convenience. But this Act does no more than authorize the Superintendent to construct the railway at a certain limit as to cost, with a limit as to gauge, and appropriates the revenue for the purpose. There are no provisions as to bridges over roads, or crossing roads on levels, or indeed, as above stated, any provision whatever for public safety.

The Government are of opinion that no railway Act wanting in such general and essential provisions ought to have effect, and it would, under ordinary circumstances, be their duty to advise His Excellency to exercise his power of disallowing this Act; but as the adoption of such a course would cause a stoppage of public works, entailing much inconvenience and probable loss, the Act will be left to its operation, upon your Honor undertaking to introduce next Session another measure containing the essential provisions in which this one is deficient.

I have, &c.,
WILLIAM FOX
(in the absence of Mr. Gisborne).

His Honor the Superintendent, Auckland.

No. 3.

His Honor T. B. GILLIES to the Hon. W. GISBORNE.

SIR,— Superintendent's Office, Auckland, 16th March, 1871.

I have the honor to acknowledge the receipt of your letter No. 58, of the 27th ultimo, informing me that His Excellency will not be advised to exercise his power of disallowing certain Acts therein mentioned, and further pointing out objections to the validity of certain other Acts passed by the Provincial Council of Auckland at its last Session. I propose to deal with these objections *seriatim*.

1. "The Highways Act, 1871."—The Provincial Council and myself were fully aware that sections 38 and 39 were, according to some of the *dicta* in Sinclair *v.* Bagge, *ultra vires*. Without attempting to impugn the soundness of these *dicta*, or their applicability to the present Act (of which, however, I am advised there are grave doubts), I may be permitted to point out that if such a decision is allowed to remain law, there is an end to all possibility of sound practical Provincial legislation on any matter in which rating is involved. The power of local rating has always been admitted to be within the functions of Provincial Legislatures; but that decision, if carried out to its legitimate results, would virtually destroy that power. Similar defects exist in the present Highway Act of this Province, and in almost every Provincial Act in the Colony containing rating powers, and thus were necessitated the successive Validation Acts of the Assembly. I would suggest that no subject requires more urgently the action of the General Government than the removal of this state of things, unless Provincial Legislatures are to be swept away as useless incumbrances. On the Act now under consideration a large amount of care has been bestowed, not only by myself and the Provincial Council, but by numerous Highway Boards throughout the Province, in order to amend defects in the working of former Acts, and to meet the advancing circumstances of the various districts; and I could only regard it as a serious calamity to the country districts were His Excellency to be advised to disallow the Act. The objections to those sections, as well as to section 41, and perhaps also to 55 and 58, though probably well founded, might, I submit, be fairly left to the ratepayers to raise and take advantage of if they think proper, especially as they only touch the machinery of the Act, and not its principles. The objection to section 42 is, I am advised, scarcely borne out by the case of Sinclair *v.* Bagge. Mr. Justice Richmond, who expressed the strongest opinion on this point, expressly guards himself by saying, "I wish to add that had the respondent been appointed . . . to receive the rate, the case would have been open to a different consideration on this head."

In the present Act, the person authorized to sue is the person appointed to receive the rate—the collector. In these circumstances, I am not desirous to avail myself of the provisions of "The Provincial Councils Legislation Appeal Act, 1869," which provisions, I may remark, must in all cases be practically valueless so far as this Province is concerned; at the same time, I venture to hope that His Excellency may be advised to leave the Act to its operation, on the understanding that either your Government or myself will introduce a Bill to the Assembly next Session to remedy the general confusion arising from the case of Sinclair *v.* Bagge; and that, failing the passing of such Bill, a Bill will be submitted to the Auckland Provincial Council at next Session, repealing or otherwise amending the objectionable sections. I would earnestly press this view upon your Government, the Act having met with almost universal approval in the Province, and its disallowance would, I fear, create intense and wide-spread excitement and dissatisfaction.

2. "The Licensing Act, 1871."—The objections to this Act are (apart from the clerical error pointed out, of misquoting the title of "The Appeals from Justices Act, 1867"), I am advised, untenable. The 52nd section in no way alters the jurisdiction of Justices, except by imposing a penalty of forfeiture for certain offences, instead of inflicting a money fine or other punishment. And I may remark, that a similar provision exists in other Provincial Acts, which have received the sanction of His Excellency. The 57th section does not appear to me to give, or profess to give, any right of appeal not already given by "The Appeals from Justices Act 1867," and was inserted as directory to the proper procedure being taken under that Act. I submit that a fair perusal of the section would have a tendency rather to guide than to mislead persons desiring to appeal. As, however, you state that the Government will abstain from advising His Excellency to disallow this Act on receiving my undertaking to introduce an amending Bill next Session of the Provincial Council, I am willing to give such undertaking, should you, after perusal of the above replies and reperusal of the sections objected to, still adhere to your expressed objections.

3. "The Grahamstown Fire Rates Act, 1871."—You correctly judge that this Act was intended to give no compulsory powers of taking land, affecting water rights, or any other private or Crown right whatever. It appears to me, therefore, that it would have been mere surplusage had an intention been expressly negatived, which it would certainly require very express enactment to have effected.