

# FURTHER PAPERS

RELATIVE TO THE

## DISALLOWANCE OF PROVINCIAL BILLS.

*In continuation of Papers presented 11th August, 1870.*

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

---

WELLINGTON.

—  
1871.



## DISALLOWANCE OF PROVINCIAL BILLS.

### No. 1.

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

SIR,— Superintendent's Office, Auckland, 4th February, 1871.  
Herewith I have the honor to transmit duplicates of the afternamed Acts of the Provincial Council of this Province, to which I have assented on behalf of His Excellency the Governor, viz. :—

- “ The Road Act, 1870, No. 1.”
- “ The Road Act, 1870, No. 2.”
- “ The Road Act, 1870-71, No. 3.”
- “ The City Boards Loan Acts Repeal Act, 1870.”
- “ The Kaipara Railway Act, 1871.”
- “ The Auctioneers Licensing Act 1863 Amendment Act, 1871.”
- “ The Highways Act, 1871.”
- “ The Licensing Act, 1871.”
- “ The Grahamstown Fire Rate Act, 1871.”
- “ The Registration of Brands Act, 1871.”
- “ The Sheep Act 1863 Amendment Act, 1871.”
- “ The Education Reserves Management Act, 1871.”
- “ The Appropriation Act, 1871.”

With the Act last named, I forward also estimates of the revenue and expenditure of the Province for the current year, and certified copies of the resolutions passed by an absolute majority of the Provincial Council, recommending the appropriation of the sums of £725 15s. and £1,092 10s. 7d. respectively, being the amount of unauthorized expenditure upon special orders during the year 1870. It will be observed that the expenditure proposed for the current year exceeds the estimated revenue by £12,878 14s. 6d. I should point out, however, that a considerable amount of the proposed expenditure is of a character either wholly or in part contingent, *e.g.*, “ Development of New Gold Fields, £2,000;” “ Subsidy for Steam Services, £1,250;” Water Supply, Grahamstown and Shortland, £2,500;” and Tramways Extension, Goldfields, £2,000.” There are also large votes in aid of education, and of roads and works north and south of Auckland, the whole of which may probably not be required for the actual expenditure of the year. I may add that a sum of £550, voted for interest in relation to the Custom House and Post Office building will not be required; and that, at the end of the year 1870, the Province was found to be in a better position financially than had been estimated beforehand by a sum of fully £3,500. You will thus perceive that the expenditure proposed is actually but little in excess of the estimated revenue, while many of the votes are so far contingent as to render it easy to make the two balance.

“ The Highways Act, 1871,” is the result of very careful inquiry as to the working of the former Act of 1867 in the country districts; and the changes introduced in it are such as have been recommended by a large majority of the existing Highway Boards, to whose consideration the original draft of the Act was submitted previous to the last Session of Council.

The only important feature of novelty in “ The Licensing Act, 1871,” will be found to be the insertion of clauses to give effect to the permissive principle as applied to licensed public-houses; a measure petitioned for by a very large and most influential portion of the population of this Province.

“ The Grahamstown Fire Rate Act, 1871,” is purely a local measure for the prevention of fires in our most populous Gold Field town; while the Registration of Brands Act and the Sheep Act Amendment Act are only amendments of no great extent in the existing state of the local Ordinances on those subjects.

The Hon. the Colonial Secretary,  
Wellington.

I have, &c.,  
THOMAS B. GILLIES,  
Superintendent.

### No. 2.

The Hon. W. Fox to His Honor T. B. GILLIES.

SIR,— Colonial Secretary's Office, Wellington, 27th February, 1871.  
I have the honor to acknowledge the receipt of your letter No. 674, of the 4th inst., transmitting duplicates of thirteen Acts recently passed by the Provincial Council of the Province of Auckland, to which your Honor had assented on behalf of His Excellency the Governor.

The Government are advised that there is no legal objection to the following Acts :—

- “ The Auctioneers Licensing Act 1863 Amendment Act, 1871.”
- “ The Sheep Act 1863 Amendment Act, 1871.”
- “ The Appropriation Act, 1871.”
- “ The Road Act, 1870, No. 1.”
- “ The Road Act, 1870, No. 2.”
- “ The Road Act, 1870-71, No. 3.”
- “ The City Board Loan Acts Repeal Act, 1870,”

His Excellency will therefore not be advised to exercise his power of disallowing any of the Acts abovementioned.

“The Highways Act, 1871,” is open to the following objections:—

The 38th and 39th sections provide for an appeal to Resident Magistrates' Courts, and Courts of Petty Sessions, against the decisions of the Board in matters relating to rating, and authorizes the Resident Magistrates and Petty Sessions to give costs. The constitution of such a court of appeal has been declared by the Court of Appeal, in the case of *Bagge v. Sinclair*, to be *ultra vires*, and to invalidate the Act, or, at any rate, to vitiate the provisions for the imposition and recovery of the rate provided by the Act.

The provision of the 41st section, which affects to make the assessment list conclusive as to its validity and evidence of liability, is, the Government are advised, *ultra vires*, as it, in effect, assumes to alter the law of evidence in any Court, whether Supreme, District, or otherwise, in which rates are sought to be recovered.

The provision of the 42nd section, which assumes to enable the collector to sue, was considered *ultra vires* by some of the members of the Court of Appeal in the case of *Bagge v. Sinclair*.

The 55th section is considered invalid, as it imposes a penalty upon undefined offences. Provincial Legislatures may, by Act, enact, that any deed or omission contrary to such Act, shall be an offence punishable by fine, &c. In this Act the Provincial Legislature does not itself define the offences, but, as it were, delegates the power of doing so to another body; and notwithstanding that it may possibly be argued, that, on the Road Board making a by-law forbidding any act to be done, that by-law becomes incorporated into the Act, the Government are advised that the provision is invalid.

Section 58 provides, that a Magistrate may exercise jurisdiction though interested as a ratepayer. But for this provision, such a Magistrate would not have jurisdiction. This provision, therefore, alters the jurisdiction of Justices, and is, as the Government are advised, invalid. Possibly the provision might have been supported, if it had been restricted in its operation to magistrates in the exercise of their jurisdiction up to £20, but it is not so restricted.

I should feel obliged if your Honor would state, in reference to the above, whether you are advised that the provisions referred to are not open to the objections made to them, and whether you desire to avail yourself of “The Provincial Councils Legislation Appeal Act, 1869,” otherwise it will be the duty of the Government to advise His Excellency the Governor to disallow “The Highways Act, 1871.”

“The Licensing Act, 1871,” is open to objection in some respects. The Government are advised that the 52nd section is *ultra vires*, for the reason that the Provincial Legislature cannot make provision for Justices to adjudicate in matters of forfeiture, or otherwise alter their jurisdiction, except by creating a new offence and imposing a penalty.

The 57th section gives a general right of appeal, and is, therefore, *ultra vires*. If it had not gone beyond the provisions of “The Appeals from Justices Act, 1867,” it might have passed without comment, as being identical with the Act of the General Assembly, and simply a statement of the law as it exists; but the provision is likely to lead persons into error, and should be repealed. I desire to point out what seems to be a misprint in this section. “The Justices of the Peace Act, 1866,” seems to have been mentioned by mistake for “The Appeals from Justices Act, 1867.” As these objections do not affect the principle of the Act under notice, the Government will abstain from advising His Excellency to disallow it, and leave it to its operation, upon receiving from your Honor an undertaking to introduce into the Provincial Council at its next Session a Bill to amend the provisions of the Act which I have pointed out as being open to objection.

“The Grahamstown Fire Rates Act, 1871,” appears to Government open to the following objection:—

The Government are advised that this Act ought to have expressed that it does not give power to interfere with any right of individuals, or of the Crown. The object, no doubt, is not to give the power of constructing waterworks compulsorily, but only such as the trustees acquire, by agreement or consent, the right to construct; and the Act should be amended so as to make this clear. For if this Act is intended to give compulsory powers of taking land, it is invalid, as not having been passed in accordance with “The Provincial Compulsory Land Taking Act, 1866;” and if water rights are intended to be interfered with, such an Act ought to be passed only after notice to the individuals whose rights are intended to be affected. Moreover, such an Act should be specific, and should define the lands or water rights intended to be affected.

The Government are advised that the 13th section of “The Registration of Brands Act, 1871,” which enables Justices to hear complaints against the Registrar of Brands, and to adjudicate equitably, &c., is *ultra vires*. What ought to have been done was, to impose a penalty on the Registrar, and then the Justices could hear the complaint. This Act will, notwithstanding, be left to its operation, if your Honor will introduce an amending Bill next Session.

“The Education Reserves Management Act, 1871,” professes to give a general power to the Superintendent to sell reserves, and thereby deprives the Governor of the power of judging whether, in any particular case, a reserve shall be sold. It was doubtless the intention of the General Assembly, in passing the provision contained in “The Public Reserves Act, 1854,” that Provincial Acts empowering the sale, &c., shall not come into operation until the time has elapsed within which the Governor may disallow them, to give the Governor the opportunity of preventing the sale of any particular reserve. And although the Act of 1854 is not very explicit on this point, it is so obviously necessary, on grounds of public policy, that the power should be retained in the hands of the Governor, that the Government will feel it their duty to advise His Excellency to disallow this Act.

With reference to “The Kaipara Railway Act, 1871,” I have the following observation to make:—

It has always been considered necessary, when passing an Act for the construction of a railway, to make provision for the mode of construction, more especially with reference to public safety and

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.

Your letter does not indicate the intentions of the Government in reference to this Act, but I presume, from your remarks, that it is not intended to disallow it.

4. "The Registration of Brands Act, 1871."—I fully concur in your remarks hereon, and will introduce an amending Act, as desired, next Session.

5. "The Education Reserves Management Act, 1871."—I regret to learn that His Excellency will be advised to disallow this Act, as there does not appear to be any legal objections to the Act; and I think, had your Government been aware of the circumstances which it is intended to deal with, they would have seen that it is not open to the objections raised on the grounds of public policy. The reason for inserting the sale provisions, is, that, some time ago, all the lands then open for sale in the Province were set aside as reserves for educational endowments—in many cases of town sections, and in others of country lands, which would be valueless to lease, but which might be sold, and the proceeds invested in reproductive modes for the support of education. You will observe, that no sale is to take place except on the request of the Board of Education, with the consent of the Superintendent and Executive, and that the proceeds are bound to be re-invested for the objects of the original reserve. If further safeguards were required, there would be no objection to my giving an undertaking, that no land would be sold until the General Government were consulted thereon, and that an Act would be brought into the Council next session rendering such a course imperative. The effect of disallowing the present Act will be to lock up, for instance, the whole township at Herd's Point, Hokianga, from sale, till a fresh Act be passed, and to prevent the utilization, by leasing, of all the reserves for the purpose of education for an indefinite period. I trust that, in the interests of education, you may yet see fit to leave this Act to its operation, subject to such conditions as I have suggested.

6. Kaipara Railway Act.—It is unnecessary to enter into any discussion as to the objections raised to this Act, inasmuch as it is not of the slightest consequence whether the Act be disallowed or not. It was passed merely to pledge the Council to an understanding entered into by myself with the Colonial Treasurer, that £27,000 should be expended on this work, and was not intended to confer any powers on the Provincial Government which they do not otherwise possess. The line passes nearly, if not altogether, through private property alone, over which the Provincial Government have obtained from the owners the necessary concessions, and it crosses, I think, only one road over which there is great traffic. I see no necessity, therefore, for giving the undertaking required, as the allowance or disallowance of the Act will not interfere with the progress of the work.

I have, &c.,

THOMAS B. GILLIES,

Superintendent.

The Hon. the Colonial Secretary, Wellington.

#### No. 4.

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

SIR,—

Colonial Secretary's Office, Wellington, 14th April, 1871.

I have to acknowledge the receipt of your Honor's letter of the 16th March, in reply to Mr. Fox's of the 27th of February, upon the subject of certain Bills passed by the Provincial Council of Auckland, to which you had assented on behalf of His Excellency the Governor.

In reply, I have the honor to communicate to you the final decision of the Government in regard to those Acts in respect to which your Honor had not been informed by Mr. Fox that they would be left to their operation.

1. Highway Act.—As the Government intend to introduce a measure next Session to remove the difficulties about Highway Acts, this Bill will be left to its operation, on the undertaking of your Honor that, if such difficulties in respect to this Act are not removed, a Bill will be submitted by your Honor to the Provincial Council to repeal or amend the objectionable sections.

2. The Licensing Act will be left to its operation, upon the undertaking promised by your Honor.

3. The Grahamstown Fire Rates Act will be left to its operation.

4. The Registration of Brands Act will be left to its operation, on the undertaking promised by your Honor.

5. The Education Act will be left to its operation, on receiving an undertaking from your Honor that no reserves shall be sold without the previous sanction of the Governor, and that you will propose a Bill to that effect to the Provincial Legislature at its next Session.

6. Kaipara Railway.—As your Honor declines to give the undertaking asked for in respect to this Act, it will be the duty of the Government to advise His Excellency to exercise his power of disallowing it.

I have, &c.,

W. GISBORNE.

His Honor the Superintendent, Auckland.

#### No. 5.

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

SIR,—

Superintendent's Office, Auckland, 24th April, 1871.

I have the honor to acknowledge the receipt of your letter No. 102, of the 14th instant, in reply to mine of the 16th March, upon the subject of certain Bills passed by the Provincial Council of Auckland, to which I had assented on behalf of His Excellency the Governor.

In reply, I have to thank your Government for leaving "The Highways Act," "Licensing Act," "Registration of Brands Act," and "Education Reserves Management Act," to their operation, and to inform you that I will take care that my undertakings as to these several Acts shall be strictly carried into effect at the next Session of the Provincial Council.

I have, &c.,

THOMAS B. GILLIES,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

### No. 6.

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

SIR,—

Superintendent's Office, Auckland, 4th February, 1871.

I have the honor to transmit to you in duplicate the under-named Bills passed by the Auckland Provincial Council, during the Session just ended, which I have reserved for the signification of the Governor's pleasure thereon, viz:—

"The Auckland Harbour Board Act, 1871;"

"The One Tree Hill Reserve Act, 1871;"

"The Mount St. John Reserve Act, 1871;" and

"The Bay of Islands Coal Company's (Limited) Lease Act, 1871."

Of these, the first is an Act to constitute a Harbour Board for the harbour of Auckland, in pursuance of the powers conferred by the Act of the General Assembly passed last Session; the second and third are Acts to divert reserves, already proclaimed, from the purposes of general education in the Province, to other purposes of local interest; and the last-named Bill is intended to enable the Bay of Islands Coal Company to obtain a valid lease of the ground originally given to Mr. John McLeod, and by him transferred to the Company upon the terms and conditions agreed upon between that gentleman and my predecessor in office.

I have, &c.,

THOMAS B. GILLIES,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

### No. 7.

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

(Telegram.)

G.B., Wellington, 18th February, 1871.

THE parchment Acts enclosed in your Honor's letter No. 667, of 4th instant, are so much damaged from salt water, in consequence of wreck of "Airedale," that they are almost illegible. Please send fresh copies by first opportunity.

To Superintendent, Auckland.

W. GISBORNE.

### No. 8.

Mr. LUSK to the Hon. W. GISBORNE.

SIR,—

Superintendent's Office, Auckland, 22nd February, 1871.

In answer to your telegram received yesterday, I have the honor to forward to you herewith fresh parchment copies in duplicate of the Acts reserved for the Governor's decision, which were enclosed in my letter to you, No. 667, of the 4th instant.

I have, &c.,

HUGH H. LUSK  
(for the Superintendent).

The Hon. the Colonial Secretary, Wellington.

### No. 9.

The Hon. Mr. Fox to His Honor T. B. GILLIES.

SIR,—

Colonial Secretary's Office, Wellington, 10th March, 1871.

I have the honor to inform you that the Bill enclosed in your Honor's letter, No. 116 of the 22nd ultimo, intituled "The One Tree Hill Reserve Act, 1871," is, as the Government are advised, *ultra vires*, because the land reserved, until it has been granted by the Crown to the Superintendent, continues to be Crown Land, and consequently not subject to Provincial legislation.

Irrespective of the legal objection, a protest has been received from Messrs. Brown and Campbell against this Bill, a copy of which I enclose for your Honor's information.

I have directed an inquiry to be made into the claim set up by Messrs. Brown and Campbell, the result of which shall be communicated to your Honor.

I have, &c.,

WILLIAM FOX  
(in the absence of Mr. Gisborne).

His Honor the Superintendent,  
Auckland.

## Enclosure in No. 9.

Messrs. BROWN and CAMPBELL to the Hon. W. GISBORNE.

SIR,—

Auckland, 4th February, 1871.

The Provincial Council of Auckland introduced and passed a Bill called the One Tree Hill Reserve Bill, appropriating that land for educational purposes for the inhabitants of Onehunga, and as we have never given up our claim to this property, which we consider was improperly taken possession of by the Government, and as the Hon. Dillon Bell promised Mr. James Farmer that during the coming Session he would introduce a Bill for the final settlement of the whole of the outstanding land claims, we addressed His Honor the Superintendent of this Province to that effect, and requested him to reserve his assent to said Bill, which he has done; and we now respectfully beg that you will recommend His Excellency to withhold his assent to the One Tree Hill Reserve Bill until Mr. Bell's action can be taken in the General Assembly.

We have, &c.,  
BROWN AND CAMPBELL,  
By their Attorney,  
JAMES T. MACKELVIE.

The Hon. the Colonial Secretary, Wellington.

## No. 10.

The Hon. H. SEWELL to His Honor T. B. GILLIES.

SIR,—

Colonial Secretary's Office, Wellington, 20th March, 1871.

I have the honor to acknowledge the receipt of Mr. Lusk's letter of the 22nd February, enclosing fresh parchment copies of the Acts passed in the recent Session of the Provincial Council of Auckland which your Honor had reserved for the Governor's decision, the originals of which were transmitted in your Honor's letter of the 4th February, and spoiled by immersion in the water on the occasion of the wreck of the "Airedale."

I have now to convey to your Honor the decision of the Government in reference to these Bills.

"The One Tree Hill Reserve Act, 1871," has already been disposed of in my letter of the 10th instant.

The Government are advised that "The Bay of Islands Coal Company (Limited) Lease Act, 1871," is *ultra vires*. I enclose, for your Honor's information, the copy of the opinion of the Attorney-General in reference to this Bill; and I have also directed that a copy shall be sent to the Secretary of the Company.

You will perceive that in the opinion of the Attorney General this Bill is *ultra vires*; but, considering all the interests involved in the question, the Government have decided to advise His Excellency to assent to it. It must, however, be understood that although the Government have not advised His Excellency to disallow the Bill, they must not therefore be considered as undertaking any responsibility for the validity of the lease of the coal mine to the Company. But if your Honor and the Company will apply to the General Assembly for an Act to validate the lease, the Government will do all in their power to support such an Act, and to facilitate its passing through its stages in both Houses of Parliament.

I have especially to point out to your Honor, as indeed you will gather from the Attorney General's opinion, that the present Waste Lands Act of the Province of Auckland is defective as regards leases of mineral lands, and I would suggest that you should submit for the consideration of the Government a Bill to be introduced into the next Session of Parliament to rectify the omission, and to provide a proper system of regulations for mineral lands. And this Bill may provide for the validation of the lease of the Bay of Islands Coal Mine.

"The Mount St. John Reserve Act, 1871," is *ultra vires* for the same reason as that given in regard to "The One Tree Hill Reserve Act, 1871;" *i.e.*, that no grant from the Crown of the land having yet been made to the Superintendent, the Provincial Legislature is not in a position to deal with it. His Excellency will, therefore, be advised to disallow this Bill.

His Excellency the Governor will be advised to assent to the Bill intitled "The Auckland Harbour Board Act, 1871," although the Government is advised that the Bill is open to objection. I enclose the copy of the opinion given by the Attorney-General in reference to this Bill, to which I beg to draw your Honor's attention.

I have, &c.,  
HENRY SEWELL  
(in the absence of Mr. Gisborne).

His Honor the Superintendent, Auckland.

## Enclosure 1 in No. 10.

Memorandum by the ATTORNEY-GENERAL.

"THE Bay of Islands Settlements Act, 1870," repeals "The Bay of Islands Settlements Act, 1858," and provides that all the lands within the boundaries of settlement, as set forth in the Schedule to the Act of 1858, shall be deemed to be ordinary waste lands within the Province of Auckland.

"The Bay of Islands Act, 1858," authorized the Governor to include within the settlement lands other than those specified in the Schedule. As a matter of fact, other lands were included: therefore the boundaries of the Bay of Islands Settlement are not correctly set forth in the Schedule to the Act



of 1858. This, therefore, seems to me to be a case of mere false description, and that the provision ought to be read as if the words "as set forth in the Schedule" were omitted from the provision.

This being my opinion, then, in my view the whole of the lands in the Bay of Islands Settlement may be dealt with under "The Auckland Waste Lands Act, 1870;" but this land being subject to an agreement for a lease, ought to be treated as subject to it still. But if the lease of the coal mine has not yet been granted, the question is, how can it now? The Governor's powers under "The Bay of Islands Act, 1858," are repealed without exception, and the Auckland Waste Land Laws contain no powers for leasing mineral lands, so far as I can find. The Act passed by the Provincial Council professes to deal with this land as ordinary waste lands in the Province reserved for public purposes.

But in the first place, under a power to reserve for public purposes, I do not see how it can be contended that land may be set aside for mining purposes; and moreover, even if well reserved, no Crown grant to the Superintendent has been made, and consequently the Province cannot legislate on the subject.

"The Bay of Islands Settlement Act, 1870," gives a power to compensate, in money or lands, persons having equitable claims on any of the lands in the Settlement. This power does not meet the case. Probably the best course is to assent to the Bill, and validate it next Session in the General Assembly, explaining, however, to the Superintendent that this must not form a precedent.

I would suggest, also, that the Auckland Waste Lands Acts should be amended so as to specify the purposes for which reserves may be made, and to enable leases of mineral lands to be made, and providing for the mode and terms of leasing.

23rd February, 1871.

J. PRENDERGAST.

### Enclosure 2 in No. 10.

MEMORANDUM by the ATTORNEY-GENERAL.

*The Auckland Harbour Act, 1871.*

I THINK that the intention of the Legislature in passing subsection 8 of section 3 of "The Harbour Board Act, 1870," was to empower Provincial Legislatures to pass special Acts authorizing Superintendents to vest reserves in Harbour Boards. In the Bill now before me, the exercise of this power is in as general terms as those contained in the Harbour Boards Act. I think, therefore, that the Superintendent should be informed that Government is advised that the proper if not the only legal mode of legislating is by a special Act mentioning the lands to be vested or reclaimed: otherwise there is no legal objection to the Bill. I think, therefore, it should be assented to, but Superintendent informed of the objection.

10th March, 1871.

J. PRENDERGAST.

### No. 11.

His Honor F. A. CARRINGTON to the Hon. W. GISBORNE.

SIR,—

Superintendent's Office, New Plymouth, 25th April, 1871.

I have the honor to transmit herewith parchment copies of the following Ordinances (Taranaki), viz. :—

"The Town Buildings Roofing Ordinance Amendment Ordinance, 1871," to which I have assented on behalf of His Excellency the Governor; and also,

"The Town Board of New Plymouth Endowment Ordinance, 1871," which I have reserved for the signification of His Excellency the Governor's pleasure thereon.

I have, &c.,

F. A. CARRINGTON,  
Superintendent.

The Hon. the Colonial Secretary.

### No. 12.

His Honor F. A. CARRINGTON to the Hon. W. GISBORNE.

SIR,—

Superintendent's Office, New Plymouth, 10th May, 1871.

I have the honor to transmit herewith parchment copy of "The Beach Road Stoppage Ordinance, 1871" (Taranaki), to which I have assented on behalf of His Excellency the Governor.

I have, &c.,

F. A. CARRINGTON.

The Hon. the Colonial Secretary, Wellington.

### No. 13.

The Hon. W. GISBORNE to His Honor F. A. CARRINGTON.

SIR,—

Colonial Secretary's Office, Wellington, 15th May, 1871.

I have the honor to acknowledge the receipt of your letter No. 31, of the 25th ultimo, enclosing "The Town Buildings Roofing Ordinance Amendment Ordinance, 1871," and "The Town Board of New Plymouth Endowment Ordinance, 1871," the former of which your Honor had assented

to on behalf of the Governor, and the latter reserved for signification of the Governor's pleasure thereon.

In reply, I have to inform your Honor that the Governor has not been advised to exercise his power of disallowance with respect to "The Town Buildings Roofing Ordinance Amendment Ordinance, 1871;" but with regard to "The Town Board of New Plymouth Endowment Ordinance, 1871," the Government is advised that it is *ultra vires*, for the following reasons, viz. :—

1. Because the proposed change of purpose is not a public purpose within the meaning of the Public Reserves Act.

2. Because the spirit, if not the letter, of "The Public Reserves Act, 1862," forbids the changing of trusts when the land has been reserved for recreation grounds.

His Excellency has therefore been advised to withhold his assent to the above Ordinance.

I have, &c.,

His Honor the Superintendent, Taranaki.

W. GISBORNE.

#### No. 14.

The Hon. W. GISBORNE to His Honor F. A. CARRINGTON.

SIR,—

Colonial Secretary's Office, Wellington, 22nd May, 1871.

I have the honor to acknowledge the receipt of your letter, No. 34, of the 10th instant, enclosing a copy of "The Beach Road Stoppage Ordinance, 1871," which you had assented to on behalf of His Excellency the Governor.

In reply, I have to inform your Honor that the Government is advised that the Ordinance in question is *ultra vires*, for the same reasons as those pointed out to you in the correspondence relating to "The Roads Diversion Ordinance, 1870," which was not disallowed on the understanding that the *ultra vires* provisions should not be acted on.

I have therefore to request that your Honor will be good enough to inform me whether you have anything to urge why this Ordinance should not be disallowed.

I have, &c.,

His Honor the Superintendent, Taranaki.

W. GISBORNE.

#### No. 15.

His Honor F. A. CARRINGTON to the Hon. W. GISBORNE.

SIR,—

Superintendent's Office, New Plymouth, 5th June, 1871.

I have the honor to acknowledge the receipt of your letters of the 15th and 22nd May ultimo, informing me that His Excellency the Governor has been advised to withhold his consent to "The Town Board of New Plymouth Endowment Ordinance, 1871," and "The Beach Road Stoppage Ordinance, 1871," on the grounds that the provisions of these Ordinances are *ultra vires*.

With reference to "The Town Board of New Plymouth Endowment Ordinance, 1871," I beg to submit the following reasons for reconsidering the decision, on the grounds that the provisions of this Ordinance are strictly in accordance with those of "The Public Reserves Act, 1854," and "The Public Reserves Act Amendment Act, 1862;" that an Ordinance identical in nature, though differing in the letter, was passed by the Superintendent and Provincial Council in 1867, and assented to by Sir George Grey, the then Governor, and that this present Ordinance is but a necessary corollary of its predecessor, more fully carrying out the intentions of the Provincial Council in endowing the Town Board of New Plymouth in 1867.

I am informed that the Ordinance in question is *ultra vires*—

1st. "Because the proposed change of purpose is not a public purpose within the meaning of the Public Reserves Act.

2nd. "Because the spirit, if not the letter, of 'The Public Reserves Act, 1862,' forbids the changing of trusts when the land has been reserved for recreation grounds."

In support of my position as to the invalidity of the first objection, I forward herewith "The Town Board of New Plymouth Endowment Ordinance, 1867," and three plans of the land held and proposed to be held by the Superintendent in trust for the Town Board under the former and proposed Ordinances—plans No. 1 and 2 showing the sections dealt with by the Ordinance of 1867; and plan No. 3, the same land as proposed to be dealt with by the Ordinance under consideration.

"The Public Reserves Act, 1854," is perfectly plain in its provisions as regards the management of the public reserves; by it the specific purposes for which "any such lands in any Province shall be held may be changed" without any limitation, so long as the lands appropriated to other and different purposes of public utility for the public service of such Province, and providing an Act or Ordinance of the Provincial Council of such Province be duly passed in that behalf. "The Public Reserves Act, 1862," contains no limitation of the powers of the Superintendent and Provincial Council in dealing with public reserves, with the exception of a provision in clause 3 prohibiting the sale of land reserved for public gardens or recreation grounds, or the lease of such land excluding the public therefrom, and this clause, as I shall presently show, certainly has no bearing on the Ordinance said to be *ultra vires*.

By deeds of grant dated respectively the 20th August, 1858, and the 27th February, 1870, and executed under the provisions of "The Public Reserves Act, 1854," the unalienated lands in the town of New Plymouth, and the belt and park lands round the town were granted to the Superintendent and his successors upon a trust described in the grants; this being an Education Trust, Mr. C. W. (now Judge) Richmond, the then Colonial Treasurer, in forwarding these grants pointed out that some specific trust must be mentioned, but that this would in no way hamper the Provincial Government, as under "The Public Reserves Act, 1854," the purpose could be changed when found desirable.

Accordingly in 1866 the Provincial Council passed the Harbour Trust Ordinance, diverting a portion of the lands conveyed by the grants from Education to Harbour purposes; and in 1867 the Council passed "The Town Board Endowment Ordinance" (enclosed), diverting another portion of the lands, both of these Ordinances receiving the sanction of the Governor.

By reference to plans No. 1 and 2 (enclosed), it will be perceived that only the sections in No. 2, coloured green, are included in the Schedule to the Ordinance of 1867. The intention of the Provincial Government was to divert the whole of the sections included in this plot of ground, known as "The Racecourse," from the purposes of the grants to the endowment of the Town Board; but the title to the sections coloured purple, in plan No. 1, not being completed, in consequence of the operation of "The Town of New Plymouth Compensation Ordinance, 1859 and 1860," this was not feasible at the time. The whole plot of land was leased to the same person, and the rents handed over to the Town Board; but only the revenue derived from sections included in the 1867 Ordinance was paid directly to the Treasurer of that body, the rent of the remainder of the sections being paid first to the Provincial Treasurer, and by him handed over to the Treasurer of the Town Board. I feel confident that a glance at the plans will prove the original intention of the Provincial Government. It could never have been in contemplation that a plot of ground should be cut up in chequers like the squares on a chess-board, all the black squares to be held by one trust and all the white by another.

The titles to the whole of the sections being now completed under "The New Plymouth Exchanges Commission Act, 1865," and "The New Plymouth Exchanges Commission Amendment Act, 1866," passed by the General Assembly to carry out the above recited Town Compensation and Town Consolidation Ordinances, the Provincial Government finds itself in a position to fully carry out its original purposes in passing the Ordinance of 1867; and the Ordinance submitted to you is, in effect, a completion of the endowment then sanctioned, as is shown by plan No. 3.

The second objection is, that the spirit, if not the letter, of "The Public Reserves Act, 1862," forbids the changing of trusts when the land has been reserved for recreation grounds.

In answer to this I assert—1. That the lands have never been "reserved for recreation grounds." 2. That had they been so reserved, the Ordinance, as shown above, involves no change of trust diverting them from such purpose; and also, that—3. The lease contemplated by the Ordinance is "in furtherance of the object for which they shall have been so reserved."

1. The grants quoted handed over the whole of the public reserves to the Superintendent for educational purposes. By "The Public Reserves Act, 1854," the specific purpose may be changed to other purposes of public utility, but only with the authority of an Ordinance of the Provincial Council. Only two such Ordinances (with the exception of the one in dispute) have been passed, viz., "The Harbour Trust Ordinance, 1866," and "The Town Board Endowment Ordinance, 1867," the titles of which fully show the services to which the lands were diverted from the purposes specified in the original grants. No reserve has been made in the town of New Plymouth for recreation grounds, although such is evidently assumed to be the case by His Excellency's legal advisers.

2. Although no such reserve has been made, yet, the Provincial Government, feeling the importance of setting apart lands in the vicinity of the town for recreation purposes, inserted a clause in "The Town Board Endowment Ordinance, 1867," repeated in that under consideration, authorizing the renting of the sections only on condition that the public shall be entitled to the use of the land, at stated periods, for cricketing and horse-racing. Reference to the plan will again show that the scattered sections leased under that Ordinance could certainly not be made available for horse racing, and that the lease of the whole plot of ground must be implied. The present Ordinance involves no change of trust. Half the land is already in the hands of the Superintendent, in trust for the Town Board. The Ordinance submitted does not remove it from that trust. The remaining half, though nominally held by the Education Trust (simply because in 1867 the titles to the sections so held were not completed, and could not, therefore, be described in the Schedule to the 1867 Ordinance), is yet an appanage of the Town Board, and all that is contemplated is to confirm by enactment the original intention of the Legislature, as confirmed by the lease under which the whole of the land shown in plans 1 and 2, and comprised in plan 3, is held by the same lessee and subject to the same conditions as to the rights of the public reserves over the land for recreation purposes.

3rd. Clause 3 of "The Public Reserves Act Amendment Act, 1862," referred to in your letter only bars the *sale* of land reserved for public gardens or recreation grounds, and not the *lease* of such lands when it is "in furtherance of the purposes for which they shall have been so reserved." Now, supposing the piece of land described as the racecourse (though it has never been reserved for such purposes) to be cut up as shown in plans 1 and 2, and held by separate trusts, it is very evident that the intentions of the Legislature would be frustrated. The Education Trust leases the sections on plan 1 to A, and the Town Board leases those on plan 2 to B. Each would fence around his separate little lots, if indeed, which is very improbable, any person could be found willing to lease land which required such an amount of fencing and subdivision into small patches, the ground would be rendered utterly useless as a racecourse, and the conditions of lease nugatory.

To render the ground available for the purposes contemplated, the sections must be consolidated under one trust, and leased to one person, who by his lease will be bound to keep the land in grass, and open to the public, as provided by the Ordinance submitted.

I trust that on reconsideration His Excellency will be advised to sanction the Ordinance submitted, otherwise serious inconvenience will be experienced both by the Provincial Government and by the Town Board.

With reference to "The Beach Road Stoppage Ordinance, 1871," you inform me that "the Government is advised that the Ordinance in question is *ultra vires*, for the same reasons as those pointed out in the correspondence relating to 'The Roads Diversion Ordinance, 1870,' which, however, was not disallowed, on the understanding that the *ultra vires* provisions should not be acted upon;" and you request me to point out reasons why this Ordinance should not be disallowed. In reply, I have the honor to submit—

1. That the Ordinance of 1870 referred to, is identical in its provisions to those passed almost annually by the Provincial Council of Otago, and that the clause as to the surrendering of the new road, &c., objected to as *ultra vires*, is copied *verbatim et literatim* from the Otago Ordinances. It seems, therefore, strange that provisions which are valid when passed in Otago become *ultra vires* when applied to Taranaki; and I cannot see that the geographical position of a place should be the cause of an alteration in the interpretation of its statutes.

On my pointing out that the provisions objected to as *ultra vires* had already and repeatedly been sanctioned by the Government in Otago Ordinances, "The Roads Diversion Ordinance, 1870," was left to its operation.

2. No provision is made in "The Beach Road Stoppage Ordinance, 1871," for the surrender of a new road, because no road is to be made to replace the beach road proposed to be stopped up. The object of stopping it is simply because it is a nuisance if kept open; that it serves no purpose of public utility, save on the rare occasions when stone is required from the beach; and that, so long as it remains open, great injury is done to the Turnpike Trust, which is constantly evaded by this road. In clause 2 provision is made for dealing with the road stopped up in such a manner as will secure the right of the public in respect of drawing stone for road-making and other purposes of public utility, as it is not thought advisable to convey the land absolutely without reserving such right. So long as the road remains open, so long will the turnpike gate be, to a large extent, evaded, to the great loss of the Province in the important matter of road extension; and I therefore trust that, on consideration of the circumstances, His Excellency will be advised to allow the Ordinance to be left to its operation.

I have, &c.,

FRED. A. CARRINGTON,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

### No. 16.

The Hon. W. GISBORNE to His Honor F. A. CARRINGTON.

SIR,—

Colonial Secretary's Office, Wellington, 11th July, 1871.

I have to acknowledge the receipt of your Honor's letter, No. 42, of the 5th ultimo, upon the subject of "The Town Board of New Plymouth Endowment Ordinance, 1871," and "The Beach Road Stoppage Ordinance, 1871," his assent to which His Excellency the Governor had been advised to withhold.

In reference to the Town Board Endowment Ordinance, I find that your Honor's statement, that in 1867 an Ordinance with similar provisions was assented to, is strictly true. You also point out that the land, though spoken of as a racecourse, had never been appropriated or reserved for the purpose. This removes one objection to the Ordinance.

As to the other objection pointed out in my letter of the 15th May, though the Government are still advised that the endowment of a municipality is not for a public purpose within the meaning of the Public Reserves Act, still, as the Ordinance of 1867 was assented to, as this objection has not been allowed to prevail in other cases, and as the appropriation for the purpose does not seem excessive, His Excellency will not be advised to refuse his assent to a similar Ordinance to that under consideration, if passed by the Provincial Council in a future Session.

Regarding "The Beach Road Stoppage Ordinance, 1871," I find that your Honor is correct in saying that the provisions which are stated to be invalid appear in the legislation of Otago and in "The Taranaki Roads Diversion Ordinance, 1870." But you omit to notice that the Government points out to you the invalid provision, and also stated that such provision was not to be acted on.

The same course was taken in corresponding with the Superintendent of Otago in reference to the Roads Diversion Ordinance of that Province, and His Honor was given to understand that the invalid provision was not to be acted on. I regret that this was not pointed out to your Honor when writing to you on the subject of the Ordinance of last year.

I need scarcely add, that the provision which has been pronounced invalid in Taranaki, is equally so in Otago, and is not acted on in the latter Province.

On the understanding, that your Honor will not make any conveyance under the second Section, His Excellency will not be advised to exercise his power of disallowance with respect to this Ordinance, though it is doubtful how far the provisions of the third Section are valid.

I have, &c.,

W. GISBORNE.

His Honor the Superintendent, Taranaki.

### No. 17.

His Honor W. FITZHERBERT to Sir G. F. BOWEN, G.C.M.G.

SIR,—

Superintendent's Office, Wellington, 7th July, 1871.

I do myself the honor to forward to your Excellency the following Acts, passed by the Provincial Council of Wellington, during their present Session [Sess. XXI.], to which I have assented on your Excellency's behalf, viz.:—

"An Act to appropriate the Revenue of the Province of Wellington for a term commencing on the 1st day of April, 1871, and ending on the 31st day of May, 1871."

"An Act to amend the First Clause of the Licensing Amendment Act, Session XIII., No. 10."

"An Act to grant a piece of Land at Wanganui to the Freemasons."

"An Act to amend and consolidate the Law relating to District Highways."

"An Act to provide for the erection of Toll-Gates on Main Roads in the Province of Wellington."

- “ An Act to provide a system of Education for the Province of Wellington.”  
 “ An Act to enable the Superintendent to enter into Contracts for the construction of Tramways.”  
 “ An Act to prohibit Burials in a certain Block of Land in the Township of Foxton.”  
 “ An Act to declare the Trusts of certain Lands in the Township of Masterton in the Wairarapa District and to provide for the appointment of Trustees therein.”  
 “ An Act to declare the Trusts of certain Lands in the Township of Greytown in the Wairarapa District, and to provide for the appointment of Trustees therein.”  
 “ An Act to appropriate the Revenue of the Province of Wellington for the term commencing on 1st day of April, 1871, and ending on 31st day of March, 1872.”

And also, that I have reserved for the assent of your Excellency, “ An Act to enable the Superintendent to deal with the Reclaimed Land in the City of Wellington.”

I have, &c.,

WILLIAM FITZHERBERT,  
Superintendent.

His Excellency the Governor, &c.

### No. 18.

The Hon. W. GISBORNE to His Honor W. FITZHERBERT.

SIR,—

Colonial Secretary's Office, Wellington 22nd July, 1871.

I have the honor to acknowledge the receipt of your letter of the 7th instant, forwarding twelve Ordinances passed by the Wellington Provincial Council during its recent Session, eleven of which you had assented to on behalf of the Governor, and the other you had reserved for the signification of His Excellency's pleasure thereon.

In reply, I have to inform your Honor that His Excellency has not been advised to exercise his power of disallowance with respect to the following, viz. :—

- “ Ad Interim Appropriation Act, 1871.”  
 “ Licensing Amendment Act, 1871.”  
 “ The Highways Act, 1871.”  
 “ The Toll Gates Act, 1871.”  
 “ The Wellington Education Act, 1871.”  
 “ The Tramways Act, 1871.”  
 The Foxton Burials Prevention Act, 1871.”  
 Masterton Trusts Act, 1871.”  
 “ Greytown Trusts Act, 1871.”  
 “ The Appropriation Act, 1871, No. 2.”

And His Excellency has been advised to assent to “ The Wellington Reclaimed Land Act, 1871.”

With respect to “ The Wanganui Freemasons Grant Act, 1871,” I have to inform your Honor that His Excellency the Governor has been advised to disallow it, as the Government are advised that it is *ultra vires*, on the ground of its authorizing a free gift, and not a sale, of land for a private purpose—such free gift not being authorized by the Public Reserves Act. The conveyance of the land would therefore, if the Act were allowed, be invalid.

With regard to the Highways Act, the Government are advised that it is open to question whether the power of deciding an appeal against rates, though given only to the Board, does not, in effect, create a judicial tribunal; for though the Act does not use any technical language indicating that the Board is to proceed judicially, yet it does provide that the Board is to hear and decide, and its decision is to be final.

Sections 61 and 62, also, should have provided that the offences should be punishable on summary conviction.

Sections 9 and 10 of “ The Toll Gates Act ” ought to have provided that the offences should be punishable on summary conviction.

With regard to “ The Education Act,” there is the same objection to the 30th and 31st sections as those pointed out to the appeal provisions of the Highways Act.

The Government, however, do not consider the objections sufficient to justify them in recommending that these Acts should be disallowed, and, as I have informed your Honor, His Excellency has not been advised to exercise his power of disallowance in respect of them.

I have, &c.

W. GISBORNE.

His Honor the Superintendent, Wellington.

### No. 19.

His Honor A. P. SEYMOUR to the Hon. W. GISBORNE.

SIR,—

Superintendent's Office, Blenheim, 30th June, 1871.

I have the honor to transmit herewith three copies of each of the following Bills passed by the Provincial Council of Marlborough, and intituled

- “ The Appropriation Act, No. 2, 1871,”  
 “ The Superintendent's Land Alienation Act,”  
 “ Roads Act Amendment Act,”

“Blenheim and Renwick Road Diversion Act,”

“Kaikoura and Kohai Road Diversion Act,”

and to request you to lay the same before His Excellency the Governor for the signification of his pleasure thereon.

I have, &c.,

A. P. SEYMOUR,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

### No. 20.

The Hon. W. GISBORNE to His Honor A. P. SEYMOUR.

(No. 271.)

Colonial Secretary's Office,  
Wellington, 31st August, 1871.

SIR,—

With reference to “The Roads Act Amendment Act, 1871,” enclosed in your letter of the 24th instant, I have to inform your Honor that the Government are advised that the Bill is *ultra vires*, as it creates a Court of Appeal against rates.

The Governor, therefore, cannot be advised to assent to it.

I have, &c.,

W. GISBORNE.

His Honor the Superintendent, Marlborough.

### No. 21.

His Honor W. ROLLESTON to the Hon. W. GISBORNE.

SIR,—

Superintendent's Office, Christchurch, 23rd December, 1870.

I have the honor to transmit herewith copies of the under-mentioned Ordinances passed by the Provincial Council, to which I have assented on behalf of His Excellency the Governor, viz. :—

“Imprest Supply Ordinance, 1870.”

“Imprest Supply Ordinance, No. 2, 1870.”

“The Diversion of Roads Special Ordinance, No. 2, 1870.”

“The Superintendent's Salary Ordinance, 1870.”

“The Education Ordinance 1864 Amendment Ordinance, 1870.”

“The Educational Reserves Leasing Ordinance, No. 2, 1870.”

“The Fencing Ordinance 1869 Amendment Ordinance, 1870.”

“The Appropriation Ordinance, 1870.”

With regard to the Fencing Ordinance 1869 Amendment Ordinance, I have the honor to request that you will be good enough to advise the Governor to disallow it if, in the opinion of the Attorney-General, it would have the effect of repealing the Ordinance of 1869.

I have, &c.,

W. ROLLESTON,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

### No. 22.

The Hon. W. GISBORNE to His Honor W. ROLLESTON.

SIR,—

Colonial Secretary's Office, Wellington, 10th January, 1871.

I have the honor to acknowledge the receipt of your letter No. 515, of the 23rd ultimo, transmitting the Ordinances named below,\* passed by the Provincial Council of Canterbury, to which your Honor had assented on behalf of His Excellency the Governor.

In reply, I have to inform your Honor that His Excellency has not been advised to exercise his power of disallowance in respect to the

“Imprest Supply Ordinance, 1870.”

“Imprest Supply Ordinance, No. 2, 1870.”

“The Diversion of Roads Special Ordinance, No. 2, 1870.”

“The Superintendent's Salary Ordinance, 1870.”

“The Education Ordinance 1864 Amendment Ordinance, 1870.”

“The Educational Reserves Leasing Ordinance, No. 2, 1870;” and

“The Appropriation Ordinance, 1870.”

With respect to “The Fencing Ordinance 1869 Amendment Ordinance, 1870,” His Excellency, at your Honor's request, has been advised to disallow it, and a Proclamation of such disallowance will be prepared accordingly for His Excellency's signature.

I have, &c.,

W. GISBORNE.

His Honor the Superintendent, Canterbury.

\* “The Imprest Supply Ordinance, 1870;” “The Imprest Supply Ordinance, No. 2, 1870;” “The Diversion of Roads Special Ordinance, No. 2, 1870;” “The Superintendent's Salary Ordinance, 1870;” “The Education Ordinance 1864 Amendment Ordinance, 1870;” “The Educational Reserves Leasing Ordinance, No. 2, 1870;” “The Fencing Ordinance 1869 Amendment Ordinance, 1870;” “The Appropriation Ordinance, 1870.”

## 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, &amp;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, &amp;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.

Excellency the Governor and the Seal of the Colony, disallowing "The Road Boards Ordinance, 1870," passed by the Superintendent and Provincial Council of Otago.

His Honor the Superintendent, Otago.

I have, &c.,  
W. GISBORNE.

## No. 26.

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

SIR,— Province of Otago, New Zealand,  
Superintendent's Office, Dunedin, 7th November, 1870.

I have the honor to acknowledge the receipt of your letter of the 13th October, No. 340, enclosing copy of *New Zealand Gazette*, containing a Proclamation under the hand of His Excellency the Governor and the Seal of the Colony, disallowing "The Road Boards Ordinance, 1870," passed by the Superintendent and Provincial Council of Otago.

I have, &c.,  
J. MACANDREW,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

## No. 27.

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

SIR,— Province of Otago, New Zealand,  
Superintendent's Office, Dunedin, 23rd December, 1870.

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, viz. :—

- "Otago Representation Ordinance, No. 2, 1870."
- "Jetties and Wharves Ordinance, 1870."
- "Road Ordinances (Southland) Repeal Ordinance, 1870."
- "Dunedin Athenæum and Mechanics Institute Ordinance, 1870."
- "Otago Municipal Corporations Ordinance 1865 Amendment Ordinance, 1870."
- "Otago Municipal Corporations Ordinance Extension Ordinance, 1870."
- "Education Ordinance (Southland) Repeal Ordinance, 1870."
- "Licensed Theatres Ordinance (Southland) Repeal Ordinance, 1870."
- "Licensing Ordinances Repeal Ordinance, 1870."
- "Auction Ordinance 1862 (Southland) Repeal Ordinance, 1870."
- "Licensed Hawkers Ordinance (Southland) Repeal Ordinance, 1870."
- "Otago Roads Ordinance 1865 Amendment Ordinance, 1870."

And the following Bills, which have been reserved for the signification of His Excellency the Governor's pleasure thereon :—

- "Southern Trunk Railway Guaranteed Interest Ordinance Amendment Ordinance, 1870."
- "Port Chalmers Reserves Management Ordinance, 1870."
- "Invercargill Park Reserve Management and Leasing Ordinance, 1870."
- "The Racecourse Reserve Leasing Ordinance, 1870."

I have, &c.,  
J. MACANDREW,  
Superintendent.

The Hon. the Colonial Secretary, Wellington.

## No. 28.

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

SIR,— Colonial Secretary's Office, Wellington, 10th January, 1871.

I have the honor to inform your Honor that His Excellency has been advised to disallow "The Southern Trunk Guaranteed Interest Ordinance Amendment Ordinance, 1870," on the following legal grounds :—

The Government is advised that this Bill is *ultra vires*, inasmuch as it contravenes the prohibition contained in "The Consolidated Loan Act, 1867," by affecting to extend the period of a guarantee authorized by a previous Ordinance (passed previously to "The Consolidated Loan Act, 1867") from fifteen years to thirty-five years; that is to say, it empowers the creation of an additional guarantee for a period of twenty years.

I have, &c.,  
W. GISBORNE.

His Honor the Superintendent, Otago.