

No. 4.

The HON. E. W. STAFFORD to HIS HONOR D. M'LEAN.

SIR,—

Colonial Secretary's Office, Wellington, 16th November, 1865.

I have to acknowledge receipt of your Honor's letter of the 5th ult., transmitting five Bills passed by the Provincial Council of Hawke's Bay, and reserved by your Honor for the signification of the Governor's pleasure; I return the Appropriation Act, with the Governor's assent noted thereon.

The Governor's assent has been withheld from the Bill intituled "The Representation Act of the Province of Hawke's Bay, 1865," as there were grave legal objections which prevented me from advising His Excellency's assent to be given to that Bill.

The Provincial Representation Act for Hawke's Bay now in force, under which the present members of the Provincial Council were elected, will be repealed immediately on the publication of the Governor's assent to the Bill in question. The tenth clause, providing when the Act is to come into force, is unnecessary, as it is already provided by law that Provincial Reserved Bills shall not have any force until the Superintendent shall have signified, by Speech or Message to the Council, or by Proclamation in the Gazette, that such assent has been given. The 6th, 7th, and 8th clauses ought not to appear in the Bill. If their provisions are different, as they would seem to be, from those contained in the Provincial Elections Act, 1858, they are invalid; if they are the same in effect, they are unnecessary. These clauses provide for the preparation of rolls as soon as practicable after the passing of the Act. The Provincial Elections Act, 1858, provides that the rolls shall be prepared annually, immediately after the completion of the Electoral Rolls for the House of Representatives. The Provincial Legislature of Hawke's Bay is not competent to alter that provision.

The Electoral Rolls for Provincial elections are now made up, and new rolls cannot be made till September next. The utmost difficulty and confusion would therefore arise if this Bill became law, and a dissolution were to take place before the new rolls are made up.

With respect to the "Diversion of Roads Act, 1865," I would suggest to your Honor that in future the description and boundaries of the land on which the new road is to be taken, and of the old road, should be expressed in schedules to the Bill, and that the plan should not form part of the Bill. The latter practice is unusual, and very objectionable. The delineation of a plan is not like the print of words. The print cannot be tampered with or altered, but the copies of plans annexed to copies of an Act, might be altered and turned to improper uses. The usual course is to refer to a map or plan deposited in some public office, as the Survey Office, or Superintendent's Office. I would further suggest that there ought to be provisions by which certain notices should be given prior to the diversion, in order that persons objecting may lodge their objections, and then power be given to the Superintendent to close the road, or otherwise, after hearing the objections; a road ought not to be stopped up, except after hearing the objections, if any should be made, of persons interested. It is probable that, in the present instance, there may be no objection; the public, however, should be made aware beforehand of what is intended.

I would also draw your Honor's attention to some objections which exist to "The Sheep and Scab Amendment Act, 1865." The Bill, in its Preamble, refers to the Title. This is improper, the Title not being part of a Bill. The provision in the second clause, whereby a payment of 2s. 6d. per head is imposed on all sheep landed, is similar to an import duty; it is invalid, inasmuch as Provincial Legislatures cannot impose such duties. If it is merely intended as payment to the Inspector for discharge of his duties, it should be so expressed. The payment at present is made on all sheep landed, not on all sheep inspected, and the payment seems an exorbitant one for the inspection of sheep. In the "Diseased Cattle Act, 1861," the payment provided is on all cattle inspected, and is limited to 2s. 6d. per head on cattle, and is not to exceed £10, whatever the number.

There are also serious objections to the "Hawke's Bay Drainage Act, 1865." I am advised that it is doubtful whether the provisions contained in the Bill for settlement of disputes, and compensation by arbitration, are not beyond the powers of a Provincial Legislature, as the tribunal proposed to be established would probably be a Court of Civil Judicature within the meaning of the second sub-section of the 19th section of the Constitution Act. The administration of an oath by the arbitrators, and other provisions, show that the tribunal is not in the nature of a Court of Justice. The 14th section does not limit the amount recoverable to the amount within the jurisdiction of the Court. Other Provincial Bills of a similar character have been assented to, and until some competent tribunal has declared them invalid, I do not think it necessary to do more in this case than to call your Honor's attention to the doubt existing.

I have postponed advising His Excellency on the subject of these three last-named Bills, "The Diversion of Roads Act, 1865," the "Sheep and Scab Amendment Act, 1865," and the "Hawke's Bay Drainage Act, 1865." Until your Honor has had an opportunity of considering the remarks which I have made with respect to them, I do not think it advisable that in their present shape they should be assented to; but if your Honor believes that any special circumstance renders it advisable that any of those Bills should be assented to, and will inform me to that effect before the 9th January next, His Excellency will be advised to give assent.

His Honor the Superintendent, Napier.

I have, &c.,

E. W. STAFFORD.

No. 5.

His HONOR D. M'LEAN to the HON. E. W. STAFFORD.

SIR,—

Superintendent's Office, Napier, January 6, 1866.

With reference to your letter of the 16th November, I have the honor to observe that with respect to the three Acts therein referred to, viz. :—