FURTHER PAPERS

RELATIVE TO THE

DISALLOWANCE OF PROVINCIAL BILLS.

(In Continuation of Papers presented 19th September, 1866.)

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

WELLINGTON.

—

1867.

PROVINCE OF OTAGO.

No. 1.

His Honor THOMAS DICK to the Hon. E. W. STAFFORD.

(No. 6786.) Superintendent's Office,

SIR,— Dunedin, 17th January, 1867.

I have the honor to forward the following Ordinances passed at the last session of the Provincial Council of Otago, to which I have assented on behalf of His Excellency the Governor, viz.:

"Turnpikes Ordinance, 1866;"
"Appropriation Ordinance, No. 1, 1866;"
"Appropriation Ordinance, No. 2, 1866;"
"Licensing Ordinance 1865 Amendment Ordinance, 1866;"
"Southern Trunk Railway Guaranteed Interest Ordinance 1865 Extension and Amendment Ordinance, 1866;"
"The Dunedin Waterworks Company Guaranteed Interest Ordinance 1864 Amendment Ordinance, 1866;"
"Vagrant Ordinance Repeal Ordinance, 1866;"
"Cemetery Ordinance Amendment Ordinance, 1866;"
"Port Chalmers Town Board Ordinance Repeal Ordinance, 1866;"
"Oamaru Town Board Ordinance 1862 Repeal Ordinance, 1866."

Also the following Bills which I have reserved for the signification of His Excellency's pleasure thereon, viz.:

"Dunedin Reserves Management Ordinance, 1866;"
"Otago Municipal Corporations Ordinance Amendment Ordinance, 1866;"
"Roads Diversion Ordinance, 1866."

I have, &c.,
THOMAS DICK,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 2.

The Hon. E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 157.) Colonial Secretary's Office,

SIR,— Wellington, 23rd March, 1867.

I have to acknowledge the receipt of your predecessor's letter, No. 6786, of the 17th January last, transmitting certain Ordinances and Reserved Bills, Schedules of which are attached hereto, passed by the Provincial Council of Otago.

His Excellency has been advised to assent to the following Bills—

"Otago Municipal Corporations Ordinance Amendment Ordinance, 1866;"
"Roads Diversion Ordinance, 1866;"

and to leave the following Ordinances to their operation—

"Turnpikes Ordinance, 1866;"
"Appropriation Ordinance, No. 1, 1866;"
"Appropriation Ordinance, No. 2, 1866;"
"Licensing Ordinance 1865 Amendment Ordinance, 1866;"
"The Dunedin Waterworks Company Guaranteed Interest Ordinance 1864 Amendment Ordinance, 1866;"
"Vagrant Ordinances Repeal Ordinance, 1866;"
"Cemetery Ordinances Amendment Ordinance, 1866."

I would observe, however, with respect to "The Turnpikes Ordinance, 1866," that the Government is advised that the Provincial Legislature has not power to authorize Justices of the Peace to act in the manner provided by section 25 of the Ordinance, and that it is doubtful whether the validity of the Ordinance may not be imperilled by this provision. Although the Government has not on this ground disallowed this Ordinance, the defect should be remedied in the next session of the Provincial Legislature.

The fourth section of "The Appropriation Ordinance, No. 2, 1866," calls for remark. The wording of that section is so framed that as after the expiration of the 31st March, and until the 31st May, it cannot be known that no session will be held before the latter date, it is doubtful whether the provision making the appropriation for the period ending 31st May, can become effective till after that date. This no doubt was not intended, but the probable intention has not been expressed. Moreover the word "not" in the last line but one should not appear, as it renders the whole section unintelligible.

I will address your Honor in a separate letter on the subject of the other three Ordinances and remaining reserved Bill.

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

His Honor the Superintendent of Otago.

No. 3.

The Hon. E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 159.) Colonial Secretary's Office,

SIR,— Wellington, 23rd March, 1867.

Referring to my letter No. 157, of even date herewith, on the subject of certain Ordinances

and Bills forwarded in your predecessor's letter, No. 6786, of 17th January last, I have to intimate to your Honor the decision of the Government with respect to the undermentioned reserved Bill and Ordinances—

Reserved Bill:

"Dunedin Reserves Management Ordinance, 1866."

Ordinances:

"Southern Trunk Railway Guaranteed Interest Ordinance 1865 Extension and Amendment Ordinance, 1866;"

"Port Chalmers Town Board Ordinance Repeal Ordinance, 1866;"

"Oamaru Town Board Ordinance 1862 Repeal Ordinance, 1866."

"The Dunedin Reserves Management Ordinance, 1866," recites in the Preamble that certain lands described in the Schedules to the Bill are vested in the Superintendent of Otago and his successors, subject to the Public Reserves Acts of 1854 and 1862, and then proceeds, in the second and third sections, to deal with those lands.

I find, however, upon inquiry, that four of the sections described in the first Schedule,—being those in its clauses No. 6, 9, and 13,—have never been granted at all to the Superintendent of Otago, and that another section, described in clause 11 of same Schedule, was not granted till after the Bill was reserved, and that consequently they were not, as stated in the Preamble, vested in the Superintendent subject to those Acts. The Government is advised that until they are so vested they cannot be dealt with by an Ordinance of the Provincial Legislature, and that the Ordinance is *ultra vires* in respect to these Reserves.

Moreover the Princes Street Reserve is included in clause 5 of the first Schedule, and your predecessor was informed in my letter No. 435, of the 16th October, 1866, that it was the intention of the Government to have the validity of the Crown Grants conveying that Reserve to the Superintendent tested before the Supreme Court. It would therefore have been impossible, even if the objections abovementioned had not existed, for Ministers to advise the Governor to assent to this Bill. His Excellency's assent to this Bill has accordingly been withheld.

The Government has carefully considered "The Southern Trunk Railway Guaranteed Interest Ordinance 1865 Extension and Amendment Ordinance, 1866." The original Ordinance enables interest to be guaranteed for periods to commence respectively from the dates of completion of stated portions of the Railway, and such guarantee was only to extend to the amount expended on each completed portion, but the amending Ordinance repeals that provision, and enables a guarantee of interest to be given for the whole paid up capital (not exceeding £400,000) of the Company undertaking the work, and the period of guarantee is to date from the commencement of the Railway Works.

A provision of this sort is in direct opposition to the object of the nineteenth section of "The Southland Provincial Debt Act, 1865" (prohibiting further Provincial Loans without the previous sanction of the General Assembly), and would enable the pecuniary obligations of the Provinces to be indefinitely increased. The Government is most anxious to encourage the prosecution of useful public works, and, with that object, did not disallow the original "Southern Trunk Railway Guaranteed Interest Ordinance, 1865," but by the Ordinance now under consideration large and uncertain liabilities would be incurred, while no adequate security for the protection of public interests is provided. Irrespective also of this consideration, I am advised that the Ordinance is open to the legal objection that the Superintendent is authorized by it to make an agreement to pay public money to a purely private purpose, and that it cannot be held that moneys appropriated to the payment of those dividends are appropriated to the Public Service. The Provincial Revenue is to be appropriated to the Public Service, and the appropriation in question does not in the opinion of the Attorney-General, come within that definition.

The Government has consequently been compelled to advise His Excellency to disallow this Ordinance.

"The Port Chalmers Town Board Ordinance Repeal Ordinance, 1866," and "Oamaru Town Board Ordinance 1862 Repeal Ordinance, 1866," are open to several objections. The third section of each Ordinance appears to make a statutory conveyance of lands, moneys, and choses in action. The fourth section of each Ordinance is clearly *ultra vires:* it purports to alter the jurisdiction and practice of the Supreme Court in the cases provided. With respect also to the former Ordinance, I would observe that an Ordinance of the Provincial Legislature was passed incorporating the Town of Port Chalmers, and, subsequently, "The Otago Corporation Empowering Act, 1865," was passed by the General Assembly, enabling the Town of Port Chalmers to be incorporated under that Act. That was done, but the empowering Act does not provide for the transfer of property, &c.

These objections have compelled Ministers to advise the Governor to disallow these two Ordinances, but as the Government desires to encourage and facilitate in every way the exercise by Municipalities of the fullest powers and privileges, a Bill with that object to be introduced in the next session of the General Assembly is now being considered, by means of which all parts of the Colony will be enabled to act effectively in a separate capacity for all necessary local purposes.

I have, &c.,

His Honor the Superintendent of Otago. E. W. STAFFORD.

No. 4.

His Honor JAMES MACANDREW to the Hon. E. W. STAFFORD.

(No. 6786.) Superintendent's Office,

SIR,— Dunedin, 4th April, 1867.

I have to acknowledge the receipt of your letter dated 23rd March, No. 159, intimating that His Excellency's assent had been withheld from certain Ordinances of the Provincial Council of

Otago for the reasons stated. 1st,—"Dunedin Reserves Management Ordinance, 1866:" Steps will be taken to remedy the objections to which you refer with a view to the subject being dealt with by the Provincial Council at its next session.

With respect to the intention of the Government to test the validity of the Crown Grant conveying the Provincial Government Reserves to the Superintendent in trust for the municipality, I must respectfully demur to such a step as being in direct contravention of a Resolution of the House of Representatives as founded upon the report of a Select Committee. As to the equity of the title upon which the Crown Grant has been issued, it appears to me that there can be no manner of doubt, and I venture to protest against any attempt to disturb the same Grant—in which light alone a reference to the Supreme Court must be regarded. I am the more surprised at this, seeing that not only has the ownership of the Provincial Government Reserves been declared by a special Resolution of the Lower House, in the session of 1865, but it has subsequently been confirmed by an Act which passed the Lower House in the session of 1866, which Act was prepared and supported by the present Attorney-General, and by him all but carried in the Legislative Council.

2nd.—"Southern Trunk Railway Guarantee Interest Ordinance 1865 Extension and Amendment Ordinance, 1866." The Provincial Treasurer has requested me to transmit a Memorandum respecting the disallowance of this Bill, which is enclosed herewith, and to which I beg to refer. As this Memorandum enters fully into the merits of the case, and, in my opinion, successfully combats the grounds upon which the Ordinance has been disallowed, it is unnecessary for me to say much; I would only remark that the disallowance, reaching me as it did immediately after arrangements had been completed to despatch a special agent to England for the purpose of negotiating for the construction of the railway, has thrown a considerable damper upon the hopes—the well founded hopes which were entertained of his success. I feel that I am justified in stating that if there is any one thing more than another upon which the people of this Province had set their minds it was the construction of this railway—as the precursor of the railway system throughout the Province, and the disallowance in question is justly regarded as a heavy blow and great discouragement.

I trust the Government will reconsider its decision upon the question, with a view to the Ordinance being re-enacted by the Provincial Council about to be convened, and so as to reach England as early as possible after the arrival there of Mr. William Carr Young, the gentleman who has been appointed special agent of the Province in this matter. Mr. Young leaves to-morrow, and proceeds to England *via* Panama. I have requested him to call upon you in order that he may personally represent the serious injury which will be inflicted upon the Province should the success of his mission be retarded or imperilled by the withholding of those inducements to undertake the construction of the railway which the disallowed Ordinance provided.

I have, &c.,
JAMES MACANDREW,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

P.S.—I will do myself the honor to address you separately respecting the other Ordinances disallowed.

Enclosure to No. 4.

The PROVINCIAL TREASURER to the SUPERINTENDENT of Otago.

THE Provincial Treasurer desires to make the following observations upon that portion of the letter of the Colonial Secretary, dated 23rd March, 1867, in which he signifies that His Excellency has been advised to disallow "The Southern Trunk Railway Guaranteed Interest Ordinance 1865 Extension and Amendment Ordinance 1866," and gives the reasons for the same.

These reasons appear to be—

1st. That the amendment by which a guarantee of interest is to be extended to the whole of the paid-up capital not exceeding £400,000 pounds, and by which it is made to date from the commencement of the works, is in "direct opposition to the object of the nineteenth section of 'The Southland Debt Act, 1865,' prohibiting further Provincial Loans without the previous sanction of the General Assembly, and would enable the pecuniary obligations of the Province to be definitely increased."

2nd. That the Ordinance authorizes the Superintendent "to make an agreement to pay public money to a purely private purpose, and that it cannot be held that moneys appropriated to the payment of those dividends are appropriated to the public service."

With respect to the first objection, the Provincial Treasurer has to remark that the nineteenth clause of the Southland Debt Act simply prohibits the authorization of Provincial Loans without the sanction of the Assembly. A guarantee is not the same as a loan, since it involves no repayment of the principal either expended or borrowed. At most, a guarantee may be considered to amount to an appropriation extending over a series of years, and the Treasurer submits that the General Government are not required by law to apply to it more than the ordinary consideration which guides them in leaving ordinary Appropriation Acts to their operation. In this case, that consideration would amount to whether the Province of Otago had a sufficient command of money to warrant it in appropriating a sum of thirty-two thousand pounds annually for fifteen years. There is no question that the resources of the Province are sufficient to make such an appropriation a safe one. There should be no objection to the nature of the expenditure, since the Act of the Assembly authorizing the railway, although it did not authorize a loan, authorized the Superintendent to construct the line. By the interpretation clause, the words "Promoters of the Line" were made to mean the Superintendent, and the seventh clause also shows that it was not only contemplated that the Superintendent might construct the line, but that the Provincial Revenue might be saddled with a permanent charge for it. A permanent charge for guarantee cannot therefore be regarded as beyond the intention of the Legislature. But supposing that the nineteenth clause were capable of being so strained, and, it may be added, so impossible an interpretation, as that any increase of the liabilities of a Province is tantamount to contracting a loan,

the Treasurer has to point out that, in the present case, the Colonial Secretary is mistaken in supposing that the amended Ordinance authorizes an increased liability. By either the original or the amended Ordinance, the Superintendent is authorized to make the Province liable for a guarantee of eight per cent. interest on £400,000 for fifteen years. The difference between the two consists only in the manner in which the guarantee is to operate, and especially how it is to commence. It is clear therefore that there is no legal impediment in the way of assent being extended to the Ordinance. But there arises out of this objection, and especially out of the remarks made by the Colonial Secretary, the question of public policy. It is not to be denied that on grounds of public policy the Government have the right to object to an Ordinance, but in this case it is respectfully submitted that reasons of public policy do not warrant the Ordinance being disallowed. It may be taken for granted, since the first Ordinance was assented to, that it is not considered opposed to public policy that a railway should be procured by the inducement of a guarantee. The amended Ordinance then has the following advantages over the original Ordinance:—

1st. It prolongs the time. The period of eighteen months from April, 1866, provided by the first Ordinance, is too short to admit of the necessary negotiations.

2nd. The guarantee provided by the amended Ordinance would be more acceptable to investors, and therefore, more likely to secure the construction of a railway. By the first Ordinance the guarantee was to be extended only to the capital employed in making each ten miles of railway after the same was completed. Although investors would still be entitled to a fifteen years' guarantee by this plan, they would not enjoy it at a time when they would most desire it, namely, whilst the works were in process of construction. The ten miles provision would undoubtedly tend to disturb the speedy and even progress of the works. Instead of the works being pushed on over the whole line, the Company would have a strong temptation to concentrate their capital, as it was from time to time paid up, upon separate portions of ten miles each; and the difficult portions of the line, which should be first commenced, would probably be the last. By the amended Ordinance, not only would it be for the interest of the Company to push on the works over the whole line, but the Superintendent could and would make a stipulation to that effect under the powers conferred by the following words in clause two:—"Provided always that such railway works shall be carried on subject to such conditions provisions and agreements as the Superintendent with the advice and consent of the said Executive Council shall think fit to impose." These words must be regarded as conferring a larger power than the third section of the original Ordinance, and in any case they are an answer to the Chief Secretary's remark, "No adequate security for the protection of public interest is provided."

In respect to the Chief Secretary's second reason against the Ordinance, the Treasurer thinks, on reconsideration, he will withdraw it. It is irreconcilable with his first objection, since, if the liability be considered in the light of a loan, the repayment could not be considered to be made for a private purpose. Again, the objection applies equally to the original Ordinance not disallowed as to the amended one. Again, there is custom to appeal to. In this and other Colonies and countries, guarantees have not been considered to be "agreements to pay money to a purely private purpose." They are looked upon as money inducements to companies to undertake works of a public nature. The Colonial Secretary might, with as much reason say that the Assembly, in the Nelson Railway Bill, authorized the alienation of a large tract of land for "a purely private purpose," as that the guaranteed inducement offered by the Otago Ordinance is amenable to a similar reproach.

The Treasurer recommends that the Superintendent should transmit this Memorandum to the Colonial Secretary, and that he should ask the General Government to re-consider their decision, so far as to assent to a similar Ordinance, if again passed by the Provincial Council. The Colonial Secretary might be invited to suggest any amendments not interfering with the spirit of the Ordinance, but which he conceived would afford a better assurance against a possible invasion of public interests.

JULIUS VOGEL,
Provincial Treasurer.

4th April, 1867.

No. 5.

The Hon. E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 193.) Colonial Secretary's Office,
Wellington, 16th April, 1867.

SIR,—

I have to acknowledge the receipt of your Honor's letter No. 6786, of the 4th instant, in which you refer to the assent of the Governor being withheld from "The Dunedin Reserves Management Ordinance, 1866."

I cannot concur in the entire accuracy of the description given in that letter of the course taken with respect to the Princes Street Reserve at Dunedin, which was included among other reserves referred to in this Bill. Your Honor states that the ownership of that reserve has been declared by a distinct Resolution of the House of Representatives in the session of 1865, and that it was subsequently confirmed by an Act which passed the Lower House in 1866, and all but carried in the Legislative Council. On this point I would observe that no Resolution of the Legislature, much less of one branch only, could settle the ownership of land; nor does the Resolution in question profess to do so,—it merely states the opinion of the House in whom the land "should be vested." A Select Committee of the House had previously recommended that the land be granted to the Municipality of Dunedin. A Crown Grant of this land was granted on 11th January, 1866, to the Superintendent of Otago, under the Public Reserves Act but a Bill, not purporting to confirm or validate the grant, but to appropriate to the Superintendent of Otago certain rents on account of the land, although passed in the House of Representatives, was rejected in the Legislative Council in 1866. Thus, although a Resolution recommending that the lands should be vested in the Superintendent of Otago was passed in the House of Representatives in a former Parliament, the present Parliament has refused to pass an Act appropriating the rents in accordance therewith.

Under all these circumstances, and taking into consideration that a claim to this land has been

preferred by Natives, the Government considered that the ownership of the property should be tried by the Supreme Court. This was communicated to the Superintendent of Otago on the 16th October, 1866, and the proposal made that the question should be tested by a friendly suit; the Superintendent declined the proposal, and the Government has consequently instructed the Attorney-General to take the necessary steps to have the question determined.

When, therefore, a Bill was passed by the Provincial Council of Otago, dealing with that reserve, it was impossible for Ministers, independently of legal objections fatal to the Bill, to advise the Governor to assent to it.

I will reply in a separate letter to your Honor's remarks on the disallowance of "The Southern Trunk Railway Guaranteed Interest Ordinance 1865 Extension and Amendment Ordinance, 1866."

I have, &c.,

His Honor the Superintendent of Otago. E. W. STAFFORD.

No. 6.

The Hon. E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 192.) Colonial Secretary's Office,

SIR,— Wellington, 16th April, 1867.

In your Honor's letter No. 6,786, of the 4th instant, you enclose a Memorandum from the Provincial Treasurer of Otago relative to the disallowance of "The Southern Trunk Railway Guaranteed Interest Ordinance 1865 Extension and Amendment Ordinance 1866."

I do not perceive that the Memorandum removes the legal objection which, as the Government is advised, is fatal to the Ordinance, and which, as I stated in my letter No. 159, 23rd March, 1867, is that the Ordinance authorizes the Superintendent to make an agreement to pay public money for a purely private purpose, and that it cannot be held that moneys appropriated to the payment of the dividends are appropriated to the public service. The work referred to is only a "public work" in the same sense as the company constructing it is a "public company." Neither is "public" in the legal sense in which the words "public uses" and "public service" are used, which refer to the community as a body represented by the Government. The fact that other Legislatures have passed Acts to a similar effect, cannot of course affect the legal question; nor is the Provincial Treasurer's reference to the Nelson Railway Act, passed by the General Assembly, a case in point, as there is nothing to prevent the Waste Lands of the Colony from being given away or otherwise dealt with as the General Assembly may determine.

On the other point referred to by the Provincial Treasurer, the Government cannot admit that an Ordinance which enables large and uncertain liabilities to be incurred without due protection to public interests is not inconsistent with the object of the nineteenth section of "The Southland Debt Act, 1865," which prohibits further Provincial Loans without the previous sanction of the General Assembly. That object is to prevent the public debt of a Province from being indefinitely increased without the previous authority of the Colonial Legislature; and that object would be frustrated by Provincial legislation authorizing extended guarantees which would virtually, by increasing the public liabilities, have the same effect as if loans were directly raised. I regret that the Government was therefore compelled to advise His Excellency to disallow this Ordinance, and I enclose for your Honor's information a copy of a letter which I addressed to Mr. W. Carr Young before he left Wellington for England, stating that the Government will be prepared to consider any future propositions which may be made for improving the existing Southern Trunk Railway Ordinance of 1865, which may secure the public interests while tending to promote the construction of the railway.

I have, &c.,

His Honor the Superintendent, Otago. E. W. STAFFORD.

Enclosure in No. 6.

The Hon. E. W. STAFFORD to Mr. W. C. YOUNG.

(No. 330.) Colonial Secretary's Office,

SIR,— Wellington, 8th April, 1867.

Referring to your interview with me to-day, on the subject of the proposed Otago Southern Trunk Railway, and of the disallowance by His Excellency the Governor of the Ordinance relating to the same, passed in the last session of the Otago Provincial Council, I have the honor to inform you that the Government will be prepared to consider any future proposition which may be made for improving the existing Provincial Ordinance of 1865, which may secure the public interests while tending to promote the construction of the railway.

The Provincial Government of Otago will be communicated with on this subject.

I have, &c.,

W. C. Young, Esq. E. W. STAFFORD.

No. 7.

His Honor JAMES MACANDREW to the Hon. E. W. STAFFORD.

(No. 7537.) Superintendent's Office,

SIR,— Dunedin, 20th May, 1867.

I have the honor to forward the accompanying Ordinance, passed by the Provincial Council on the 16th instant, and to which I have this day assented on behalf of His Excellency the Governor.

"Southern Trunk Railway Guaranteed Interest Ordinance, 1867."

Will you be good enough to telegraph whether His Excellency has been advised to leave it to its operation.

I have, &c.,
JAMES MACANDREW.

The Hon. the Colonial Secretary, Wellington.

No. 8.

The Hon. E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 270.) Colonial Secretary's Office,
SIR,— Wellington, 3rd June, 1867.

I have the honor to acknowledge the receipt of your Honor's letter No. 7537, of the 20th ultimo, transmitting "The Southern Trunk Railway Guaranteed Interest Ordinance, 1867," to which you state that you have assented on behalf of the Governor.

This Bill authorizes the Superintendent, with the advice and consent of his Executive Council, to guarantee to a Company formed for the construction of a Railway from Dunedin to the Clutha, interest at the rate of eight per cent. on paid up capital, not exceeding the sum of five hundred thousand pounds. If this sum had not exceeded by £100,000 the amount originally authorized and understood by the General Assembly as required when it passed "The Otago Southern Trunk Railway Act, 1866," the Governor would have been advised to leave this Ordinance to its operation; but Ministers cannot, without the previous sanction of the Colonial Legislature, authorize so large a sum, as would accrue from the guaranteed interest on the additional amount, to be added to the liabilities of the Colony. I may observe that your Honor has omitted to signify on the copies of the Ordinance the assent of the Superintendent on behalf of the Governor. All copies of Ordinances assented to on behalf of the Governor, and forwarded for the signification of his pleasure, should bear such assent on the face of them.

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

His Honor the Superintendent, Otago.

No. 9.

His Honor JAMES MACANDREW to the Hon. E. W. STAFFORD.

(7537-3) Province of Otago, New Zealand,
SIR,— Superintendent's Office, Dunedin, 15th June, 1867.

I have the honor to acknowledge the receipt of your letter, No. 270, of the 3rd instant, on the subject of "The Southern Trunk Railway Guaranteed Interest Ordinance, 1867," transmitted by me on the 20th ultimo.

I have, &c.,
JAMES MACANDREW,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 10.

Copy of a Letter from the Honorable E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 357.)

SIR,— Colonial Secretary's Office, Wellington, 7th August, 1867.

Adverting to my letter No. 356 of this day's date, I have to address your Honor on the subject of the remaining Ordinances enclosed in your letter No. 7759, of the 5th ultimo.

The Governor has been advised to disallow the undermentioned Ordinances—

"Administration of Justice Ordinance, 1867;"

"Provincial Wardens' Court Jurisdiction Extension Ordinance, 1867;" and

"Fencing Ordinance, 1867;"

for the following reasons respectively:

Several provisions in the Administration of Justice Ordinance are clearly *ultra vires*. The power given by the Constitution Act to a Provincial Legislature to create Courts extends only to creation of Courts for trying and punishing offences summarily punishable by the law of the Colony, but the powers which this Ordinance affects to give by incorporating the forty-fifth and forty-sixth sections of "The Justices of Peace Act, 1866," include the making orders for payment of money on complaint. These orders and complaints are matters generally of a civil nature, and the jurisdiction in respect of them cannot be given by a Provincial Legislature.

The provision incorporating sections seventy-seven to eighty-one of "The Justices of the Peace Act, 1866," is *ultra vires*, as it imposes a penalty for assault, and empowers wardens to deal with such assaults summarily, or to commit for trial. Although it may be open to question whether a Provincial Legislature may not give power to try and punish such an offence, it is quite clear that it cannot create a Court or give a power to commit for trial by indictment. Moreover, the Ordinance purports to exempt—in cases when a charge of assault is dismissed, and the person charged is furnished with a certificate of such dismissal—that person from a liability to any civil or criminal proceedings for such an assault; also, to appropriate a part of the fine imposed. Both these provisions are *ultra vires*. There are other provisions in the Ordinance which, as the Government is advised, are illegal, not only amongst those which are incorporated from "The Justices of the Peace Act, 1866," but also amongst express provisions in the Ordinance itself. For instance, sections nine and ten affect the practice procedure and jurisdiction of the Supreme Court. Section eight also purports to empower the Superintendent to make rules of practice and proceedings, &c., in the Courts referred to. This is in effect to delegate to the Superintendent a power which (assuming the law to

be so) has been conferred on the Provincial Legislature, a delegation which a subordinate Legislature is not competent to make.

"The Provincial Wardens' Courts Jurisdiction Extension Ordinance, 1867," is also open to legal objections. It affects to give a civil jurisdiction up to £20 to the wardens established under the Ordinance to which I have previously referred. This is beyond the power of a Provincial Legislature. It may, perhaps, create Courts for the trial of offences punishable summarily, and also alter civil jurisdiction of Courts having civil jurisdiction, but it cannot give a civil jurisdiction to Courts having only a criminal jurisdiction.

Sections six, seven, and eight, of "The Fencing Ordinance, 1867," are *ultra vires*, and fall within the recent judgment of the Court of Appeal in the case of Sinclair *v.* Bagge. A Provincial Legislature may, under "The Provincial Councils Powers Act, 1856," alter the civil jurisdiction in cases where the amount claimed does not exceed £20, but the provisions in question do not so limit the amount.

"The Otago Gold Fields Provincial Management Ordinance, 1867," has ceased to operate, and the present consideration of its legality, with a view to its allowance or disallowance, is practically unimportant, but I cannot omit to point out to your Honor the serious question which is raised by the delay which has taken place in your transmission to the Governor of this Ordinance after it had been assented to by you. The Ordinance was assented to by your Honor on the 21st May last, and was not transmitted by you until the 5th of July. The Constitution Act prescribes, with a view to enabling the Governor to disallow, if necessary, an Ordinance assented to by the Superintendent, that, "Whenever any Bill shall have been assented to by the Superintendent as aforesaid, the Superintendent shall forthwith transmit to the Governor an authentic copy thereof." In the case of the Ordinance in question, your Honor allowed six weeks to elapse after you had assented to the Ordinance before you transmitted it to the Governor, and in the meantime you acted on it, so that the Ordinance before its transmission had any longer ceased to operate. This is evidently an evasion, if, indeed, it is not an infringement of the law. The neglect of the injunction in a Statute when the matter enjoined is a public duty, is in itself a misdemeanor, and renders the person committing it liable to indictment, and, in the case of an Ordinance assented to on behalf of the Governor, raises a serious doubt as to its validity.

I have, &c.,

His Honor the Superintendent, Otago. E. W. STAFFORD.

No. 11.

His Honor JAMES MACANDREW to the Hon. E. W. STAFFORD.

(No. 7797-1.)

Province of Otago, New Zealand. Superintendent's Office,

SIR,— Dunedin, 15th July, 1867.

I have the honor to forward the following Ordinances passed at the late session of the Provincial Council, viz.:—

"The Neglected and Criminal Children Ordinance, 1867;"

to which I have assented on behalf of His Excellency the Governor. I have also the honor to forward—

"The Oamaru Town Board Ordinance 1862 Repeal Bill, 1867;"

"The Port Chalmers Town Board Ordinance Repeal Bill, 1867;"

"The Dunedin Reserves Management Bill, 1867;"

which I have reserved for the signification of His Excellency's pleasure.

I have, &c.,

JAMES MACANDREW,

The Hon. the Colonial Secretary, Wellington. Superintendent.

No. 12.

The Hon. E. W. STAFFORD to His Honor JAMES MACANDREW.

(No. 394.) Colonial Secretary's Office,

SIR,— Wellington, 20th September, 1867.

I have to acknowledge the receipt of your Honor's letter No. 7797, of the 15th July last, transmitting an Ordinance and certain reserved Bills passed at the late session of the Provincial Council of Otago.

His Excellency has assented to "The Dunedin Reserves Management Ordinance, 1867," and I return to your Honor a copy with such assent duly noted thereon. I would observe with respect to the recreation reserves included in that Ordinance, that it is advisable that proper restrictions and limitations should be placed upon the dealing by the Corporation with the recreation reserves, and that the power to lease such reserves ought to be particularly guarded so as not to defeat their object.

The Government is advised that "The Neglected and Criminal Children Ordinance, 1867," is in many of its provisions *ultra vires*. A Provincial Legislature cannot alter the criminal law except, first, in providing for trial or punishment of offences which by the law of New Zealand are punishable in a summary way; and, secondly, by declaring that certain acts or omissions within the Provinces are offences and by providing for trial of such summarily or otherwise, and by imposing as punishment for such offences imprisonment not exceeding one month. This Ordinance provides that certain children shall be deemed "neglected children," and authorizes the apprehension of such a child, and provides that if a child is brought before Justices "charged" with being a "neglected child" it may be sent by the Justices to an Industrial School for a term of not less than one and not more than seven years. It also provides that on conviction of a child, either on an information or summarily, the Court or Justices may send such child, after termination of sentence, to a Reformatory for a term not more than seven years. This is an alteration of the criminal law of New Zealand, and it is not such an

alteration as falls within the power conferred by the Constitution, because the offences created are new and are not contained in the law of New Zealand. The provision is not within the power conferred by "The Provincial Councils Powers Act, 1856," because it affects to authorize imprisonment for a term of seven years. Sections twenty-five and twenty-eight contain provisions which are *ultra vires*, and fall within the recent judgment in "Sinclair *v.* Bagge." If the jurisdiction is intended to be civil, the provision is not one "altering jurisdiction of a Court of civil judicature with summary jurisdiction," and is not limited to "debts or demands under £20." If the jurisdiction is intended to be a criminal jurisdiction, it creates an offence and imposes a penalty not permitted by "The Provincial Council Powers Act, 1856." Section thirty-three is clearly *ultra vires*, as it purports to permit Justices to award a whipping for absconding. Sections twenty and twenty-one are also *ultra vires* in affecting to prescribe for the practice and procedure of Courts of justice in actions, but contain no limit either as to the nature of the Court or the amount of the claim. For these reasons, the Governor has been advised to disallow this Ordinance, the provisions of which can only be enacted by the General Assembly.

The Governor cannot be advised to assent to "The Oamaru Town Board Ordinance 1862 Repeal Ordinance, 1867," and "The Port Chalmers Town Board Ordinance Repeal Ordinance, 1867." These Ordinances, which are identically the same except in respect of the places to which they apply, are open to the same legal objections. Section four in each Ordinance is *ultra vires*, as it affects practice and procedure of Courts not of summary jurisdiction and contains no limit as to amount of claim, and consequently the provision falls within the prohibition in the Constitution Act, and does not fall within the power conferred by "The Provincial Councils Powers Act, 1856." The reservation of the Bill does not affect the question, as the express assent of the Governor would not give validity to invalid provisions. The third section, which provides a statutory transfer of property from one body to another, is also objectionable.

I am not aware why these Ordinances have been repassed and reserved by your Honor, as they are transcripts of Ordinances passed by the Provincial Council of Otago, and assented to by the Superintendent, and lately disallowed on account of the objections pointed out in my letter No. 159, of the 23rd March last.

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

His Honor the Superintendent, Otago.

PROVINCE OF CANTERBURY.

No. 1.

His Honor W. S. Moorhouse to the Hon. E. W. Stafford.

(No. 147.) Superintendent's Office,
Sir,— Christchurch, Canterbury, 12th February, 1867.

I have the honor to enclose copies of the undermentioned Ordinances passed by the Provincial Council, and to which I have assented on behalf of His Excellency the Governor, viz.:—

"The Hokitika Municipal Ordinance, 1866;"
"The Medical Practitioners' Ordinance, 1867;"
"The Westland Board of Education Ordinance, 1867;"
"The Stanmore Road Bridge Ordinance, 1867;"
"The Cass Pension Ordinance, 1867;"
"The Fire Ordinance Amendment Ordinance, 1867;"
"The Public House Ordinance 1866 Amendment Ordinance, 1867;"
"The Westland Public House Ordinance, 1867;"
"The Roads Ordinance Amendment Ordinance, 1867;"
"The Westland Hospital Ordinance, 1867;"
"The Christchurch City Council Ordinance 1862 Amendment Ordinance, 1867."

I have, &c.,
W. S. Moorhouse.
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 2.

His Honor W. S. Moorhouse to the Hon. E. W. Stafford.

(No. 69.) Superintendent's Office,
Sir,— Christchurch, Canterbury, 26th February, 1867.

I have the honor to forward herewith the undermentioned Ordinances, passed by the Provincial Council, and to which I have assented on behalf of His Excellency the Governor, viz.:—

"The Hokitika Municipal Corporation Ordinance, 1867;"
"The Gibson Quay Ordinance Amendment Ordinance, 1867;"
"The English Agent's Ordinance, 1867."

I have, &c.,
W. S. Moorhouse,
Superintendent,

The Hon. the Colonial Secretary.

No. 3.

The Hon. E. W. STAFFORD to His Honor W. S. MOORHOUSE.

(No. 139.) Colonial Secretary's Office,
Wellington, 15th March, 1867.

SIR,—

I have to acknowledge the receipt of your Honor's letter, No. 69, of the 26th ultimo, transmitting three Ordinances passed by the Provincial Council of Canterbury, and assented to by your Honor.

His Excellency has been advised to leave to their operation "The Gibson Quay Ordinance Amendment Ordinance, 1867," and "The English Agent's Ordinance, 1867."

"The Hokitika Municipal Corporation Ordinance, 1867," is open, in the opinion of the Attorney-General, to several legal objections, many of its provisions being *ultra vires*. The eighty-third and eighty-fourth sections assume to give an appeal against rates to Resident Magistrates' Courts, a power withheld from Provincial Legislatures by the nineteenth section of the Constitution Act, and, so far as appeal is concerned, not within the modification created by "The Provincial Council Powers Act, 1856." Embarrassment might thus arise from sueing in cases where rates are not paid.

The ninety-second section is also, for the same reasons, beyond the power of a Provincial Legislature.

Section ninety-nine gives power to borrow money to the extent of £50,000, on assignment of rates, and accordingly the Bill should have been reserved in conformity with the instructions given by the Governor under the Constitution Act to Superintendents', (see *New Zealand Gazette*, No. 12, of the 2nd May, 1857, page 84), not to assent to any Bill passed by a Provincial Council for the purpose of raising money by way of loan.

Section one hundred and eight, taken in connection with section one hundred and ten, appears to the Attorney-General to be *ultra vires*. The effect of the two provisions would be to enable the Town Council to make bye-laws creating offences punishable by summary conviction, and thus beyond the power of a Provincial Legislature. (See twelfth sub-section of nineteenth section of the Constitution Act.) The Provincial Legislature is authorized by "The Provincial Council Powers Act, 1856," to pass provisions creating such offences, but this Act does not empower it to authorize another body to do so.

The Ordinance in question contains provisions similar to those in the Otago Municipal Ordinance, and it was found necessary to validate that Ordinance by an Act of the Assembly.

Hokitika was incorporated under "The Municipal Council Ordinance Amendment Ordinance, 1866," and "The Municipal Council Ordinance, Session 14, No. 2," and, although there are provisions enabling Town Councils to borrow a sum equal to three years' estimated revenue and to make bye-laws, there are not provisions in the Municipal Ordinance or "The Christchurch City Council Ordinance, 1862," or "The Lyttelton Municipal Council Ordinance, 1863," giving appeal to Resident Magistrates' against rates.

The Government intends to submit to the General Assembly next Session, a general Municipal Bill, giving ample authority for the imposition and recovery of rates, and also those powers and those duties which are usually vested in Municipal Bodies, and which will enable Municipal Bodies already established to be brought within its provisions.

Under these circumstances, taking into consideration the legal objections, and in view of the general Municipal Bill referred to, I would submit to your Honor whether it would not be better that the Ordinance in question should be disallowed.

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

His Honor the Superintendent, Canterbury.

No. 4.

The Hon. E. W. STAFFORD to His Honor W. S. MOORHOUSE.

(No. 155.) Colonial Secretary's Office,
Wellington, 23rd March, 1867.

SIR,—

The Government has had under its consideration "The Medical Practitioners' Ordinance, 1867," and "The Westland Hospitals Ordinance, 1867," transmitted in your Honor's letter No. 147, of the 12th ultimo.

"The Medical Practitioners' Ordinance, 1867," provides that after the 1st of March, instant, no person shall use any medical title unless registered under the Ordinance of the Legislative Council of New Munster, relating to the qualifications of Medical Practitioners, and that no unregistered person shall recover fees or charges.

An Act of the Imperial Parliament, intituled "The Medical Act," 21 and 22 Victoria, c. 90, provides in section 31 that every person registered under that Act shall be entitled to practice in any part of Her Majesty's dominions, and to recover his charges in any Court of law.

The Provincial Ordinance would, if valid, prevent persons registered under the Imperial Act from recovering fees, and is repugnant to and inconsistent with the Imperial Act, and therefore *ultra vires*, so far as it affects persons registered under the Imperial Act. The Ordinance has consequently been disallowed. The Government is advised that it would be quite within the power of the Provincial Legislature to legislate on the subject if it was provided that the Ordinance should not apply to persons registered under the Imperial Act, and if the Ordinance provided that persons so registered should have the same privileges, &c., as persons registered under the Provincial Act.

"The Canterbury Gold Fields Hospitals' Ordinance, 1867," is open to two grave legal objections, the first affecting the constitution of the bodies to be created under the Ordinance, and the second the validity of the bye-laws to be passed by one of these bodies.

The second section is, it is presumed, intended to have the effect of creating the general board a corporation, with powers to sue, but a corporate name is given to it, which would be common to all boards. The Government is advised that, while the whole section is uncertain and difficult to be construed, it must bear the construction that the Superintendent may permit the general board or committee of management to be a corporation. The Provincial Legislature cannot so legislate. By "The Provincial Corporations' Act, 1865," the Provincial Legislatures may create corporations, but the Ordinance under consideration proposes not to create a corporation, but to empower the Superintendent to create it. Even if such a provision were valid, it would have the objection of enabling a double corporate body to be created, for the incorporation may be of the committee of management as well as of the general board. The general board should alone be incorporated, and by a distinctive title, as "The General Board of the Hospital."

In section 6 it is provided that the general board shall alone have power to make bye-laws. If it appeared that such bye-laws were only intended for the government of the corporate body, that is the general board of governors, the provision would not be objectionable, but section 12 imposes a penalty on persons bringing spirits to the hospital contrary to bye-laws, and it is therefore clear that the intention is the bye-laws should affect others than the members of the corporation. The consequences would be that the board of managers would have the power to create offences liable to penalties recoverable summarily under the twelfth section. As the only powers which the Provincial Legislature has of creating offences is derived from "The Provincial Councils' Powers Act, 1856," it cannot empower another body to make bye-laws creating offences. The Provincial Ordinance must specify the acts which are to be offences liable to penalties.

If the bye-laws were to affect only the corporate body, as for instance to regulate its proceedings, the power to make them would not be open to legal objection, because such a power is incident to every corporation, and would be held by that body without express provision.

Ministers regret that they have, for these reasons, been compelled to advise the Governor to disallow this Ordinance.

I have, &c.,

His Honor the Superintendent, Canterbury. E. W. STAFFORD.

No. 5.

His Honor W. S. MOORHOUSE to the Hon. E. W. STAFFORD.

(No. 135.) Superintendent's Office,

SIR,— Christchurch, Canterbury, 5th April, 1867.

I have the honor to acknowledge the receipt of your letter, informing me that His Excellency the Governor has been advised to disallow the following Ordinances:—

"The Medical Practitioners' Ordinance, 1867."

"The Westland Hospitals Ordinance, 1867."

I have, &c.,

F. E. STEWART,

The Hon. the Colonial Secretary, Wellington. (In the absence of the Superintendent.)

PROVINCE OF MARLBOROUGH.

No. 1.

His Honor W. H. EYES to the Hon. E. W. STAFFORD.

Superintendent's Office,

SIR,— Blenheim, 13th August, 1866.

Drainage Act 1866, section 15, No. 3.
Licensing Act Amendment Act, 1866, section 15, No. 5.

I have the honor to transmit herewith copies of two Acts as mentioned in the margin, which have been passed by the Provincial Council of Marlborough, and to request that you will be good enough to lay the same before His Excellency the Governor, and advise him to give his assent thereto.

I have, &c.,

H. GODFREY,

The Hon. the Colonial Secretary, Wellington. Deputy Superintendent.

No. 2.

His Honor W. H. EYES to the Hon. E. W. STAFFORD.

(No. 1176.) Superintendent's Office,

SIR,— Blenheim, 10th October, 1866.

I have the honor to draw your attention to "The Drainage Act, 1866," passed by the Provincial Council, and transmitted to you on the 13th August last, with a request that you would be good enough to lay the same before His Excellency the Governor, and advise him to give his assent thereto.

The Act in question is in my opinion of very great importance to the interests of a great number of individuals, and indeed to the welfare of this Province generally, and I am very anxious therefore to learn whether there are any objections to its becoming law.

I have, &c.,

The Hon. the Colonial Secretary, Wellington. W. H. EYES.

No. 3.

The Hon. E. W. STAFFORD to His Honor W. H. EYES.

(No. 470.) Colonial Secretary's Office,
SIR,— Wellington, 21st November, 1866.

I have to acknowledge the receipt of your Honor's letter No. 1176, of the 13th August last, transmitting a Bill passed by the Provincial Council of Marlborough, intituled "The Drainage Act, 1866."

The Government is advised that sections 16, 29, 30, and 31 of this Bill are *ultra vires*, being in contravention of sub-section 2 of section 19 of the Constitution Act, and I regret therefore that I have been unable to advise His Excellency to assent to this Bill.

I have, &c.,
His Honor the Superintendent, Marlborough. E. W. STAFFORD.

No. 4.

His Honor W. H. EYES to the Hon. E. W. STAFFORD.

(No. 49-99.) Superintendent's Office,
SIR,— Blenheim, 5th July, 1867.

I have the honor to transmit herewith copies of five Acts which have been passed by the Provincial Council of Marlborough, intituled respectively—

"The Drainage Act, 1867;"
"The Charitable Trusts Act, 1867;"
"The Picton Improvement Act Amendment Act, 1867;"
"The Licensing Act Amendment Act 1866 Amendment Act, 1867;"
"The Appropriation Act, 1867-8;"

and to request that you will advise His Excellency the Governor to assent to the same.

I have, &c.,
W. H. EYES.
The Hon. the Colonial Secretary, Wellington. Superintendent.

No. 5.

The Hon. E. W. STAFFORD to His Honor W. H. EYES.

(No. 382.) Colonial Secretary's Office,
SIR,— Wellington, 7th September, 1867.

Adverting to the reserved Bill intituled "The Drainage Act, 1867," enclosed in your Honor's letter No. 49-99, of the 5th July last, I have to state that the Government is advised that the thirteenth section of that Bill is *ultra vires*, as constituting a Court of Appeal, and falls within the recent judgment in "Sinclair *v.* Bagge"; and that section fifteen is also *ultra vires*, being to the same effect as the sixteenth section of the similar Bill disallowed in 1866. His Excellency cannot therefore be advised to assent to this Bill.

I have, &c.,
His Honor the Superintendent, Marlborough. E. W. STAFFORD.

PROVINCE OF WELLINGTON.

No. 1.

His Honor I. E. FEATHERSTON to His Excellency Sir G. GREY.

SIR,— Superintendent's Office, Wellington, 17th June, 1867.

I do myself the honor to forward to your Excellency authenticated copies of the following Acts, passed in the last Session of the Provincial Council of this Province, and to which I have given my assent on behalf of your Excellency, viz.:—

1. "An Act to appropriate the Revenue of the Province of Wellington for a term commencing the first day of April, 1867, and ending the thirtieth day of June, 1867."
2. "An Act to provide for the Protection of certain imported Birds and other Animals in the Province of Wellington."
3. "An Act to enable the Superintendent of the Province of Wellington to issue to Volunteers and Militiamen Remission Certificates for the Purchase of Land."
4. "An Act to Indemnify the Superintendent of the Province of Wellington for the Expenditure of certain Moneys for the Civil Government and Public Works and undertakings of the said Province."
5. "An Act to consolidate and amend the Laws relating to the Sale of Spirituous and Fermented Liquors."
6. "An Act to amend 'An Act to authorize the construction of a Bridge over the Wanganui River, and levying of Tolls on traffic over the same.'"
7. "An Act to enable the Superintendent of the Province of Wellington to sell certain Reclaimed Land for the purposes of a Telegraph office."
8. "An Act to appropriate the Revenue of the Province of Wellington for the year commencing the first day of April, 1867, and ending the thirty-first day of March, 1868."

9. "An Act to amend 'An Act to promote the Establishment of Common Schools in the Province of Wellington,' Session II., No. 6."
10. "An Act to consolidate and amend the Law relating to Fencing within the Province."
11. "An Act to amend and consolidate the Law relating to District Highways."

I have, &c.,
His Excellency the Governor of New Zealand. I. E. Featherston,
Superintendent.

No. 2.

The Hon. E. W. Stafford to His Honor I. E. Featherston.

(No. 197.)

Sir,— Colonial Secretary's Office, Wellington, 28th June, 1867.

I have to acknowledge the receipt of your Honor's letter of the 17th instant, transmitting eleven Acts passed by the Provincial Council of Wellington, and assented to by your Honor.

The following five Acts will be left to their operation:—

"The Volunteer Free Grants Act, 1867;"
"The Indemnity Act, 1867;"
"The Harbour Reserves Amendment Act, No. 2;"
"The Appropriation Act, 1867–1868;"
"The Education Act Amendment Act, 1867."

With regard to "The Indemnity Act, 1867," I would observe that "The Provincial Audit Act, 1866," provides that if the Superintendent spends money without appropriation, he shall be liable to a penalty; but that if he has received an address signed by the Speaker, and passed by an absolute majority of the whole Council, requesting him to recommend a grant of a sum of money to meet such expenditure, such an address shall be a sufficient bar to any proceeding for recovery of such penalty. This Act professes to indemnify the Superintendent on account of such expenditure; the meaning of this must be that the Superintendent should not be subject to the penalty to which he is subject for acting illegally; but "The Provincial Audit Act, 1866," irrespectively of that part of that Act which provides for an indemnity (namely by address signed by the Speaker, passed by an absolute majority of the whole Council), cannot be set aside in this manner, because if an Act of the General Assembly imposes a penalty, a Provincial Legislature cannot pass an Act indemnifying the person liable to the penalty. Moreover, the Audit Act could be so far defeated by this means, inasmuch as, although an absolute majority of the whole Council is required for the address, an Indemnity Act may be passed by a much smaller number, even a quorum of the Council.

If your Honor has received the address provided by the Audit Act, nothing more was requisite; and if you have not received such an address, this Act should not have been passed.

I would call your Honor's attention to the omission in "The Harbour Reserves Amendment Act, No. 2," of a clause postponing the coming into operation of the Act until after the time for disallowance by the Governor had expired. This postponement is effected by "The Public Reserves Act, 1854," but the omission of such a clause is, especially when it is inserted in both the Acts which this Act amends, inconvenient and apt to mislead.

I will address your Honor in separate letters on the subject of the other five Acts enclosed in your letter.

I have, &c.,
His Honor the Superintendent, Wellington. E. W. Stafford.

P.S. As "The Ad Interim Appropriation Act, 1867," is repealed by "The Appropriation Act, 1867–1868," it is unnecessary for me to notice it.

No. 3.

The Hon. E. W. Stafford to His Honor I. E. Featherston.

(No. 198.)

Sir,— Colonial Secretary's Office, Wellington, 28th June, 1867.

Adverting to my letter, No. 197, of even date herewith, on the subject of the Acts enclosed in your Honor's letter of the 17th instant, I have to express my regret that Ministers are compelled to advise His Excellency to disallow the undermentioned Acts, for the following reasons:—

"The Protection of Certain Animals Act, Wellington, 1867."—This Act is inconsistent with the provisions of the Act of the General Assembly, "Protection of Certain Animals Act, 1865," which (section 2) protects deer, hare, swan, wild goose, or wild duck, of any imported species, till first of May, 1870; and after that day permits the shooting, &c., thereof in certain months (May to August inclusive); and the same section empowers the Governor to cause protection to cease in any part of the Colony before May, 1870. The Wellington Act (sections 2 and 3) absolutely extends protection to 1872, and thereby assumes to abrogate the Governor's power given in the Act of 1865, and also to abrogate the permission to kill given by that Act, in the specified months after 1870.

The Government is advised that the Provincial Act is repugnant to the Act of 1865. If an alteration of that law is thought necessary it should be effected by the General Assembly.

"The Wanganui Bridge Amendment Act."—The Government is advised that this Act should have been reserved for the signification of the Governor's pleasure thereon. In 1857 the Governor issued instructions under the Constitution Act, that Provincial Bills for the purpose of raising money by way of loan should be reserved; and in conformity therewith the Wanganui Bridge Act of 1862 (Session X. No. 6) which this Act amends was reserved. Irrespectively of the instructions, it is proper that any Bill amending or repealing an Act which had been reserved should also be reserved. There is a further objection to the Act, if any money has been raised under the Act which it amends,

for it repeals provisions by which borrowers obtain a right to three months' notice of the repayment of the money borrowed. The Act should have been drawn so as not to affect debentures already issued. "The Southland Provincial Debt Act, 1865," forbids the passing of an Ordinance by a Provincial Legislature for raising a loan, and enacts that no such Bill shall be assented to by the Governor without the sanction of the Assembly; clearly indicating that all Provincial Bills for raising loans are to be reserved in accordance with the Governor's instructions before referred to.

"The Fencing Act, 1867."—The sixteenth section of this Act establishes a compulsory Court of Arbitration for settling certain matters in dispute. The Government is advised that such an enactment is *ultra vires*, as a Provincial Legislature cannot establish such a tribunal.

"The District Highways Act, 1867." This Act could only be passed by a Provincial Legislature under the authority of "The Provincial Councils Powers Extension Act, 1865," and should have been reserved, as required by the third section of the latter Act, for the signification of the Governor's pleasure thereon. The Government is also advised of the following objections to several of the sections of the Provincial Act, which necessitates its disallowance. Section 11 assumes to regulate the forms and the manner of proceeding in Courts of Law. This is in contravention of the nineteenth section of the Constitution Act and "The Provincial Councils Powers Act, 1856." Section 17—In the rating clause, buildings the property of the Crown, used or occupied by the General Government, ought to have been excepted. Section 20, referring to the recovery of rates, is also objectionable on the same ground that section 11 is objected to. If the subject matter had been limited to twenty pounds, this provision might perhaps have been authorized by "The Provincial Councils Powers Act, 1856," if the provision had also been made applicable solely to the Resident Magistrates' Court. Section 22 assumes to authorize the compulsory taking of land for roads. This power has been considered one not properly to be exercised by Provincial Legislatures, except under restrictions. In the last Session of the General Assembly the power was expressly given to Provincial Legislatures to take lands compulsorily, but subject to certain restrictions and conditions. The land must be taken in conformity with the provisions of "The Lands Clauses Consolidation Act, 1863." Moreover the proceedings on the introduction and passing a Bill for taking lands are to be regulated by Standing Orders, approved of by the Governor. And the Act forbids the taking of land under a Provincial Act, except in accordance with this Act ("The Provincial Compulsory Land Taking Act"). The Act also assumes to establish a tribunal for deciding disputes as to compensation; this is *ultra vires*, as pointed out with regard to the Fencing Act. Sections 23, 24, 25, are *ultra vires*, inasmuch as they assume to impose duties on the Supreme Court and its officers, and to regulate the practice of that Court. Section 28 is *ultra vires;* it is legislation as to Waste Lands of the Crown; for though it only applies to lands granted, yet it is so framed that it is really legislation on the subject of grants of Waste Lands. Besides that objection, this subject has been dealt with by legislation of the General Assembly—see "Crown Grants Act, 1866," sections 9, 10, 11. The section is objectionable as dealing with a subject which is one purely for the General Assembly. Section 30 is clearly beyond the power of a Provincial Legislature, except under "The Provincial Councils Powers Extension Act, 1865," but the Act has not been reserved as required by that Act. Section 31 is *ultra vires*, as affecting legislation of the General Assembly on the subject of Waste Lands; for though under "The Provincial Councils Powers Extension Act, 1865," Provinces may make laws affecting roads, yet such legislation must not be repugnant to, or inconsistent with, laws of the Colony. Section 32—The Crown Lands Commissioner ought not to have duties imposed on him by the Provincial Legislature. Section 39 assumes to empower Boards to dispose of highways. The Provincial Legislature is empowered by "The Highways and Watercourses Act, 1858," to authorize the Superintendent to dispose of highways, but the provisions of that Act must be observed. This section is not the same, but is repugnant to it. The same observation applies to this section that has been made to others, and may be made to the whole Act, namely, it ought to have been reserved.

I have, &c.,

His Honor the Superintendent, Wellington. E. W. STAFFORD.

No. 4.

The Hon. E. W. STAFFORD to His Honor I. E. FEATHERSTON.

(No. 199.)

SIR,— Colonial Secretary's Office, Wellington, 28th June, 1867.

With reference to my letter, No. 197, of even date herewith, on the subject of the Acts enclosed in your Honor's letter of the 17th instant, I have now to address your Honor relative to "The Licensing Act, 1867."

This Act repeals existing laws authorizing the issue of licenses, but there is no provision preserving existing licenses. It comes into force on the first July next, and there can be no meeting of Justices to receive applications for licenses till August next. If the Act be not disallowed no licenses now existing will be valid; and while it imposes penalties for selling without a license, it makes no provision for granting licenses for a considerable period after the commencement of the Act. I should be glad if your Honor can furnish me with any explanation which would show that this interpretation of the Act is incorrect, and obviate the necessity of its disallowance.

I have, &c.,

His Honor the Superintendent, Wellington. E. W. STAFFORD.

PROVINCE OF TARANAKI.

No. 1.

His Honor H. R. Richmond to the Hon. E. W. Stafford.

(No. 115.) Superintendent's Office,
Sir,— New Plymouth, 18th February, 1867.

I have the honor to enclose herewith copy on parchment of "The Wild Cattle Ordinance 1867," and "The Appropriation Ordinance, 1867."

I have, &c.,
H. R. Richmond,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 2.

The Hon. E. W. Stafford to His Honor H. R. Richmond.

(No. 99.) Colonial Secretary's Office,
Sir,— Wellington, 23rd March, 1867.

I regret to inform your Honor that Government is advised that "The Wild Cattle Ordinance, 1867," transmitted in your letter No. 115 of the 18th ultimo, is *ultra vires*, and that Ministers have been compelled to advise the Governor to disallow it.

This Ordinance does not in effect do more than amend provisions already contained in "The Branding of Cattle Ordinance, 1865," but it confers on Commissioners its powers to decide upon the question of whose property certain cattle may be; this decision is to be had upon evidence satisfactory to the Commissioners and in accordance with bye-laws to be made as to the manner of proving ownership. All the elements necessary to constitute a Court of Jurisdiction here exist, and the Ordinance does in effect assume to establish such a Court, and thus contravenes the second sub-section of the nineteenth section of the Constitution Act.

Moreover the twentieth section of the Ordinance empowers a board to make bye-laws for the purpose of carrying the Ordinance into effect, and such bye-laws having been confirmed by the Superintendent, shall have the effect of law. A similar provision is contained in the Ordinance which this repeals, but there are grave objections to it. It is doubtful whether a Provincial Legislature has power to delegate its functions to another body or to any individual. These bye-laws are to regulate the manner of proving ownership and to provide for carrying the Ordinance into effect. No such undefined powers should be given, and it is questionable whether they can legally be so given.

I would also observe that by section twenty-four penalties are to be recovered, but it does not appear that any penalties are imposed by the Ordinance.

I have &c.,
E. W. Stafford,
Colonial Secretary.

His Honor the Superintendent, Taranaki.

No. 3.

His Honor H. R. Richmond to the Hon. E. W. Stafford.

(No. 119.) Superintendent's Office,
Sir,— New Plymouth, 4th March, 1867.

I have the honor to enclose an Ordinance for the raising of a loan to erect a bridge over the Waiwakaiho River, for His Excellency's signature.

The remains of the bridge which was recently carried away, will go a long way towards the construction of a new bridge, but it is important that the work should be put in hand at once, in order that the materials of the wreck may be available.

I have thereupon the honor to request that the Ordinance, if approved, may be sent back with the last possible delay.

I may mention that, using the old material, it is hoped that the actual cost of re-construction will not exceed £2000.

I have, &c.,
H. R. Richmond,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 4.

The Hon. E. W. Stafford to His Honor H. R. Richmond.

(No. 77.) Colonial Secretary's Office,
Sir,— Wellington, 8th March, 1867.

I have the honor to acknowledge the receipt of your letter of the 4th March, enclosing an Ordinance passed by the Provincial Council of Taranaki for the raising of a loan to erect a bridge over the River Waiwakaiho, and in reply to inform your Honor that as no Act has yet been passed by the General Assembly sanctioning the loan, the Governor is prohibited from assenting to the Ordinance by the nineteenth section of "The Southland Provincial Debt Act, 1865."

I have, &c.,
E. W. Stafford,
Colonial Secretary.

His Honor the Superintendent, Taranaki.

No. 5.

His Honor H. R. RICHMOND to the Hon. E. W. STAFFORD.

(No. 127.) Superintendent's Office,
SIR,— New Plymouth, 30th March, 1867.

I have the honor to acknowledge the receipt of your letter of the 8th instant, intimating the disallowance of "The Waiwakaiho Loan Ordinance, 1867," in consequence of no Act having been passed by the General Assembly sanctioning it, as required by the nineteenth section of "The Southland Provincial Debt Act, 1865."

It is much to be regretted that a clause of such importance to the whole of the Provinces of New Zealand should have been introduced into an Act, the title of which gives no indication of its existence, but leads to the conclusion that it deals only with the Southland debt.

As the wreck of the Waiwakaiho Bridge now lies in the bed of the river, it is very desirable that it should be removed before the winter floods carry it away, the value of the material may be estimated at five hundred pounds: I would therefore ask if the Government would be inclined to introduce a Bill during the next session of the Colonial Legislature to enable His Excellency to assent to an Ordinance for the purpose of erecting a bridge over the Waiwakaiho River. If the Government would do so, it would be possible to raise the money necessary to take the valuable material out of its precarious position and to go on with the erection of the bridge.

I have &c.,
THOMAS KELLY,
Deputy Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 6.

The Hon. E. W. STAFFORD to His Honor H. R. RICHMOND.

(No. 111.) Colonial Secretary's Office,
SIR,— Wellington, 6th April, 1867.

I have to acknowledge the receipt of your letter No. 127, of the 30th ultimo, and in reply to state that, in compliance with your request, the Government will propose during the next session of the General Assembly, a Bill to enable the Governor to assent to a Provincial Ordinance of Taranaki, for raising a loan not exceeding altogether three thousand pounds for the purpose of erecting a bridge over the Waiwakaiho River.

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

His Honor the Superintendent, Taranaki.

PROVINCE OF HAWKE'S BAY.

No. 1.

His Honor DONALD MCLEAN to the Hon. E. W. STAFFORD.

Superintendent's Office,
SIR,— Napier, 12th August, 1867.

I have the honor to transmit copies of the undermentioned Acts passed during the last sitting of the Provincial Council of Hawke's Bay, and trust that His Excellency will be pleased to assent to the same:—

"The Cattle Trespass Act, 1867;"
"The Sheep and Scab Amendment Act, 1867;"
"The Appropriation Act, 1867;"
"The Thistle Act, 1867."

I have, &c.,
DONALD MCLEAN,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 2.

The Hon. E. W. STAFFORD to His Honor DONALD MCLEAN.

(No. 250.) Colonial Secretary's Office,
SIR,— Wellington, 24th September, 1867.

I have to acknowledge the receipt of your Honor's letter of the 12th ultimo, transmitting four reserved Bills passed by the Provincial Council of Hawke's Bay.

With respect to the Bill intituled "The Thistle Act, 1867," I would refer to my Circular of the 9th instant, generally on the subject of Provincial legislation with regard to civil and criminal jurisdiction. The provisions in sections four and five are open to the objections pointed out in that Circular. Section nine also provides that penalties are to be paid into the Provincial Treasury and to be appropriated by the Superintendent. By Act of the General Assembly, such penalties are Ordinary Revenue of the Colony, and, as such, must be paid into the Public Account of the Colony and be appropriated by the General Assembly. As this Bill is *ultra vires* and repugnant to the laws of the Colony the Governor cannot be advised to assent to it.

The Appropriation Bill is open to the objections pointed out in my Circular of the 9th of July last. The second section is inconsistent with "The Provincial Audit Act, 1866," which requires that no money shall be paid out of Provincial Revenue on any warrant of the Superintendent except it be certified by the Provincial Auditor. Section three affects to indemnify the Superintendent for certain illegal expenditure. This indemnification cannot be effected by such means. The Colonial Legislature has provided a punishment for illegal expenditure to a certain extent, and also a means whereby such punishment may be barred. No Provincial law can effect that object. Probably your Honor had not received my Circular when this Bill was passed, but before the Governor can be advised to assent to this Bill it is necessary that the Government should be satisfied by your Honor that "The Provincial Audit Act, 1866," has been complied with, so far as it relates to unauthorized expenditure.

With respect to "The Sheep and Scab Amendment Act, 1867," I observe that section four does not limit the amount of penalty to £100. If more than one hundred sheep were driven in contravention of that section the fines would be more than £100, and consequently the power given to the Provincial Council by "The Provincial Council Powers Act, 1856," would be exceeded. The Governor will, if your Honor wishes it, be advised to assent to this Bill on the understanding that an amending Act in the point in question is submitted to the Provincial Council; but, as I understand that the Provincial Council is now in adjournment and will meet again in a few days, it would probably be preferable that a new Bill on the subject should be passed.

I have, &c.,

His Honor the Superintendent, Hawke's Bay. E. W. STAFFORD.