

P A P E R S

RELATIVE TO

ACTS OF GENERAL ASSEMBLY

OF

SESSION 1858,

21ST AND 22ND VICTORIÆ.

Presented to both Houses of the General Assembly by command of His Excellency.

AUCKLAND:

1860.

SCHEDULE.

MEMORANDA FROM MINISTERS IN NEW ZEALAND.

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MEMORANDA FROM MINISTERS IN NEW ZEALAND

ON ACTS OF ASSEMBLY, 1858.

[MEMORANDUM BY MR. STAFFORD.]

Colonial Secretary's Office,
Auckland, August 24th, 1858.

The Session of the Colonial Legislature having only come to a close on the 21st instant, His Excellency's Ministers have been precluded from preparing in time for this Mail, for the consideration of the Secretary of State for the Colonies, a Memorandum explanatory of the intention and bearing of the several Acts passed during the recent Session. A full statement in these respects will, however, be furnished for the next Mail.

In the meantime it is advised that the Bills quoted in the margin, which have been reserved for the signification of Her Majesty's pleasure thereon, may be forwarded by the present mail.

The first Act, while simplifying the mode of collection, is calculated to provide a slight increase of Revenue to meet the Military Expenditure lately imposed on the Colony. As commercial operations and the receipts of Customs will be disturbed until Her Majesty's pleasure has been signified as to this Act, it is requested that as little delay as possible may occur in reference to it.

The second Act affects the operation of all the Land Laws in the Colony, and the third extends the period within which the operations of the Land Claims Court can be carried on. It is urgently to be desired, therefore, that Her Majesty's Assent may be signified at the earliest possible moment to these Acts, and especially to the last mentioned Act, as no further proceedings can be initiated in the Land Claims Court until this Act comes into operation.

E. W. STAFFORD.

[MEMORANDUM BY MR. STAFFORD.]

Colonial Secretary's Office,
Auckland, October 9th, 1858.

The Responsible Advisers of the Crown in New Zealand offer, for the information of the Secretary of State for the Colonies, the following observations on the several Acts passed by the General Assembly in its fifth Session, except those relating more especially to Native Affairs, which have already been remarked on at length in their Memorandum of the 29th September.

- No. 1. "*Interpretation Act*."—This Act simplifies the language of Acts of the Assembly, and prescribes the time when they shall severally be deemed to have come into operation.
- No. 2. "*English Laws Act*."—The late acting Chief Justice Stephen, recently decided, in a case before the Supreme Court that the "*English Wills Act*," passed in 1837, was not in force in New Zealand. The grounds on which this opinion was given appear to have no foundation, and the opinion to have rested on a misapprehension of facts, as to the time when this Colony became a British possession. As the decision of Mr. Stephen, if correctly stating the Law, would have excluded from the administration of justice a great number of other important English Statutes which had always been considered as in force in the Colony, it was imperative that no doubt whatever should be permitted to rest on a matter of so much importance; and the "*English Laws Act*" was passed to declare that to be the Law, which from the foundation of the Colony has always been so considered and acted on.
- No. 3. "*Crown Costs Act*."—Mr. Labouchere, when Secretary of State for the Colonies, suggested the introduction of a Bill on this subject, similar to an Act recently passed by the Imperial Parliament. The "*Crown Costs Act*" is somewhat more extensive in its operation than the English Act, as there appeared to be no reason in this Colony why the rule as to costs should be confined to a certain class of suits only.
- No. 4. "*Absent Defendants Act*."—The object of this Act is to assimilate the Law of New Zealand, as to service of the process of the Supreme Court on Absent Defendants to the Law, as recently enacted in England and in some of the Australian Colonies on the same subject.
- No. 5. "*Absent Debtors Act*."—This is a Foreign Attachment Act. The principles involved in it are to be found in the law of Foreign Attachment, as in force in the City of London. The provisions of the Act are similar to those of Acts of the same character, for some time past in operation in the Australian Colonies.

Acts of General Assembly, 21 & 22 Victoria.

21 & 22 Victoria, Nos. 72, 75, and 76—"*Customs Duties Act*, 1858;" "*Waste Lands Act*, 1858;" "*Land Claims Settlement Extension Act*, 1858."

Acts of General Assembly, 21 and 22 Victoria.

- No. 6. "*Unstamped Instruments Act.*"—An Act similar to this was recently passed in New South Wales, which, having been reserved for the signification of Her Majesty's pleasure, was assented to by Her Majesty. It is a law of great importance, as its effect will be to clear up a doubt which has for a long time been hanging over a considerable number of titles to land in the Colony. Its operation will be very beneficial.
- No. 7. "*Coroners Act.*"—The Legislatures of five of the Provinces of the Colony had conferred on Superintendents the power of appointing Coroners; and in the other Province the office had been made elective by an Act of the Provincial Council. It appeared to the Government of the Colony that obvious and strong reasons existed for the General Government resuming all the departments connected with the administration of justice, which had been transferred from time to time to the Provincial Authorities. During the late Session of the General Assembly, Bills were brought in for the purpose, inclusive of the "Coroner's Act," all of which were passed, thus placing the administration of justice now altogether under the control of the General Government. The law relating to Coroners has at the same time been improved, and a new provision introduced relative to fires, which has already been acted on with good results.
- No. 8. "*Militia Act.*"—The propriety of training the inhabitants of New Zealand to the use of arms, so as to enable an effective defensive force, to be called out in case of need, being obvious, this Act provides for the above object. The provisions for the enrolment of volunteers are specially calculated to work beneficially.
- No. 9. "*Pensioner Villages Sale of Reserves Act.*"—Passed in compliance with the request of the Imperial authorities, to enable certain Pensioners' cottages and allotments, forfeited for non-fulfilment of the terms of their enrolment, to be sold, and the proceeds paid into the Imperial Treasury.
- No. 10. "*Execution of Criminals Act.*"—The provisions of this Act are founded on a Report of the House of Lords, and the mode of Execution prescribed has been successfully adopted in New South Wales and Victoria.
- No. 11. "*Election Writs Act.*"—There being previously no power of issuing writs to supply vacancies in the House of Representatives during a recess of the Assembly, a full attendance of Members at the commencement of each session was frequently prevented. The object of this Act is to obviate for the future, the serious inconvenience which had consequently been experienced.
- No. 12. "*Wool and Oil Securities Act.*"—The object of this Act is to enable the proprietors of Sheep and Whaling Stations to raise money on their future produce. It will no doubt be found of great advantage in giving facilities to those engaged in these important industrial occupations who have long pressed for the enactment of such a law.
- No. 13. "*Special Partnerships Act.*"—The Provincial Council of Wellington, in their first session, passed an Act of a similar character to this; and the Auckland Provincial Council, in their second session passed a similar Act. It is obvious that a want of uniformity throughout the Colony of the law on such a subject is a great evil. The Act under consideration, therefore, repeals the two Provincial Acts, and enacts a law for the Colony in reference to Special Partnerships.
- No. 14. "*Foreign Seamen's Act.*"—The subject of this Act is another on which the Provincial Councils were permitted to legislate. It appeared to the present Ministry that the law relative to Seamen should be uniform throughout the Colony, and that, as regards Foreign Seamen especially, Provincial Councils should not have been permitted to legislate. The object of the present Act, therefore, is to repeal the Provincial Acts and to enact a law for the Colony. The matter is one of considerable importance, as a great number of Foreign Whaling Ships visit the ports of New Zealand for refitting and refreshment. Great difficulties, especially after the discovery of Gold in Australia, were experienced in reference to the crews of such vessels, there being no law applicable to them under which they could be satisfactorily dealt with; consequently the number of Whaling Ships visiting New Zealand fell off considerably. The Provincial Acts, for the time they have been in operation, appear to have worked satisfactorily to all parties, and their substance has therefore been re-enacted. A law of a similar character has been for some time in operation in New South Wales.
- No. 15. "*New Zealand Post Office Act.*"—This Act was imperatively required, from the absence of any definite authority for regulating the Postal service of the Colony so as to meet the rapidly growing wants of the public in this respect. It has been carefully prepared, after a consideration of the Postal Laws in force in Great Britain and several of the Colonies.
- No. 16. "*Provincial Reserved Bills Act.*"—The thirtieth section of the Constitution Act provides that the assent of the Governor to a reserved Bill passed by Provincial Councils shall be signified within three months next after the Bills shall have been presented to the Superintendent for the Governor's assent. Great inconvenience has resulted from this provision, and useful Bills have in some cases been lost, from the impossibility of complying with it. The Act under consideration enables the Governor to express his pleasure at any time within three months from the time he receives them, instead of after their presentation to the Superintendent. The clause referred to of the Constitution Act, is not clear in other points, and it is therefore repealed, and substantially re-enacted with the necessary amendments.
- No. 17. "*Bishop of New Zealand Trusts Act.*"—Passed in accordance with the resolutions of a conference of Clerical and Lay Members of the Church of England, to enable the Bishop of New Zealand to convey to Trustees, as specified by the Act, certain properties held by him for religious

and other purposes in connection with the Church. The subdivision of the original Diocese of the Bishop of New Zealand, would in itself have rendered this Act expedient.

- No. 18. "*Auckland Roman Catholic Endowments Sales Act.*"—This Act provides that certain endowments for educational and religious purposes, vested in the Roman Catholic Bishop at Auckland may be sold, and the proceeds invested in other properties more suitable for these objects than the original premises.
- No. 19. "*Boundaries of Provinces Act.*"—From the absence of sufficient knowledge with respect to the unsettled portions of the Colony, when the limits of the Provinces were declared in 1853, considerable uncertainty exists as to portions of their boundaries. Already a dispute as to their mutual boundary line, involving a considerable area has arisen between the Provinces of Canterbury and Otago; to settle this dispute, and any similar ones which may occur in future, the Act under notice was passed.
- No. 20. "*Census Act.*"—The want of Statistical information with respect to New Zealand has long been complained of both within and without the Colony. The Census Act now passed provides a machinery for obtaining for the future the fullest information as to the population and progress of the country.
- No. 21. "*Australasian Creditors Act.*"—This Act has been passed in conformity with an arrangement under which similar laws have been enacted in the several Colonies of Australia.
- No. 22. "*Supreme Court Judges Act.*"—The object of this Act is to give effect to the resolutions agreed to by the two Houses of Assembly in the Session of 1856, and subsequently approved of by the Imperial Government. Provision is also made for a superannuation allowance to Judges on retiring after a certain period of service.
- No. 23. "*Law Practitioners' Act.*"—Passed to continue for five years an arrangement under which Barristers and Solicitors act as General Practitioners.
- No. 24. "*Sheriff's Act.*"—The objects of this Act are twofold;—1st, To remove Sheriffs from the control of the Provincial Governments; and 2nd, To amend the law relating to Sheriffs as Officers of the Supreme Court.
- No. 25. "*Gaoler's Act.*"—This Act transfers to the several Gaolers the powers and liabilities with respect to the custody of prisoners, previously vested in the Sheriffs.
- No. 26. "*Petty Sessions Act.*"—The object of this Act is to facilitate the administration of justice, by Justices of the Peace, in thinly peopled country districts of the Colony.
- No. 27. "*Justices of the Peace Act.*"—Those useful Acts relating to Justices of the Peace, usually called "Jervis's Acts," are brought into operation in New Zealand by this Act.
- No. 28. "*Registration Act.*"—This Act is based upon the law of 1847, which is repealed, but its provisions are more completely harmonised with the "Marriage Act," and several of the details have been improved, partly in accordance with similar laws in other places, and partly to render its operation suitable to the special circumstances of New Zealand.
- No. 29. "*Marriage Act Amendment Act.*"—This does not alter the principle of the "Marriage Act" of 1854, which has been generally satisfactory in its operation; but was passed with the twofold object,—1st, Of amending certain details, so as to prevent inconveniences found to attend the working of some of the provisions of the Act of 1854: And, 2nd, Of removing any doubts which might be raised as to the validity of some marriages solemnised under that Act without a complete observance of all its requirements. To avoid reference from one act to another the sections of the Act of 1854, which require amendment have been repealed and re-enacted with the amendments incorporated. With the same view to the simplification of the law on so important a subject, the "Marriage Act Amendment Act" of 1856 has been repealed, and the single section of which it consisted re-enacted as Section IX. of the present Act.
- In carrying out the second object, care has been taken to restrict the legalisation of marriages not only to cases in which no legal impediment existed at the time of the marriage, but also to cases in which the parties acted in good faith, and with an intention to be married according to law, although, from inadvertence, all the requirements of the law had not been fully complied with.
- No. 30. "*District Courts Act.*"—This is a carefully considered Act, passed for the purposes especially of providing for the administration of justice in those Provinces in which a Judge of the Supreme Court does not reside.
- No. 31. "*Audit Act.*"—Empowers the Governor in the name and on behalf of Her Majesty, to appoint an Auditor of Public Accounts, whose duties are precisely defined in the Schedule to the Act. This Officer holds office during good behaviour, and is removeable only by the Governor upon an address from both Houses of the General Assembly. The Act further provides for the examination of the Public Accounts by the House of Representatives, through the medium of a Select Committee, appointed in a way which is intended to secure a due influence to a minority of the House in the composition of the Committee.
- No. 32. "*Disqualification Act.*"—The object of this Act is to prevent undue influences from being exercised in connection with the Legislatures or Government of the Colony. To effect this, all persons connected with the administration of Justice, or the collection of Revenue, are prohibited from holding seats in those bodies, or being elected Superintendents of Provinces.
- No. 33. "*Ordinary Revenue Act.*"—This Act provides that the Revenue of Customs, and also that arising from the Post office, Supreme Courts, and other specified Departments of Government,

may be compendiously designated as Her Majesty's Ordinary Revenue of the Colony. The enactment of the LXIII Section of the Constitution Act, subjecting the expenses of the Customs Department to the regulation and audit of the Lords of the Treasury, having become obsolete by the transfer of the Department to the Colonial Government, is repealed by the second section of the "Ordinary Revenue Act." The same section also repeals so much of the LXII Section of the Constitution Act as enabled the Governor to defray the costs of collecting the Customs and other branches of the Ordinary Revenue, without a vote of the House of Representatives.

- No. 34. "*Banker's Returns Act*."—This Act is intended to enable information to be obtained in an authentic form, of the transactions of all Banks established in New Zealand, to secure which a separate statement of the Assets and Liabilities at each place of business is required.
- No. 35. "*Resident Magistrate's Court Amendment Act*."—The objects of this Act are first, to abolish the extended jurisdiction which had been conferred on the Resident Magistrates' Courts,—viz., to the extent of £100, for which jurisdiction the District Courts to be established under the "District Courts Act," are intended to provide a substitute;—and secondly, to improve the Resident Magistrate's Courts in some particulars in which they had been found to be defective. A most important provision is also added, giving Resident Magistrates a discretion to withhold executions against Natives. This has become essential, in order to prevent persons obtaining judgments of the Courts from forcing the Civil Power into conflict with the Aborigines, in endeavouring to carry out the process of these Courts.
- No. 36. "*Canterbury Association Land Orders Act*."—There being a doubt as to the power of issuing Grants from the Crown to purchasers from the late Canterbury Association, this Act validates all Grants issued, or to be issued, in respect of lands selected in virtue of Land Orders issued by that Association.
- No. 37. "*Definition of Districts Act*."—Extends the power of defining and designating the territorial divisions of the Colony, as Colonization proceeds.
- No. 38. "*Nelson College Act*."—Constitutes certain persons a Body Corporate for the governance and management of a College at Nelson, founded by the Trustees of the Trust Funds of that place.
- No. 39. "*Merchant Shipping Act*."—The object of this Act is to make the provisions of the English "Merchant Shipping Act of 1854" applicable to vessels registered in New Zealand, while within the jurisdiction of the Colony.
- No. 40. "*Customs Regulation Act*."—This Act is founded on the "Customs Consolidation Act, 1853," of the Imperial Parliament, and appears to require no comment.
- Nos. 41 & 42. See separate Memorandum of the 29th September.
- No. 43. "*Civil Service Superannuation Act*."—Provides a superannuation allowance for Officers of the Civil Service of the colony on retiring after certain periods of service.
- No. 44. "*Martin's Annuity Act*."—Grants an annuity for life, to the late Chief Justice of New Zealand.
- No. 45. "*Province of Taranaki Act*."—Changes the name of the Province of New Plymouth.
- No. 46. "*Crown Grants Correction Act*."—It has been found, especially in the New Zealand Company's Settlements, that a number of Crown Grants have been issued, containing erroneous descriptions of the land intended to be granted; and this Act is to enable the Governor to have such errors corrected.
- No. 47. "*New Zealand Native Reserves Amendment Act*."—The only purpose of this Act is to make a technical amendment in the "New Zealand Native Reserves Act, 1856."
- No. 48. "*Naturalization Act*."—Is of the same character as the Acts passed in previous Sessions for naturalizing the subjects of Foreign States who have settled in New Zealand.
- No. 49. "*Auckland Reserves Act*."—Enables certain reserves to be sold, and the proceeds applied to the erection of public buildings and the improvement of other public reserves.
- No. 50. "*Nelson Trust Fund Amendment Act*."—Inadvertently, the Act of 1854, which this Act amends, while providing for the election of trustees to continue in office for three years, made no provision for the election of their successors on the expiry of their term of office; this deficiency is now supplied by the present Act.
- No. 51. "*Nelson College Trust Act*."—Vests in the Governors of Nelson College the lands set apart for the support of the College, and enables certain of these lands to be exchanged for other lands.
- No. 52. "*Savings Banks Act*."—The main object of this Act is to extend the power of investing the funds of the bank, which has been rendered necessary from the circumstance that the old Government debentures held by these banks have lately been paid off by the Government. Other improvements have been introduced suggested by an experience of the working of the old law, the greater portion of which has been incorporated in the present Act.
- No. 53. "*Qualification of Electors Amendment Act*."—A great difference of opinion existed in the Legislature as to the amendment of the Qualification of Electors, and especially in reference to the extent to which the franchise should be enjoyed by the aboriginal Native population. An irreconcilable difference of opinion existed between the two Houses as to some of the sections of

a Bill passed by the House of Representatives; and this Act simply embodies a few of the provisions of the Bill, on which there was no difference of opinion, but which were calculated to meet some practical difficulties that had arisen. The question relating to the Natives will form the subject of a separate communication,

- No. 54. "*Registration of Electors Act*."—The law on this subject, previously to the passing of this Act, rested on a Proclamation, dated the 5th March, 1853, issued by Sir George Grey, under the powers conferred upon him by the 5th section of the Constitution Act. Under that Proclamation a number of practical difficulties have from time to time occurred in the Registration of Electors. A still greater evil arose from the facility with which persons not qualified were placed in great numbers on the Electoral Roll. The right of objection which existed has hitherto been looked upon as so invidious as to have been but rarely exercised, and the consequence has been that the Electoral Roll has become thoroughly corrupt. This Act provides for the abolition of the present Roll, and the construction of a new one by the Registration Officer; and subsequent Registration is to be made by a claim in the usual way, verified by a declaration as provided by the 4th section of the Act. Thus, safeguards are prescribed to prevent the names of unqualified persons from being placed on the Roll; and in addition to the right given to every elector to object as before, it is made the duty of the Registration Officer to object to every person whom he deems from any cause not to be entitled to be on the Electoral Roll. The principal part of the provisions of the Act are an adaptation of the English law on the same subject.
- No. 55. "*Electoral Districts Act*."—This Act was passed to give to certain districts which had become populous and wealthy since the definition of electoral districts in 1853, separate representation; leaving the question of a general adjustment of the representation of the colony for future consideration.
- No. 56. "*Regulation of Elections Act*."—Like the registration of Electors, the law for regulating elections was contained in the proclamation of the 5th March, 1853. Great practical inconvenience and anomalies existed under the Proclamation, and the object of the present Act was to remove these and to place the conduct of elections on a satisfactory basis. Great evils had resulted from personation, and careful provisions are introduced into this Act to put a stop to an evil which had become systematic.
- No. 57. "*Corrupt Practices Prevention Act*."—Corrupt practices at elections in some of the electoral districts of New Zealand have become so prevalent that it is absolutely necessary that a vigorous effort should be made to put a stop to them. This Act is an adaptation of the English Act on the same subject.
- No. 58. "*Elections Petitions Act*."—No provision before the passing of this Act had been made for the trial of election petitions, beyond section xlv. of the Constitution Act of 1853, and some imperfect provisions in the proclamation of the 5th of March 1853 already referred to. The present law regulating the trial of election petitions in the House of Commons is not suited to the circumstances of New Zealand,—it is far too complicated. The principle adopted in the present measure is, with some modification, that which was in force under the Act known as "Granville's Act," which was superseded by the xi. & xii. Vic. : c. 98.
- No. 59. "*Provincial Elections Act*."—All the preceding Acts on the subject of elections, have reference only to the House of Representatives. The object of the present Act is to adopt the provisions of most of these Acts to the election of Superintendents and Members of Provincial Councils. The Electoral Roll for the House of Representatives is adopted for the election of Superintendents and Members of Provincial Councils. Those elections are to be conducted in the manner provided by the "*Regulation of Elections Act, 1858*," and the "*Corrupt Practices Act, 1858*" is made applicable to provincial elections. The essential difference made between the elections for the General Assembly, and for the Provinces, is in the trial of controverted elections; much as the English law has been modified to suit the circumstances of the former, it is still not at all suitable to the latter. After much deliberation it has been considered best to put controverted Provincial elections upon the same footing as Municipal elections in England; and this is done by the 9th and 10th sections of the Act.
- No. 60. "*Provincial Lawsuits Act*."—Was passed to enable Superintendents to sue and be sued. Great inconvenience has been felt from the want of such a power.
- No. 61. "*Lunatics Ordinance Amendment Act*."—This Act makes further provision than previously existed for the safe custody of persons suffering under mental derangement.
- No. 62. "*Bankers' Drafts Act*."—Removes doubts as to the manner in which cross written Drafts on bankers shall be payable.
- No. 63. "*Appropriation Act, No. 1*."—By this Act the usual provision is made for the Public Service to the 30th June, 1858, out of the Ordinary Revenue of the Colony.
- No. 64. "*Appropriation Act, No. 2*."—Grants out of the Ordinary Revenue a Supply for the service of the year ending June 30th, 1859, which Supply section xi. extends at the same annual rate for another year, in the event of the next Session of the General Assembly not being held before the 30th June, 1859. The Act also appropriates the sum of £53,641 5s. out of the New Zealand Loan, for the service of the Land Purchase Department.
- No. 65. See Memorandum of 29th September.
- No. 66. "*Surplus Revenues Act*."—This is a measure of considerable importance to the finance of the Colony.

Under the lxi. section of the Constitution Act, the revenue collected in the several Provinces formed, in the first instance, one consolidated fund, which was subject to the charges of collection, the charge of the public debt, and other permanent charges, and the appropriation of the General Assembly for specific services. The surplus was divisible amongst the six Provinces in the ratio of their respective contributions to the gross revenue.

The tendency of this provision was to induce the Representatives from each Province to seek on the one hand, unduly to increase the charges of the General Government within their own Province; and on the other hand, unduly to diminish those charges within other Provinces. For, whilst the increase of the General Government expenditure in a Province reduced the Provincial share of Surplus Revenue only by a fractional part of the increase, and so, in the Provincial point of view, might appear a gain to that Province, to all the other Provinces it had the aspect of a loss. This bad tendency had to some extent become apparent in practice.

The Act now under consideration repeals the objectionable provision of the Constitution Act, and substitutes a plan of distributing the Surplus Revenues, which appears decidedly preferable in the present circumstances of the Colony.

A separate Debtor and Creditor account is to be kept by the Colonial Treasurer with each Province. In this account, the Province is credited with the gross collections within its limits. The services of the General Government being divided into general and local, every Province is debited in account, first, with a share of the cost of the general services, bearing the same proportion to their whole cost as the revenue collected within the Province bears to the whole revenue of the Colony; and secondly, with the whole of the cost of the local services within such Province. The Balance in each case is payable into the Provincial chest as surplus revenue.

The Civil List; the cost of the establishments of the principal Executive Offices; of the General Assembly; of the Inter-Colonial, and Inter-Provincial Steam Mail Service; and of the Militia, with a few other items, remain general charges. The local expenses of the Supreme Court, and the whole cost of District and Resident Magistrates' Courts, and of some other less important services, are charged locally.

It will be seen that the new mode of charging only relates to the services classed as local, and that as regards the general services the rule of the Constitution Act is still retained.

This measure, by obviating financial jealousies between the several settlements, will, it is believed, consolidate their political union.

No. 67. "*Land Revenue Appropriation Act.*"—This Act carries into effect a portion of the scheme for the adjustment of the public burdens, embodied in the financial Resolutions of 1856, under which the New Zealand Loan was contracted. It declares that the land revenue arising within the respective Provinces shall, from the 1st July, 1856, become provincial revenue. This is necessarily an arrangement binding only as between the Colony and its several Provinces. The 8th section expressly provides that the Act shall affect "The New Zealand Loan Act, 1856," under which the sum of £500,000 is made chargeable upon the general revenues of the Colony, including its land revenue. The Act retains in the hands of the General Government the power of appointing receivers of the land revenue. There is also a provision for accumulating a fund, in aid of the Loan, for the extinguishment of Native Title in the Northern Island, by retaining and investing one-sixth of the gross produce of the land fund of the Northern Provinces.

No. 68. "*Public Debt Apportionment Act.*"—This measure gives effect with certain modifications, to other parts of the financial scheme of 1856 for the adjustment of the public burdens. It is in the nature of a domestic arrangement amongst the Provinces of the Colony, and does not affect, or purport to affect, the security of the Public Creditor.

The most notable variation from the resolutions, is in the apportionment of the charge of £200,000 amongst the three Provinces of the Middle Island; which is not, as proposed by the resolutions, in equal shares, but places an increased burden on the Provinces of Canterbury and Otago. The Representatives of the Province of Nelson having strongly complained of the former proposition, as imposing on their Province a burden disproportioned to the benefits received, and also to its resources as compared with the other two Provinces,—a reference to arbitration was agreed to on behalf of the three Provinces concerned. The result of the reference is embodied in the Act, under which the respective charges are as follows:—

	Principal.	Annual charge of Interest and sinking fund.
Nelson	£45,000	£2,700
Canterbury	77,500	4,650
Otago	77,500	4,650
	<hr/> 200,000	<hr/> 12,000

No. 69. "*Auckland Improvement Act.*"—A calamitous fire having recently occurred in the most populous portion of the City of Auckland, destructive of many houses, it was considered advisable to take advantage of the vacant space thus created, to promote the health and convenience of the inhabitants of the City, by enabling some of the properties which had previously been intersected by narrow lanes to be purchased for the purpose of constructing wider thoroughfares, and of improving the drainage. This Act provides a means of effecting these desirable objects.

No. 70. "New Provinces Act."—From the physical character of the Islands of New Zealand, it has always been apparent that, as colonization proceeded, the same causes, which had already planted separate settlements in these Islands, would lead to new seats of population being established in districts geographically distinct from,—and having no community of local interest with,—the older settlements. The Constitution Act accordingly vested power in the General Assembly to establish New Provinces. Had the political state of the Colony been other than it is, it might have been preferable that the important power should have been exercised from time to time by the Legislature, *pro re natâ*, rather than to attempt, (as by the Act under consideration,) to define, once for all, the conditions under which the inhabitants of a given district should be entitled to claim its erection into a Province. The fear, however, lest local jealousies and the influence of the existing Provincial centres, should in the absence of any general law on the subject, cause the just claims of new districts to the powers of local self-government to be disregarded, led to the present measure. Had it been delayed, it is doubtful whether for many years it would have been possible to augment the existing number of Provinces. Consequently, several districts, calculated, if locally governed, to become most prosperous, would have had their affairs administered and their land fund and other resources exhausted by governments seated at distances of 150 or 200 miles, and actuated, possibly, by local interests hostile to the development of the new settlements. On the other hand, the success of the measure will ensure fair play to such districts, and put a final period to those encroachments of some of the Provincial Governments, which at one time threatened the Royal Prerogative and the integrity of the Colony. By the multiplication of Provinces the number of subjects in which two or more Provinces have a common interest will be increased, and thus the exclusive sway of merely provincial feelings will be beneficially superseded by wider sympathies,—whilst the original Provinces, being reduced to the true dimensions of local divisions, will universally renounce the unwise ambition of becoming separate Colonies.

The provisions of the Act are such as will sufficiently secure that any of the existing Provinces which may have a real physical unity shall not be subject to division.

The 10th section provides that in the New Provinces the Superintendent shall be elected by the Provincial Council, instead of by the whole body of the electors of the Province. This provision will lessen the risk of collisions between the two branches of the provincial Legislature, and will render a dissolution of the Provincial Council an effectual remedy when such do occur. Under the Constitution Act a dissolution is not always effectual in such a case, as it may happen that the electors may again return the same Superintendent and the same Provincial Council, or one of similar sentiments; as, although the opponents of the Superintendent may be in a minority in the Province as a whole, they may yet be strong enough in the separate electoral districts to return a majority of members to the Provincial Council. There is no escape from such a position under the Constitution Act.

The 11th Section will enable Superintendents of the new Provinces to sit and deliberate with the Councils; should this experiment succeed, the costly apparatus of an Executive through which the Superintendents are supposed to be represented in the Councils, may in many cases be done away with, or largely reduced.

This measure may be regarded as the turning point in the struggle which has been going on between the Ultra-Provincialists, and those who maintain the authority of Her Majesty's Government.

Undoubtedly this Act will require revision, but this will be easy, and it may even be safe to repeal the Act, when once the notion that the Provincial Governments have a vested right in the maintenance of the existing Provincial boundaries, shall have been effectually broken through.

No 71. "Civil List Act."—This Act is reserved for the signification of Her Majesty's pleasure thereon, and requires no lengthened notice. The main purpose of the proposed change is to increase the provision for the Supreme Court. No alteration is proposed in the amount of the Governor's Salary, but the "Governor's Salary Act, 1856," is repealed for the purpose of consolidating it with the present Act. The proposed alterations are shewn by the subjoined comparative statement.

Civil List as fixed by Constitution Act		Proposed new Civil List.	
Governor	£2500	.....	£3500
Private Secretary .....		.....	300
Chief Justice	1000	.....	1400
Puisne Judge	800	.....	1000
Puisne Judge .....		.....	1000
Establishment of the General Government	4700	.....	4800
Native purposes	7000	.....	7000
	16,000		
Governor's additional Salary under "Governor's Salary Act, 1856"	1000		
	£17,000		£19,000

No. 72. "Customs Duties Act."—As this may be deemed to be an Act varying the security for the guaranteed loan to New Zealand, within the meaning of the 20th and 21st Vic. c. 51, Section iii., a clause has been inserted deferring its operation until it shall have been confirmed by Her

Majesty in Council. The increase which the Act will effect in the taxation of the country has been rendered necessary by the demand of Her Majesty's Government for a contribution by the Colony towards the Military Expenditure of the Empire.

The following table contrasts the duty levied under the existing Tariff on the nine principal specified articles, with that which it is proposed to levy on the same articles under the new Tariff.

Articles.	Present Duty.			Proposed Duty.		
	£	s.	d.	£	s.	d.
Beer, in wood, the gallon - - - - -	0	0	6	0	0	6
Beer, &c., in bottle, the gallon - - - - -	0	1	0	0	1	0
Cigars and Snuff, the lb. - - - - -	0	3	0	0	3	0
Coffee, &c., the lb. - - - - -	0	0	2	0	0	3
Spirits, the gallon - - - - -	0	8	0	0	9	0
Sugar, the lb. - - - - -	0	0	0½	0	0	1
Tea, the lb. - - - - -	0	0	3	0	0	4
Tobacco, the lb. - - - - -	0	1	3	0	1	6
Wine, the gallon - - - - -	0	3	0	0	3	0

The augmented duties both on Spirits and Tobacco will be still somewhat below the Tariffs of Victoria and New South Wales, but considering the peculiar circumstances of this Colony, with its numerous harbours, and an Aboriginal population imperfectly subject to the restraints of law, it has been thought inexpedient to attempt at present a larger increase on these articles, especially on the latter, which is more easily smuggled.

The calculation of the Native contributions to the Revenue is a matter of great difficulty. Supposing that the present contribution of the Native population to the Tobacco duties may possibly reach £5000 per annum, the proposed augmentation of 3d. per lb on unmanufactured Tobacco would levy an additional £1000 per annum on the whole Native population, an amount too insignificant to be felt.

Instead of the existing duties charged by measurement at 3s. and 1s per cubic foot, it is proposed to charge, first, a rate of 4s. per cubic foot on the more productive articles comprised in the class now subject to the 1s. duty ;—and secondly, a rate of 3s. per cwt. on Hardware and Ironmongery, and also on Candles and Soap.

These various augmentations will enable considerable additions to be made to the Free list, which it is proposed shall include a variety of necessary and bulky articles, at present subject to duty, amongst others Wood, Iron, Salt, Leather, Earthenware, and Ship Chandlery.

On the whole it will be seen that the Tariff is an approach towards the simplicity of the Australian Tariffs, under which the whole Revenue is raised from a few specified articles.

No. 73. “ *Gold Duty Act.*”—Enables a rate on gold produced in New Zealand to be levied, with a view to meeting the expenses of the Gold Fields of the Colony.

No. 74. “ *Gold Fields Act.*”—The existence of profitable gold-fields in the Province of Nelson having been established, and there also being, from numerous indications, a strong probability that gold will be obtained in remunerative quantities in other parts of the Colony, it became necessary to adopt measures regulating the occupation of these Gold Fields, and for the due maintenance of order amongst those attracted to them.

This Act has accordingly been passed after a careful examination of what was suggested by the experience of the neighbouring gold-producing Colonies.

No. 75. “ *Waste Lands Act.*”—The disallowance by Her Majesty, of the “ *Waste Lands’ Act*” of 1856 necessitated the passing of an Act by the General Assembly to validate the disposal of the Waste Lands. The present Act confirms, with certain limitations, the regulations, as specified in the Schedule, which have been adopted for the disposal of the Waste Lands in the several Provinces, and thus afford to them a stability which they did not previously possess, and the want of which had been complained of as productive of inconvenience and uncertainty, calculated to discourage the settlement of the country.

Of the Regulations referred to, a considerable portion are either identical with, or modifications of those introduced by Sir George Grey, in March 1853. The most important variations being, that in some places the system of offering Land for sale by auction in the first instance, at prices varying according to quality and position, has been extended,—while in others the land is taken at a fixed price only, as in the Province of Canterbury, where the present Regulations for the sale of lands are based on those under which that settlement was planted, and which have hitherto been found to work satisfactorily in that portion of the Colony. Some difference also exists in the mode of administering the lands ; but hitherto no marked superiority has been proved to attach to any particular system. When a more extended experience has been obtained of the working of the several laws it may be expedient to render the systems now in use more uniform ;—but without that experience, it would have been unwise hastily to upset arrangements which had, for the most part been carefully considered, and which were, in a great measure more or less based on principles understood in the localities within which they were brought into operation ;

this Colony having from the first been settled, not from one common centre or on one unvarying system as to the occupation of its Waste Lands, but in a number of localities isolated from each other, differing in their physical character, and having separate and sometimes apparently opposing interests, and in which, from their first settlement, the public lands had been sold, at prices, and with conditions, differing from those under which the Waste Lands in other portions of the Colony were alienated.

With a view to the Imperial guarantee given to the New Zealand Loan, provision has been made in the present Act for prohibiting the alienation of lands on credit, and for a due supervision on the part of Her Majesty, over the respective Officers who locally administer the public lands.

No. 76. "*Land Claims Settlement Extension Act.*"—The operation of the "*Land Claims Settlement Act*," of 1856, has been even more satisfactory than was anticipated;—a very large number of claims have been brought before the Court, and many of them already adjudicated upon satisfactorily; large quantities of land, hitherto locked up from the uncertainty of ownership, have thus become available for active colonization, either from having been awarded to individuals, or from having reverted to the Crown.

The object of the present Act is to extend to July 1859 the period for filing Notices of Claim, and for initiating certain proceedings to be taken for rendering Grants void. Provision has also been made for dealing with cases not brought under the operation of the Court by the Act of 1856, and further powers conferred on the Commissioners with respect to the awards to be given in certain cases where the original contracts cannot be carried out.

It is requested that, to prevent the inconvenience and loss which would be sustained by the suspension of the Land Claims Court, Her Majesty's pleasure with respect to this Act may be signified on as early a day as possible.

No. 77. "*Land Orders and Scrip Act.*"—This Act is in principle substantially identical with the Act bearing the same title, which it repeals; but affords more extended privileges to the holders of Land Orders and Scrip; thus removing, for the most part, the objections to some of the provisions of the repealed Act, which had been commented upon by Lord Stanley while Secretary of State for the Colonies.

No. 78. "*Highways and Water Courses Act.*"—The Constitution Act provides that Provincial Councils shall not pass laws "affecting lands of the Crown." It often happening that there are roads which have been laid out over lands of which the soil is in the Crown, which it is found desirable to divert or to shut up, in many such cases the most advantageous course would be to dispose of the abandoned roads to the neighbouring proprietors—as the law stands this cannot be done by the Provincial Councils, and the object of this Act is to enable Superintendents, with the advice and consent of Provincial Councils, to pass laws for disposing of land over which roads have been shut up. A similar power has been given as regards Watercourses.

No. 79 and 80.—*See Memorandum of the 29th September.*

It is desirable that the Reserved Acts, No. 71 to 80 inclusive, may be considered as soon as they conveniently may be by the Imperial Government, and Her Majesty's pleasure with respect to them signified, especially Nos. 72, 73, 74, 75, and 76, all of which relate to questions of much importance, which will either be beneficially affected by these Acts, or cannot be dealt with until they come into operation.

E. W. STAFFORD.

[MEMORANDUM BY MR. WHITAKER.]

Acts of General Assembly, Nos. 1, }
4 & 5, of Session 1858. }

Auckland,
16th April, 1859.

In reference to the Secretary of State's Despatch, dated 2nd December, 1858, on the subject of several of the Acts, passed during the last Session of the General Assembly, your Excellency's Advisers have to observe,—

1. As to No. 1. "An Act for the interpretation of Acts of the General Assembly of New Zealand" that there appears to be some misapprehension of the question by the Secretary of State.

It is true that the "limits of the Colony were last defined by Letters Patent of 1842," in which the Southern limit is not 50°, but 53°, of South Latitude, but it appears to have been overlooked that the Constitution Act, 15 & 16 Vic., c. 72 enacts that for the purposes of that Act, "New Zealand shall be deemed to include all Territories" "Islands and Countries lying between 33 degrees of South Latitude, and 50 degrees of South Latitude, and 162 degrees of East Longitude and 173 degrees of West Longitude" reckoning "from the Meridian of Greenwich."

It thus appears that the General Assembly has not a power of legislation over the whole of the Colony, but only over such part of it as is situate to the North of 50 degrees of South Latitude,—the object of such restriction having apparently been to exclude from the control of the General Assembly, the Auckland Islands, for which a Lieutenant Governor had some time before been appointed.

It was with a view to conform with this state of things, that the interpretation of the word "Colony" in the Act No. 1 was framed. It is submitted that to substitute the figures 53 for 50 is clearly beyond the power of the Assembly, but that it was quite unobjectionable for that Body

to enact *that in the Construction of Acts* passed by it, the word "Colony" should be deemed to include all such Territories, &c., as the Constitution Act, passed by the Imperial Parliament, had placed under the jurisdiction of the New Zealand Legislature. There could, it is conceived, be no objection to its enacting that the word "Colony" should be deemed to mean the whole, or any part of such Territory, but clearly wrong to include in such definition, any Territory not in the description of the 80th Section of the Constitution Act.

2. With respect to the Acts Nos. 4 & 5, they contain alike in section 10 and 27 respectively, a provision to the effect, that persons making false affidavits in Foreign Countries, may be tried in New Zealand. These provisions were not inadvertently introduced. It certainly appeared questionable whether the New Zealand Legislature possessed the power of enacting such a law, and after consultation with the Chief Justice, it would have been omitted, but on reference to an Act 17 Vic. No. 21 of the New South Wales Legislature, it appeared that a similar enactment had been passed in 1853, and was then in operation—no repeal, alteration or disallowance of it having been found to have subsequently taken place. It was therefore assumed that the Imperial Government had determined that Colonial Legislatures had the power to which exception is now taken, and the desirability of keeping the law as far as possible alike in two Colonies so intimately connected as New South Wales and New Zealand, led to the introduction of the Sections objected to in the New Zealand Acts,—the provisions made in the two Colonies are identical. As, however, it now appears that the New Zealand Legislature has been misled by the New South Wales Act, a Bill to repeal the Acts objected to, and to re-enact their provisions, with the omission of the Clauses referred to, will be introduced when the General Assembly is again in Session.

FREDK. WHITAKER.

[MEMORANDUM BY MR. TANCRED.]

"Militia Act, 1858."

Auckland,
17th April, 1859.

Two objections are raised by the Home Authorities to the Militia Act of last Session.

1. It contains no Clause giving precedence to Colonels of Her Majesty's regular Army over all Militia Officers, and to Officers below that rank, precedence of all Militia Officers of equal rank though the Commission of the latter are of older date.
2. By the 7th Clause, the Militia in time of actual invasion, rebellion, or insurrection, cannot be moved beyond the boundaries of its own district unless they Volunteer for service out of the same.

Upon these objections Ministers would observe, first, as regards the question of precedence, the Act was passed under an impression that Officers of the regular Army, as a matter of course would take precedence of Officers of the Militia, and that therefore a provision of this nature was unnecessary. The omission of such a clause moreover appears all the more natural, inasmuch as the Act previously in force in the Colony, and so far as Ministers know, the Acts of a like nature passed in other Colonies, contain no provision for this purpose. On the other hand it appeared that any attempt on the part of the Colonial Legislature to determine the right of precedence as between Her Majesty's Forces and the Militia, might be justly regarded as an attempt to infringe upon the Prerogative of Her Majesty, to whom alone the determination of such matters is supposed properly to belong. Should it, however, appear desirable to the Right Honorable the Secretary of State after further consideration, that a provision of the nature alluded to ought to be made, Ministers will introduce a measure for that purpose at the next Session of the General Assembly.

As regards the second objection relating to the limits within which the several bodies of Militia may be moved, it is to be observed that the main object proposed by the new Act was not so much to create a thoroughly trained force, fitted to act independently against an enemy, as to provide a substitute for the regular forces in those services where a less complete organization would answer every purpose. Thus it was considered that, in cases of emergency, the whole of the regular army in New Zealand, would become available, and might take the field at once, leaving their places to be supplied by the local Militia which would be entrusted with the defence of the garrisons and Military posts. An imperfectly trained force it was thought, would be more fitted for these necessary purposes than for service in the field, and the necessity for moving the Militia to distant parts of the Colony would be obviated. It is believed, moreover, were a proposal made to make the Militia available in any part of the Colony, that the Legislature would not assent to it, because it would be practically impossible, owing to the physical difficulties peculiar to a new country, easily to move bodies of Militia from one part of the Colony to another. For this reason it was thought better to adopt some plan by which the limits in which each Militia Corps could be moved, could be adapted to the circumstances of each locality, and accordingly a more elastic system was introduced than that established by the former Militia Ordinance. That Ordinance under no circumstances allows of the Militia being ordered to go beyond twenty-five miles from the Police Office of the district, a much more rigid limitation than that contained in the new Act. The present Act on the contrary allows of indefinite enlargement of the districts, and is, so far, less open to the objection raised than the Ordinance which it repeals. It may be remarked, in conclusion, generally, that the Act now under consideration contains nothing essentially different from the former Ordinance, but was merely passed for the purpose of improving it in some particulars.

HENRY JOHN TANCRED.

[MEMORANDUM BY MR. TANCRED.]

“Waste Lands Act, 1858.”

Auckland, 20th June, 1859.

1. Your Excellency's Responsible Advisers have had under their consideration the Secretary of State's Despatch, dated the 23rd February, 1859, on the subject of “The Waste Lands Act, 1858,” and they have to express their regret that Her Majesty's Imperial Government should have met with difficulties in deciding what course to pursue in reference to it.
2. Your Excellency's Advisers have referred the specific legal question raised by the Despatch to the Attorney-General of the Colony. That Officer's Report transmitted herewith, calls attention to the circumstance that the clause in the General Land Regulations of the 4th March, 1853, which it is supposed it would be illegal to confirm, is an expired clause, and would not be revived by the confirming Act. This, it is believed, is a conclusive answer to the specific objection raised against the Bill.
3. Your Excellency's Advisers venture to think that had the other Legislation of the Session of 1858, particularly “The Land Revenue Appropriation Act, 1858,” and the “Public Debt Apportionment Act, 1858,” been before the Secretary of State simultaneously with the Waste Lands Bill, no doubt would have occurred as to the effect of the Bill. It would then have been apparent, that the subject of the regulation of the sale and disposal of the Waste Lands, and that of the appropriation of the Land Revenue, had been treated by the Colonial Legislature as wholly distinct subjects—which they really are; and it would also have become manifest that the Waste Lands Bill, having been passed for the former purpose, (as is shown by its Title, the heading of its Schedule, and its general tenor,) could not possibly be construed to operate as an appropriation of Land Revenue, to the subversion of express and contemporaneous Acts of Appropriation. Any appropriation of Land Revenue is entirely foreign to the purpose of the Bill, which was framed and passed *alio intuitu*; whilst the appropriation of the Land Revenue of the whole Colony, expressly inclusive of the Province of Wellington, is provided for by contemporaneous Laws, with an anxious saving of the Lien imposed by the New Zealand Loan Act.—See Sections 6, 7, and 8 of “The Land Revenue Appropriation Act, 1858,” and Sections 2 and 7, of “The Public Debt Apportionment Act, 1858.”
4. On the point of the essential distinction between the regulation of the sale and disposal of the Waste Lands, and the appropriation of the Land Revenue, your Excellency's Advisers desire to remark, that it is one constantly observed by the Imperial Legislature. Thus, the General Assembly's power of regulating the sale and disposal of the Waste Lands, is conferred by Sec. 72 of the New Zealand Constitution Act,—the power of appropriating the Land Revenue by Sec. 66. The language of 14 & 15 Vic., c. 86, Sec. 1, may also be referred to, as plainly drawing the same distinction.
5. It would seem from its phraseology and from its essentially temporary character, that the 29th clause of the Proclamation of 4th March, 1853, was not meant to be more than a Notification by the Executive Government, of its intentions respecting the temporary employment of funds in its hands. If more were meant, the clause was a nullity, as being in excess of the Governor's delegated power under Section 79 of the Constitution Act, which only extended to the *ad interim* regulation of the sale and disposal of the Waste Lands, and not to the appropriation of the proceeds. Now, if the clause ought to be considered as originally meant for no more than a Government notice of the nature above suggested, the general confirmation of these Regulations, amongst which it was very improperly published, ought not to be deemed to convert it into a solemn and absolute Act of appropriation. It is not in the nature of a confirmation to effect what was beyond the scope and purpose of the Instrument confirmed.
6. The charge effected by the New Zealand Loan Act, 1856, having been expressly confirmed by Act of Parliament, enactments of the General Assembly, purporting to disturb that charge would be illegal. This is in itself strong corroborative ground for holding that the Bill should not be considered as purporting to give a new operation to the 29th clause of the Regulations of 1853. No Court of Law would construe an illegality to be intended, unless compelled by clear terms to adopt such a construction.
7. Your Excellency's Advisers now propose to make a few observations in reference to the remark of the Secretary of State, that in none of the Regulations proposed to be confirmed by the Waste Lands Bill, 1858, is there any recognition of the Lien imposed on the Waste Lands by the Loan Act.
8. Your Excellency's Ministers observe in the first place, that this objection assumes, (1) that the confirmation of these Regulations would give them the effect of an Act of Assembly of the date of the confirming Act, so as to over-ride prior Acts of that Body, containing provisions inconsistent with the Regulations. (2) That the New Zealand Loan Act, 1856, is an Act of Assembly containing such provisions.
9. Ministers beg respectfully to submit that these assumptions are unfounded, but let the former assumption be conceded, and let it be granted that the whole body of confirmed Regulations ought to be considered as enactments of the General Assembly, posterior in date to the Loan Act, it was still unnecessary to make any saving of the operation of the latter Act, because there is no conflict between its provisions and those of the Land Regulations.
10. In the first place, adverting to the distinction already insisted upon between laws regulating the sale and disposal of the Waste Lands, and laws appropriating the Land Fund, it is evident that

laws on the former subject, such as the confirmed Regulations have no necessary relation to a law on the latter subject—such as the Loan Act—so that the confirmed Regulations, though of later date, would not necessarily interfere with the operation of the Loan Act. A law appropriating Land Revenue might indeed be conceived in such terms as to be affected by later legislation on the subject of the sale and disposal of the Waste Lands. For instance, if the appropriation were specially confined to the Revenue arising under particular land laws, the repeal of the latter might incidentally repeal, or rather nullify the appropriation. But an appropriation of the Land Revenue of the Colony in general terms, would be unaffected by alterations in the laws under which the Revenue arose.

11. By the New Zealand Loan Act, 1856, the General Revenue of the Colony is charged in general terms. There is no reference to the particular laws under which the then existing Revenue was levied and received. On the contrary, there is a clear reference to future laws, and a clear inclusion of the Revenue to arise thereunder. A Lien of this character cannot possibly be affected by changes in the laws under which the Revenue arises; for the Lien, according to the express terms by which it is created, fastens upon all new subject matter coming within the definition of General Revenue of the Colony.
12. But it may be asked if the Waste Lands Bill, 1858, does not in any wise discharge or vary the security expressed by the New Zealand Loan Act, why in apparent obedience to the Guarantee Act, 20 & 21 Vic., c. 51, sec. 3, was a clause inserted requiring the confirmation of the Act by Her Majesty in Council. This was done with a probably redundant caution. It was thought that any variation in the particulars of Revenue affected by the security might possibly be deemed a variation of the security within the meaning of the 3rd section of the Guarantee Act. The clause in question was therefore inserted to preclude the doubt. It was, also as a matter of public faith, thought proper that the Imperial Government should be consulted before any material changes were made in laws affecting the quantum of Revenue. In this view, the Tariff Act also was reserved. But it is beyond doubt that the Lien created by the Loan Act, extends to the Revenue arising under new laws, without any further provision to that effect than is contained in the Loan Act itself.
13. On the whole, your Excellency's Advisers confidently believe that a reconsideration of the case will satisfy the Imperial Government, that there exists no valid reason for withholding Her Majesty's assent to this Bill.

HENRY JOHN TANCRED.

REPORT OF THE ATTORNEY-GENERAL REFERRED TO ABOVE.

Attorney-General's Office,
Auckland, 18th June, 1859.

SIR,—In obedience to your request that I should report for the information of the Government, on the specific legal objection raised by The Right Honorable the Secretary of State's Despatch, dated the 23d of February, 1859, to the Bill passed during the last session of the General Assembly in New Zealand, intitled "The Waste Lands Act, 1858," I have the honor to state as follows:—

(No. 355.)

The objection raised to the Bill is, that in confirming the General Land Regulations of 4th March 1853, so far as relates to the Province of Wellington, it purports to affect an appropriation of the Land Revenue of that Province, contrary to the provisions of the "New Zealand Loan Act, 1856," and of the Act of Parliament guaranteeing the Loan.

The 29th clause of the Regulations referred to, declares that the Land fund will be applied in a particular manner "until the General Assembly may otherwise direct." Now such a direction was given, first, by the "Appropriation Act, 1854," secondly, by the "Appropriation Act, 1855," and finally by the "Land Revenue Appropriation Act, 1858"—the last a perpetual appropriation. The clause therefore according to the original terms has expired.

Can the clause then be considered to be revived, and to have a fresh period of operation given to it by the Bill under consideration? It appears plainly to me that it cannot.

The first section of the Bill is as follows:—

- "I. The several Acts, Ordinances and Regulations specified in the Schedule to this Act annexed, are hereby declared to have been valid from the time of the passing or issuing thereof, and the said Acts, Ordinances, and Regulations, and the Bills specified in the said Schedule shall hereafter have the full force and effect of law in the several Provinces to which they respectively relate."

This enactment necessarily imports that the several clauses of those Acts are to take effect according to the original meaning of the terms in which they are expressed, and not otherwise. The very nature of a confirmation is to ensure validity, but not to give a new meaning to the confirmed instrument.

Applying this principle to the present case, it is plain, that the General Land Regulations of 1853, as confirmed by the Bill, speak from their original date, and not from the date of the confirming Act, since the latter construction would impart a new meaning to all expressions which have any relation to the date of the Regulations.

Therefore, in the 29th clause of the Regulations, the words "until the General Assembly may otherwise direct," must be read with reference to the original date of the Regulations; and being so read would remain inoperative. To read these words with reference to the date of the con-

firming Act would do violence to the manifest intent, which was to confirm an existing law, and not to make a new one.

I have, &c.,

FRED. WHITAKER.

The Honorable
The Colonial Secretary.

[MEMORANDUM BY MR. WHITAKER.]

Auckland, 16th July, 1859.

“The Foreign Seamen’s Act, 1858.”

With reference to the objections made by the Secretary of State to “The Foreign Seamen’s Act, 1858,” your Excellency’s Responsible Advisers have to make the following remarks:—

1. The words objected to by the Law Officers of the Crown in Section II., were introduced for the purpose of making the enactment suitable to the circumstances of this Colony. It may frequently happen under that section that a Deserter may be apprehended by a Constable, at a great distance from any Justice of the Peace capable of hearing the complaint, and it may in some cases entail a great hardship on the Seaman himself, and considerable expense and inconvenience to the Master of the Ship, to compel them, contrary to the wish of both parties, to go before a Justice of the Peace. Moreover, the Master is responsible for the apprehension of the Seaman, and is subject to a penalty of £50 if it be made on improper or insufficient grounds.
2. It does not appear to your Excellency’s Advisers that the penal clauses of the Act can be characterized as unusually severe. By the Table at the foot of this memorandum it will appear that the penalties are very much the same as those imposed by the English “Merchant Shipping Act, 1854,” and it must be borne in mind as regards most of the offences, that the temptation in New Zealand to commit them is much greater than in England, and as regards pecuniary penalties, they must be less regarded or felt here than there.

If, however, Her Majesty’s Imperial Government on a re-consideration of the matter, still think that alterations should be made, they will be proposed by Your Excellency’s Advisers in the next Session of the General Assembly, which it is proposed to hold about March or April next.

FRED. WHITAKER.

T A B L E.

	“Merchant Shipping Act, 1854.”	“New Zealand Foreign Sea- men’s Act, 1858.”
Desertion	Not exceeding 12 weeks, and forfeiture of clothes and wages	Not exceeding 12 weeks, first offence Not exceeding 6 months, se- cond offence
Assaulting Officers	Not exceeding 12 weeks	Not exceeding 6 months
Disobedience or neglect of duty	Not exceeding 4 weeks, and two days’ pay forfeited	Not exceeding 4 weeks
“ “ “	Not exceeding 12 weeks and six days’ pay for every 24 hours’ disobedience, or any ex- penses incurred in hiring a substitute	Not exceeding 12 weeks
Combining to disobey	Not exceeding 12 weeks	Not exceeding 12 weeks
Enticing to desert	Not exceeding £10	} First offence, not exceeding £20 } Second offence, from £10 to £50
Harboursing Deserters	“ “ £20	
For approaching Ship after warning		Not exceeding £10.

[MEMORANDUM BY MR. STAFFORD.]

Colonial Secretary’s Office.

12th January, 1860.

“Bankers’ Returns Act.”

With reference to the Duke of Newcastle’s Despatch, No. 12, of the 1st September last, with its enclosures, it is to be observed that the days appointed by the “Bankers’ Returns Act” for

making up the weekly and quarterly Returns, are the same as those fixed for the same purpose in the neighbouring Colonies, and which were therefore adopted here as apparently unobjectionable.

At the suggestion however of the Secretary of State, it will be proposed to the Legislature to give to the Governor the power of altering those days from time to time, should circumstances appear in any case to require it.

With regard to the Form of Return set out in the Schedule of that Act, it does not appear to the Advisers of the Crown in New Zealand, that more is required by that Return than may be fairly considered requisite to protect the interests of the public. It is not proposed therefore to make in this respect the alteration asked for by the Oriental Bank Corporation.

E. W. STAFFORD.

DESPATCHES FROM THE SECRETARY OF STATE.

No. 1.

DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON, BART., TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
2nd December, 1858.

No. 38.
No. 1 to 26.

SIR,—I have to acknowledge the receipt of your Despatch, No. 61 of the 19th July, forwarding authenticated copies of 26 Acts passed by the General Assembly, and assented to by yourself in Her Majesty's name. Their numbers and dates are noted in the margin.

I have submitted to the Queen, those Acts of which the numbers, dates, and titles will be found in the annexed Schedule, and I have to inform you that they will be allowed to remain in operation.

With regard to the Acts Nos. 1, 4, and 5, I wish to offer the following remarks :—

No. 1. "An Act for the interpretation of Acts of the General Assembly of New Zealand."

In the 9th clause of this Act it is provided that the terms "Colony" and "this Colony" shall mean the Colony of New Zealand, the "boundaries whereof shall be deemed to include all Territories, Islands, and Countries, lying between 33 degrees of South Latitude and 50 degrees of South Latitude, and 160 degrees of East Longitude, and 173 degrees of West Longitude"

The phrase "shall be deemed to include" is open to objection, as assuming on the part of the New Zealand Legislature, an authority to define their own boundaries, which is evidently a power that can belong to no Dependency. But there is also an error in the description. The limits of the Colony have, as I understand, been last defined by Letters Patent of 1842, in which the Southern limit is not fifty but 53 of South latitude. The difference is of some importance, as the Auckland Islands lie between the 50th and 53rd parallels.

I think that the single word "comprising" should be instituted for the phrase "the boundaries whereof shall be deemed to include," and that the figure 53 degrees should be substituted for 50 degrees.

It will therefore be desirable that this Act should be amended in the manner now described, and in the meantime I shall defer taking the Queen's pleasure respecting it.

With respect to the Acts Nos. 4 and 5, I regret to state that after a full consideration of their provisions I have been obliged to recommend that they should be disallowed by Her Majesty.

In the 10th clause of the Act No. 4, and the 27th clause of No. 5 there is an inadvertency which will require alteration, and I draw your particular attention to it because it is an inadvertency not common in Colonial Legislation, and against which therefore the New Zealand Legislature will do well to guard. These clauses adopt absolutely the provisions of the Imperial Act 18 and 19 Vic. Cap. 42, but the 4th and 5th clauses of that Statute provide that persons who in *Foreign Countries* make false affidavits for purposes therein referred to shall be guilty of perjury, and that those who in such Foreign Countries forge any seal or signature for the same purposes, or knowingly tender in evidence a document to which such a seal or signature is affixed, shall be guilty of felony.

It is clear, however, that the Government can only legislate in respect of the Territory to which its jurisdiction is expressly extended by Royal or Parliamentary authority, and is incompetent to impose a Criminal character on acts of this kind committed in Foreign Countries beyond that jurisdiction. This is also the opinion of the Law Officers of the Crown to whom the point has been referred.

The 4th and 5th clause of the Imperial Act, therefore, should not be adopted by any Colonial Legislature, and that of New Zealand should confine itself to imposing a penalty on all who may within the Colony, knowingly tender in evidence any document of the nature contemplated by the Imperial Statute, which contains false evidence, or is supported by a Counterfeit Seal or Signature.

In order to prevent any inconvenience to the Colonists of New Zealand from the immediate disallowance of these two Acts—I shall defer the transmission of the necessary orders in Council for that purpose, until the latest period allowed by the law, when the local Legislature may in the meantime have an opportunity of amending them.

You will be at liberty to procure the re-enactment of their principal provisions, with the modifications to which I have now drawn your notice.

The remaining Acts, Nos. 8, 14, and 15, are still under the consideration of Her Majesty's Government.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

E. B. LYTTON.

SCHEDULE.

- No. 2. An Act to declare the laws of England, so far as applicable to the circumstances of the Colony, to have been in force therein on and after the 14th day of January, 1840.
- No. 3. An Act to provide for the payment of Costs in proceedings instituted on behalf of the Crown.
- No. 6. An Act to declare Unstamped Instruments executed out of, but affecting Real Estate within this Colony, admissible in evidence.
- No. 7. An Act to regulate the appointment and duties of Coroners in the Colony of New Zealand.
- No. 9. An Act to enable the Government to sell certain Reserves in the Pensioner Villages in the Province of Auckland, and to pay over the proceeds to Her Majesty's Imperial Treasury.
- No. 10. An Act to regulate the execution of Criminals.
- No. 11. An Act to provide for the issue of writs for supplying vacancies in the House of Representatives during the Recess.
- No. 12. An Act to enable the Proprietors of Sheep and Whaling Stations, to give valid security on future produce of Wool, Oil, and Bone.
- No. 13. An Act to authorise the formation of Special Partnerships.
- No. 16. An Act to extend the time within which the Governor is required to signify his pleasure on Bills passed by Provincial Councils and reserved by Superintendents.
- No. 17. An Act to authorise the Bishop of New Zealand to convey certain hereditaments and premises to trustees to be appointed in that behalf by the General Synod of the Church of England in New Zealand.
- No. 18. An Act to authorise the Sale of certain lands at Takapuna, in the North Suburbs of Auckland, appropriated for the maintenance and education of Children of both races, and of Children of other poor persons being Inhabitants of the islands of the Pacific Ocean; and likewise to authorise the sale of land situated in Nelson-street, City of Auckland, and set apart as a site for the erection of a Church for the Roman Catholic Natives.
- No. 19. An Act to provide for ascertaining and defining the boundaries of the several Provinces of New Zealand.
- No. 20. An Act for taking an account of the population of New Zealand, and for collecting Statistical information relating thereto.
- No. 21. An Act to give further remedies to Creditors against Debtors removing from any other of the Australasian Colonies to the Colony of New Zealand.
- No. 22. An Act to regulate the appointment and tenure of Office of the Judges of the Supreme Courts.
- No. 23. An Act to enable Barristers and Solicitors of the Supreme Court to act as General Law Practitioners.
- No. 24. An Act to regulate the appointment and duties of Sheriffs.
- No. 25. An Act to amend the Law relating to the appointment of Gaolers and the Custody of Imprisoned Debtors and Criminals.
- No. 26. An Act to provide for the holding of Petty Sessions of the Peace in the Colony of New Zealand.

No. 2.

DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON, BART., TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
23rd December, 1858.

SIR,—With reference to that part of my Despatch, No. 38, of the 2nd instant, in which you were informed that the Act of the Legislature of New Zealand, No. 8, of 21st and 22nd Victoria, entitled "An Act for raising a Militia within the Colony," was under the consideration of Her Majesty's Government, I transmit for your information, the copy of a letter from the War Office, enclosing copy of one from the Military Secretary to His Royal Highness the General Commanding-in-Chief, upon the subject of this enactment.

You will perceive that His Royal Highness has remarked that there is no Clause in the Act giving precedence to Colonels of Her Majesty's regular Army, over all Militia Officers, and to Officers below that rank, precedence over all Militia Officers of equal rank, though the Commission of the latter be of elder date, and I have to request that you will take measures for the amendment of the Act in this particular.

I have also to request that you will call the attention of your Responsible Advisers, as deserving of consideration, to the remark of His Royal Highness with regard to the limitation contained in 7th Clause of the Act.

I have, &c.,

E. B. LYTTON.

No. 46.
11th Dec., 1858.

MEMORANDA FROM MINISTERS

Enclosure in No. 2.

SIR HENRY STORKS TO MR. ELLIOT.

War Office,
11th December, 1858.

SIR,—With reference to your Letter of the 28th ultimo, enclosing an Act of the Legislature of New Zealand for raising a Militia within the Colony, I am directed by Major-General Peel to transmit to you, to be laid before Secretary Sir E. B. Lytton, the accompanying copy of a communication which has been received on the subject from the Military Secretary to the General Commanding-in-Chief.

Major General Peel requests that Sir E. B. Lytton will call the attention of the Governor of New Zealand to the observations of His Royal Highness, with a view to an amendment of the Act in the particulars pointed out.

I have, &c.,

T. F. Elliot, Esq.,
&c., &c., &c.

H. K. STORKS.

Sub-Enclosure to Enclosure in No. 2.

COLONEL YORKE TO THE UNDER SECRETARY OF STATE FOR WAR.

Horse Guards,
6th December 1858.

SIR,—I have had the honour to lay before the General Commanding-in-Chief, your Letter of the 2nd instant with its enclosure from the Colonial Office, forwarding the copy of an Act relative to the Militia of New Zealand, and requesting to be informed whether H.R.H. is of opinion that this Act should be confirmed, and I am directed to state for the information of Major General Peel that H.R.H. has observed that there is no clause in this Act (herewith returned) giving precedence to Colonels of H.M.'s regular Army over all Militia Officers, and to Officers below that rank, precedence of all Militia Officers of equal rank, though the Commissions of the latter be of elder date.

And further, that by the 7th Clause, the Militia even in time of actual invasion, rebellion, or insurrection, cannot be moved beyond the boundaries of its own District, unless they volunteer for service out of the same.

I have, &c.,

The Under Secretary of State,
War Office.

C. YORKE.

No. 3.

DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON, BART., TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
4th January, 1859.

No. 3.

SIR,—With reference to that part of my Despatch, No 38 of the 2nd ultimo, in which you were informed that the Act of the Legislature of New Zealand, No. 15, of the 21st and 22nd Victoria, entitled "An Act to regulate the Postal Service of the Colony of New Zealand," was under the consideration of Her Majesty's Government, I have now to acquaint you that I have laid this Act before the Queen, and that it will be left to its operation.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

E. B. LYTTON.

No. 4-

DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
24th January, 1859.

No. 8.

SIR,—Her Majesty's Government have had under their consideration a Bill passed by the New Zealand Legislature, No. 76, entitled "An Act to make further provision for the settlement of Land Claims," and reserved for the Assent of Her Majesty.

I have the honor to inform you that Her Majesty has been advised to assent to the same, and that the necessary Order will be transmitted to you by the earliest opportunity.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

E. B. LYTTON.

No. 5.

DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
19th February, 1860.

No. 12.

SIR,—With reference to that part of my Despatch, No. 38, of the 2nd of December, in which you were informed that the Act of the Legislature of New Zealand, No. 14 of 21st and 22nd Victoria "for preventing desertion and other misconduct of Seamen belonging to Foreign Ships," was under the consideration of Her Majesty's Government, I transmit for your information the copy of a Letter,

with its enclosure, which has been received upon the subject from the Lords of the Committee of Privy Council for Trade, in reply to the reference which was made to that Board.

You will perceive that the Law Officers of the Crown are of opinion that it is desirable that two passages, as marked in the accompanying copy of the Act which is returned, should be omitted from the second section of the Enactment, and I have to request that you will direct the attention of your Responsible Advisers to this subject, and also to the observations of the Lords of the Committee in respect of the severe character of the Penal clauses of the Act.

I shall defer submitting this Act to the Queen, and shall await the receipt of a further Enactment amending it in the particulars above specified.

I have, &c.,

Governor Gore Browne, C. B.,
&c., &c., &c.

E. B. LYTTON.

19th Jan., 1858.

Enclosure in No. 5.

MR. BOOTH TO MR. MERIVALE.

Office of Committee of Privy Council for Trade,
Whitehall, 19th January, 1859.

SIR,—

With reference to Mr. Elliot's Letter of the 29th November last, transmitting for the consideration of my Lords, a copy of an Act of the Legislature of New Zealand, intituled "An Act to prevent desertion and other misconduct of Seamen belonging to Foreign Ships," I am directed by the Lords of the Committee of Privy Council for Trade, to transmit to you a copy of a letter received by their Lordships from the Foreign Office, dated the 15th instant, on the subject of that Act, pointing out an amendment of the 2nd clause of the Act, which is recommended by the Law Officers of the Crown to whom the Act was submitted by Lord Malmesbury. Whilst concurring in that recommendation, my Lords direct me to request that you will state to Sir E. B. Lytton, that it appears to their Lordships desirable that on any occasion when the amendment of the Act may be under consideration, attention should be called to the Penal clauses of the Act which appear to their Lordships to be unusually severe.

(Enclosure).

The Act is herewith returned.

I am, &c.,

Herman Merivale, Esq., C. B.,
&c., &c., &c.

JAMES BOOTH.

Sub-Enclosure to Enclosure in No. 5.

MR. HAMMOND TO MR. BOOTH.

Foreign Office,
January 15th, 1859.

SIR,—

I am directed by the Earl of Malmesbury to acquaint you, for the information of the Lords of the Committee of Privy Council for Trade, that he referred to the Law Officers of the Crown for consideration, the Act of the Legislature of New Zealand, intituled "An Act to prevent Desertion and other misconduct of Seamen belonging to Foreign Ships," of which a printed copy was enclosed in your Letter of the 2nd ultimo.

(Enclosure).

The Law Officers state that the Act is unobjectionable except as to the provision which they marked by brackets at section 2, page 56, that a Seaman apprehended under the Act may be taken at once on board the ship *unless* he require to be taken before a Magistrate. Seeing that any such requisition, if made, may be disregarded with impunity, the Law Officers think the clause as it stands would invest a Constable with a very dangerous power, and that the Act should be amended by the omission of the two passages within brackets, so that in all cases the Seaman apprehended should be taken before a Magistrate.

The printed copy of the Act is herewith returned.

I have, &c.,

J. Booth, Esq.,
&c., &c., &c.

E. HAMMOND.

No. 6.

COPY OF A DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON TO GOVERNOR GORE BROWNE, C. B.

Downing Street,
2nd February, 1859.

SIR,—

Her Majesty's Government have had under their attentive consideration, the Bill of the New Zealand Legislature, intituled No. 75, "Waste Lands Act, 1858," reserved for the Assent of Her Majesty, and transmitted with your Despatch No. 72 of the 26th August last. They have also con-

No. 14.

sidered the Minutes of your Responsible Advisers on the subject of this Bill, transmitted with your subsequent Despatch No. 99, of the 11th October.

They have had great difficulty in deciding on the best course to take with respect to the provisions of this Bill, especially as your Despatches do not fully advert to some very important objections which, nevertheless, seem obviously to arise on the inspection of it.

So far as the effect of the Bill is simply to transfer the management of the Waste Lands to the several Provincial Governments, the measure appears one to which Her Majesty might be at once advised to assent. That is a subject on the expediency of which the New Zealand Legislatures are the best judges, and there are besides obvious advantages in the transfer.

But a more serious question arises, where not only the management of the revenue, but the use of the revenue itself, is transferred to the Provincial Governments.

The Act of Parliament to guarantee a Loan for the service of New Zealand, 20 & 21 Vic., cap. 51, recites and adopts the provisions of the local Act for raising that Loan, one of which is, that the general revenue of New Zealand, which is pledged for payment of the interest of the Loan, includes the revenue arising from the disposal of the Waste Lands of the Crown.

Any Act by which a portion of that revenue is diverted from this purpose and made over to a Provincial Government, would therefore seem illegal on the face of it.

Moreover, it was on the faith of this application of the revenue, that the Loan in question was guaranteed by this country. To infringe on the revenue fund so made applicable would therefore seem to involve a breach of faith.

But it is a misfortune arising from the peculiar mode of framing this Bill, which professes to confirm in one mass the voluminous Land Regulations of several Provinces, that part of it at least is open to this objection. As regards the Province of Wellington, the general Land Regulations of March 1853, are kept in force, but those Regulations expressly devote the Waste Lands Fund (after payment of Parliamentary charges under a former Act of Parliament) to Provincial purposes. By confirming those Regulations, as to Wellington, the New Zealand Legislature (no doubt quite unintentionally, as they have obviously inserted other provisions from a desire to maintain the guarantee), would, as far as their power goes, exempt the Land Fund of that Province from any liability to interest for the Loan of 1857.

I do not notice that the other Provincial Laws and Regulations confirmed by this Waste Lands Act are open to this specific objection. But in none of them is there any recognition of the lien imposed on the Waste Lands Revenue by the Loan Act; and it is not easy to foresee the complications and difficulties to which this omission would give rise.

Her Majesty's Government regret that defects of so partial a character should nevertheless be so serious as to compel them to delay Her Majesty's Assent to the entire Bill, there being no legal method of giving force to that much largest portion of it which is unobjectionable. It is by no means their wish, so to enforce the provisions of the guarantee Act, so as to make them burdensome to the Colony. They are fully aware that specific appropriations of the Land Fund, whether by General or by delegated Provincial authority, must take place, and that they may take place with ample security to the creditor; provided only the paramount nature of the lien be maintained. And they regret that by delaying Her Majesty's Assent to the Act, they may cause some inconvenience to parties who, both in the Colony and in this country, have engaged in transactions on the faith of the Auckland Regulations before these had been made duly operative by law. But they are of opinion that the exigency of the guarantee cannot be fairly satisfied, unless the Act be amended by the insertion of some provision recognizing it. They would be satisfied with a general clause empowering the Governor, anything in this Bill contained notwithstanding, to take from the Land Revenue of the several Provinces *pro rata*, whenever, and if ever the revenue from other branches shall be insufficient to pay the interest of the guaranteed Loan. They do not, however, wish to prescribe this particular form of clause, if any equally stringent can be devised. Until this proposal has been considered by the Legislature, Her Majesty's Assent to the Act is necessarily delayed.

I have, &c.,

E. B. LYTTON.

Governor Gore Browne, C. B.,
&c., &c., &c.

No. 7.

COPY OF A DESPATCH FROM THE RIGHT HON. SIR E. B. LYTTON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
8th March, 1859.

SIR,—

No. 15.

With reference to my Despatch of the 24th of January last, I transmit to you herewith an Order of the Queen in Council, confirming the Reserved Act of the Legislature of New Zealand, "to make further provision for the settlement of Land Claims."

I have, &c.,

E. B. LYTTON.

Governor Gore Browne, C.B.,
&c., &c., &c.

No. 8.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
24th March, 1859.

SIR,—

I have received your Despatch No. 99 of the 11th October last, forwarding, with a Memorandum prepared by your Responsible Advisers upon the same, authenticated copies of forty-one Acts, as noted in the margin, which were passed by the General Assembly of New Zealand during its last Session, and to which you have assented in Her Majesty's name.

I have to acquaint you that I have laid before the Queen the Acts of which the numbers, dates, and titles, will be found in the annexed Schedule, and that they will be left to their operation.

The remaining Acts are still under the consideration of Her Majesty's Government.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

CARNARVON.

No. 17.

No. 27 to 40,
43 to 64,
and 66, 70.

LIST OF ACTS LEFT TO THEIR OPERATION.

No. 27. An Act to bring into operation within the Colony certain Acts of the Imperial Parliament, relating to Justices of the Peace.—*8th July, 1858.*

No. 28. An Act for the Registration of Births, Deaths, and Marriages, in New Zealand.—*8th July, 1858.*

No. 29. An Act to repeal certain Sections of the "Marriage Act, 1854, and to repeal the "Marriage Act Amendment Act, 1856," and to make other provisions in lieu thereof.—*8th July, 1858.*

No. 30. An Act to establish District Courts in the Colony of New Zealand.—*16th July, 1858.*

No. 31. An Act to provide for the Audit of the public accounts of the Colony of New Zealand.—*21st July, 1858.*

No. 32. An Act to disqualify persons holding certain offices from being Members of the House of Representatives, Superintendents of Provinces, or Members of Provincial Councils.—*21st July, 1858.*

No. 35. An Act to make further provision for the Administration of Justice in Resident Magistrates' Courts in the Colony of New Zealand.—*4th August, 1858.*

No. 36. An Act to give validity to Crown Grants made in fulfilment of certain Land Orders issued by the Canterbury Association.—*4th August, 1858.*

No. 37. An Act to enable the Governor to define and designate Counties and certain other places in the Colony of New Zealand.—*4th August, 1858.*

No. 38. An Act to incorporate the Governors of Nelson College.—*4th August, 1858.*

No. 43. An Act to provide for the retirement of officers of the Civil Service of the General Government of New Zealand.—*10th August, 1858.*

No. 44. An Act to grant a retiring allowance to William Martin, Esq., late Chief Justice of New Zealand.—*10th August, 1858.*

No. 45. An Act to alter the name of the Province of New Plymouth.—*10th August, 1858.*

No. 46. An Act to enable the Governor to cause certain errors in Crown Grants to be amended.—*10th August, 1858.*

No. 47. An Act to enable Commissioners of Native Reserves to sue and be sued.—*10th August, 1858.*

No. 48. An Act for the Naturalization of certain persons in the Colony of New Zealand.—*18th August, 1858.*

No. 49. An Act to enable the Governor to sell and exchange certain allotments of Land in and near the City of Auckland, and apply the proceeds of such sales in Public Improvements.—*18th August, 1858.*

No. 50. An Act to further amend the Nelson Trust Funds Act, 1854.—*18th August, 1858.*

No. 51. An Act to vest certain Trust property within the Province of Nelson, in the Governors of Nelson College.—*19th August, 1858.*

No. 52. An Act to provide for the management of Savings' Banks.—*19th August, 1858.*

No. 53. An Act to amend the Law relating to the Qualification of Electors and Members of the House of Representatives.—*19th August, 1858.*

No. 54. An Act to amend the Law relating to the Registration of persons qualified to vote at Elections of Members of the House of Representatives.—*19th August, 1858.*

No. 55. An Act to constitute Electoral Districts for the Election of Members of the House of Representatives.—*19th August, 1858.*

No. 56. An Act to make provision for the regulation and conduct of Elections of Members of the House of Representatives.—*19th August, 1858.*

No. 57. An Act to make provision for the prevention of corrupt practices at Elections.—*19th August, 1858.*

No. 58. An Act to make provision for the trial of Petitions against the Election or Return of Members of the House of Representatives.—*19th August, 1858.*

No. 59. An Act to amend the Law relating to the Election of Superintendents of Provinces, and Members of Provincial Councils.—*19th August, 1858.*

No. 60. An Act to enable Superintendents of Provinces to sue and be sued.—19th August, 1858.

No. 61. An Act to amend an Ordinance to make provision for the safe custody of, and prevention of offences by persons dangerously insane, and for the care and maintenance of persons of unsound mind.—19th August, 1858.

No. 62. An Act to amend the Law relating to Drafts on Bankers.—19th August, 1858.

No. 63. An Act to appropriate the Ordinary Revenue of New Zealand for the year ended the 30th June, 1858.—21st August, 1858.

No. 64. An Act to apply a sum out of the Ordinary Revenue to the service of the year ending the thirtieth day of June, one thousand eight hundred and fifty-nine, and to appropriate a sum to be raised by the "New Zealand Loan Act, 1856."—21st August, 1858.

No. 69. An Act to enable the Superintendent of the Province of Auckland to purchase certain Lands in the Electoral District of the City of Auckland, for the purpose of improving the said City, and for that purpose to borrow money upon the security of certain Lands in the said City.—21st August, 1858.

No. 9.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
9th April, 1859.

SIR,—

No. 20.

I have received your Despatch No. 96, of the 6th of October last, forwarding an authenticated copy of an Act passed by the General Assembly of New Zealand, and to which you have assented in Her Majesty's name, intituled "An Act to grant the annual sum of seven thousand pounds for a term of seven years, from the 30th June, 1858, in aid of Schools for the education of the Aboriginal Native Race."

No. 65.

I have to acquaint you that I have laid this Act before the Queen, and that it will be left to its operation.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

CARNARVON.

No. 10.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
15th April, 1859.

SIR,—

No. 21.

I have had under my consideration two Acts passed by the Legislature of New Zealand during their last Session, and transmitted in your Despatch, No. 99, of the 11th of October last, viz. :—

No. 67. An Act to appropriate the Revenue arising from the disposal of the Waste Lands of the Crown in New Zealand, and

No. 68. An Act to apportion amongst the Provinces of the Northern Island, the sum of One Hundred and Eighty Thousand Pounds, to be raised for the extinguishment of Native Title; and to make the Provincial Revenues of the several Provinces chargeable; in exoneration of the Revenue of the Colony, with specific portions of the public debt. And I have to inform you that these Acts have been laid before the Queen, and that they will be left to their operation.

The 8th Clause of the Act, No. 67, is I perceive intended by the Legislature, to obviate the defect in the "Waste Lands Act, 1858," to which I referred in my Despatch, No. 14, of the 23rd of February last, and which rendered me unable to advise the confirmation of that Act. I am advised, however, that the Clause would not certainly have this effect, but that the partial re-enactment by the "Waste Lands Act, 1858," of a regulation (Appendix No. 6, Section 68) which appropriates the Land Revenue to public Roads and other objects, not taking effect till a period subsequent to the coming into operation of the Land Revenue Act, might be held to over-ride the latter Act, and would in that case operate as a repeal *pro tanto*, not only of the 8th Clause which relates to the guaranteed Loan, but of the 6th which in some degree fixes the appropriation of the Land Fund.

I think it necessary to mention these inconvenient consequences which would follow from the confirmation of the Waste Lands Act as it stands, in order that in any amendment of that Act the Legislature may not fail to provide against them.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

CARNARVON.

In the absence of Sir E. B. Lytton.

No. 11.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street
29th April, 1859.

SIR,—

Her Majesty's Government have had under their consideration a Bill passed by the New Zealand Legislature, intituled "An Act to alter the duties of Customs" and reserved for the signification of Her Majesty's pleasure, which was sent home in your Despatch No. 72 of the 26th of August last, and I transmit to you herewith an Order of the Queen in Council confirming the above Act. No. 25.

You will take such measures as may be necessary for giving effect to Her Majesty's Assent to this enactment.

I have, &c.,

CARNARVON,
In the absence of Sir E. B. Lytton.Governor Gore Browne, C.B.,
&c., &c., &c.

No. 12.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
6th May, 1859.

SIR,—

I have received your Despatch of the 11th October last, No 99, enclosing the authenticated copy of an Act passed by the New Zealand Legislature, intituled :— No. 27.

No. 70, "An Act to provide for the establishment of New Provinces in New Zealand."

I have likewise received both in your Despatch No. 8, of the 26th January, and direct from the Superintendent of Wellington, a Memorial in which certain Members of the General Assembly pray Her Majesty to disallow this Act. A remonstrance against it has also reached me from Messieurs Gladstone and Company, who are creditors of the Province of Wellington.

The first objection made to the Act is that it was passed in the absence of the Members for Wellington who would, if present, have opposed, and, perhaps, have thrown it out. Her Majesty's Government however do not feel justified in entering on the consideration of any allegation of this kind. It is not their desire to arbitrate between contending parties in the Legislature, but as far as possible to accept its decisions on all local matters, as expressing the wish of the Colonists. The present Law must be taken as expressing that wish till it is reversed as formally as it was enacted.

The next objection touches the substantial merits of the Act, as it concerns the observance of faith with the Public Creditor. It appears that the Messieurs Gladstone and others have lent or engaged to lend money to the Province of Wellington on the security of the Revenues of that Province, but the Act now passed vests in the Colonial Government a power which it has since exercised, to separate Hawke's Bay from Wellington. It further appears that although the new Province is obliged by the Act to contribute towards the interest of the "permanent" debts of the original Province, it is at least doubtful whether this liability extends to a redeemable debt such as that due to the Messieurs Gladstone. It is indeed pointed out to me that a settler in Hawke's Bay has, at a Public Meeting, distinctly maintained the contrary.

Now, whatever may be the equitable rights *inter se* of the old and new Province, (a question which appears to depend greatly on the mode in which the Loan was expended) it is clear that the Creditor who lent his money on security which the Borrower had at the time of the contract a right to pledge, ought not to be deprived of any part of that security by any subsequent Act of the General and Provincial Legislature. Indeed if such a transaction were allowable, the whole substance of his security might be gradually abstracted by successive divisions of the Province which borrowed his money.

If, then, I understand Messieurs Gladstone's case aright, they appear to me clearly entitled to such an alteration of the Law as will revive, or place beyond dispute, their lien on the Revenue, not only of the territory which may for the time being constitute the Province of Wellington, but of all that constituted that Province at the date of their Loan.

Having, however, expressed their opinion, I must add that I do not consider the question one in which Her Majesty's Government are called upon to interfere otherwise than by advice. The Messieurs Gladstone in lending money, relied, I hope not without reason, on the good faith of the Colonists to whom the management of their own affairs had at that time been definitely entrusted. And it is, I conceive, to that good faith, and not to the Imperial Government, that their appeal lies. Although, therefore, I trust that the Legislature will consent to make the amendment in the Act which in my opinion the Creditors of the Province are entitled to claim, I have not thought it necessary to delay laying the Act before Her Majesty, who has been graciously pleased to leave it to its operation.

I have, &c.,

CARNARVON.
In the absence of Sir E. B. Lytton.Governor Gore Browne, C.B.,
&c., &c., &c.

MEMORANDA FROM MINISTERS

No. 13.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
10th May, 1859.

No. 31.

SIR,—

I have received your Despatch No. 101 of the 13th of October last, forwarding authenticated copies of six Bills passed by the General Assembly of New Zealand during its fifth Session, and reserved by you for the signification of Her Majesty's pleasure, and I transmit to you the accompanying Orders of the Queen in Council, confirming respectively five of these Enactments, of which the Numbers and Titles are specified in the annexed Schedule.

You will take such measures as may be necessary for giving effect to Her Majesty's Assent to these Enactments.

In connection with the Act No. 77, I have further to acknowledge the receipt of your Despatch No. 80, of the 15th of September last.

I have, &c.,
CARNARVON.Governor Gore Browne, C.B.,
&c., &c., &c.

SCHEDULE.

(Enclosure.)

No. 71. "An Act to alter the sums granted to Her Majesty by the Constitution Act for Civil and Judicial services."

No. 73. "An Act for granting a duty upon Gold,"

No. 74. "An Act to make provision for the management of Gold Fields in the Colony of New Zealand."

No. 77. "An Act to amend the Law defining and settling the rights of holders of Land Orders and Land Scrip."

No. 78. "An Act to enable Provincial Councils to pass Laws for diverting Public Roads and Watercourses and for disposing of the Land over which the same passed."

No. 14.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
16th May, 1859.

No. 32.

SIR,—

With reference to my Despatch No. 17 of the 24th March last, I have to acquaint you that I have laid before the Queen the Act of the Legislature of New Zealand No. 39, of 21st and 22nd Victoria, intituled "An Act to bring into operation within the Colony of New Zealand, certain provisions of the Merchant Shipping Act of 1854," and that it will be left to its operation.

I have, &c.,

CARNARVON,

In the absence of Sir E. B. Lytton.

Governor Gore Browne, C.B.,
&c., &c., &c.

No. 15.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
18th May, 1859.

No. 34.

SIR,—

I have received your Despatches named in the margin, which transmit for the consideration of Her Majesty the following Acts, passed by the Legislature of New Zealand :—

No. 41. "An Act to regulate the Local Affairs of Native Districts"

No. 42. "An Act to make better provision for the Administration of Justice in Native Districts."

No. 79. "An Act to enable the Governor to establish a Settlement for Colonization in the Bay of Islands."

No. 80. "An Act to enable the Native Tribes in New Zealand to have their Territorial Rights ascertained, and to authorise the issue, in certain cases, of Crown Grants to the Natives."

I wish, in the first place, to acknowledge the care, ability, and sound judgment with which these Bills appear in most respects to have been adapted to the character and circumstances of the Native Tribes; and if I am unable in some respects to give effect to the policy of your Advisers, I wish them to believe that this does not arise from any want of reliance on their desire to advance the well-being of the Natives, nor of their capacity to deal with the important and delicate questions on which that well-being depends; but from my conviction that circumstances do not yet justify the Imperial Government in abdicating the responsibilities which at present rest on it, with regard to that remarkable Race.

The Act No. 41 appears to me on the whole, wisely framed, and to bear great promise of usefulness. The second clause however is open to an objection on the grounds which I have already indicated. It not only invests the Governor in Council with the virtual power of making laws affecting in many most important respects the rights and habits of the Natives, (a power which I readily concede, on the understanding that the Governor will exercise a personal discretion in consenting to them) but it omits to secure to the Crown its customary right of disallowance. If, however, that right is indispensable with regard to laws which are passed by the Representatives of the Colonists for the furtherance and protection of their own interest, much more is it necessary in regard to regulations enacted by the Governor in Council for people whom they cannot in any sense be said to represent. I have felt much doubt whether I could properly advise Her Majesty to leave to its operation, a law which was open to so important an objection. But believing that the Act is on the whole in the direction of a wise and useful legislation, and that the Legislature of New Zealand will see the justice of the view which I have stated upon this single point of objection, I have been reluctant, by a disallowance *in toto* of the Act, to entail the public inconvenience which might occur, and the long delay which must necessarily elapse before legislative provision could be again made to meet the objects in view.

I have therefore laid the Act before Her Majesty, who has been pleased to leave it to its operation. Unless, however, the Legislature should consent to amend it by enacting that all regulations made in pursuance of the second clause shall be subject to disallowance by Her Majesty, it may be necessary to consider under what conditions your assent could be properly given to them, and it may be necessary to require, previous to such consent, that any rules which could by possibility give occasion for dispute or discontent among the Natives, should contain a proviso, either suspending their operation till the consent of the Home Government is obtained, or (which would probably be more convenient) expressly empowering the Crown to disallow them.

To the Acts numbered 42 and 79, I see no objection. The former has therefore been left to its operation by Her Majesty, and the latter (which is reserved for the signification of Her Majesty's pleasure) will be confirmed by Order in Council.

I much regret that I have not been able to advise the same course respecting the Act, No. 80, which appears to me open to various important objections. In the first place, the proposed issue of Certificates of Native Title under the express authority of the Colonial Government, involves important questions which are not adverted to in your Despatch. It is no doubt most desirable that the disputes of the Natives respecting the right to land should no longer be settled by arms, and that the occupation of land in severalty by the Natives should be encouraged. But with regard to the plan which is submitted to me for this purpose, I am bound to ask myself whether in case the decisions of the Governor in Council on titles to land should be resisted by the Natives, the British Government are prepared to promise such a military force as may be sufficient to enforce them. If any such expectation could be held out, it would be clearly necessary that the decisions which imposed so much responsibility and expense on the Home Government should be taken by an officer solely responsible to that Government and not to the Colonists. If (as is the case) no such expectation could be held out, it is more than questionable whether the moral influence of the European Government would not suffer by the issue of Certificates of title which the Natives would be at liberty to disregard with impunity.

It appears to me therefore in every respect better that the establishment of tribal and other titles, and the acquisition by individual Natives of property in severalty should be facilitated, not by the issue of formal documents appearing to rest on the authority and involve the guarantee of the Government, but by the cautious enactment of rules respecting the occupation of land, which are contemplated in the second section of the Act No. 41.

I perceive, however, that the proposed scheme has a further object, and that it is intended to furnish a means of ultimately enabling individual Colonists to purchase the landed property granted in severalty to individual Natives. There can be no doubt that the passing of the present Act would be very speedily followed by a change or rather revolution in the system of land purchase in the direction indicated by your Advisers. But such a change I conceive to be in the highest degree unadvisable. The present system of old land purchase appears, as far as I can judge, to be understood and acquiesced in by the Natives, and to be working well for the Colony, while the pecuniary difficulty suggested by your Advisers, is one which it is in the power of the local Legislature to provide against.

On the other hand, the system of individual purchase is, to say the least, opposed to the spirit of the New Zealand Government Act (15 & 16 Vic. C. 72, S. 73,) and it is open to important objections in point of policy; it offers no sufficient guarantee for the fairness of the negotiations which have preceded the transfer; it invests the Government with a discretion in respect of sanctioning purchases which can scarcely be exercised without incurring the suspicion of favouritism; it will encourage speculators to anticipate (and thus obstruct) the progress of settlement by appropriating choice and commanding spots of land within the Native territory, and induce an intermixture of European with Native lands, calculated to cause confusion and inconvenience. I hold it therefore, far more advisable that Government should purchase territories, than that individuals should purchase properties, so that the line which separates the purchased lands on which European law is to prevail, from the unpurchased on which the Native usages will continue to subsist, though always advancing, will be broad and unequivocal.

I also feel strongly the probability that the proposed tax of 10s. an acre on every sale may rouse the distrust of the Natives, and that the proposed mode of sale, while it encourages individual

land jobbing among one class of the Natives, may irritate others who see the lands which have belonged to their tribe passing from within their reach, without themselves receiving their share of the profits.

If, indeed, the Imperial Government were prepared to depart from the arrangements already, sanctioned, and to transfer the management of Native Affairs from the Governor, acting under Instructions from this country and through a Staff of permanent Officers, to an Officer responsible to the Colonists, and changing with the Government, it might be considered that the system of land purchase from the Natives was to be decided upon by Colonial and not Imperial authority. But this view of the subject I am not able to accept; Her Majesty's Government wish to give the fullest effect to the system of Responsible Government, and to leave all questions of domestic and internal interest to be decided by the Colonial Government, but they cannot either for the sake of the Colonists, or for that of the Natives, or for Imperial interests, surrender the control over Native Affairs, the administration of which has been up to the present time, considering the difficulties and intricacies of the subject, crowned with a very remarkable success, and is paving the way towards that complete civilization and consolidation of the Native Race with the English Colonists, which Her Majesty's Government, not less than the local Government, desire to see effected. And whilst Her Majesty's Government feel themselves constrained to justify to Parliament the large expense which every year is incurred for the maintenance of a Military force in New Zealand for the defence of the Colony, and for the better control and regulation of the Native Race, they must retain in their hands the administration of those Affairs, which at any moment may involve the employment of those troops, and the consequence of an expensive conflict. So long as the Colony for this purpose enjoys the advantage of Military and Naval protection, Her Majesty's Government cannot consent to yield a point which in their opinion, is so intimately connected with the security of the Colony, the justice due to Native claims, and the issues of Peace or War itself.

Convinced, therefore, that the proposed Act is calculated to effect hazardous alterations in a system, the working of which does not at present appear open to any practical objection, I have been unable to recommend that this Act should be confirmed by Her Majesty, and it will accordingly remain inoperative.

I have, &c.,

CARNARVON,

In the absence of Sir E. B. Lytton.

Governor Gore Browne, C.B.,

&c., &c., &c.

No. 16.

COPY OF A DESPATCH FROM LORD CARNARVON TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
13th June, 1859.

No. 40.

SIR,—

With reference to my Despatch No. 34 of the 18th ultimo, I transmit to you herewith an Order of the Queen in Council confirming the reserved Act of the Legislature of New Zealand "to enable the Governor to establish a Settlement for Colonization in the Bay of Islands."

(No. 79.)

You will take such measures as may be necessary for giving effect to Her Majesty's Assent to this Enactment.

I have, &c.,

CARNARVON,

In the absence of Sir E. B. Lytton.

Governor Gore Browne, C.B.,

&c., &c., &c.

No. 17.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
22nd August, 1859.

No. 10.

SIR,—

With reference to my Predecessor's Despatch, No. 17 of the 24th of March last, I have to inform you that I have laid before the Queen the Acts of the Legislature of New Zealand of which the numbers, dates, and titles, will be found in the annexed schedule, and that they will be left to their operation.

(Nos. 33, 40, and 66.)

Her Majesty's Government have still under their consideration the Act No. 34 of the same session "to provide for the periodical publication of the liabilities and assets of Banks in New Zealand."

I have, &c.,

NEWCASTLE.

Governor Gore Browne, C.B.

&c., &c., &c.

SCHEDULE.

No. 33.—“ An Act to declare what shall be deemed the Ordinary Revenue of the Colony, and to provide for the Regulation by the General Assembly of the cost of collecting the same.—*4th August, 1858.*”

No. 40.—“ An Act to regulate the collection and management of the Revenue of Customs.—*4th August, 1858.*”

No. 66.—“ An Act to provide for the distribution of the Surplus Ordinary Revenue amongst the several Provinces of New Zealand —*21st August, 1858.*”

No. 18.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
1st September, 1859.

SIR,—

With reference to that part of my Despatch, No. 10, of the 22nd ultimo, in which you were informed that the Act of the Legislature of New Zealand No. 34 of 21st and 22nd Vic., “ to provide for the periodical publication of the liabilities and assets of Banks in New Zealand,” was under the consideration of Her Majesty’s Government, I transmit to you herewith the copy of a Letter from the Board of Treasury, to whom the Act in question was referred, enclosing a memorial from the Oriental Bank Corporation praying to be exempted from the operation of the Act. No. 12

You will observe that the Lords Commissioners concur in the objections raised by the Oriental Bank to certain of the provisions of this Enactment: and I have to submit to your Responsible Advisers the expediency of obtaining the amendment of the Act on the points adverted to. 26th August, 1859.

I shall accordingly for the present defer submitting the Act for the Queen’s decision.

I have, &c.,

Governor Gore Browne, C.B.,
&c., &c., &c.

NEWCASTLE.

Enclosure in No. 18.

MR. HAMILTON TO MR. MERIVALE.

Treasury Chambers,
26th August, 1859.

SIR,—

With further reference to your Letter of the 25th April last, transmitting an Act of the Legislature of New Zealand of 21 and 22 Vic., No. 34, intituled “ An Act to provide for the periodical publication of the liabilities and assets of Banks in New Zealand,” I am directed by the Lords Commissioners of Her Majesty’s Treasury to transmit herewith a copy of a memorial from the Oriental Bank praying to be exempted from the operation of the Act; and I am to request that you will suggest to the Duke of Newcastle, that the objections entertained by the Oriental Bank to the Act in question, should be communicated to the Governor of New Zealand, and that the signification of Her Majesty’s pleasure on the Act should be for the present suspended. (Enclosure.)

I am to state that my Lords concur in the object which the New Zealand Legislature has in view, of making all Banks in the Colony conform to a common system regarding the publication of their assets and liabilities, but their Lordships think that it is desirable to render such requirements as little burthensome on the Banks, especially on those which are required by their charters to make specific returns, as may be consistent with the public interests.

The Act is herewith returned.

I am, &c.,

H. Merivale, Esq., C.B.,
&c., &c.

G. A. HAMILTON.

Sub-Enclosure to Enclosure in No. 18.

TO THE RIGHT HONORABLE THE LORDS COMMISSIONERS OF HER MAJESTY’S TREASURY.

The humble Memorial of the Chairman, Deputy-Chairman, and Court of Directors of the Oriental Bank Corporation,
Sheweth,— (Enclosure.)

That an authorised copy of an Act of the General Assembly of New Zealand, 21 and 22 Vic., No. 34, intituled “ An Act to provide for the periodical publication of the liabilities and assets of Banks in New Zealand,” has just been sent over to your Memorialists.

That it appears to your Memorialists that some of the provisions are made unnecessarily particular and troublesome without any possible benefit or advantage, and they therefore most respectfully submit for the consideration of your Lordships, whether some modifications might not be made without interfering in any way with the proper security of the public, especially as regards those who, like your

Memorialists, are tied down by very stringent restrictions and conditions as to Returns and Reserve of Specie by their Royal charter.

That section 1 of the Act not only directs that a weekly statement of assets and liabilities shall be prepared, which is not objected to, but that it shall be done at the close of business on every Monday—the most inconvenient day of all others for a banker—in lieu of leaving it open, so that each banker might select his own accustomed day of balancing.

That by section 2, the quarterly statement shall be made up on the last Monday in each quarter in lieu of within the first week after, and up to the last day of each quarter: thus entailing upon your Memorialists and others, the unnecessary trouble of keeping two sets of balancing account books—one to answer the requisitions of the Royal charter, and the other of the local Act.

That the form of return set forth in the Schedule to the said Act is at variance with that required by the Royal charter and by all the other Colonies, going more into detail, and, as your Memorialists submit, more than is requisite, and consequently giving needless additional trouble.

That your Memorialists humbly trust, as by their Royal charter they are bound to furnish ample monthly returns to the respective Colonial Governors, who have the power by their officers of personal inspection, their Corporation, and others similarly circumstanced, may be exempted from the operation of the said Act, or that such alterations may be made in the said local Act as your Lordships shall deem suitable and proper under the circumstances.

No. 19.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
9th September, 1859.

SIR,—

No. 14.

I have received your Despatch No. 36, of the 21st of April last, forwarding copy of an explanatory Memorandum from your Responsible Advisers upon the remarks contained in my Predecessor's Despatch No. 38 of the 2nd of December last, in respect of certain clauses contained in the Acts of the Legislature of New Zealand, Nos. 1, 4, and 5, of 1858, which appeared to require amendment.

In answer, I have to observe that the 9th clause of the Act No. 1 provided that in all Colonial Acts the term "Colony" and "this Colony" "shall severally mean New Zealand—the boundaries whereof shall be deemed to include all territories, &c., lying between 33 degrees of South Latitude, "and 50 degrees of South Latitude," &c.

To this it was objected by Sir E. B. Lytton, first, that it appeared to assume the power of defining the boundaries of the Colony: next, that it defined them differently from the Royal Letters Patent under which the Colony was constituted—substituting the 50th for the 53rd degree of South Latitude.

Your Responsible Advisers argue, in reply, that the Colony, though not competent to define its own boundaries, is competent to declare what shall be the meaning of a certain word in the construction of its own Acts—and next, they point out that since the date of the Letters Patent, the boundaries of the Colony have been laid down by Act of Parliament, (15 & 16 Vic. Cap 72, Sec. 80) and that the definition embodied in the local Act coincides with that in the Imperial Statute.

This last observation is unquestionably correct, and the fact appears to have been overlooked when the instruction was addressed to you. The objection of form is however I think insufficiently answered by your Responsible Advisers. The words which I have above quoted, seem to me both in form and in substance to declare what shall be the limits of New Zealand for the purpose of exercising Legislative Authority, a declaration which should proceed from the Crown or Parliament of the United Kingdom: and that it is inconvenient (whether or not strictly illegal) that such definition should be contained in a Colonial Act, assented to by the Governor in the name of the Crown. Indeed, it appears to me that to be perfectly clear, the amendment suggested by my Predecessor was hardly adequate, and that for the words "the boundaries whereof shall be deemed to include," should be substituted not merely the word "comprising," but the words "comprising till otherwise determined by competent authority."

But as it now appears that the local Act in question does but repeat the Statutory definition, and as it is further clear that the Act can be of no avail to prevent the Imperial Parliament from altering the boundaries of the Colony hereafter, in the improbable event of its becoming necessary, it appears to me that it is unnecessary to pursue the discussion any further. The Act will accordingly be left to its operation.

The objection taken to the Acts Nos. 4 and 5 are acknowledged by your Government, though there appears to have been a precedent for them in the New South Wales Act, 17 Vic., No. 21, Sec. 21. But, as your Responsible Advisers express their intention to propose to the Legislature the repeal of the existing Acts, and their re-enactment with the amendments required by my Predecessor, it will not be necessary that I should advise Her Majesty to disallow the Enactments.

Governor Gore Browne, C.B.,
&c., &c., &c.

I have, &c.,
NEWCASTLE.

No. 20.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
18th October, 1859.

SIR,—

No. 20.

I have to acknowledge your Despatch No. 47, of 21st June last, in reply to that of Sir E. B. Lytton informing you that Her Majesty's Assent to the New Zealand Waste Lands Act of 1858 would be delayed; and enclosing Memoranda from your Attorney-General and your Responsible Advisers, stating their reasons for recommending that the Assent should be given.

I have fully considered the correspondence relating to this Act, including Sir E. B. Lytton's Despatch of 15th April last, which you had not received at the date of yours now answered.

It is perfectly clear from this correspondence that the New Zealand Legislature was equally solicitous with Her Majesty's Government to preserve the stipulations of the Guarantee, and I do not think it necessary to enter into the question whether the Legislature had, or had not technically interfered with these stipulations by the Enactment in question, as the Attorney-General for New Zealand with much shew of reason denies them to have done. For I am satisfied that in any case no real danger will accrue to the Guarantee, by the giving of Her Majesty's Assent to the Act, which will accordingly be done at the next Council. I presume that no inconvenience is likely to be thereby occasioned, as the recommendation of Sir E. B. Lytton, in his Despatch of April last, to amend the Act, cannot, probably, have been submitted to the Legislature in the interval.

You are fully aware from former instructions of your duty in respect to the substantial maintenance of this Guarantee; and, as to its technical maintenance, I agree with my predecessor that the best course would be to introduce a general clause saving the rights of the Imperial Treasury in any law affecting the land Revenue.

I have, &c.,

NEWCASTLE

Governor Gore Browne, C. B.,
&c., &c., &c.

No. 21.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C. B.

Downing Street,
October 31st, 1859.

SIR,—

With reference to my Despatch No. 20 of 18th instant, I transmit to you herewith an Order of the Queen in Council confirming the reserved Act of the Legislature of New Zealand "to regulate the disposal and administration of the Waste Lands of the Crown in New Zealand."

You will take such measures as may be necessary for giving effect to Her Majesty's Assent to this Enactment.

I have, &c.,

NEWCASTLE.

Governor Gore Browne, C. B.,
&c., &c., &c.

No. 22.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C. B.

Downing Street,
November 6th, 1859.

SIR,—

I referred for the consideration of the Secretary of State for War your Despatch No. 37 of the 23rd April last, forwarding a Memorandum by your Responsible Advisers on the objections raised by the General Commanding-in-Chief, to certain clauses of the Act passed by the General Assembly of New Zealand "for raising a Militia within the Colony," and I transmit to you the copy of a reply which has been received from the War Office on the subject.

I have, &c.,

NEWCASTLE.

Governor Gore Browne, C. B.,
&c., &c., &c.

Enclosure in No. 22.

SIR E. LUGARD TO MR. MERIVALE.

War Office,

October 21st, 1859.

SIR,—

I am directed by the Secretary of State for War to acknowledge the receipt of your Letter of the 23rd August last, with its enclosures, from the Governor of New Zealand, in reference to certain

(Enclosure.)

15th Oct., 1859.

objections which had been taken by the General Commanding-in-Chief, in the Militia Act passed in 1858 by the Legislature of that Island; and in reply I am to transmit to you, for the information of the Duke of Newcastle, the enclosed copy of a Letter from the Military Secretary conveying the opinion of His Royal Highness on the explanations offered by the Governor and his Responsible Advisers in regard to those objections.

I have, &c.,

E. LUGARD.

H. Merivale, Esq., C.B.,
&c., &c.

Sub-Enclosure to Enclosure in No. 22.

SIR C. YORKE TO THE UNDER SECRETARY, WAR OFFICE.

Horse Guards,
October 15th, 1859.

(Enclosure.)

SIR,—

Having submitted to the General Commanding-in-Chief, your Letter of the 29th August last, enclosing a copy of a Despatch from the Governor of New Zealand, with a Memorandum (herewith returned) relating to certain objections raised to the Act of the Legislature of that Colony for raising a Militia force, I am directed by His Royal Highness to request you will inform the Secretary of State for War, that the explanation in regard to the first objection referred to in my Letter of the 6th December last, appears admissible, provided the Act shall be allowed to interfere with the operations of paragraph 12, page 4, of the Queen's Regulations and Orders for the Army, and that in regard to the second objection, which is not removed by the explanation, there can be no doubt that it is highly desirable that a Militia, in contradistinction to a Volunteer Force, should always be mobile within the Colony, leaving it to the discretion of the Military Authorities to move it or not according to circumstances; but if the local Legislature will only sanction a Local Militia, of course the objection cannot be sustained.

I have, &c.,

C. YORKE.

The Under Secretary of State for War.

No. 23.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
17th January, 1860.

No. 4.

SIR,—

5th Jan., 1860.

I referred your Despatch, No. 57 of the 19th July last for the consideration of the Lords of the Committee of Privy Council for Trade; and I transmit to you the copy of the Letter which has been received in reply.

No. 14 of 21 & 22 Vict.

You will perceive that the Law Officers of the Crown, on reference being made to them through the Foreign Office, are still of opinion that their objections to the "Foreign Seamen's Act 1858," are well founded, and are not removed by the observations of your Responsible Advisers; and that they recommend that the Act should be amended so as to make it obligatory on the Constable to take the Seaman before the Magistrate.

I have to instruct you to endeavour to procure the introduction of these amendments, as in the event of their not being adopted it will become necessary to advise Her Majesty to disallow the Act.

The period within which it is competent so to disallow it, will expire on the 19th of October, 1860, being two years from the date at which the Act is recorded as having been received at this Department.

I have, &c.,

(Signed) NEWCASTLE.

Governor Gore Browne, C.B.,
&c., &c., &c.

Enclosure in No. 23.

MR. BOOTH TO MR. ELLIOTT.

Office of Committee of Privy Council for Trade,
Whitehall, 5th January, 1860.

(Enclosure.)

SIR,—

With reference to your Letter of the 3rd November last, and to previous correspondence on the subject of an Act of the Legislature of New Zealand, intituled "An Act to prevent Desertion and other misconduct of Seamen belonging to Foreign Ships," I am directed by the Lords of the Committee of Privy Council for Trade to transmit to you, for the information of His Grace the Duke of Newcastle,

a copy of a Letter received by their Lordships from the Foreign Office, conveying the observations of the Law Officers of the Crown upon the Memorandum, which was enclosed in your Letter, of the Responsible Advisers of the Governor of New Zealand in reference to that Act.

I have, &c.,

JAMES BOOTH.

The Act which was borrowed from the Colonial Office is herewith returned.

Sub-Enclosure to Enclosure in No. 23.

MR. MURRAY TO MR. BOOTH.

Foreign Office,
27th December, 1859.

SIR,—

Lord John Russell has referred to the Law Officers of the Crown your Letter of the 14th ultimo, adverting to the Act of the Legislature of New Zealand (21 and 22 Vic., No. 14,) intituled "An Act to prevent Desertion and other misconduct of Seamen belonging to Foreign Ships," and requesting to be informed whether in his Lordship's opinion it was necessary to insist upon the objections to the 2nd section of that Act which were suggested by the late Law Officers in their report of the 12th January last. (Enclosure.)

In reply to the above reference, the Law Officers have reported that they are of opinion that the objections in question are well founded and are not removed by the observations of the Responsible Advisers of the Government of New Zealand as contained in their Report of the 16th of July last enclosed in your Letter.

The Law Officers further observe that the Act is intended to apply to the Foreign Seaman, ignorant of our laws or of his rights under them, and probably not even speaking the language of the Constable who apprehends him, that to allow a person so circumstanced to be forced on board at the will of the Master (against whom he may have just cause of complaint) without being taken before a Magistrate might produce an amount of injustice and oppression against which the proviso affords no practical protection; for once on board the Ship, he would find it difficult to make his complaint heard.

The Law Officers therefore express their opinion that the Act should be altered as was suggested, so as to make it obligatory on the Constable to take the Seaman before a Magistrate.

I have, &c.,

JAMES MURRAY.

James Booth, Esq.
