

## SECTION I.

Vide Sessional Papers,  
1862, A, No. 2, B.

to the Law Officers of the Crown in England (in a case bearing on this question), and to their reply, transmitted in the Secretary of State's Despatch, 10th August, 1861.

His Excellency is respectfully recommended to transmit the enclosure now forwarded, in order to obtain the opinion of the Law Advisers of the Crown on the question raised in that Memorandum.

ALFRED DOMETT.

#### MEMORANDUM AS TO ALTERATION, ETC., OF THE CONSTITUTION ACT.

In the case laid before the Law Officers in England (pages 5 and 6, A. No. 2b., Session Papers of 1862), relative to the legality of the New Provinces Act, the following question is asked (No. 5).

"Can the powers given by the Constitution Amendment Act, of repeal, alteration, and suspension of the provisions of the Constitution Act be exercised inferentially by passing over-riding Acts, or must that power be exercised directly and expressly as an alteration, suspension, or repeal of certain specified provisions of the Constitution Act, and has the New Provinces Act in fact repealed, altered, and suspended the Constitution Act as regards the original Provinces and their boundaries and Electoral Districts."

The reply of the Law Officers was that the fifth question "must be answered in the negative."

Setting aside the New Provinces Act, respecting which another case has been sent to the Law Officers in England, there appear to be several Acts of the General Assembly altering the Constitution Act "inferentially" and "not directly and expressly as an alteration, suspension, or repeal of certain specified provisions" of that Act.

I would instance the following as some which appear to me as included in that category,—

"The Disqualification Act, 1858,"

"The Elections Writs Act, 1858,"

"The Qualification of Electors Amendment Act, 1858,"

"The Land Revenue Appropriation Act, 1858,"

"The Highways and Watercourses Diversion Act, 1858."

Should not the doubts of the validity of these Acts be removed?

W. GISBORNE,  
Under Secretary.

#### NOTE BY THE ATTORNEY-GENERAL (MR. GILLIES).

A most important question, and one which should engage the careful attention of the Attorney-General during the recess; it cannot be attended to properly in the present Session. My impression has always been in accordance with the opinion indicated by the Law Officers of the Crown, and that an Act must be passed validating such Acts of the Assembly as those referred to.

THOMAS B. GILLIES.

9th August, 1862.

#### OPINION OF THE ATTORNEY-GENERAL (MR. WHITAKER).

The power given to the General Assembly of New Zealand by the Constitution Amendment Act is to "alter, suspend, or repeal" any, except certain specified provisions of the Constitution Act.

There is no doubt that, in reference to two Laws passed by the same Legislature, an alteration or repeal may be either expressed or implied,—that *Leges posteriores priores contrarias abrogant*,—and that the fact of a subsequent Law being contradictory and contrary to a prior Law, operates as a repeal or alteration of the latter.

The power of alteration and repeal is given in general terms, without restriction, by the Constitution Amendment Act; and it would have appeared to me that the effect of this was to confer on the General Assembly the rights which, as far as I am aware, in all other cases are incidental to such a power—viz., that it may be exercised by express enactment, or by "overriding Acts." I do not see the grounds upon which a limited meaning is given to the words "repeal and alter." The Imperial Parliament does not possess, indeed cannot have, as regards its own acts, more than a power to repeal, alter, and suspend, and that power, in express words, it has, as regards one Act, given to the General Assembly of New Zealand. In my opinion, the General Assembly would not be restricted to a particular mode of using it.

The Law Officers of the Crown in England are, however, of a different opinion, and, in deference thereto, it is necessary that the errors which it appears have been committed should be rectified.

The proposition of Mr. Gillies to pass a "validating Act" does not seem to me to meet the case.