

has not been acknowledged. You must be aware that this subjects the Provincial Government to considerable embarrassment, and I have to request that those Bills will be taken into consideration at your earliest convenience with a view to ascertain the ultimate decision of His Excellency the Governor with regard to them.

The Hon. the Colonial Secretary,
Auckland.

I have, &c.,
JAS. R. MENZIES,
Superintendent.

No. 72.

THE SUPERINTENDENT, SOUTHLAND, TO THE COLONIAL SECRETARY.

Superintendent's Office, Southland,
24th December, 1861.

SIR,—

I have the honor to acknowledge your letter of the 6th instant, which informs me that certain Ordinances passed by the Provincial Legislature of Southland have, for reasons which are stated, been disallowed by His Excellency the Governor.

The object of the "Loan Ordinance" was, as stated in your letter, primarily for purposes of Immigration, and secondarily for other purposes of public utility. At the time when the Provincial Council was in Session, the attractions of the rich gold fields in the Province of Otago had introduced an element of uncertainty into all Estimates of Revenue for a limited period, the precise effect of which could not be predicted; the loan was proposed to be raised in order to neutralise any injurious effect upon the Revenue which this disturbing cause might produce; and in the meantime, until its tendencies were ascertained, to place at the disposal of the Government a fund (which would be unaffected by this cause,) sufficient to enable it to carry out measures which it conceived would be beneficial to the Province. It may, perhaps, be conceded, as regards Immigration, that the judicious character, or otherwise, of the measures contemplated may be a matter of opinion; but, it is probable that the local Government was in a sufficiently advantageous position to enable it to judge of their propriety.

I enclose an extract from the report of the Immigration Agent in Dunedin, which will show the result of observations there; and also copies of instructions to Mr. Morrison, of London, the tenor of which will indicate the views of the Province of Southland.

The emergency which appeared to render it advisable to contract a Loan having passed away, it is not now necessary to enter more fully into this subject, inasmuch as the prosperous state of the Revenue of the Province entirely obviates the necessity of borrowing for the present.

A statement of the Revenue and Expenditure up to the end of this year will be forwarded to you as soon as the accounts are made up, in accordance with your request.

His Excellency the Governor has been pleased to disallow the "Provincial Government Ordinance" a decision in which it is my duty to acquiesce, but at the same time I may be permitted to make a few observations on the reasons assigned for advising its disallowance.

Section 13 of the Ordinance is stated to be open to legal objections inasmuch as it creates a disqualification not provided for by Section 10 of the Constitution Act. I must observe, with all deference, that the validity of this objection is not very obvious. Section 19 of the Constitution Act appears to define all the subjects upon which Provincial legislation is prohibited and it does not include the point in question. That the above construction of Section 10 of the Constitution Act has not been invariably held by the legal advisers of the Crown in New Zealand is proved by the following instances. Section 9 of the "Otago Executive Council Ordinance, 1854," expresses, in language which is somewhat involved, substantially the same meaning as Section 13 of the "Southland Provincial Government Ordinance," and that provision (namely Section 9) is at this moment law in Southland. If it is held that subsequent legislation—such as Section 2 of the Imperial Act (17th August, 1857,) amending the Constitution Act has further limited the field of Provincial Legislation—another recent instance can be referred to in which the Legal Advisers of the Crown in New Zealand recommended the Governor to leave to its operation an Ordinance containing a provision of the same nature.

I find in the *Otago Colonist*, June 21st, 1861, a copy of the "Executive Council Ordinance (Bill) 1861," as introduced into the Provincial Council of Otago, the eighth Section of which is the same word for word as Section 9 of the "Otago Executive Council Ordinance, 1854." I have not received any authenticated copy of the Ordinance as it passed the Council, but a perusal of the debate upon it as reported in the *Otago Colonist*, June 28th, especially that portion which refers to the evening sitting on June 23rd, wherein it is stated that after the passing of the 7th clause, the remaining clauses passed with slight amendments, leads to the conclusion that Section 8 passed the Council substantially in the form in which it was introduced, and yet I find that the assent of His Excellency to this Ordinance is notified in the *New Zealand Gazette* of 7th instant, notwithstanding that it appears to have contained a provision open to legal objection.

The disallowance of the Diseased Cattle Ordinance was anticipated as a necessary consequence after the enactment on the same subject by the General Assembly.

The Hon. the Colonial Secretary,
Auckland.

I have, &c.,
JAS. R. MENZIES.