

FURTHER PAPERS

RELATIVE TO THE

DISALLOWANCE OF PROVINCIAL BILLS.

(In continuation of Papers presented 8th October, 1867.)

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

WELLINGTON.

—
1868.

DISALLOWANCE OF PROVINCIAL BILLS.

No. 1.

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

House of Representatives,

Wellington, 22nd August, 1867.

SIR,—

I have the honor to transmit herewith three copies each of the respective Acts mentioned in the margin, passed by the Provincial Council of Marlborough, and to request that the same may be laid before His Excellency the Governor for his assent thereto.

Public Cemeteries
Act, 1867.
Public Reserves
Management Act,
1867.

The Hon. the Colonial Secretary, Wellington.

I have, &c.,

W. H. EYES.

No. 2.

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

(No. 430.)

Colonial Secretary's Office,

Wellington, 22nd October, 1867.

SIR,—

I have to acknowledge the receipt of your Honor's letter of the 22nd of August last, forwarding certain reserved Bills passed by the Provincial Council of Marlborough.

The Bill entitled "The Public Cemeteries Act, 1867," is, as the Government is advised, open to the following legal objections which invalidate it, and consequently cannot be assented to. "The Public Reserves Act, 1862," permits a Provincial Legislature by Act or Ordinance to vest Public Reserves in a Corporation or in other persons having corporate succession to be named in such Act or Ordinance, and in effect provides that under it the property shall vest in a body which legally continues to exist notwithstanding deaths, resignations, &c., of members, so that without the necessity for deeds of transfer the property devolves to successors. Unless this corporate succession were secured such deeds of transfer were thought necessary, and it was considered that a Provincial Legislature could not, as is attempted in the case of this Bill, provide, by force of an Act of its own, for the transfer of property without deeds of transfer. The law of the Colony with regard to the devolution and mode of transfer of real and personal property cannot be altered by a Provincial Legislature. The Bill should either have named the first trustees and given to them corporate succession or it might have vested the reserves in an existing body having corporate succession.

Moreover, it appears on reference to the Secretary for Crown Lands that one of the sections of land (section 264, Kaikoras Suburban,) has not been granted to the Superintendent, and consequently is not subject to the Reserves Act of 1862.

With reference to the Bill entitled "The Public Reserves Management Act, 1867," further information respecting its object is required before I am able to advise His Excellency to assent to the Bill. The reserves dealt with were made for special purposes, and although the purposes have not been changed, it is proposed by the Bill that the lands should be let on lease and the rents go into the Provincial Treasury without being charged with any particular trusts. Some of these reserves are for "Road purposes," another for a "Public School," and I have to request your Honor to be good enough to explain how the proceeds from these reserves can be secured for the special purposes for which they were reserved if they are dealt with as proposed by the Bill in question; and I should also wish to be assured, before I can advise the Bill to be assented to, that these reserves are not likely to be required for their special objects during the period of fourteen years, for which they could, if the Bill become law, be leased.

His Honor the Superintendent, Marlborough.

I have, &c.,

E. W. STAFFORD.

No. 3.

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

Superintendent's Office,

Blenheim, 13th November, 1867.

SIR,—

I have the honor to acknowledge the receipt of your letter No. 430, of the 22nd ultimo, on the subject of two Bills, intituled respectively "The Public Cemeteries Act, 1867," and "The Public Reserves Management Act, 1867."

With respect to the latter Bill, I may observe that it was passed by the Provincial Council unanimously, that body being satisfied that every lease granted by the Government would provide for the rights of the public in using the reserve for the specific purpose for which it was set aside.

Referring to those reserves mentioned in your letter as being for "road purposes," I may observe that the leasing of them would not prevent the Government taking metal from the gravel pits within their boundaries, which was the object of reservation.

FURTHER PAPERS RELATIVE TO THE

The block of land in the district of Tua Marina set aside for a school is in addition to what has been already fenced in for the purpose of erecting a school thereon, and while, looking to the future, it may be of great advantage to possess this block to add to the grounds of the church and school, there is little probability of there being any use for it for the next fourteen years.

I have, &c.,

W. H. EYES,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 4.

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

Superintendent's Office,

New Plymouth, 31st January, 1868.

SIR,

I have the honor to enclose copies on parchment of the following Ordinances:—

Session 16.—No. 1. "Supplementary Appropriation Ordinance, 1867-8."

" No. 2. "Town Buildings Roofing Ordinance, 1867."

" No. 3. "Furze Ordinance, 1867."

I have, &c.,

H. R. RICHMOND,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 5.

The Hon. J. C. RICHMOND to His Honor H. R. RICHMOND.

Colonial Secretary's Office,

Wellington, 2nd March, 1868.

(No. 65.)
SIR,—

Adverting to your Honor's letter of the 31st January last, I am advised that "The Furze Ordinance, 1867," (transmitted therein) contains provisions which are *ultra vires*.

Section 1 provides that in default of owners, &c., removing furze, certain public officers may do so, and recover summarily the expense together with costs of suit and such sum as Court may allow, in any Court having competent jurisdiction. This section is *ultra vires*, as it affects to make provision altering the jurisdiction and practice of Courts of Justice by providing that the amounts shall be recovered summarily, and that costs shall be recovered, and lastly by providing that such Courts shall allow a sum to be paid for trouble and expense of the Commissioners. This defect appears in other parts of the Ordinance.

The Governor has, therefore, been advised to disallow this Ordinance.

I have, &c.,

J. C. RICHMOND,
(for the Colonial Secretary.)

His Honor the Superintendent, Taranaki.

No. 6.

His Honor J. P. TAYLOR, to the Hon. E. W. STAFFORD.

Superintendent's Office,

Southland, 24th January, 1868.

SIR,—

I have the honor to enclose herewith copies in duplicate of an Ordinance entitled "The Licensing Ordinance, 1868," passed by the Provincial Council of Southland, and which I have reserved for the signification of His Excellency's pleasure thereon.

I take advantage of this opportunity to mention a circumstance which stands in the way of obtaining two of the main objects of all Licensing Ordinances—viz., the punishment by fine or otherwise of those who sell liquor without taking out a license and the protection of those who do.

The convicting magistrates have no power to award the informers any part of the fine imposed as a penalty for such transgressions, and the consequence is that none will incur the odium of informing, and the law is universally broken with impunity, the revenue is defrauded, and the publicans complain.

Public opinion expects that the police should take this invidious duty, but I do not think it would tend to enhance the respect in which these men are now held were they required to act as spies, and I am sure they would not do it. It would impair their efficiency too in other respects, and prevent their getting much necessary information regarding more serious offences. Moreover if it were both possible and desirable so to employ the police, it would be, in such a community as this, useless.

Our force has been reduced from twenty-seven to nine men for the whole Province, and of course each individual is perfectly known; even when out of uniform, to all who are likely to offend, and would have as little chance of obtaining drink himself or seeing it served to others as the Speaker in his robes.

Thus, except that the Government gets a certain amount of fees—not what it ought to get—the Ordinance is practically of no effect. I am credibly informed that as much liquor is retailed by persons not authorized so to sell, or not licensed at all, as by those who are; and that the police know most, if not all the offenders, but can get no one to lay informations. The small rewards they are able to offer are not sufficient inducement. The office of informer is an odious and an unpopular one, and a man acting as such is generally, in a small community, obliged to clear out after once appearing in that character in Court. Indeed four or five years ago, when a number of sly groggers were summoned, the police had to protect the informers. Since then, say during the last four years, only three convictions have been obtained.

Of course in such circumstances the General Government takes but little in the way of fines, and the Provincial Government less than it should do in the way of license fees. I believe that were half the fine allowed to be paid to the informer both sources of revenue would be more productive, and, which is infinitely more important, the demoralizing effect of habitually breaking the law openly and with impunity, would be stopped.

I respectfully submit these facts for your serious consideration.

I have, &c.,

JNO. P. TAYLOR,

Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 7.

The Hon. J. C. RICHMOND to His Honor J. P. TAYLOR.

SIR,—

Colonial Secretary's Office, 19th March, 1868.

I have to acknowledge the receipt of your Honor's letter of the 24th January last (received here on the 16th instant), transmitting "The Licensing Ordinance, 1868," passed by the Southland Provincial Council, and reserved by your Honor for the signification of the Governor's pleasure thereon.

There appears to be a clerical mistake in section seventeen of this Ordinance, reference being made to form B in the schedule, and there being no such form; as reference is also made to the form by a figure also (5), the error is not of much importance.

The Government is, however, advised that some of the provisions of this Ordinance are *ultra vires*.

Section seventeen expressly provides that the hearing of applications for licenses shall be a judicial proceeding. Provincial Legislatures are precluded by the Constitution Act from altering the constitution, practice, or jurisdiction of any court. It is true that Provincial Legislatures have constantly passed Acts imposing on Justices of the Peace and Resident Magistrates the duty of hearing applications for licenses, but in many cases the provisions of such Acts have been so framed as to leave it in doubt whether the Justices are invested in the matter with judicial or mere ministerial functions. The provisions in the Ordinance under consideration puts the question beyond doubt by an express declaration that the duties are judicial.

There are also provisions for empowering Justices to declare property forfeited for certain breaches of the Ordinance; these provisions, as the Government is advised, alter the jurisdiction and practice of the court, and are, therefore, *ultra vires*. The Provincial Council should have confined itself to providing penalties for the offences, summarily recoverable, as the law of the Colony provides for the practice and procedure in such cases.

The Government wish, before deciding on the advice to be given with respect to this Ordinance, to be informed whether your Honor wishes it to be assented to in the face of these legal objections.

I have, &c.,

J. C. RICHMOND.

His Honor the Superintendent, Southland.

No. 8.

His Honor J. WILLIAMSON to the Hon. E. W. STAFFORD.

(No. 229.)

Superintendent's Office,

SIR,—

Auckland, 7th March, 1868.

Herewith I have the honor to transmit to you "The Auckland and Drury Railway Act, 1868," (in duplicate) which I have reserved for the signification of His Excellency's pleasure thereon.

I have, &c.,

J. WILLIAMSON,

Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 9.

The Hon. E. W. STAFFORD to His Honor J. WILLIAMSON.

(No. 150.)

Colonial Secretary's Office,

SIR,—

Wellington, 16th May, 1868.

I have to acknowledge the receipt of your Honor's letter No. 229, of the 7th of March last, transmitting a reserved Bill entitled "The Auckland and Drury Railway Act, 1868."

I regret to have to state that the Government are advised that legal defects in this Bill will prevent the Governor's assent being given to it in its present shape.

The Act of the General Assembly, entitled "The Auckland and Drury Railway Act, 1867," empowers the Superintendent and Provincial Council of the Province of Auckland, by Act, to authorize the mortgage, sale, or lease of the railway on such terms and conditions as to the Superintendent and Provincial Council should seem meet. The Bill in question does not define the terms and conditions, but provides that the Superintendent may mortgage, sell, or lease, but subject to a proviso that any such disposition shall be on condition "only" that the mortgagee, &c., shall complete the railway; but section three provides that the Superintendent may make other conditions as to the completion of any contract made by virtue of the Act for the completion of and working the railway. It is presumed that the framers of the Bill intended by the use of the word "only" that there should, in any disposition, be a condition to the effect that the mortgagee, &c., should complete the work. It could not have been intended that there should be no other conditions; indeed, it seems from the third section that other conditions may be made by the Superintendent. The Act provides that the Superintendent is to decide upon the conditions other than that condition expressly provided. This

provision, the Government are advised, is invalid, because under the empowering Act of the General Assembly the Provincial Council has itself to determine the conditions upon which the railway is to be disposed of. In this point of view it is clear that there ought to be provision in the Bill for the proper working of the railway, and that the disposition of the land ought to be subject to a condition for the proper working as well as for the completion of the railway.

If the Bill is again submitted to the Provincial Council, and amendments made which will remove these legal objections to it, the Government will be glad to advise the Governor to assent to it in such amended form.

His Honor the Superintendent, Auckland.

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

No. 10.

His Honor J. P. TAYLOR to the Hon. E. W. STAFFORD.

SIR,—

Superintendent's Office, Southland, 7th May, 1868.

Oreti Ferry Leasing Ordinance, 1868.

I have the honor to enclose herewith copies in duplicate of the Bill named in the margin, and to request that you will be good enough to obtain the assent of His Excellency the Governor thereto.

I have, &c.,
JOHN P. TAYLOR,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 11.

The Hon. E. W. STAFFORD to His Honor J. P. TAYLOR.

(No. 298.)

Colonial Secretary's Office,

SIR,—

Wellington, 15th June, 1868.

I have to acknowledge the receipt of your Honor's letter of the 7th ultimo, transmitting the reserved Bill, entitled "Oreti Ferry Leasing Ordinance, 1868."

I regret to state that I am unable to advise His Excellency to assent to this Bill, which, I am advised, is *ultra vires*, inasmuch as it deals with land not granted by the Crown to the Superintendent.

Before this land can be dealt with by the Provincial Legislature, it must be first brought under "The Public Reserves Act, 1854."

His Honor the Superintendent, Southland.

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

No. 12.

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

(No. 37-138.)

Superintendent's Office,

SIR,—

Blenheim, 7th May, 1868.

The Appropriation Act 1868-9.
The Public Reserves Sale Act 1868.

I have the honor to enclose herewith three copies of each of the Acts named in the margin, which were passed during the last session of the Provincial Council of Marlborough, and to request that you will lay the same before His Excellency the Governor, and advise him to give his assent thereto.

I have, &c.,
W. H. EYES,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 13.

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

(No. 316)

Colonial Secretary's Office,

SIR,—

Wellington, 22nd June, 1868.

The Bill entitled "The Public Reserves Sale Act, 1868," which was enclosed in your Honor's letter, No. 37-138, of the 7th ultimo, has been under the consideration of the Government, and for the undermentioned reasons I have been unable to advise the Governor to assent to it.

In the Schedule to the Bill one of the lots authorized to be sold is designated as part of section 49, "Fairfield Downs." I understand that the Council intended "Wakefield Downs," but the error is not of that clerical kind which could be corrected after the Bill left the Council, and the land as it is now designated has not been granted under the Public Reserves Act, and cannot be dealt with by a Provincial Legislature.

There is a more serious objection to the Bill, and which involves an important principle. The Bill authorises the Superintendent to sell the reserves specified in it under the provisions of "The Marlborough Waste Lands Act, 1867," and states that the proceeds of such sale shall be paid to the Provincial Treasurer and become Provincial Revenue. If the reserves are thus converted into Waste Lands, as to all intents and purposes they must be, in order to come under the provisions of "The Marlborough Waste Lands Act, 1867," the proceeds of such sale should be subject to the sixth section of "The Public Reserves Act, 1867," and be treated accordingly. Otherwise by converting reserves into Waste Lands, a Provincial Legislature could indirectly avoid the liabilities imposed by the Colonial Legislature on Provincial Land Revenue.

His Honor the Superintendent, Marlborough.

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

No. 14.

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

(No. 205.)

SIR,—

Superintendent's Office,

Christchurch, Canterbury, N.Z., 6th May, 1868.

I have the honor to transmit herewith 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 Interpretation Ordinance, 1868."

* * * * *

I have, &c.,

The Hon. the Colonial Secretary.

W. S. MOORHOUSE,
Superintendent.

No. 15.

The Hon. E. W. STAFFORD to His Honor W. ROLLESTON.

(No. 285.)

SIR,—

Colonial Secretary's Office,

Wellington, 9th June, 1868.

"The Interpretation Ordinance, 1868," which accompanied your predecessor's letter, No. 205, of the 6th ultimo, has been under the consideration of Government; and I have to inform your Honor that they will be obliged to recommend His Excellency to disallow it, in consequence of the following legal objections, which they are advised it contains :—

The first section provides that the Provincial Ordinances of Canterbury shall be deemed "Public Ordinances." If Provincial Ordinances are not now by law considered "Public," they cannot be made so by Provincial legislation. His Honor Mr. Justice Johnston, I believe, has decided that Provincial Ordinances are not "Public" Ordinances, and that therefore Courts of law do not take judicial notice of them, but require them to be pleaded and proved. The other Judges of the Supreme Court apparently entertain the same view, inasmuch as they lately made a Rule of Court regulating the manner of pleading Provincial Ordinances. Moreover, "The Official Documents Evidence Act, 1860" (section 7), by providing for the proof of Provincial Ordinances, impliedly determines that they require proof; and if they require proof they are not taken notice of judicially, and are not "Public" Acts or Ordinances.

The third section is also objectionable in point of law. The time when such Ordinances as those referred to therein come into operation cannot be fixed by a Provincial Legislature. The Constitution Act fixes the time; and though such time is the date of assent, and similar to the provision in the third section, yet it is not proper that a provision purporting to exercise power which is *ultra vires* should appear in the Provincial Statute Book.

There is a clerical error in the last line of the sixth section, "revising" instead of "reviving."

The definition of Province, in the eighth section, should refer to the boundaries "for the time being" fixed by law.

I have, &c.,

His Honor the Superintendent of Canterbury.

E. W. STAFFORD.

No. 16.

His Honor W. ROLLESTON to the Hon. E. W. STAFFORD.

(No. 341.)

SIR,—

Superintendent's Office,

Christchurch, Canterbury, N.Z., 13th June, 1868.

I have the honor to acknowledge the receipt of your letter of the number and date quoted in the margin, in which you inform me that in consequence of certain legal objections the Government will be obliged to advise His Excellency to disallow "The Interpretation Ordinance, 1868."

No. 285.
June 9, 1868.

I have, &c.,

The Hon. the Colonial Secretary.

W. ROLLESTON,
Superintendent.

No. 17.

His Honor D. McLEAN to the Hon. E. W. STAFFORD.

Superintendent's Office,

SIR,—

Napier, July 4th, 1868.

I have the honor to transmit six Acts, as per margin, passed by the Provincial Council of Hawke's Bay during its late sitting, and to request you will be kind enough to recommend His Excellency to assent to the same.

"Volunteers and Militia Remission Certificate Act, 1868," Session XIII., No. 1;

"Overdraft Bill, 1868," Session XIII., No. 2;

"Credit Act," Session XIII., No. 3;

"Appropriation," Session XIII., No. 4;

"Loan Appropriation Act Amendment Act, 1868," Session XIII., No. 5;

"Education Rate Act, 1868," Session XIII., No. 6.

I have, &c.,

The Hon. the Colonial Secretary, Wellington.

DONALD McLEAN,
Superintendent.

FURTHER PAPERS RELATIVE TO THE

No. 18.

The Hon. E. W. STAFFORD to His Honor D. McLEAN.

(210.)
SIR,—Colonial Secretary's Office,
Wellington, 25th July, 1868.

I have to inform your Honor that His Excellency the Governor has been advised to withhold his assent to the reserved Bill entitled "The Overdraft Act, 1868," which accompanied your Honor's letter of the 4th instant.

I am advised that the Bill is *ultra vires*, as a Provincial Legislature cannot authorize the Superintendent to borrow, and cannot therefore authorize the appropriation of money to pay what has been illegally borrowed.

I have, &c.,

His Honor the Superintendent, Hawke's Bay.

E. W. STAFFORD.

No. 19.

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

(No. 7,797-4.)
SIR,—Superintendent's Office,
Dunedin, 17th July, 1868.

I do myself the honor to forward the enclosed Ordinances passed at the last session of the Provincial Council, to which I have assented on behalf of His Excellency the Governor, namely:—

"The Gunpowder Ordinance, 1868;"

"The Sheep Ordinance, 1867, Amendment Ordinance, 1868;"

"The Fencing Ordinance, 1868;"

"The Appropriation Ordinance, 1868-9;"

"The Imprest Supply Ordinance, 1868;"

"The Cattle Trespass Ordinance, 1858, Amendment Ordinance, 1868;"

"The Goat Nuisance Ordinance, 1868;" and

"The Inflammable Oils Ordinance, 1868;"

and the following Bills which I have reserved for the signification of His Excellency's pleasure thereon, namely:—

"The Dunedin Reserves Leasing and Sale Ordinance, 1868;"

"The Shag Point Coal Reserve Leasing Ordinance, 1868;" and

"The Warepa Schoolmaster's Residence and Glebe Lands Leasing Ordinance, 1868."

I have, &c.,

J. MACANDREW,

Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 20.

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

SIR,—

Wellington, 10th August, 1868.

Referring to the Fencing Ordinance passed by the Provincial Council of Otago at its recent session, I have now to state that circumstances have arisen in connection with the acquirement of land for agricultural lease settlement on the gold fields which render it expedient that the said Ordinance should not come into operation.

Under the Ordinance as it stands, the runholder will be liable to pay one-half the cost of fencing on every fifty-acre section which may be taken up within the boundaries of his run—a provision which will add greatly to the amount of claims for compensation, and seriously limit the action of the Provincial Government in acquiring land for settlement.

I have therefore to request that His Excellency's assent may be withheld from the Ordinance in question, with a view to the subject being again dealt with by the Provincial Council.

I have, &c.,

J. MACANDREW,

Superintendent of Otago.

The Hon. the Colonial Secretary.

No. 21.

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

(388.)
SIR,—Colonial Secretary's Office,
Wellington, 15th August, 1868.

Adverting to "The Inflammable Oils Ordinance, 1868," and "The Fencing Ordinance, 1868," which accompanied your Honor's letter No. 7,797, of the 17th ultimo, I have to state that His Excellency has been advised to disallow those Ordinances, for the following reasons respectively:—

I am advised that the provisions in "The Inflammable Oils Ordinance, 1868," affecting to empower the forfeiture of oils, &c., kept contrary to the Ordinance, and to authorize the issue by Justices of the Peace of search warrants, are *ultra vires*.

"The Fencing Ordinance, 1868," has been disallowed in compliance with the request and for the reasons contained in your Honor's letter of the 10th instant.

I have, &c.,

E. W. STAFFORD.

His Honor the Superintendent of Otago.

No. 22.

The DEPUTY SUPERINTENDENT of OTAGO to the Hon. E. W. STAFFORD.

(7,797-15.)

Superintendent's Office,

Dunedin, 24th August, 1868.

SIR,—

I have the honor to acknowledge the receipt of your letter of the number and date quoted 388. in the margin, intimating the disallowance by His Excellency the Governor of "The Inflammable Oil 17th Aug. 1868. Ordinance, 1868," and "The Fencing Ordinance, 1868."

I have, &c.,

J. FRASER,

Deputy Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 23.

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

(405.)

Colonial Secretary's Office,

Wellington, 26th August, 1868.

SIR,—

I have the honor to state, with reference to the reserved Bill entitled "Education Reserves Abandonment Ordinance, 1868," a transcript of which accompanied your Honor's letter No. 7797-11, of the 4th instant, that the Government are advised that the Provincial Council of Otago have no power to pass such a Bill, the power of the Superintendent being confined to making reserves on the recommendation of the Council, and the power of the Council being confined to making such recommendation; and that neither the one nor the other has, jointly or severally, any authority to undo what has been done in respect of such reserves, even though no Crown Grant of them has been made. The provisions of the Bill can only be made by the General Assembly.

His Excellency has accordingly been advised to disallow this Ordinance.

I have, &c.,

E. W. STAFFORD.

His Honor the Superintendent, Otago.

