them accordingly.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, New Plymouth.

Colonial Secretary's Office,
Auckland, October 6th, 1857.

SIR,—

I have to acknowledge the receipt of your letter, No. 30, of the 27th August; and, in reference to your Honor's remarks upon the Waste Lands Bill, to state that it was not overlooked that the power of excepting portions of the Waste Lands from sale was intended to be bestowed by that Bill.

The 22nd clause, to which I presume you refer as a sufficient protection to prevent the sale of the Gold Fields, is however most inadequate for that purpose; as under the clauses of the proposed Act all the Gold Fields would be open at once to purchase on credit, subject to be withdrawn with the concurrence of the Superintendent and Waste Lands Board; in the absence of which, however, they might be bought at a low price and on long credit, in opposition to the public interests.

If the Gold Fields had been exempted from sale, except with the concurrence of the Superintendent and Waste Lands Board, it would have afforded a greater, but still insufficient security, as the policy in this respect of one Superintendent and Executive is always liable to be reversed by a succeeding Government.

When the character of a considerable portion of the population which these fields are likely to attract, and the consequent pressure which might at times be brought to bear upon the Provincial Government, is also remembered, it is necessary to the proper management and regulation of the Gold Fields, that no discretion should be left in the matter; but that, by express provisions in the Act, all lands containing Minerals of value should be excepted from the operation of the credit system.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Nelson.

Colonial Secretary's Office,
Auckland, December 7th, 1867.

SIR,—

I have the honor to inform you that His Excellency the Governor has been pleased, on the advice of his Responsible Ministers, to disallow the "Crown Grants Endorsement Ordinance, 1857," passed by the Provincial Legislature of New Plymouth.

The principle upon which this course has been taken is, that the disallowed Ordinance effected alterations in the general law of the property within the Province, without the existence of any sufficient reasons peculiar to the Province, for the changes introduced.

The 1st and 2nd Sections prescribed a particular form of report on Claims preferred under the "New Zealand Company's Land Claimants Ordinance of 1851," within the Province of New Plymouth; the effect of which would be, in certain cases, to give to such Reports in that Province, an operation which in like circumstances they could not acquire in any other part of the Colony. Now if this innovation be requisite or expedient in the settlement of New Plymouth it is no less so in other settlements founded by the New Zealand Company. It is doubtful whether in any case a Provincial Legislature ought to interfere with the general principles of the law of Real Property. But such interference is inadmissible, when the supposed necessity for Legislation is, as in the present case, common to several Provinces, or to the whole Colony. Whatever remedy it may in such case be thought expedient to apply, should be uniformly and simultaneously applied throughout the Colony by the action of the General Assembly. It is difficult to exaggerate the confusion, and consequent danger to titles, which would result from admitting the introduction of needless Provincial diversities in the Law of Real Property, however well devised and useful in themselves the proposed alterations in any case may be.

If it be said that, in consequence of the forced sales of land for payment of Rates which have taken place in the Province of New Plymouth, a special necessity for legislation has actually arisen in that Province, it may be answered that the ordinance goes beyond providing for any particular case, and establishes a general rule, which would have extensive consequences.

As regards your Honor's apprehension of a conflict between the provisions of the Public Works Ordinance of New Plymouth, and the New Zealand Company's Land Claimants Ordinance of 1851, it appears, to say the least, very doubtful whether the Commissioner under the latter Ordinance would be warranted in reporting any person, who had been duly expropriated under the former Ordinance, to be legally entitled to a grant.

The 3rd Section of the disallowed Ordinance would give to Crown Grants, issued on sales by the Crown in the Province of New Plymouth a retro-active effect on the legal estate, which such instruments do not as yet possess in any other part of the Colony. The objections I have already stated to the first and second sections apply equally to such an enactment. The attention of the General Assembly has been more than once directed to the subject of the 3rd Section, by the introduction of Bills which have been withdrawn simply because they were not deemed satisfactory in their provisions. This circumstance makes it more evident that the subject is one with which no Provincial Legislature should be allowed to deal.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, New Plymouth.

Colonial Secretary's Office,
Auckland, January 25th, 1858.

SIR,—

In reply to your letter of the 10th of November last, covering the copies of four Ordinances passed by the Provincial Council of Canterbury, I have the honor to state that the letter which you inform me was addressed to me by your Honor's predecessor on the 28th July last, transmitting copies of the same Ordinances, has never reached me.

The copies now received have been laid before the Governor; who has been pleased to leave the "Public House Amendment Ordinance," and the "Canterbury Association Reserves Amendment Ordinance," to their operation; and to disallow the "Diversion of Roads," and the "Governor's Bay Road Ordinance."

His Excellency's Ministers feel great regret that it was imperative upon them to advise the Governor to disallow the latter Ordinance; in as much as the land, professed to be dealt with by the sixth Section of the "Diversion of Roads Ordinance," was either Waste Land of the Crown, in which case, under the provisions of the "Waste Lands Act, 1856," the Bill should have been reserved: or it was Crown Land reserved for a special purpose, with respect to which the Provincial Council is debarred from passing any law at all.

The "Governor's Bay Road Ordinance" was not objectionable in principle; but, as it depended entirely upon the former Ordinance, was useless without it.

I am at the same time aware that it is most desirable that full powers of legislating for the alteration of lines of road and streets should be possessed by the respective Provincial Councils: which are from their local knowledge the most competent bodies to judge of the necessity or otherwise of such alterations; while they would be enabled, from their frequent sessions, most speedily to legislate when

necessary. I propose therefore to submit a Bill, for the purpose of conferring such powers, to the General Assembly in the ensuing Session.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, Canterbury.

Colonial Secretary's Office,
Auckland, 5th May, 1858.

SIR,—

I have to acknowledge the receipt of your Honor's letter, No. 44, of the 26th March last, transmitting a copy of the "Dog Registration Ordinance, 1858," passed by the Provincial Council of New Plymouth, and assented to by your Honor on behalf of His Excellency the Governor.

In my letter No. 468, of the 28th September last, notifying the disallowance of the "Dog Registration Ordinance, 1857," passed by the Provincial Council of New Plymouth, I fully explained to your Honor the objectionable nature of its provisions, under which dogs belonging to Natives would be liable to be destroyed; and the dangerous consequences to the peace of the Province which might ensue therefrom. I at the same time suggested a mode, in any future Ordinance of this kind, of obviating the objections to the measure in question.

I cannot, however, find, in the present Ordinance, any modification to that effect. It is applicable to all the Natives throughout the Province of New Plymouth;—a very questionable point of policy at the present time. It professes to subject the Natives to conditions, which there is no reasonable probability that the Provincial Government would be able to enforce. Under its provisions, not only are unregistered Dogs belonging to Natives, when found on occupied land, liable to destruction; but Natives who have Dogs at their Pas, though they may never bring them on purchased Blocks, are subject to a fine, if they do not register their Dogs.

Under these circumstances, the Governor has been advised to disallow this Ordinance; and His Excellency has been pleased to disallow it accordingly.

I have &c.,
(Signed) E. W. STAFFORD.

His Honor
The Superintendent, New Plymouth.