

No. 23.

His Honor J. MACANDREW to the Hon. W. GISBORNE.

SIR,—

Wellington, 9th August, 1870.

Herewith I have the honor to forward three copies "Road Boards Ordinance, 1870," passed by the Provincial Council of Otago at its late Session, and assented to by me on behalf of the Governor.

I have, &c.,

J. MACANDREW,

His Honor the Colonial Secretary, Wellington.

Superintendent of Otago.

No. 24.

The Hon. W. GISBORNE to His Honor J. MACANDREW.

SIR,—

Colonial Secretary's Office, Wellington, 7th October, 1870.

I have the honor to acknowledge the receipt of your Honor's letter of the 9th August last, enclosing three copies of "The Road Boards Ordinance, 1870," passed by the Provincial Council of the Province of Otago, and assented to by your Honor on behalf of His Excellency the Governor.

I regret to have to inform your Honor that the Government is advised that the Ordinance in question is *ultra vires*, and that His Excellency will have to be advised to disallow it in consequence.

I have the honor to enclose a copy of the remarks of the Attorney-General, in which he points out in detail the provisions of the Ordinance which are, in his opinion, beyond the powers of the Provincial Legislature legally to enact.

A Proclamation disallowing the Ordinance will immediately appear in the *New Zealand Gazette*.

I have, &c.,

W. GISBORNE.

His Honor the Superintendent, Otago.

Enclosure in No. 24.

MEMORANDUM by the ATTORNEY-GENERAL.

THE 36th section is *ultra vires*, as being in conflict with "The English Laws Act, 1858," which adopts the law of England on the subject of the mode of execution of contracts.

Section 42 is *ultra vires*, because it empowers rates to be imposed on Native lands and on certain Crown lands. I am disposed to think that, though perhaps a Provincial Ordinance may enable a rate to be imposed on lands held under lease from the Crown, it cannot enable a rate to be imposed on land over which a mere licensee has a right to depasture sheep, &c. It is questionable whether a Provincial Ordinance can enable a rate to be imposed on any land before a Crown grant has been issued.

Section 55, and the sections incorporated therewith, are *ultra vires* as establishing a Court of Appeal.

Section 60 is *ultra vires*, because it enables the Board to sell road lines—these are Crown lands.

Section 62, and the sections incorporated therewith, are *ultra vires*, as altering jurisdiction of Supreme and District Courts.

Section 76, and sections giving like powers, are *ultra vires*, as enabling Crown lands to be enclosed and affected.

Section 81, *ultra vires*, as altering jurisdiction of Justices.

Section 90 *ultra vires*, as affecting to appropriate general revenue—fees, fines, &c. Clauses constituting Revision Court and giving it powers are *ultra vires*, as establishing a Court of Justice and as altering the jurisdiction of Resident Magistrate's Court, &c.

Sections 157 and 158 *ultra vires*, as altering jurisdiction and practice of Supreme Court.

Section 163, *ultra vires*, as altering jurisdiction of Justices.

Sections 171, 173, and 174 *ultra vires*, as altering practice and procedure of Courts of Law.

Section 177 *ultra vires*, as it affects to empower the Road Boards to legislate by by-laws imposing penalties, and thus altering the criminal law. This I think beyond the power of the Provincial Legislature.

Section 181 *ultra vires*, as altering jurisdiction of Supreme Court.

The sections creating a Court of Appeal are *ultra vires*.

The sections providing for recovery of rates are *ultra vires* if they alter the law; if they do not, they are unnecessary.

Section 195 *ultra vires*, as altering law of evidence.

Section 203 and the following sections are *ultra vires*, as altering jurisdiction of Supreme and District Courts.

Section 233 *ultra vires*, as altering jurisdiction of Courts of Law.

Section 241. I think a Provincial Legislature cannot give authority to hear evidence on oath, &c.

The Ordinance seems generally to have been framed without regard to the powers of legislation conferred on Provincial Legislatures.

3rd October, 1870.

J. PRENDERGAST.

No. 25.

The Hon. W. GISBORNE to His Honor J. MACANDREW.

SIR,—

Colonial Secretary's Office, Wellington, 13th October, 1870.

Adverting to my letter No. 331, of the 7th instant, I transmit to your Honor herewith the enclosed *New Zealand Gazette*, noted in the margin, containing a Proclamation, under the hand of His No. 56, 11 Oct., 1870.