

OPINION

OF

THE ATTORNEY-GENERAL

ON THE

POWER OF THE UNIVERSITY OF OTAGO
TO CONFER DEGREES.

PRESENTED TO THE HOUSE OF REPRESENTATIVES BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON.

—
1872.

OPINION OF THE ATTORNEY-GENERAL AS TO THE POWER OF THE UNIVERSITY OF OTAGO TO CONFER DEGREES.

THE Otago University Ordinance, passed in the year 1869, provides for the establishment of a University at Dunedin, in the Province of Otago, and that the Council of the University shall have power to confer certain degrees.

I do not think that this Ordinance is, so far as it creates a University with power to confer degrees, *ultra vires*.

A University is but a lay corporation, with certain powers, amongst others, to grant degrees.

If the University is created by charter from the Crown, its degrees will be recognized, if so provided in the charter, throughout the British dominions.

If created by Act of the Imperial Parliament, and it be so provided therein, its degrees will be recognized throughout the British dominions.

If created by a local Legislature, its degrees will be recognized only within the territory over which the local Legislature has jurisdiction.

For this reason, the University of Melbourne, established under an Act of the Victorian Legislature, obtained a charter from the Crown, in order that its degrees might be recognized throughout the British dominions.

It is no doubt true that corporate bodies can be created only by charter from the Crown or by Statute, and in that case the Crown is a party to the creation, for it makes the Statute, though with the advice and consent of Parliament, and it is, moreover, true that all titles and distinctions must emanate from the Crown, or be authorized by a Statute.

Nevertheless, as Provincial Legislatures have, under an Act of the Imperial Legislature, a power to legislate for their respective Provinces, except on certain specified matters, and as none of the specified matters include the creation of a University or other corporate body, or the conferring of degrees, I think that the Ordinance is not *ultra vires*, and that degrees may be conferred under it, but such degrees will be recognized and give rank and precedence only within the Province.

It is, however, to be noticed that the Legislature of New Zealand seems to have considered the question whether Corporations could be established under Provincial legislation, open to some doubt; for in 1865, in "The Provincial Corporations Act, 1865," after reciting that doubts had arisen, it enacted that any Provincial Legislature might make laws for creating Corporations within the limits of the Province, for the purposes and objects in respect of which Provincial Legislatures are empowered to make laws.

Now, it cannot be said that Provincial Legislatures are not empowered to make laws for the promotion of sound learning within their respective Provinces.

However, I do not think that it is necessary to rely on "The Provincial Corporations Act, 1865." Indeed, if the Provincial Legislatures had not the power under the Constitution Act, the General Assembly could not give them the power except by a Bill, to be reserved for the Queen's assent. "The Provincial Corporations Act, 1865," was not reserved.

JAMES PRENDERGAST.

23rd November, 1871.
