

*Existing Law.* and management of any gaols within their Province—that is, of course, subject to and in as far as may not be at variance with other Acts of the General Assembly.

*Execution.* 4. Provision is made by “*The Execution of Criminals Act, 1858*,” for executions being carried out within gaols under proper regulations, in the presence of the sheriff, the gaoler, &c.

5. The time for carrying out the sentence is regulated by “*The Supreme Court Act, 1860*,” (section 8).

6. By “*The Sheriff's Act Amendment Act, 1863*,” the duty of carrying out the executions is cast upon the sheriff of the district, to whom the gaoler is to deliver the condemned person on his demand, and the prisoner then is to cease to be in the custody of the gaoler, and is to be in that of the sheriff. It seems unnecessary to allude further to the contents of the last-mentioned Acts.

*Removal of prisoner.*

7. It is further provided by “*The Prisoners' Removal Act, 1865*,” (section 2), that the Governor may, by warrant under his hand, from time to time, when and as he may deem necessary, direct the removal from any gaol or hulk of any prisoner confined therein to any other gaol or hulk within New Zealand, and upon every such removal, every such prisoner shall be subject to be kept at such gaol or hulk for the residue of his sentence, or until removed by legal authority (?). The Governor in Council is further enabled to delegate these powers under his hand and the Seal of the Colony to the Superintendent of any Province, to be exercised within such Province and not elsewhere. Provision is also made (section 4) for punishing persons for misconduct during removal from one prison to another.

*New Munster Empowering Ordinance.*

8. After the division of the Colony, in the year 1848, into the two Provinces of New Ulster and New Munster, by a proclamation defining their limits, the Legislative Council of New Munster in its first session (1849) passed an empowering Ordinance (No. 5), enacting that there should be conferred on the Lieutenant-Governor of the Province all such powers as are conferred by certain Ordinances enumerated in the Schedule, on the Governors, Lieutenant-Governor, or other Officer administering the Government of the Colony for the time being. The “Ordinance for the Regulation of Prisons” is one of those which are enumerated on the Schedule. After the passing of the Constitution Act in 1852, and the establishment of the six Provinces thereunder, the Legislatures of some of the Provinces which had theretofore been part of the Province of New Munster passed empowering Ordinances whereby they assumed to transfer to the Superintendent powers under certain Ordinances of the old Legislative Council which had formerly been transferred to the Lieutenant-Governor of New Munster. Other Provinces, some of them formerly comprised in New Munster, and others which were not within that Province, passed Ordinances, by which the powers of the Governor, Lieutenant-Governor, or Officer administering the Government of the whole Colony, under enumerated Ordinances of the Legislative Council were [assumed to be] transferred to the Superintendents. There may be some doubt whether if the powers were effectually transferred to the Lieut.-Governor of New Munster, and were not afterwards transferred to the Superintendents of Provinces under the Constitution Act, they reverted back to the Governor of the Colony.

*Provincial Empowering Ordinances.*

- (1.) In *Wellington* an empowering Ordinance, 1854, passed or professed to transfer the powers of the Lieut.-Governor of New Munster to the Superintendent; but the Prisons Ordinance is not one of those enumerated in the Schedule; and therefore the powers derived therefrom by the Lieut.-Governor of New Munster have not been transferred to the Superintendent of Wellington.
- (2.) In the Province of *Hawke's Bay*, the empowering Ordinance, like that of Wellington, from which it was derived, does not contain the Prisons Ordinance in the Schedule.
- (3.) In *Nelson*, the Provincial Council in its first session (1853) passed an Ordinance (No. 2) vesting in the Superintendent all the powers and authority which by any Ordinance of the original Legislative Council or the Provincial Council of New Munster, enumerated in the Schedule, were theretofore vested in the Governor and Lieut.-Governor or other Officer administering the Government of the late Province of New Munster; and among such Ordinances was the Prisons Ordinance of 1846. It would appear, therefore, if this Ordinance be not *ultra vires*, that, inasmuch as the Governor's powers had been transferred to the Lieut.-Governor of New Munster without any provision leaving concurrent powers in the Governor, this Ordinance would deprive the Governor of the Colony of the powers under the Prisons Ordinance with respect to the Province of Nelson; and yet, as we shall see, the rules in force in the gaol of that Province under the Prisons Ordinance were made by the Governor.
- (4.) In the Province of *Marlborough* there seems to be no special empowering Ordinance; but the Superintendent relies on “*The New Provinces Act, 1858*,” by which it is provided that all the powers vested in the Superintendent of the original Province shall, within such Province, be vested in the Superintendent thereof: and, therefore, the Superintendent of Marlborough has the same powers as the Superintendent of Nelson.
- (5.) In the Province of *Canterbury*, the empowering Ordinance, which includes the Prisons Ordinance in the Schedule, enacts that all powers of the Governor-in-Chief, &c., of New Zealand or of the Lieut.-Governor of New Munster are, within the limits of the Province of Canterbury, conferred on the Superintendent thereof; but it also enacts (section 2) that nothing contained in the Ordinance shall limit or control the power of the Governor of New Zealand in the exercise of any power theretofore exercised by His Excellency under the authority of the enumerated Ordinance.

The construction of these enactments seems by no means clear. It would appear that if the Governor once made rules under the Prisons Ordinance, the Superintendent could not supersede them by others; and that the Governor could always supersede any rules made by the Superintendent.

- (6.) By the *Otago* empowering Act of 1854, which mentions the Prisons Ordinance in the Schedule, the powers of the Governor, &c., under the Ordinances in the Schedule, as far as they may be without repugnance to the Constitution Act, are, within that Province,