

# MEMORANDUM

ON THE

## VALIDITY OF PROVINCIAL ORDINANCES,

BY

### THE ATTORNEY-GENERAL.

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

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WELLINGTON.

—  
1871.



## MEMORANDUM ON THE VALIDITY OF PROVINCIAL ORDINANCES.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>AUCKLAND.</b>	
<i>The City Board Act, 1863.</i> No. 7, Sess. XV. Secs. 16, 17, 18, 19. Provide that on any complaint being made touching the validity of an election, Select Committee of Board shall hear and decide, and grant costs. Sec. 51. Justice may take declaration of valuer.	It seems that it is questionable, and as constituting a Court, I think is invalid. So far as this gives power to Justices of the Peace it is <i>ultra vires</i> , but Justices have power without.
Sec. 56. Power to recover rates before one Justice of the Peace at suit of Collector, or other person appointed by Collector.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sec. 57. Rate-book to be evidence.	Ditto.
Sec. 58. Justice of the Peace may summon any person quitting property before paying rates to show cause why they should not be paid, and to issue distress warrant.	Ditto.
Sec. 65. Provision appointing Chairman of Board to sue.	Questionable whether power to Chairman to sue is not altering the practice of the Court and <i>ultra vires</i> .
Sec. 116. Production of <i>Gazette</i> containing by-laws to be evidence.	Questionable.
<i>The City Board Act 1863 Amendment Act.</i> No. 6, Sess. XVI.	Not objectionable in itself, but only as dependent upon objectionable clauses in other Acts.
<i>The City Board Act 1863 Amendment Act, No. 2, 1865.</i> No. 4, Sess. XVIII.	Ditto.
<i>The Highways Act, 1862.</i> No. 5, Sess. XIV.* Sec. 20. Trustees appointed under Act to hear objections to assessment.	This is probably not <i>ultra vires</i> , as it does not appear that trustees are to proceed judicially.
Sec. 21. Appeal may be made to nearest Resident Magistrate or two Justices of the Peace.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sec. 22. Costs to be awarded by Resident Magistrate or Justices of the Peace.	Ditto.
Sec. 24. Power to Collector to sue.	Ditto.
Secs. 28, 29, 30. Giving a power to register a memorial of a rate, and to charge the land thereby, and money stated in memorial may be recovered by trustees.	Appears highly objectionable, if not <i>ultra vires</i> , as legislating on a subject which is considered one for the General Assembly.
Sec. 46. No Resident Magistrate or Justice of the Peace to be incapacitated from doing any act by reason of interest.	<i>Ultra vires</i> , as altering the practice of the Resident Magistrate's Court.
<i>The Highways Act, 1867.</i> No. 9, Sess. XX.† Sec. 25. Trustees appointed under Act to hear objections to assessment.	This is probably not <i>ultra vires</i> , as it does not appear that the trustees are to proceed judicially.

\* It is believed that this Act is not now in operation. The Act of 1867 repeals it as to districts then existing, but the Act of 1867 does not come into operation in new districts until proclaimed. It is presumed that the Act of 1867 is virtually the only Act in existence.

† This Act provides for alternative rate on acreage or value to sell.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>AUCKLAND—continued.</b>	
<i>The Highways Act, 1867—continued.</i>	
Sec. 26. Appeal may be made to nearest Resident Magistrate or Justices of the Peace.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sec. 27. Costs to be awarded by Resident Magistrate or Justices of the Peace.	Ditto.
Sec. 30. Giving power to Collector to sue in summary way before Resident Magistrate, and to recover by distress.	Ditto.
Sec. 37. No Resident Magistrate or Justice of the Peace to be incapacitated from doing any act by reason of interest.	<i>Ultra vires</i> , as altering the practice of the Resident Magistrate's Court.
Sec. 49. Giving power to Superintendent to impose and levy rates.	Objectionable so far as it incorporates clauses to which objection has already been made.
<i>The Thistle Act, 1858. No. 5, Sess. VIII.*</i>	
Sec. 6. Confers power on Resident Magistrate or two Justices of the Peace to make an order authorizing person appointed under the Act to enter upon land and eradicate thistles, and Resident Magistrate or Justices of the Peace to have power to make order for payment of costs occasioned by eradicating thistles.	<i>Ultra vires.</i> In contravention of 19th section of Constitution Act.
<i>The Impounding Act, 1867. No. 10, Sess. XX.</i>	
Secs. 21, 22. Power to Justice of the Peace to make order to sell cattle.	<i>Ultra vires</i> , altering jurisdiction, practice, and procedure of Resident Magistrate's Court.
Sec. 27. Resident Magistrate, or two Justices of the Peace, have power to summon owner of cattle having trespassed, and to determine matter of complaint.	Ditto.
Sec. 30. Gives power to any Justice of the Peace to replevy.	Ditto.
Sec. 31. Power given to Justices of the Peace to make order as to damages and costs, or delivery of cattle, and as to sale.	Ditto.
<i>The Sheep Act, 1863. No. 14, Sess. XV.</i>	
Sec. 7. Owner of sheep may appeal against decision of Inspector that they are diseased, to the nearest Resident Magistrate, who shall determine same in summary way.	<i>Ultra vires</i> , as altering jurisdiction of Resident Magistrate.
Sec. 21. Imposing penalty not exceeding £5, on every sheep set at large contrary to provisions of Act.	Whether, as it is not clearly provided the setting at large of each sheep is to be a separate offence the provision is not <i>ultra vires</i> , is open to question.
<i>The Diversion of Roads Act, 1863. No. 2, Sess. XV.</i>	
This Act provides for shutting up roads and taking private lands for roads, and compensating owners of lands.	This Act appears now in conflict with the provisions of "The Highways and Water Courses Act, 1858," and "The Compulsory Land Taking Act, 1866;" it should be repealed. The subject is provided for and regulated by those Acts.
<i>The Auckland Municipal Police Act, 1862. No. 10, Sess. XIV.</i>	
Secs. 2, 5, 15. Give jurisdiction to Magistrates to order abatement of nuisances.	<i>Ultra vires.</i>
Sec. 8. Provides that informations or complaints be laid by particular persons.	Doubtful validity, as limiting the number of persons by whom informations should be laid.
<i>The Auckland Rural Police Act, 1866. No. 11, Sess. XIX.</i>	
(Misprinted in Schedule to Act of 1867 as No. 2.)	
Sec. 4. Power to Constable to take recognizance.	
Secs. 5, 6. Constable may discharge prisoner if accuser declines to enter into recognizance.	Questionable validity.

\* It seems the object of the Provincial Legislature would be obtained by imposing a penalty of say £100 for not eradicating thistles, after notice from some officer or authority empowered.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>AUCKLAND—continued.</b>	
<i>The Auckland Rural Police Act, 1866—continued.</i> Sec. 10. Police to lay information.	Questionable validity, as limiting the number of persons by whom information should be laid.
<i>The Distress Act, 1866.</i> No. 3, Sess. XX. Provisions for restraining for rent.	The subject-matter is provided for by the Distress and Replevin Act of 1868, and the provisions which are <i>ultra vires</i> are quite unnecessary. This Act should and may without inconvenience be repealed.
<i>The Turnpike Act, 1866.</i> No. 12, Sess. XIX. (Printed in Schedule as Sess. XX., No. 4.) This Act gives power to erect turnpikes and levy tolls on public roads.	There seem to be no provisions <i>ultra vires</i> .
<i>The Turnpike Act Amendment Act, 1866.</i> No. 4, Sess. XX. Amends exemption clause in "Turnpike Act, 1866," No. 12, Sess. XIX.	Ditto.
<b>TARANAKI.</b>	
<i>The Roads and Bridges Ordinance, 1858.</i> No. 1, Sess. VI. Secs. 26, 27, 28. Power to Provincial Treasurer to sue for rates, and purport to give power to recover rates in a summary way before a Justice of the Peace, and making the amount leviable on the goods on lands rated. Sec. 29. Provides that rate-book be evidence.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sec. 30. Superintendent authorized to sell land for rates six months in arrear.	Questionable, as altering the law of evidence or practice of Courts of Justice. Unnecessary, and contrary to provisions of "The Sale for Non-payment of Rates Act, 1862."
Sec. 43. Affects to give power to recover before Resident Magistrate expenses of trimming live fences without limit to amount.	<i>Ultra vires.</i>
Secs. 53, 54, 55, 56. In proceedings by and against Board, Chairman or Clerk, as nominal plaintiff or defendant, may represent Board.	<i>Ultra vires</i> , as altering practice and procedure of Courts.
Sec. 58. Provides that convictions made under the Act shall not be void for want of form.	Ditto. And the matter has been sufficiently provided for by Acts of General Assembly.
Sec. 60. Which provides that nothing in the Act contained shall be deemed to alter jurisdiction of any Court, save such as are of summary jurisdiction (which, it is supposed, means procedure); and that in civil cases the provisions of the Ordinance altering the jurisdiction of Courts of summary procedure shall extend only to cases not exceeding £20.	This is an ingenious attempt to bring the clauses above pointed out as <i>ultra vires</i> within the powers conferred by "The Provincial Councils Powers Act, 1856;" but it fails, because that Act does not give a power to alter the jurisdiction and practice of Courts of summary procedure generally, but only of summary Courts having jurisdiction up to £20.
<i>The Town Board of New Plymouth Ordinance, 1863.</i>	Nothing <i>ultra vires</i> .
<i>Road Districts Loan Ordinance, 1868.</i> Sec. 4. Board of Commissioners of Road District may mortgage rates. If mortgage be not paid, power is given to Supreme Court to apply for order on Provincial Treasurer to pay out of rates.	<i>Ultra vires</i> , as altering practice and jurisdiction of Supreme Court.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>HAWKE'S BAY.</b>	
<i>The Sheep and Scab Amendment Act, 1867.</i>	Nothing objectionable in this Act.
<i>The Hawke's Bay Sheep Act, 1870.</i>	<i>Ultra vires.</i>
Sec. 13. Empowers two Justices of the Peace to order muster of sheep on cause being shown.	Ditto.
Secs. 20, 21. Authorize two Justices of the Peace, on hearing information, to order an Inspector to take such measures as he thinks fit.	Ditto.
Sec. 24, and subsecs. 2, 13. Under these subsections a penalty of over £100 might be imposed.	If penalty over £100, <i>ultra vires.</i>
<i>The Licensed Victuallers Act, 1870.</i>	<i>Ultra vires.</i>
This Act establishes a Court for hearing application to Justices for certificates, authorizing issue of licenses to them, and objections against the granting of such certificates, and also empowers the Court in certain events to order transfer of licenses; and throughout the Act it purports to give to Resident Magistrates' Courts and Courts of Petty Sessions various powers with regard to making orders in relation to licensed purposes.	<i>Ultra vires.</i>
<b>WELLINGTON.</b>	
<i>An Act to make further provisions relative to Fencing within Districts of the Province. No. 13, Sess. I.*</i>	
<i>The Fencing Act, 1867.†</i>	Seems <i>ultra vires</i> as constituting a tribunal or Court of Judicature.
Sec. 16. Powers conferred on tribunal of arbitrators to determine disputes.	
<i>An Act to establish and regulate Markets. No. 12, Sess. I.</i>	Objectionable as imposing duties on officers with whom the Provincial Legislature and Executive have no administrative relations.
Secs. 1, 2, 3. Which impose upon Sheriff or two Justices of the Peace the duty of calling public meeting for the purposes of ascertaining whether inhabitants of district desire a market to be established, and for election of Market Commissioners.	<i>Ultra vires</i> ; for the Constitution Act forbids altering of criminal law by Provincial Councils; and although the "Provincial Councils Powers Act, 1856," enables Provincial Legislatures to create offences and impose penalties up to £100, it does not enable such Legislatures to give a similar power to other bodies.
Sec. 14. Which empowers Commissioners to provide in by-laws for imposition of penalties for their breach.	<i>Ultra vires.</i> ( <i>Bagge v. Sinclair.</i> )
Sec. 23. Empowering Justices to determine disputes as to stallage rents and tolls.	Ditto.
Sec. 38. Empowers Justices to determine whether food seized is unfit for man.	Ditto.
Sec. 43. Which provides what kind of service of summonses or other legal proceedings shall be good service.	Ditto.
Sec. 44. Provides by and against whom legal proceedings shall be carried on in any Courts.	Ditto. So far as this Act relates to powers, it is amply provided for by "The Municipal Act, 1867." Moreover, the regulation of a market in a town or district should not be vested in a separate body, but in such body as has power over other matters affecting Towns or Road Districts.

\* Repealed by "Fencing Act, 1867," which has been validated by "Provincial Acts Validation Act, 1867."

† This was never an Ordinance of the Provincial Council, it never having been assented to; but having been passed by the Provincial Council, action was suspended in order that it might be validated by Act of General Assembly.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>WELLINGTON—continued.</b>	
<i>An Act to repeal the Wellington Board Act, and make other provisions for the Management of the City of Wellington.</i> No. 11, Sess. XIII.*	
<i>An Act to provide for the Management of the Streets and Drainage in Towns and Populous Places, and the Preservation of the Health of the Inhabitants thereof.</i> No. 17, Sess. II. Secs. 5, 6, 7, 8, 9, 10, 11, 12, 15. Imposing duties on Sheriff of convening meetings and conducting elections.	Objectionable, as imposing duties on officer of General Government not having any relation to Provincial Governments.
Sec. 23. Board to sue and be sued in name of Clerk. No action to abate by death of Commissioner (five being a Board).	<i>Ultra vires</i> , and matter sufficiently provided for by Acts of General Assembly.
Sec. 28. Power to Board to make by-laws, and provide therein for imposition of penalties.	<i>Ultra vires</i> , for though the Constitution Act forbids the altering of the criminal law by Provincial Councils, and although "The Provincial Council Powers Act, 1856," enables Provincial Legislatures to create offences and impose penalties up to £100, it does not enable such Legislature to give a similar power to other bodies.
Sec. 29. Power to Justice of the Peace before whom penalty is recovered to remit penalty.	Questionable.
Secs. 95, 96, 97, 98. Power to sell land for rates, and imposing duties on Justices to set out land to be sold, and to Sheriff to sign conveyance.	<i>Ultra vires</i> , and subject sufficiently provided for by "Sale for Non-payment of Rates Act, 1862."
Sec. 84. Power given to Resident Magistrate to order the forfeiture of unwholesome food.	<i>Ultra vires</i> .
Sec. 94. Power to Collector to recover rates.	Ditto. ( <i>Bagge v. Sinclair</i> .)
Sec. 111. In default of owner doing work to his premises, Board may repair same, and expenses of repairing may be recovered by summary proceedings.	Unintelligible. It does not provide in what Court and in what way. So far as applicable to any Court other than Resident Magistrate's up to £20, is <i>ultra vires</i> .
<i>The Drainage Act, 1863.</i> No. 7, Sess. X.	
Subsec. 2 of Sec. 4. Affects to give powers to Supreme Court to direct how compensation money should be applied.	<i>Ultra vires</i> , as affecting jurisdiction of Supreme Court.
Sec. 6. Two Justices of the Peace, assembled on application of either party, may state compensation and decide disputes.	<i>Ultra vires</i> .
Sec. 9. Provides for settlement of disputes by arbitration, and making award a rule of Supreme Court.	Ditto.
Sec. 15. Empowers Justices of the Peace to decide questions as to what lands are benefited by drainage.	Ditto.
<i>The Public Boards Act, 1856.</i> No. 3, Sess. III. (Misprinted No. 2, Sess. III.)	
Secs. 7, 8, 9, 10, 11, 13. Impose on Commissioners and Justices of the Peace duties of calling meetings of inhabitants, and holding elections of Boards.	Objectionable for reasons stated as regards similar provisions in other Acts.
Sec. 18. Contracts to be made in name of Chairman; action not to abate by death of member of Board.	<i>Ultra vires</i> . Alters practice of Court.
<i>An Act to amend and consolidate the Law relating to District Highways.</i> No. 10, Sess. IX.†	
<i>The District Highways Act, 1867.</i>	
Sec. 5. Speaks of Justices of a proclaimed district, and confers upon them the duties of calling meetings and holding elections.	<i>Ultra vires</i> . ( <i>Bagge v. Sinclair</i> .)

\* Wellington having been created a Corporation under "The Municipal Corporation Act, 1867," this Act is repealed.

† Repealed by "The Highways and Watercourses Diversion Act, 1858."

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
WELLINGTON— <i>continued.</i>	
<i>The District Highways Act, 1867—continued.</i>	
Sec. 10. Confers powers on Benches of Magistrates to order Chairman of Road Board to repair roads.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sec. 11. Provides that Chairman may sue and be sued on behalf of Board.	Ditto, and unnecessary. The Legislature have provided sufficiently on subject.
Sec. 20. Provides that rates may be recovered by summary proceedings at suit of Collector, without limit as to amount.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Secs. 23, 24, 25, 39. Provide for settlement of disputes, and awarding compensation by arbitrators, and making award a rule of Supreme Court, and for taxing costs.	Ditto.
Secs. 22–27. Provide for taking land compulsorily in a manner not in accordance with provisions of “The Compulsory Land Taking Act, 1866.”	<i>Ultra vires</i> , as repugnant to Act of General Assembly.
Sec. 30. Empowers Superintendent to authorize the occupation, for pastoral purposes, of certain highways vested in the Crown.	<i>Ultra vires</i> , the freehold being vested in the Crown.
Sec. 39. Empowers Board to grant conveyance of disused highways.	This is <i>ultra vires</i> , the land being Crown land. It is, moreover, repugnant to “The Highways and Watercourses Act, 1858.”
<i>An Act to vest in a Board of Wardens, for the Management of Local Public Works the Management of the Streets, Sewerage, and Preservation of the Health of the Inhabitants of the Town of Wanganui.</i>	This Act, so far as it incorporates <i>ultra vires</i> provisions of Sess. II., No. 17, is <i>ultra vires</i> .
<i>An Act to amend and consolidate the Laws relating to Scab, Catarrh, and Sheep Inspectors.</i> Sess. XI., No. 13.	
Sect. 13. Gives power to a Justice of the Peace to order search of vessels for infected sheep.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sect. 33. Gives power to recover assessment on sheep before Resident Magistrate or any Justice of the Peace, although it may exceed £20.	Ditto.
Secs. 1, 2, 6, of <i>An Act to authorize the Superintendent to cause a Wharf to be erected in the Harbour of Port Nicholson.</i> No. 1, Sess. VIII.	
Sec. 1. Superintendent authorized to construct wharf at such place in the harbour as may appear best adapted for the purpose.	This would give a power to erect it below high watermark, even on land not granted to Superintendent, but remaining in the Crown. This a Provincial Legislature cannot do, the Constitution Act forbidding them by legislation to affect Crown lands.
Sec. 4. Power to Superintendent to make by-laws, and to provide for the imposition of penalties.	<i>Ultra vires</i> for reasons already stated with regard to by-laws.
NELSON.	
<i>An Act to provide for altering Roads in the Province of Nelson, 1855.</i>	
No. 4., Sess. II.	
Secs. 1, 2, 3, 4, and generally the whole Act. Powers to Justices of the Peace to hear and determine whether road is necessary or may be diverted or not; and authorizing the taking of roads through private lands; and for determining amount of compensation by award; and authorizing Supreme Court to make orders in certain cases for allotting compensation money.	<i>Ultra vires.</i> This Act is also repugnant to “Highways and Watercourses Diversion Act, 1858,” and “The Provincial Compulsory Land Taking Act, 1866.”
<i>An Act to provide for the Making and Maintaining of Roads and other Public Works in the Province of Nelson.</i> No. 4, Sess. III.	
(1856), except clauses 4, 5, 6, 7, 9, 26, 27, 32, and 33.*	

\* Amended by “Country Roads Amendment Act, 1868.” No. 12, Sess. V.



Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<i>NELSON—continued.</i>	
<i>An Act to provide for Making and Maintaining Roads, &amp;c.—contd.</i>	
Sec. 10. Disputes relating to election of members or making rate to be determined by Superintendent and Executive Council (on request of five electors), whose decision shall be final.	This seems to be <i>ultra vires</i> within the principle in <i>Bagge v. Sinclair</i> .
Sec. 15. Authorizes Justice of the Peace to make order on a party to reimburse another party charges and expenses occasioned by his obstruction.	Ditto.
Sec. 18. Empowering two Justices of the Peace to hear and determine disputes as to the taking of materials from private lands for mending roads.	<i>Ultra vires.</i> Ditto.
Secs. 21, 22, 23, 24. Providing for settlement of certain disputes by arbitration and for making award a rule of Court.	Ditto.
Sec. 25. Provides for recovering before Justice of the Peace dues for use of public works.	Ditto, as constituting a new Court.
Sec. 29. Persons may appeal against assessment to Bench of three Magistrates called Court of Appeal.	<i>Ultra vires.</i>
Sec. 31. Power to recover rate before one Justice of the Peace.	<i>Ultra vires</i> , creating new tribunal for recovering a debt of any amount.
Sec. 41. Proceedings against Clerk in name of Board not to abate by death of Clerk or Member.	<i>Ultra vires</i> , as altering practice and procedure of Courts of Justice.
Sec. 44. Providing that no Judge, Resident Magistrate, or Justice of the Peace, shall be disqualified as ratepayer.	<i>Ultra vires</i> , as giving a jurisdiction where the Judge or other person would not have it. No provisions in this Act requiring validation.
<i>The Country Roads Amendment Act, 1858. No. 12, Sess. V.</i>	
<i>The Country Roads Amendment Act, 1863. No. 2, Sess. X.</i>	
Sec. 2. Persons to be summoned before Justices of the Peace to show cause why hedges and trees should not be trimmed, and empowering Justice of the Peace to order them to be trimmed.	Invalid.
Secs. 4, 5, 6. Empower Road Board to make by-laws, and providing penalties for breach thereof.	<i>Ultra vires.</i> Probably this would be so even though no power to create penalties were given by Act, for though "The Provincial Councils Powers Act, 1856," gives the power to Provincial Legislatures to create penalties, it does not empower Provincial Legislatures to authorize another body to do so.
<i>An Act to provide for the Improvement of the Town of Nelson, 1856.</i>	
No. 3, Sess. III., except clauses 3, 4, 5, 6, 7, 9, 11, 29, 31, 32, 33, 34, 35, 38, 40.*	
Sec. 10. Disputes relating to making rate to be referred to Superintendent and Executive Council.	Questionable.
Secs. 13, 14. Empowering Justices of the Peace to order making of drains.	<i>Ultra vires.</i>
Sec. 16. Empowering a Justice of the Peace to order the reimbursement of expenses of making watercourses or drains.	<i>Ultra vires.</i>
Secs. 18, 19, 20, 21. Disputed compensation to be settled by arbitration; costs to be awarded, and award made a rule of Supreme Court.	Ditto, as adding to jurisdiction of Court in a manner not warranted by law.
Sec. 25. Power given to two Justices to order building or wall to be taken down, and to order payment of expenses.	<i>Ultra vires.</i>
Sec. 28. Provides for recovery of dues before a Justice of the Peace in a summary way.	Ditto.
Secs. 35, 36. Property may be sold if rates in arrear.	Repealed by "Sale for Non-payment of Rates Act, 1862." Questionable and objectionable.
Sec. 37. Providing for settlement of a special rate for improvements by arbitration.	<i>Ultra vires</i> , as altering practice of Court, and provided for by "The Unincorporated Boards Suits Act, 1870."
Sec. 45. Action may not abate by reason of death of member of Board, or Clerk; and Board may sue in name of Clerk.	

\* Amended by "The Nelson Improvement Amendment Act, 1858," and "The Nelson Improvement Act, 1862."

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
NELSON—continued.	
<i>An Act to provide for Improvement of the Town, &amp;c.</i> —continued. Sec. 47. Provides that no Judge shall be disqualified by reason of interest.	<i>Ultra vires</i> , as giving a jurisdiction, where otherwise he would not have it.
<i>An Act to amend "The Nelson Improvement Act, 1856," and to repeal "The Nelson Improvement Amendment Act, 1857, 1858."</i> No. 11, Sess. V. Sec. 8. Persons aggrieved by assessment may appeal to Bench of two Magistrates—called Court of Appeal. Sec. 13. If rate be not paid, property may be sold.	<i>Ultra vires</i> , as establishing a Court. ( <i>Bagge v. Sinclair.</i> ) Repugnant to "The Sale for Non-payment of Rates Act, 1862."
Secs. 15, 16, 17. Authorize Board to make by-laws, providing thereby for imposition of penalties. Sec. 23. Empowers Resident Magistrate to order persons laying out streets and public roads to make them of certain width.	<i>Ultra vires</i> , for reasons above given in another Act. <i>Ultra vires.</i>
<i>An Act to amend "The Nelson Improvement Act, 1856, 1862."</i> No. 8, Sess. IX. Sec. 2. Penalty to be recovered before one Justice of the Peace.	Ditto. ( <i>Bagge v. Sinclair.</i> )
MARLBOROUGH.	
<i>The Picton Improvement Act, 1861.</i> No. 5, Sess. V. Sec. 9. Power to Superintendent to decide about elections and vacancies in office.	Questionable.
Sec. 13. Persons aggrieved by assessment may appeal to Bench of not less than two Justices of the Peace, called Court of Appeal.	<i>Ultra vires.</i>
Sec. 16. Power to recover rate before one Justice of the Peace in a summary way	Ditto.
Secs. 17, 18, repealed. Property may be sold for non-payment of rates. Superintendent to sign conveyance; Magistrate to set out land; Justices to determine what portion of land to be sold.	Repealed by "The Picton Improvement Act, 1861;" and <i>ultra vires</i> so far as tribunals are concerned; and inconsistent with, and repugnant to, provisions of the General Assembly on the same subject.
Secs. 22, 23. Power to Justices to hear and determine objections to making drains, &c.	<i>Ultra vires.</i> ( <i>Bagge v. Sinclair.</i> )
Sec. 26. Providing for recovery of expenses of putting down drains and other structures, built contrary to Act, before a Justice of the Peace.	Ditto.
Secs. 27, 28, 29, 30. Provision for settlement of disputes by arbitration, and for making award a rule of Court, and for payment of costs	Ditto.
Section 33. Imposes a penalty for every week a certain act is omitted to be done.	It does not appear clear; but under this provision a penalty over £100 may be imposed.
Sec. 34. Power to two Justices of the Peace to order dangerous building to be taken down, and to recover expenses before Justice of the Peace.	<i>Ultra vires.</i>
Sec. 37. Power to recover dues in a summary way before Justices of the Peace.	<i>Ultra vires.</i>
Sec. 38. Power to settle amount of special assessment by arbitration.	Ditto.
Sec. 44. Board to sue and be sued in name of Clerk. Actions not to abate by death of member of Board, &c.	Ditto, and sufficiently provided for by Acts of General Assembly.
Sec. 46. Provides that no Judge should be disqualified though interested.	<i>Ultra vires.</i>
Secs. 47, 48, 49. Authorize making by-laws, and providing thereby for imposition of penalties.	Ditto.
Sec. 49. Penalty for breach of by-laws to be recovered before Justices of the Peace in a summary way.	Ditto.

Title of Act or Ordinance, and subject matter of Sections.	Remarks.
<i>MARLBOROUGH—continued.</i>	
<p><i>The Picton Improvement Act, 1861—continued.</i>            Sec. 54. Authorizes Justices of the Peace to order private persons laying out roads to make them of a certain width.            Sec. 55. Appeals to Justices against acts of Board in exercise of powers relating to laying out of buildings uniformly.</p>	<p><i>Ultra vires</i>, for reasons already given in similar cases.  <i>Ultra vires.</i></p>
<p><i>An Act to amend the Picton Improvement Act.</i> No. 1, Sess. VII., 1863.</p>	<p>Nothing objectionable in this Act.</p>
<p><i>The Blenheim Improvement Act, 1864.</i>            Sec. 12. Provides for settlement of disputes relating to elections and vacancies in office by Superintendent and Executive.            Sec. 16. Persons aggrieved by assessment may appeal to Bench of not less than two Justices of the Peace, called Court of Appeal.            Secs. 24, 25. Power to Justices of the Peace to orderwh ether drains or sewers shall be made or not.            Secs. 27, 28. Power to recover expenses caused by obstruction of work, or making unauthorized excavations in a similar way.            Secs. 29, 30, 31, 32. Power to settle disputes and compensation by arbitration, and to make award a rule of Court.            Sec. 35. Powers to Bench of not less than two Justices of the Peace to require roads to be made of necessary width.            Sec. 36. Two Justices of the Peace may order dangerous building to be pulled down, and for recovering expenses in a summary way before two Justices of the Peace.            Sec. 39. Power to recover market dues before a Justice of the Peace in a summary way.            Sec. 46. Board may sue and be sued in name of any one member of Board, or Clerk, and action not to abate by death of Clerk or member of Board.            Secs. 48, 49, 50. Power to Board to make by-laws and impose penalties.             Sec. 56. Bench of not less than two Justices of the Peace to cause surveyors to make correct plans of public roads or streets.</p>	<p>Questionable.  <i>Ultra vires.</i>            Ditto.            Ditto.            Ditto.            Ditto.            Ditto.            Ditto.            Ditto.            Ditto.            Ditto.  <i>Ultra vires</i>, and unnecessary, and matter sufficiently provided for by Act of General Assembly.  <i>Ultra vires.</i></p>
<p><i>The Drainage Act, 1867.</i></p>	<p>This Bill was never assented to by the Governor, but had the force of an Act of the General Assembly given to it by "The Provincial Acts Validation Act, 1867;" but the validation of it was expressly discontinued by "The Provincial Acts Validation Act Continuance Act, 1868."</p>
<p><i>The Roads Act, 1867.</i></p>	<p>Validated by "Provincial Acts Validation Act, 1867," but devalidated by "Provincial Acts Validation Act Continuance Act, 1870."</p>
<p><i>The Picton and Havelock Improvement Act, 1869.</i>            Sec. 9. Power to Justice to order cattle, owners of which are unknown, to be destroyed.</p>	<p><i>Ultra vires.</i></p>
<p><i>The Picton Improvement Act Amendment Act, 1867.</i></p>	<p>Nothing objectionable in this Act.</p>
<p><i>The Province of Marlborough Roads Act, 1870.</i>            Sec. 8. Provides that disputes with regard to elections of members of Road Boards to vacancies should be decided by Superintendent and Executive on petition in writing.</p>	<p>Questionable and objectionable, as the tribunal created seems to be a Court of Judicature within the judgment in <i>Bagge v. Sinclair</i>.</p>

Title of Act or Ordinance, and subject-matter of Section.	Remarks.
<b>MARLBOROUGH—continued.</b>	
<i>The Province of Marlborough Roads Act, 1870—continued.</i> Secs. 23, 24, 25. Power to make by-laws and provide for penalties for breaches.	<i>Ultra vires.</i> The Legislature has given power to the Provincial Legislature to create offences, but has not empowered the Provincial Legislature to authorize another body to do so.
Sec. 32. Gives power to Resident Magistrate's Court and Court of Petty Sessions to appeal against rates.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Sec. 48. Power to take materials from land, and to Justices to settle disputes relating thereto, and to Justices to give orders for the taking of such materials.	Ditto, as adding to jurisdiction of Magistrates.
Secs. 51, 52, 53, 54. Disputes relating to compensation to be settled by arbitration : Power to appoint arbitrators and make award a rule of Court.	Ditto, as creating a new tribunal, and adding to the jurisdiction, and affecting the jurisdiction and procedure of Supreme Court.
Sec. 56. Which authorizes Judges, Resident Magistrates, &c., to act though interested.	<i>Ultra vires</i> , as giving a jurisdiction where no jurisdiction exists.
<b>CANTERBURY.</b>	
<i>The Roads Ordinance, 1864.</i> No. 8, Sess. XXII.	Repealed by "The Roads Act, 1869."
<i>The Roads Ordinance Amendment Ordinance, 1866.</i> No. 20, Sess. XXIV.	Ditto.
<i>The Roads Ordinance Amendment Ordinance, 1867.</i> No. 12, Sess. XXVI.	Ditto.
<i>The Roads Ordinance Amendment Ordinance, 1867.</i>	Ditto.
<i>The Roads Act, 1869.</i> Secs. 19-27. Power to revise ratepayers' roll, and to hear and determine questions as to assessment.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
Secs. 20, 21, 22, &c. Establishing a Court for revision of electoral rolls.	Ditto.
Secs. 34. Provides that rate should be property of Board, but recovered at suit of Collector.	Ditto.
<i>The Christchurch City Council Ordinance, 1862.</i>	Christchurch is now created a Corporation, and this Act is now repealed by "The Municipal Corporations Act, 1867."
<i>The Lyttelton Municipal Council Ordinance, 1863.</i>	Lyttelton is now created a Corporation, and this Act is now repealed by "The Municipal Corporations Act, 1867."
<i>The Hokitika Municipal Council Ordinance, 1867.</i>	Hokitika is now created a Corporation, and this Act is now repealed by "The Municipal Corporations Act, 1867."
<i>The Municipal Council Ordinance.</i> No. 2, Sess. XIV.	Under this Ordinance Kaiapoi and Timaru were originally incorporated, but they have since been constituted Municipalities under "The Municipal Corporations Act, 1867," of the General Assembly, and therefore, within those towns, the above Ordinance is repealed. It should now be repealed throughout the whole Province; for though it remains in force, there is no reason for, or apparent intention of, creating Corporations under it.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<i>CANTERBURY—continued.</i>	
<i>The Sheep Rating Ordinance, 1866. •</i>	Repealed by "The Roads Act, 1869."
<i>The Sheep Rating Ordinance 1866 Amendment Ordinance, 1867.</i>	This contains no <i>ultra vires</i> provisions, and merely contains an amendment of mere immaterial omissions in "The Sheep Rating Ordinance, 1866," and ought to have been repealed by "The Roads Act, 1869."
<i>The Fencing Ordinance, 1869."</i>	Repealed by "The Fencing Ordinance, 1869."
<i>The Fencing Ordinance 1866 Amendment Ordinance, 1867.</i>	Ditto.
<i>The Fencing Ordinance, 1869.</i> Sec. 9. Empowering Resident Magistrate's Court or Court of Petty Sessions to hear evidence and decide disputes relating to fencing.	<i>Ultra vires.</i> (Bagge v. Sinclair.)
<i>The Roads Ordinance Amendment Ordinance, 1866.</i>	Repealed by "The Roads Ordinance, 1869."
<i>The Gibson Quay Ordinance, 1866.*</i>	Nothing <i>ultra vires</i> in this Ordinance.
<i>The Gibson Quay Ordinance Amendment Ordinance, 1867.</i>	Ditto.
<i>The Beswick Wharf Ordinance, 1864.</i>	Nothing objectionable in this Ordinance.
<i>The Fire Ordinance, 1864.</i>	Nothing objectionable in this Act; though, if it is intended by sections 6 and 14 that damages for the injury to property, as well as penalty, may be recovered before a Justice of the Peace, then the provision, so far as it extends to damages, is <i>ultra vires</i> . The object of the Bill is to authorize the enrolment of fire brigades, and to authorize the pulling down of houses. The subject has been adequately dealt with by the General Assembly in "The Municipal Corporations Act, 1867," and "The Fire Inspectors Act, 1870."
<i>The Sheep Ordinance, 1864.</i> Sec. 18. Which provides that, on imposition of a penalty for not erecting dipping apparatus, Justice of the Peace may suspend infliction of penalty for three months.	It is questionable whether these clauses are not inconsistent with Acts of General Assembly which regulate proceedings for imposition of penalties before Justices of the Peace.
Sec. 20. Justices of the Peace may suspend any penalty imposed for scabby sheep.	Ditto.
Sec. 21. Six months to elapse between convictions for scabby sheep.	<i>Ultra vires.</i>
Sec. 22. Justices may order infected sheep to be herded and yarded.	Ditto, as adding to jurisdiction of Justices.
Sec. 23. Inspector may order infected sheep to be herded and yarded. Appeal lies to Resident Magistrate with two Justices of the Peace.	<i>Ultra vires, constituting a Court.</i>
Sec. 45. Any Justice of the Peace may order owner of sheep to muster same on application of owner of sheep.	<i>Ultra vires.</i>

\* This wharf is erected on a piece of land granted to the Superintendent under the Public Reserves Act. The Act authorizes the charging and letting of tolls.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>CANTERBURY—continued.</b>	
<p><i>The Sheep Ordinance, 1864—continued.</i>            Sec. 48. Provides that persons wilfully communicating disease to sheep shall on conviction before two or more Justices of the Peace, be imprisoned for not more than six months.</p>	<p>Provision does not express how the conviction is to be obtained, summarily or otherwise. "The Provincial Councils Powers Act, 1856," provides that the Provincial Legislature must express whether the conviction is to be by summary procedure or otherwise.</p>
<p>Sec. 51. Provides that expenses of prosecutor are to be paid out of penalties.</p>	<p>All penalties are General revenue, and are not subject to Provincial appropriation; and by "The Diseased Sheep Fines Appropriation Act, 1867," all fines and penalties are made Provincial revenue and are to be paid to the Provincial Account.</p>
<p><i>The Sheep Ordinance 1864 Amendment Ordinance, 1869.</i>            Sec. 2. Provides for suspension of penalty after imposition of same.</p>	<p>This is open to the objection pointed out in the Sheep Ordinance of 1864.</p>
<p><i>The Education Ordinance, 1864.</i>            Sec. 7. Provides for settlement of disputes by Superintendent, whose decision shall be final.            Sec. 31. A Justice of the Peace has power to summon a person to show cause why rate should not be levied by distress.</p>	<p>Questionable.  <i>Ultra vires.</i></p>
<p><i>The Hospital and Charitable Aid Ordinance, 1864.</i> (Misprinted in Schedule to Act of 1867, as "The Hospital and Charitable Act Ordinance, 1864.")            Sec. 4. Which provides that all suits by or against any Institute established under this Act shall be in the name of the Superintendent.            Sec. 14. Objections to payment of rates to be heard by two Justices of the Peace, or more.            Sec. 18. Provides that rates shall be sued for in name of Collector.</p>	<p><i>Ultra vires</i>, as altering practice of Court. (<i>Bagge v. Sinclair.</i>)  <i>Ultra vires.</i> (<i>Bagge v. Sinclair.</i>)  <i>Ultra vires</i>, as altering practice of Court. (<i>Bagge v. Sinclair.</i>)</p>
<p><i>The Hackney Carriage Ordinance, 1864.</i> (Misprinted as "The Railway Carriage Ordinance, 1864.")            Provides for City Council making regulations and by-laws, and attaching penalties for breach.</p>	<p>Beyond powers of Provincial legislation, but the Act may be considered obsolete, notwithstanding validation—(1) because the City Council to which that Act refers does not exist, the town having been incorporated under the Municipal Corporations Act; and (2) the present Municipality has powers of a similar nature under the Municipal Corporations Act: therefore this Act may be repealed.</p>
<p><i>The Waimakariri Bridge Ordinance, 1863.</i></p>	<p>Nothing <i>ultra vires</i> in this Ordinance.</p>
<p><i>The Heathcote Bridge Ordinance, 1862.</i></p>	<p>Ditto.</p>
<p><i>The Dog Nuisance Ordinance.</i> No. 3, Sess. XVII.</p>	<p>Ditto.</p>
<p><i>The Dog Nuisance Ordinance Amendment Ordinance, 1862.</i></p>	<p>Ditto.</p>

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
<b>CANTERBURY—continued.</b>	
<i>The Trespass of Cattle Ordinance, 1869.</i>	
Sec. 22. Empowers Justices of the Peace to give order for sale of impounded cattle on being satisfied by evidence on oath that provisions of Ordinance have been complied with.	<i>Ultra vires.</i> Either creating a new tribunal, or adding to jurisdiction of Justices of the Peace in a manner not authorized by law.
Sec. 24. Authorizes Justices to order sale in certain cases.	Di to, ditto.
Sec. 33. Provides that proceedings on account of trespass must be considered within thirty days after occurrence of trespass.	This seems to affect the practice and procedure of all Courts of Justice, and is therefore <i>ultra vires</i> .
<b>OTAGO.</b>	
<i>The Otago Roads Ordinance, 1865. No. 190, Sess. XX.</i>	
Sec. 36. General Board to decide on objection to rates, or may appoint a Commissioner.	This seems to create a tribunal for deciding on objections, and seems to come within definition of a Court of Judicature, laid down in <i>Bragge v. Sinclair</i> .
Sec. 39. Power conferred on Collector to sue for rates.	Questionable.
Sec. 40. Appeal may be made to Resident Magistrate's Court.	<i>Ultra vires.</i> ( <i>Bagge v. Sinclair.</i> )
<i>The Otago Roads Ordinance 1865 Extension and Amendment Ordinance. No. 210, Sess. XXI.</i>	Nothing objectionable in this Ordinance.
<i>The Otago Municipal Corporation Ordinance, 1865.*</i>	
Secs. 40, 41. Constitute Council a Court for revision of List of Voters and hearing objections.	This is <i>ultra vires</i> , as it constitutes a tribunal, and appears to be within decision of <i>Bagge v. Sinclair</i> .
<i>An Ordinance to amend "The Otago Municipal Corporations Ordinance, 1865."</i>	
Sec. 7. Power to Superintendent to endow Municipality by reserves of waste lands.	Invalid, as affecting waste lands of the Crown.
<i>The Otago Municipal Corporations Ordinance Amendment Ordinance, 1866.</i>	Nothing invalid.
<i>The Port Chalmers Town Board Ordinance Repeal Ordinance, 1867.</i>	This Ordinance was passed for the purpose of transferring to a new Corporation, created in 1867, lands and property, rights of action, &c., vested in the old Corporation for that town. The objects of the Ordinance have been served, and validation does not require to be continued.
<i>The Oamaru Town Board Ordinance 1862 Repeal Ordinance, 1867.</i>	Ditto.
<i>The Fencing Ordinance, 1867.</i>	
Sec. 6. If persons cannot agree as to the nature of fence, difference may be settled by Resident Magistrate or Justices of the Peace.	<i>Ultra vires.</i> ( <i>Bagge v. Sinclair.</i> )

\* This Ordinance was permanently validated by sec. 42 of "The Otago Municipal Corporations Empowering Act, 1865," of the General Assembly. As it may be doubted whether the language used in this validation is sufficient for the purpose, it will be advisable either to validate this Bill by different language, or to repeal the Ordinance altogether, and bring the Dunedin Municipality under "The Municipal Corporations Act, 1867." That Corporation has already adopted a considerable part of the Act; and if "The Municipal Corporations Act, 1867," were amended by providing for the introduction of vote by ballot in corporations, it is probable that Dunedin would not object to the Act.

Title of Act or Ordinance, and subject-matter of Sections.	Remarks.
SOUTHLAND.	
<p><i>The Invercargill Town Board Ordinance, 1863.</i> Sec. 46. Board to hear objections to assessments.</p>	<p>This seems to be objectionable, as creating a tribunal for deciding objections.</p>
<p>Sec. 48. Collector with warrant from Justices of the Peace may enter upon land and distrain for rates in arrear.</p>	<p><i>Ultra vires.</i></p>
<p>Sec. 53. Appeal lies to Resident Magistrate, or any two Justices of the Peace, with regard to rates.</p>	<p>Ditto.</p>
<p>Section 56, and following clauses. Empower Board to make by-laws on any subject, and providing for breach of by-laws by penalties.</p>	<p>Ditto. The Legislature, though it has empowered the Provincial Council to create offences, has not empowered the Provincial Council to authorize any other body to make by-laws.</p>
<p>Sec. 74. Provides for mode of service of writs, and other legal proceedings.</p>	<p><i>Ultra vires</i>, as affecting practice and procedure of all Courts.</p>
<p>Sec. 75. Provides that penalties recovered should be paid to Clerk of Board, and form part of its funds.</p>	<p><i>Ultra vires.</i> Penalties are General revenue, and therefore Provincial Legislature cannot appropriate them.</p>
<p><i>The Roads Ordinance, 1862. No. 19 of Series.</i></p>	
<p>Sec. 11. Empowers two Justices of the Peace to determine complaints against officers of Road Boards for detaining books or other property.</p>	<p><i>Ultra vires.</i></p>
<p>Sec. 31. Gives appeal with regard to rates to Resident Magistrate or Justices of the Peace.</p>	<p>Ditto.</p>
<p>Sec. 34. Provides for levying rates in arrear by distress warrant.</p>	<p>Ditto.</p>
<p><i>The Tolls Ordinance, 1866. No. 65 of Series.</i></p>	
<p>Sec. 26. Empowers the Superintendent to make by-laws and attach penalties.</p>	<p>Seems <i>ultra vires</i>. The Provincial Legislature has power to create offences, but it cannot give that power to any other body.</p>
<p><i>The Roads Ordinance 1862 Amendment Ordinance, 1867.</i></p>	
	<p>Nothing objectionable in this Ordinance.</p>