

RELATIVE TO THE

DISALLOWANCE OF PROVINCIAL BILLS.

(In continuation of Papers presented 26th July, 1865.)

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON:

1866.

FURTHER PAPERS RELATIVE TO THE DISALLOWANCE OF PROVINCIAL BILLS.

PROVINCE OF AUCKLAND.

No. 1.

His HONOR F. WHITAKER to the HON. E. W. STAFFORD.

SIR,—

Superintendent's Office, Auckland, 25th October, 1865.

I have the honor to transmit herewith authentic copies of the Acts noted in the margin, which Acts have been passed by the Auckland Provincial Council, and to which His Honor the late Superintendent has assented on behalf of His Excellency the Governor.

Wairoa Road Act,
1865.
City Board Loan
Act, No. 2, 1865.

I have, &c.,

The Honorable the Colonial Secretary,
Wellington.

F. WHITAKER,
Superintendent.

No. 2.

The HON. E. W. STAFFORD to HIS HONOR F. WHITAKER.

SIR,—

Colonial Secretary's Office, Wellington, 29th November, 1865.

I have to acknowledge the receipt of your Honor's letter, No. 443, of the 25th ult., enclosing copies of two Acts, entitled respectively the "City Board Loan Act, No. 2, 1865," and "Wairoa Road Act, 1865," passed by the Auckland Provincial Council, and assented to by the late Superintendent of that Province on behalf of the Governor.

I am constrained for the following reasons to advise the Governor to disallow these Acts.

The City Board Loan Act passed the Provincial Council on the 27th April, 1865, and was assented to by the Superintendent on the 12th May following, the day after the prorogation of the Council, and was only received by the Government on the 3rd inst.

The Wairoa Road Act passed the Council on the 20th April, 1865, was presented to the Superintendent for assent on the 31st May, and was assented to on the 24th ult., five months after the prorogation of the Council, six weeks after the dissolution, and on the day on which a new Superintendent was elected.

The Constitution Act, in the 28th section, provides that copies of Provincial Bills assented to shall be sent "*forthwith*" to the Governor. In the case of the City Loan Act this proviso has been utterly disregarded, as more than five months were allowed to elapse before the Act was transmitted.

Although this circumstance might not of itself invalidate the Act, it manifestly requires notice. Moreover, the Act in question was assented to after the prorogation of the Council. It is the practice (apparently founded on legal obligation) for the Crown to assent to Bills during the sitting of Parliament — a practice also adopted in the General Assembly — and, looking at the provisions contained in the Constitution Act, I am advised that the Superintendents ought to declare their assent or otherwise before the prorogation of the Provincial Council. This latter observation applies, of course, with much greater force to the Wairoa Road Act. The Attorney-General is of opinion that the instructions of the Governor (issued to Superintendents of Provinces in 1857, and published in the New Zealand Gazette, No. 12, of 2nd May, 1857) requiring Provincial Loans Acts to be reserved, apply to Acts empowering Municipal and other bodies to raise loans on a mortgage of rates, &c., as well as to Acts empowering Superintendents to raise loans on mortgage of Provincial revenue.

The City Board Loan Act does not provide that the loan is to be raised under the City Board Act, 1863. I am aware that Bills of this kind have not, in the case of former City Board Acts passed by the Auckland Provincial Legislature, been reserved, and, if the objection stood alone, I should have been disposed to overlook it.

The Wairoa Road Act is not, I am advised, framed with a due regard to the provisions of the Highways and Watercourses Act, 1858. There should be no such provision as that contained in the second section of the Provincial Act. The Highways and Watercourses Act providing that the Governor may make Crown Grants in the usual form, the provision in the local Act is unnecessary, and moreover, very objectionable, as it purports to empower the Governor to make a Grant to certain persons, "their heirs, executors, administrators, and assigns," and upon certain trusts. Setting aside this somewhat extraordinary provision as regards the persons to whom the Grant is to be made, it would be highly inexpedient that the Governor should be bound to make grants to private individuals upon trusts, more particularly upon trusts not specified. It is true that the objectionable provision in the Wairoa Road Act appears to be in conformity with the provisions of the Diversion of Roads Act, but in former Auckland Provincial Acts a grant in fee simple has been provided for. This would not be objectionable, though unnecessary.

I will also draw your Honor's attention to the fact that by the Act in question the Crown would

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convey away the soil in the stopped-up road, but that the fee simple of the soil in the new road remains in the former owner. It should be considered whether the fee simple in the land of the new road ought not to be secured as well as the right of way over such land.

His Honor the Superintendent, Auckland.

I have, &c.,

E. W. STAFFORD.

No. 3.

HIS HONOR F. WHITAKER to the HON. E. W. STAFFORD.

SIR,—

Superintendent's Office, Auckland, 6th December, 1865.

I have the honor to acknowledge the receipt of your letter of date 29th November ult., informing me that you cannot advise His Excellency the Governor to assent to the "City Board Loan Act, No. 2, 1865," and the "Wairoa Road Act, 1865."

I have, &c.,

The Honorable the Colonial Secretary,
Wellington.

HUGH CARLETON,
For the Superintendent.

No. 4.

HIS HONOR F. WHITAKER to the HON. E. W. STAFFORD.

SIR,—

Superintendent's Office, Auckland, February 3rd, 1866.

Memorandum by
Mr. Carleton, 26th
January, 1866.

At the request of the Provincial Secretary, I have the honor to forward a Memorandum which he has written in reference to two Acts passed by the Provincial Council, and assented to by my predecessor, Mr. Graham.

The question as to whether Acts can be assented to by the Superintendent after the prorogation of the Council is one of some importance, and it may be useful if it should again have to be considered, that the reasons for an opposite opinion to that now held by the Attorney-General should be before him. The disallowance of the "City Loan Act, No. 2, 1865," referred to in the Provincial Secretary's Memorandum raises a question of immediate practical importance, as several other Acts of a similar character have been passed, and others will be required.

The Auckland Loan Act, 1863, authorises the Superintendent to raise the sum of £500,000, and this has been done. The 8th section of the Act prescribes the purposes for which the money may be expended, and declares that "No money raised under the provisions of the Act shall be paid or expended without authority of an Act of the Superintendent and Provincial Council." The City Board Loan Act was a special Act passed in pursuance of this provision to appropriate a portion of the Loan already raised, and not for the purpose of raising one. I therefore respectfully submit that it is no way open to the objections made to it as a Loan Act.

I have, &c.,

FRED. WHITAKER,

Superintendent.

Enclosure in No. 4.

MEMORANDUM BY MR. CARLETON.

In reference to the Colonial Secretary's letter, No. 2641, announcing the disallowance of the City Loan Act, No. 2, 1865, and the Wairoa Road Act, 1865, passed before the advent of the present Superintendent to office, I desire to observe that none of the objections taken by the Attorney-General to the City Loan Act are in my opinion necessarily fatal to that Act. The right of the Governor to exercise his own discretion in the matter of disallowance is of course unquestioned. I therefore restrict the question to this point, namely, whether the Governor was compelled, by reason of illegality, or non-compliance with instructions, to disallow.

The Colonial Secretary writes as follows: "The Act in question was assented to after the prorogation of the Council. It is the practice (apparently founded on legal obligation) for the Crown to assent to Bills during the sitting of Parliament, a practice also adopted in the General Assembly, and looking at the provisions contained in the Constitution Act, I am advised that the Superintendents ought to declare their assent or otherwise before the prorogation of the Provincial Council."

I am unable to discover any "legal obligation," nor can I perceive the force of any parallel drawn between the functions of a Superintendent, an officer elected by the people, and those of the Crown. It is true that laws are made by the General Assembly *in Parliament assembled*, from which it appears to follow that the Governor's assent must be given during session; but provincial laws are made by the Superintendent of the Province with the advice and consent of the Provincial Council thereof.

That advice and consent once obtained, no limitation is expressed in regard to time.

The wording of the 18th section of the Constitution Act is clear and explicit.

It must be admitted that other sections of that Act are more loosely worded; for instance, the 19th section, by which it is enacted that it shall not "be lawful for the Superintendent and the Provincial

“Council to make or ordain any law or ordinance” for any of the purposes therein mentioned ; or section 53, which mentions laws made, not by the Provincial Legislature, but by the Provincial Council.

Still No. 18, is, I think, manifestly the governing section of the Act in regard to this subject. It is, moreover, observable that the framers of the Constitution Act appear to have been careful throughout not to treat the Provincial Legislatures as Parliaments. In accordance with this view, is a dictum of a Judge of the Supreme Court : That provincial laws must be received as bye-laws and proved.

The Colonial Secretary states, by way of further objection to the “City Board Loan Act,” that the Hon. the Attorney-General is of opinion that the instructions of the Governor (issued to Superintendents of Provinces, 1857, and published in the N. Z. Gazette of No. 12, May 2, 1857,) requiring Provincial Loan Acts to be reserved, apply to Acts empowering Municipal and other bodies to raise loans on a mortgage of rates, as well as to Acts empowering Superintendents to raise loans on mortgage of Provincial Revenues.

It seems to me that the Attorney-General must have misapprehended the nature and object of the Act in question. Possibly the short title may have misled. The “City Board Loan Act” is not an Act to raise a loan, but to appropriate a loan already raised under the Auckland Loan Act, 1863. It is simply an empowering Act, one of a series of Acts, 18 in number, made in accordance with section 18 of the Auckland Loan Act, 1863, the first 17 of which have been assented to on the part of the Governor.

In regard to the “Wairoa Road Act” disallowed, I have merely to observe that it was not drafted by the Provincial Solicitor, nor transmitted by the Superintendent to the Council. It was introduced on leave by a member of Council, a proceeding apparently not contemplated (compare sections 26 and 53) by the framers of the Constitution Act.

26th January, 1866.

HUGH CARLETON.

No. 5.

The HON E. W. STAFFORD to HIS HONOR F. WHITAKER.

SIR,—

Colonial Secretary's Office, Wellington, 19th February, 1866.

I have the honor to acknowledge the receipt of your Honor's letter, No. 182, of the 3rd inst. transmitting, at the request of the Provincial Secretary, a Memorandum written by him in reference to the “City Board Loan Act, No. 2, 1865,” and the “Wairoa Road Act, 1865,” disallowed by His Excellency the Governor.

In reply, I have to state for the information of the Provincial Secretary, that the Hon. Attorney-General, to whom I referred your letter and its enclosure, states that he can hardly think that it is intended seriously to argue that the ordinary rules which regulate Legislative bodies are not applicable to Superintendents and Provincial Councils when enacting laws.

The mere form, he observes, in which the Governor and Legislative Council and House of Representatives make laws offers no criterion whereby a distinction may be drawn in the respective power of Governor and Superintendent. The whole question is, what is the intention of the Legislature, and he thinks it clear that the declaration of assent or non-assent is to be made to the Council while sitting, and in the session in which the Bill passed.

The Attorney-General thinks that the “City Board Loan Act, No. 2, 1865,” did authorise the Board to borrow. It principally authorises a loan to the Board, but thereby authorises the Board to borrow.

I have, &c.,

His Honor the Superintendent, Auckland.

E. W. STAFFORD.

PROVINCE OF TARANAKI.

No. 1.

His HONOR H. R. RICHMOND to the HON. E. W. STAFFORD.

SIR,—

Superintendent's Office, New Plymouth, 24th November, 1865.

I have the honor to transmit three copies on parchment of “Provincial Council Ordinance, 1865,” and also three copies on parchment of “Executive Council Ordinance, 1865.”

I have, &c.,

H. R. RICHMOND,

The Honorable the Colonial Secretary.

Superintendent.

No. 2.

The HON. E. W. STAFFORD to HIS HONOR H. R. RICHMOND.

SIR,—

Colonial Secretary's Office, Wellington, 28th December, 1865.

I have to acknowledge the receipt of your Honor's letter, No. 68, of the 24th ult., transmitting copies of “Provincial Council Ordinance, 1865,” and of the “Executive Council Ordinance, 1865,” respectively passed by the Provincial Council of Taranaki, and assented to by your Honor on behalf of the Governor.

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I regret to be constrained to advise His Excellency to disallow both these Ordinances, for the following reasons:—

The second section of the "Executive Council Ordinance, 1865," purports to limit the action of the Superintendent, subject to its provisions, and, with one exception, to acts done only "by and with the advice and consent of the Executive Council."

As the "Constitution Act," and several Acts of the General Assembly, confer powers on the Superintendent alone, a restrictive enactment of this kind by a Provincial Legislature is *ultra vires*.

This objection would be obviated by providing in the section referred to that the restriction is subject to the provisions of any Acts defining the powers and duties of the Superintendent.

Moreover, the 5th section of the Ordinance purports to disqualify an Officer of the Provincial Government from a seat in the Provincial Council. This would be to alter the "Constitution Act," which provides for the qualification of both Electors and Members. The object in view may be obtained by providing that no Member of the Provincial Council shall hold the office in question.

The "Provincial Council Ordinance, 1865," repeals, without any saving clause, the Provincial Ordinance under which the existing Provincial Council is elected. If this Ordinance were operative the effect would be to annul the existing Provincial Council of Taranaki, and to render a fresh election of Members necessary. I am, however, advised that the Ordinance should have been reserved for the signification of the Governor's pleasure thereon, inasmuch as it repeals an Ordinance required to be reserved under the 27th section of the "Constitution Act." The Ordinance in question has, therefore, no legal effect. The proper course, therefore, will be to disallow it in the usual manner.

I have, &c.,

His Honor the Superintendent of Taranaki.

E. W. STAFFORD.

PROVINCE OF HAWKE'S BAY.

No. 1.

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

SIR,—

Superintendent's Office, Napier, July 11, 1865.

I have the honor to transmit two copies of the "Publicans' Licensing Amendment Ordinance," passed last session of the Provincial Council of Hawke's Bay, which I have duly reserved for the signification of His Excellency the Governor's assent thereto.

I have, &c.,

The Honorable the Colonial Secretary,
Wellington.

DONALD M'LEAN,
Superintendent.

No. 2.

THE HON. J. C. RICHMOND to HIS HONOR D. M'LEAN.

SIR,—

Colonial Secretary's Office, Wellington, 21st August, 1865.

I have to acknowledge your Honor's letter of the 11th ult., transmitting copies of the "Publicans' Licensing Amendment Ordinance," passed during last session of the Provincial Council of Hawke's Bay, and reserved by your Honor for the signification of the pleasure of His Excellency the Governor thereon.

This Bill seems to be very unartificially drawn, and to contain several mistakes, for instance, the date is stated to be the 27th instead of the 28th year of Her Majesty's reign. No year at all is stated in the Short Title of the Bill. There appears also to be a confusion in the terms "Ordinance" and "Act," which are used interchangeably, and the meaning of the third clause is obscure.

The Bill should, I think, be re-drafted in clear language, and again passed in Provincial Council before His Excellency can be advised to assent to it.

His Excellency has been advised to withhold his assent to the present Bill.

I have, &c.,

His Honor the Superintendent, Napier.

J. C. RICHMOND.

No. 3.

HIS HONOR D. M'LEAN to the HON. J. C. RICHMOND.

SIR,—

Superintendent's Office, Napier, October 5, 1865.

I have the honor to transmit herewith two copies of Acts as per margin, passed by the Provincial Council of Hawke's Bay during the past session, and hope His Excellency will be pleased to assent to the same.

DONALD M'LEAN,

The Hon. the Colonial Secretary.

Superintendent.

Diversion of
Roads Act.
Sheep and Scab
Amendment Act.
Representation
Act.
Appropriation
Act.
Drainage Act.

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 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.

I have, &c.,

His Honor the Superintendent, Napier.

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. :—

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1. The Diversion of Roads Act, 1865 ;
2. The Sheep and Scab Amendment Act, 1865 ;
3. The Hawke's Bay Drainage Act, 1865 ;

There are special circumstances that in my opinion render it advisable that the consent of His Excellency the Governor should be given to them.

With reference to the 1st and 3rd of the Acts named, I should state that subject to certain trifling amendments (since made) these Acts were approved by the Government lately in power.

The diversion proposed by the 1st Act has actually been made.

For the 2nd Act there is pressing necessity, as from time to time sheep are being imported into the Province, and it is proper that the provisions of this Act should be in force.

As to the 3rd Act, I believe that upon that being assented to, advantage will be taken of its provisions for commencing drainage works hitherto delayed for the want of the necessary powers to carry them out.

I abstain from any discussion of the different objections comprised in your letter. I am advised that similar powers are contained in various Provincial Acts to which the Governor's assent has been from time to time given, and such assent has hitherto been considered as establishing a precedent for Acts of a similar nature.

I have, &c.,

DONALD McLEAN,

Superintendent.

The Hon. the Colonial Secretary.

No. 6.

THE HON. E. W. STAFFORD TO HIS HONOR D. McLEAN.

SIR,— Colonial Secretary's Office, Wellington, 15th January, 1866.

With reference to your Honor's letter of the 6th instant, I have the honor to inform you that the following Acts referred to therein, viz.:

The Diversion of Roads Act, 1865 ;

Sheep and Scab Amendment Act, 1865 ;

Hawke's Bay Drainage Act, 1865 ;

Having been laid before the Governor, His Excellency has been pleased to assent to the same, and I return you herewith one of each of the Acts in question with such assent duly noted thereon.

I have, &c.,

His Honor the Superintendent, Hawke's Bay.

E. W. STAFFORD.

PROVINCE OF WELLINGTON.

No. 1.

HIS HONOR I. E. FEATHERSTON TO THE HON. J. C. RICHMOND.

SIR,— Superintendent's Office, Wellington, 12th September, 1865.

I do myself the honor to forward to your Excellency authenticated copies of the eight following Acts passed by the Provincial Council of the Province of Wellington, to which I have assented on behalf of your Excellency, viz.:

An Act to provide for the Management of the land set apart as the Manawatu Race Course.

An Act to Amend the "District Highways Act," Session 9, No. 10, and Session 10, No. 4.

An Act to Repeal clause 27 of "The Market Act, 1854," so far as concerns the City of Wellington.

An Act to provide for the Management of the Hutt Public Park and Race Course.

An Act to provide for the Management of the land set apart as the Wairarapa Race Course.

An Act to appropriate the Revenue of the Province of Wellington for the year commencing 1st day of April, 1865, and ending 31st day of March, 1866.

An Act to Amend the Licensing Ordinances now in force in the Province of Wellington.

An Act to Repeal the "Wellington Town Board Act," and to make other provisions for the Management of the City of Wellington.

I have, &c.,

I. E. FEATHERSTON,

The Honorable the Colonial Secretary, Wellington.

Superintendent.

No. 2.

THE HON. E. W. STAFFORD TO HIS HONOR I. E. FEATHERSTON.

SIR,— Colonial Secretary's Office, Wellington, 25th November, 1865.

I have the honor to acknowledge the receipt of your Honor's letter of the 12th September last,

DISALLOWANCE OF PROVINCIAL BILLS.

9 A.—No. 3.

transmitting copies of eight Acts passed by the Provincial Council of Wellington, and assented to by your Honor on behalf of His Excellency.

The Hon. the Attorney-General has advised that the three under-mentioned Acts—

“Manawatu Race Course Act, 1865;”
 “Hutt Race Course Act, 1865;” and
 “Wairarapa Race Course Act, 1865;”

have been rendered invalid by reason of their not being reserved for the assent of the Governor, as required by the 4th section of the “Public Reserves Act Amendment Act, 1862.”

For these reasons I am compelled to advise His Excellency to disallow these Acts.

These Acts do not, in other respects, comply with those provisions of the Public Reserves Acts of the General Assembly which require the Crown Grant to the Superintendent of the land purporting to be dealt with to have been first issued, and also, when it is desired, to transfer the estate under the 2nd section of the Amendment Act of 1862; the transfer must be to a corporate body having succession. The Bill should not, I am also advised, contain general powers of sale or leasing, but there ought to be a special Act in each case.

The following Acts are left to their operation:—

An Act to Amend the District Highways Act, Sess. 9, No. 10, and Sess. 10, No. 4.

The Appropriation Act, 1865-6.

An Act to Amend the Licensing Ordinances now in force in the Province of Wellington.

An Act to Repeal the Wellington Town Board Act now in force in the Province of Wellington.

An Act to Repeal clause 27 of the Market Act, 1854, so far as concerns the City of Wellington.

I have, however, the honor to point out, with a view to their amendment, some apparent defects which may interfere with their beneficial operation.

The Act recited in the District Highways Amendment Act is not correctly named. The Short Title of the Act is the “District Highways Act, 1862.”

Some of the provisions of the Licensing Amendment Act appear obscure. The object of the Act is not clearly expressed. Neither does it clearly appear whether the licenses are to be for one year or for a less period, or whether they are to commence from the day of the meeting, or by whom in that case they are to be granted. The form of the certificate which the Magistrates (sec. 2) are authorised to issue, seems inapplicable to the circumstance established by the Act.

There are some provisions of questionable validity in the Town Boards Act.

The 3rd section defines and alters the boundaries of the City or Town of Wellington, and it is doubtful whether the Act should not have been reserved under section 27 of the Constitution Act.

A Schedule is referred to in section 19 of this Act, but the Act sent contains none.

It is doubtful whether section 37 is not *ultra vires*, as a Provincial Legislature cannot prescribe forms and methods of procedure in a Court of Justice.

I have not advised the disallowance of the Act, but I would suggest to your Honor the advisability of applying to the General Assembly for an Act validating the Act in question.

With respect to the Market Amendment Act, it seems impossible to see to what extent compensation under it might not be claimed, and it is difficult to see what rule can be adopted under it for granting compensation.

His Honor the Superintendent, Wellington.

I have, &c.,
 E. W. STAFFORD.

PROVINCE OF SOUTHLAND.

No. 1.

HIS HONOR J. P. TAYLOR to the HON. J. C. RICHMOND.

SIR,—

Superintendent's Office, Southland, 12th July, 1865.

I have the honor to enclose herewith in duplicate copies of the Bills named in the margin, and to request that you will be good enough to obtain the assent of His Excellency the Governor thereto.

I have, &c.,
 JOHN P. TAYLOR,
 Superintendent.

The Hon. the Colonial Secretary, Wellington.

Provincial Auditor and Deputy Auditor's Salary Bill, 1865.
 Police Bill, 1865.
 Licensing Bill, 1865.
 Church of England Cemetery Bill, 1865.
 Appropriation Bill, No. 4, 1865.

No. 2.

The HON. J. C. RICHMOND to HIS HONOR J. P. TAYLOR.

SIR,—

Colonial Secretary's Office, Southland, 17th August, 1865.

I have to acknowledge the receipt of your Honor's letter of the 12th ult., transmitting copies of five Bills passed by the Provincial Council of Southland, and reserved by your Honor for the signification of the Governor's pleasure thereon.

I proceed to notice these Bills respectively.

There is no legal objection to the “Provincial Auditor and Deputy Auditor's Salaries' Ordinance, 1865,” and to the “Appropriation Ordinance, 1865,” and His Excellency has been advised to assent to these Bills. I return to your Honor these Bills, with such assent duly noted thereon.

With respect to the “Police Ordinance, 1865,” there are several objections which prevent Ministers from being able to recommend His Excellency the Governor to assent to it. Every Justice of the Peace, by virtue of his Commission, has authority to issue his Search Warrant to seek for property

which there is reasonable cause to suspect has been stolen. If the object of the second clause is no more than this, it is unnecessary. However, the clause authorises the issue of a Search Warrant when there is cause to suspect that the carcass, head, &c., of any cattle "has been taken." The expression, "has been taken," has no technical meaning; in its meaning is included any taking, rightful or wrongful, and even if wrongful, such as amounts to criminal as well as that which falls short of that, and amounts only to a civil trespass.

The third clause is also very indefinite, and should be reconstructed. It is not provided how or when the person charged is to be brought—whether under the warrant to search, or by summons or ordinary warrant on information laid.

Moreover, the adjudication or trial is not clearly provided for, whether summary or not, and even if it were, such a power should not be given to one Justice of the Peace.

This clause may have been suggested by sections in the Larceny Act, 24 and 25 Vic. (Imperial) and the Criminal Law and Practice Act, 1864, of the Colony of Victoria. If this be so, sufficient attention has not been shewn to the framing of those sections.

The meaning of the word "cattle" should be defined.

Lastly, it appears that the Bill altogether misses the object it was intended to reach. It was probably intended to give a power to search for and punish those who knowingly had in their possession the head or skin, &c., of cattle which had been stolen. This is not the meaning of the words used; the felony suspected to have been committed is of the head, skin, &c., and not of the living animal.

The "Licensing Ordinance, 1865," has been assented to by His Excellency, and I return to your Honor a copy of the Bill with such assent duly noted thereon. I would, however, make the following observations with respect to this Ordinance. The 38th clause requires special comment. The question may properly be asked, what is the effect of this provision, which certainly, if effectual, would be very beneficial.

It is to be observed that this clause does not propose to make the sale on credit an offence punishable by a fine or summary conviction, nor indeed does the clause forbid a sale on credit. It merely proposes to prevent the vendor on credit recovering from the vendee in any Court of Justice. This is clearly beyond the power of a Provincial Council. The Council may provide that a sale on credit is an offence punishable by a fine on summary conviction. If that were provided, then the sale would be illegal.

It is further to be remarked that by clause 57 current licenses shall be deemed to have been granted under the Ordinance now passed by the Council. But until this provision there were not in Southland, under the Ordinances repealed, any powers of granting any license but an ordinary Publicans' License. This clause should therefore have provided that the Publicans' Licenses granted under the repealed Ordinances, should be subject to provisions relating to Publicans' Licenses under this Ordinance. There are provisions applicable to some licenses which are not applicable to Publicans' Licenses, and doubts might be raised as to which provisions were intended to apply to "current licenses."

As, however, much inconvenience would probably be experienced if this Bill were not assented to, Ministers have advised His Excellency to assent to it, but I have to suggest to your Honor that a Bill should be brought into the Provincial Legislature for the amendment of the Bill on the points to which I have adverted.

I regret to state that for the following reasons Ministers are unable to recommend His Excellency to assent to the "Church of England Cemetery Ordinance, 1865."

In the Preamble it appears that a piece of land, referred to in the Schedule as five acres, having, with other lands, been first conveyed to the Superintendent, under the Public Reserves Act, 1854, in trust as an endowment for educational purposes, became by Ordinance of the Provincial Council, passed under and by virtue of the Public Reserves Act, 1854, subjected to other trusts, and the Superintendent thereby held the said lands in trust for the purposes of a public burial ground. This was a change of trust which was warranted by the Reserves Act, 1854. In 1864, however, the Provincial Council, by Ordinance, changed, or attempted to change, this trust, so far as relates to the land in the Schedule, into what seems a private trust, a trust for private purposes, namely, for the purposes of a burial ground for the deceased members of the Church of England. This, as it appears, was not a change of trust for the public purposes of the Province. However, that Bill was assented to, but in it the powers of management were reserved to the Superintendent, and were expressly withdrawn from the Bishop. In passing, it may also be observed that it is very questionable whether the Superintendent could be empowered by an Ordinance of the Provincial Council actually to convey the lands to the Bishop, and at the same time there should be reserved to him the power of management. The Government is advised that the Superintendent should have retained the fee, and the Ordinance should have provided for the management. However, the Ordinance was passed, but the Bishop declines to accept the land upon the trusts, and it is now proposed to convey the lands to the Bishop in trust for a burial ground for the members of his Church, and to give him absolute and unlimited powers of leasing, and to dispose of the rents, issues, &c. These provisions are so extraordinary, and so clearly opposed to the provisions and spirit of the Public Reserves Act, 1854, that Ministers are unable to advise that the Bill be assented to.

Surely if the land is for a burial ground, it should not be in the power of the Bishop to lease it even for a year, but he may lease it for a thousand years. As it appears, the proper course is for the Superintendent to retain the fee, and for the Provincial Council to pass an Ordinance changing the trusts into general trusts for a public cemetery, and to provide for the management by managers or others who should have power to apportion or set apart to such religious bodies as may require it, parts of the land, not, however, parting with the control, and the Superintendent still keeping the fee.

There is also reason to believe that the description of the contents or acreage of the land is incorrect. It is probable that the land is twenty acres, not five acres, as will be seen by the Memorandum of Mr. Domett, a copy of which is enclosed.

His Honor the Superintendent, Southland.

I have, &c.,
J. C. RICHMOND.

Enclosure 1 in No. 2.

MEMORANDUM BY MR. DOMETT.

There is no allusion whatever in the body of the Ordinance to Schedule B, or the land in it. The Ordinance speaks of one Schedule only, and one parcel of land.

The description in Schedule B appears to have been copied and added by mistake; while in the copying, the "habendum" in the Grant (probably) from which the description was taken has been included by another mistake.

There is no registered Grant of the actual land in question (either piece); and there is no map in the office which shews the block on which either piece exists. But there is a Grant of a piece of land as a Cemetery, of which I forward a tracing from the plan on the Grant to the Superintendent of Otago. From a comparison of this plan with the description in Schedule A of the Ordinance, it seems almost certain that the bit in the Schedule is the Southern portion of the land in the Grant of 20 acres marked A.

If this supposition be correct, the Ordinance would be waste paper so far. I see nothing for it but a reference to the Provincial Government of Southland for full information.

April 13, 1864.

A. DOMETT.

No. 3.

His HONOR J. P. TAYLOR to the HON. J. C. RICHMOND.

SIR,—

Wellington, 17th August, 1865.

I have the honor to enclose copy of "Southland Debenture Ordinance, 1865," for your information, in case the former copy left in the Honorable the Attorney-General's Office should have been mislaid.

I have, &c.,

JOHN P. TAYLOR,

The Honorable the Colonial Secretary, Wellington.

Superintendent.

No. 4.

His HONOR J. P. TAYLOR to the HON. J. C. RICHMOND.

SIR,—

Superintendent's Office, Southland, 1st September, 1865.

I have the honor to acknowledge the receipt of your letter of the 17th ult., enclosing copies of the Ordinances named in the margin, with the Governor's assent noted thereon, also informing me that His Excellency had been advised to withhold his assent from the following Bills, viz.:—The Appropriation Ordinance, No. 4, 1865.

"Police Ordinance, 1865," and the "Church of England Cemetery Ordinance, 1865." Licensing Ordinance, 1865.

I presume that Mr. Domett's Memorandum of 13th April, 1864, has been enclosed by mistake, as it can have no reference to the "Church of England Cemetery Ordinance, 1865," passed by the Provincial Council of Southland passed on the 21st June, 1865, and forwarded for the signification of the Governor's pleasure thereon on the 12th July last. Provincial Auditor and Deputy Auditor's Salary Ordinance, 1865.

The description of the piece of land, also, appears to be correct, as the Schedule to the "Church of England Cemetery Ordinance, 1865," describes 5 acres, and not 20.

I have, &c.,

J. HUGH NURSE,

The Honorable the Colonial Secretary, Wellington.

Deputy-Superintendent.

No. 5.

The HON. J. C. RICHMOND to HIS HONOR J. P. TAYLOR.

SIR,—

Colonial Secretary's Office, Wellington, 1st September, 1865.

I have the honor to acknowledge the receipt of your letter of the date quoted in the margin, enclosing, for the Governor's assent, a copy of the Southland Debenture Ordinance, 1865, and in reply to inform your Honor that the Government cannot advise His Excellency on the subject of that Bill till the intentions of the Legislature as to the general regulations of Provincial Loans have been declared. 17th August, 1865.

I have, &c.,

J. C. RICHMOND.

His Honor the Superintendent, Southland.

No. 6.

The HON. J. C. RICHMOND to HIS HONOR J. P. TAYLOR.

SIR,—

Colonial Secretary's Office, Wellington, 13th September, 1865.

I have the honor to acknowledge the receipt of your letter of the date quoted in the margin, on the subject of the Church of England Cemetery Ordinance, 1865. 1st September, 1865.

I have, &c.,

J. C. RICHMOND.

His Honor the Superintendent, Southland.

