



THE  
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 EXTRAORDINARY.

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*Otago Provincial Council.*

THE following Cabinet Minute upon an application made by the Superintendent of Otago for the dissolution of the Provincial Council, is published for general information.

THE question the Government are called upon to decide is, Whether they will recommend His Excellency to comply with the request of the Superintendent of Otago, that the Provincial Council of that Province may be dissolved, in order that there may immediately result a general election for Superintendent and members of the Council?

The circumstances out of which the request of the Superintendent has arisen appear to be as follow:—The Superintendent, in opening the 31st Session of the Council, on the 6th May, delivered a speech, as is usual on such an occasion; and Mr. Fish moved an address in reply thereto, that address being, on the whole, expressive of a desire to consider the “many important proposals suggested by the Superintendent.” Upon the address, Mr. Reid moved an amendment, in the following terms:—“That this Council is of opinion that the appointment of the gentlemen at present occupying the Government Benches, and their retention of office, is in direct opposition to the system of responsible Government sanctioned by the Council; and this Council hereby records its protest against any Government being appointed or holding office under such circumstances.”

A debate ensued, in the course of which Dr. Webster moved the following amendment:—“That this Council do not approve of the action of His Honor the Superintendent in dismissing the late Executive and appointing another, without immediately calling the Council together; and while having confidence in the present Executive, thinks, from the mode of the appointment, that in the interests of the Province, and to settle the question, they should resign.” Mr. Tolmie, the head of the then Executive, stated during

the debate, that, in consequence of the tone it had taken, the Government had determined to tender their resignation. There appeared to be a desire on the part of the members present to continue the debate, despite the statement of Mr. Tolmie; and a motion for adjournment, proposed by the Secretary for the Gold Fields, was negatived by 25 to 13. Thereupon, a number of members, including those of the Government, retired from the Chamber, and Mr. Reid’s amendment was subsequently carried without a division. On the following day (9th May), Mr. Tolmie announced that he had placed the resignations of himself and his colleagues in the hands of the Superintendent, and that he had recommended His Honor to send for Mr. Reid. This recommendation was acted upon; but on 12th May, before Mr. Reid had completed his task, the Superintendent sent a message to the Council, in which he stated—That he regretted the course adopted by the Council; that the action he had taken, which was censured by the Council, he would take again under similar circumstances, and that he thought “it would be better to afford the people an opportunity of electing a Superintendent and Provincial Council which may work together harmoniously, and with which view he respectfully solicits the concurrence of the Provincial Council in an application to His Excellency the Governor for an immediate dissolution.” On 15th May, Mr. Reid submitted to the Superintendent the names of the members whom he proposed to associate with himself in the Executive. After some consideration, His Honor intimated to Mr. Reid that he did not think the gentlemen whose names had been submitted would be satisfactory to the Council. His Honor, in fact, refused to accept the Executive formed by Mr. Reid, and that gentleman at once withdrew from the attempt to form a Government. Then the Superintendent sent to the Council another message recommending concurrence in a dissolution, and he intrusted to Dr. Webster the duty of forming an Executive. When the Council met on the 16th May, it was intimated that Dr. Webster

had not succeeded with his task; and in the course of the proceedings which followed, it was declared that the Superintendent had prorogued the Council.

His Honor applied, by telegram, for a dissolution, stating his reasons in the following terms:—

“The Superintendent of Otago requests that His Excellency the Acting Governor may be advised at once to dissolve the Superintendent and Provincial Council of Otago, for the following reasons:—The Council, instead of going on with the public business, will have been in session a fortnight to-morrow without attempting to make any progress; the *questio vexata* being who are to constitute the Executive. Vote of want of confidence in the present Executive was passed on the motion of Mr. Reid, who thereupon was asked by the Superintendent to submit the names of a new Executive. After some delay, and having done his best, names were submitted which were not satisfactory to the Superintendent, and which most certainly would not have been satisfactory to the country. The Superintendent's belief is, that they would not have been satisfactory to the Council, and that had they been accepted, we should most certainly within a day or two have had another ministerial crisis. Subsequently, thinking that the two parties in the Council might agree to an Executive chosen from both sides, Dr. Webster, who is not strongly attached to either side, was requested by the Superintendent to undertake the task of forming an Executive. This he has not succeeded in. Meanwhile, much valuable time and money are being wasted, without, so far as the Superintendent can see, any prospect whatever, for an indefinite period, of an Executive being formed which will be able to conduct the public business. The Superintendent has sent repeated messages to the Provincial Council, pointing out the necessity of an appeal to the people as the only means of preventing a dead-lock, and requesting the Council's concurrence to an application for dissolution. To none of these messages have the Council replied. Under these circumstances, therefore, the Superintendent earnestly trusts that His Excellency will comply with the request; and as it will be impossible to provide for the exigencies of the public service under authority of law after the end of this month, it is respectfully urged that writs may be issued so as to enable a new Council to be convened within two months of this date, at latest. The Superintendent would only add, that the present situation is very painful to himself, and that he makes his application under a very grave sense of responsibility. He is fully persuaded that the course recommended meets with all but universal approval throughout the Province, and that unless it is adopted the interests of the Province will be very seriously prejudiced.

“J. MACANDREW,

“Superintendent of Otago.

“19th May, 1873.”

A telegram was subsequently received from the Hon. Dr. Menzies, requesting the Government not to come to a decision until a memorial adopted by a number of members of the Council constituting a majority thereof, and addressed to the Governor, had reached Wellington. Considering the matter urgent, the Government requested Dr. Menzies to telegraph the memorial in full; and a copy of it is appended hereto.

There does not appear to be any statutory necessity that a request for a dissolution, if made by a Superintendent or by a Provincial Council, must, in order to effect being given to it, be concurred in by the Council or by the Superintendent, as the case may be. But, undoubtedly, it has been generally supposed that, in order to the Governor granting a

dissolution, the application for it must be concurred in by the Superintendent and the Council. This impression has probably grown out of the feeling that, if the Superintendent alone, or the Council alone, had power to determine a dissolution, such a power might be used to coerce the non-concurring party.

There is but one instance in which a dissolution has been granted at the request of the Superintendent alone. That dissolution was asked for by the Superintendent of Auckland, and was, after a long correspondence, and with very much reluctance, granted by the Government of which the Hon. Mr. Stafford was the head. It was granted expressly upon the ground that it appeared that the action of the Council evidenced its determination “not to carry on the legislative business of the Province.”

The question now arises, Whether the Provincial Council of Otago has evidenced such a determination, or whether there are other reasons which make a dissolution necessary? It can hardly be said that the Otago Council has evidenced a determination “not to carry on the legislative business of the Province;” it appears, rather, that the Council was willing to carry on the business, provided it was led by an Executive which commanded its confidence. In Otago, the proceedings of the Council are conducted with a close adherence to the rules adopted where responsible Government exists; and the question now presents itself, not whether the Council was willing to carry on the business, but whether, being willing to do so only under an Executive possessing its confidence, there is any probability that such an Executive can be formed in the present relations of the Superintendent and Provincial Council. The action of the Council necessitated the resignation of the Government, and led to Mr. Reid being “sent for.” Mr. Reid formed a Government; and the Superintendent, adopting a course which is believed to be very unusual, refused to accept the Government, on the grounds, as stated in His Honor's telegram, that the names submitted were “not satisfactory to the Superintendent, and most certainly would not have been satisfactory to the country.” He added, also, “The Superintendent's belief is, they would not have been satisfactory to the Council.” There may not be on record an example of a Superintendent, or of any one occupying an analogous position, acting upon opinions such as those expressed, instead of awaiting the decision of the legislative body; but it does not appear that to refuse to accept an Executive, in such circumstances, is opposed to the principles of responsible Government. And it is to be noted that Mr. Reid, who may be supposed to be most affected by the course taken, appears to have admitted, in a speech in the Council, that, in his opinion, the Superintendent was quite justified, if he thought fit, in rejecting the names submitted to him. It seems fair to attribute this opinion to Mr. Reid, since its expression is reported in both the morning papers published in Dunedin. In the Ordinance constituting the Provincial Executive, there is no express power of the kind given: the only provision which may be supposed to bear upon the point is, that the Executive are to hold office during the pleasure of the Superintendent.

Assuming the Superintendent to have been justified in refusing to accept Mr. Reid's Executive, he appears then to have taken the course most likely to lead to progress with the business of the Province, by asking a neutral member to form an Executive. On that gentleman failing, the Superintendent was left to the advice of the Executive headed by Mr. Tolmie, who were holding office until their successors were appointed. It was in accordance with the advice of that Executive, that the Superintendent ultimately prorogued the Council.

It may be asked—supposing it to be held, as already suggested, that it is objectionable to allow a Superintendent to obtain a dissolution without the concurrence of the Provincial Council—Whether such a rule is not necessarily modified in the case of a system of Executive Government such as has been adopted in Otago, and which does not appear to have been contemplated by the Constitution Act under which Provincial Governments were created? If, as is really the case in Otago, the Superintendent deems himself bound to carry on the business of the Province with the advice and consent of his Executive—and if the Superintendent is unable to work with an Executive which commands the confidence of the Council—the result must be a dead-lock, out of which there can be no escape except through a dissolution.

On the whole, it is not very material whether or not the Superintendent was justified in refusing to accept the Executive named by Mr. Reid. It is quite clear that had he accepted the Executive, and found that he could not work with its members, he would have been acting within his power in requiring their resignation.

The Government have given to the memorial of a number of the members of the Provincial Council to His Excellency the Governor, the consideration to which the care with which it is drawn up, and its importance, entitle it. The statements contained in sections 2 to 8 inclusive, appear to be furnished as grounds of complaint against His Honor the Superintendent. Indeed, the whole memorial is substantially an expression of condemnation of the conduct of the Superintendent. It does not seem to have occurred to the memorialists that, supposing the Government subscribed to the opinions expressed in censure of His Honor's conduct, the obvious course open to the Government would be the very one to which the memorialists are opposed—namely, to leave to the people of the Province the opportunity of selecting, if they desire it, a fresh Superintendent, and as the law in that case compels, and as justice would dictate, a new Provincial Council. Supposing, to give an analogous instance, a number of members of the House of Representatives complained to the Secretary of State of the conduct of the Officer Administering the Government of the Colony, the Secretary of State could not more completely meet the wishes of the complainants, together with the allegation of the Governor complained of that the memorialists did not represent the feelings of the country, than by providing a new Governor, and decreeing a fresh election. This the Colonial Government would do as far as they have the power, by advising a dissolution. The appointment of the Superintendent does not rest with the Governor; all that he can do is to give to those who have the appointment, the opportunity, if they wish it, of making a change. It indeed seems singular that the memorialists, complaining, as they do, of such large constitutional evils, do not see in an appeal to the people a natural and constitutional redress of sufficient importance to outweigh the temporary inconvenience it may occasion.

As it has been pointed out that a dissolution might be fairly asked and granted in consequence of misconduct on the part of the Superintendent, it is necessary to express an opinion on the principal points raised by the memorialists, otherwise it might appear that the Government consider their complaints valid.

The memorialists lay great stress upon the Superintendent's dismissal of the gentleman at the head of his Executive, in consequence of his having taken office in the Colonial Government without consulting

or even advising the Superintendent. The Government are unable to see that His Honor acted otherwise than with moderation. It is to be remembered that the Constitution Act intended that the Superintendent should possess the full powers of a constituent part of the Provincial Legislature. The acceptance of Executive advice—in other words, the submission to the advice of one branch of the Provincial Government—is a great concession on the part of a Superintendent. A constitutional Monarch or Governor is not bound to act upon advice with which he disagrees, or to accept advisers with whom he cannot work in harmony; but constitutional Monarchs or Governors, with rare exceptions, are ready to be guided by the advice of their Executive, as they do not possess, as a rule, strong opinions upon the points about which advice is tendered. Superintendents, on the other hand, are elected rulers in most cases because of the opinions they express, and they clearly owe obligations and duties to those who elect them as well as to their advisers. It may be held, therefore, that a Superintendent, in respect to the choice of his Executive, and his acquiescence in their advice, possesses at the least as much discretion as other constitutional rulers. But no constitutional ruler would submit to the head of his Executive accepting the post of Executive Adviser in another Government, without consulting or even informing him. In short, Mr. Reid did not exhibit to the Superintendent the courtesy which the latter had a right to expect. Mr. Reid's first letter in reply to His Honor was satirical, and disrespectful in tone, and was itself a proof that, in his new position, he ceased to pay to his chief the respect which he owed to him. In a subsequent letter, after Mr. Reid retired from Colonial office, his tone was much more respectful, and he justified his acceptance of office on the ground that a deputy was performing his duties in Dunedin. This plea is no doubt entitled to consideration; but the Government, after giving it full weight, have come to the conclusion that Mr. Reid's deputy was only performing such duties as required to be discharged on the spot, in the same way as when a Minister temporarily leaves the seat of Government, some other Minister during his absence signs papers for him. But Mr. Reid could not depute his position as head of the Executive to any one. He continued to hold that position, although temporarily absent from the Province. Having dismissed Mr. Reid, the Superintendent would not have stretched his powers in declining to accept him again, as his adviser, until after a general election; but with great moderation he invited Mr. Reid to resume his position immediately after he ceased to hold office in the Colonial Government.

The memorialists complain that the Superintendent, by Mr. Reid's dismissal, acquired the power to call to his counsels an Executive not possessing the confidence of the Council, and they argue from it a subversion of constitutional Government. They do not seem to see that what they complain of would, under similar circumstances, be incidental to any constitutional Government. The legislative body leaves in office an Executive in which it has confidence. If anything make it necessary that the Premier should retire, it should be his duty previously to endeavour to persuade his chief to give to some one whom he believes will command the confidence of the Legislature the power of forming a Ministry. But if, without even informing his chief, he accepts another appointment, it is he, and not that chief, who is responsible should an Executive obtain office not possessing the confidence of the Legislature. Throughout the correspondence, the Superintendent appears not unnaturally

to have expected that the Council would agree with him.

As to the Superintendent not intrusting the formation of an Executive to one of Mr. Reid's colleagues, no doubt if, in ordinary course, Mr. Reid had tendered his resignation, it would have been the duty of the Superintendent to have asked his advice as to a successor; and, indeed, it would have been quite competent to Mr. Reid, before resigning, or doing that which necessitated his resigning, to have satisfied himself whether the Superintendent was inclined to protect the views of a majority of the Council, and failing his believing such to be the case, to have abstained from resigning, or doing that which necessitated his resigning.

As to the complaint that the Superintendent ought to have called the Council together earlier, there does not seem any conclusive reason why the Superintendent was not at liberty to exercise his discretion in the matter, especially if he was fortified by the opinion of his Executive. But on this point the Government do not express a decided opinion.

The Council is now prorogued, and the Superintendent had a right to prorogue it. In a few weeks the appropriations will have expired, and votes will be required in order that money may be applied to carrying on the necessary business of the Province. There is no reason to suppose but that, if the Superintendent were again to convene the Council, there would be difficulty in constituting another Executive, and that business would be delayed until that had been effected. It appears, therefore, to be probable, if not certain, that the most rapid mode of securing that the business of the Province shall be proceeded with, and appropriations be granted, is to sanction a dissolution, and at once to proceed with fresh elections.

Apprehension that the present case may be regarded as a precedent, ought not to disturb the decision of the question: future cases may be left to be carefully considered, and to be dealt with strictly on their merits.

It may be deemed very doubtful whether, in a Province in which there is carried on a strict system of responsible Government, as is the case in Otago, the Superintendent has not in his power such a discretion as to acting or not acting with an Executive commanding the confidence of the Council, as to be able to compel a dissolution. Nor can it be urged that such a power intrusted to an elective officer in the position of a Superintendent, is altogether unreasonable. If his action lead to a dissolution without the consent of the Provincial Council, it not the less ends his term of office, and subjects him to the trouble and the cost of appealing to the electors of the Province. In the most direct manner, a Superintendent so acting submits his conduct to public criticism; and in the consequent election, the opinion of the constituency of the Province can be unmistakably expressed.

Upon the considerations stated, the Cabinet agree to recommend His Excellency the Governor to grant the request of the Superintendent of Otago, and to immediately cause a dissolution of the Provincial Council.

In Cabinet.

JULIUS VOGEL.

Wellington, 22nd May, 1873.

MEMORIAL OF MEMBERS OF THE PROVINCIAL COUNCIL.

To His Excellency Sir George Arney, Knight, Acting Governor and Commander-in-Chief in and over the Colony of New Zealand.

The Memorial of the undersigned, being Members of the Provincial Council of Otago:

HUMBLY SHOWETH,—

1. That, believing that His Honor the Superintendent of Otago has, with the advice and consent of the Executive of the Province now in office, but the members of which have tendered their resignations, requested your Excellency to dissolve the Council, your memorialists desire to lay certain facts before your Excellency.

2. That the Provincial Council was prorogued on the thirty-first day of May, one thousand eight hundred and seventy-two, with the following members of Executive, viz., Mr. Donald Reid, Provincial Secretary and Treasurer; James Benn Bradshaw, Secretary for Gold Fields and Works; John Bathgate, Provincial Solicitor; William Henry Cutten, non-official.

3. That on his acceptance of the office of Minister for Public Works for the Colony, Mr. Donald Reid, who was Provincial Secretary and Treasurer, was dismissed by His Honor the Superintendent from the office of Provincial Secretary and Treasurer, on the sole ground that the holding of the two offices was incompatible.

4. That certain correspondence took place between His Honor the Superintendent and Mr. Reid, a copy of which is hereunto annexed and marked "A."

5. That at the time of Mr. Reid's dismissal he was not acting as Provincial Secretary and Treasurer, Mr. Cutten being Acting Provincial Secretary and Treasurer in his stead.

6. That His Honor the Superintendent, instead of asking some members of the Council of the party who are in the majority to form an Executive, sought for advice from gentlemen who are of the party in the minority in the Council.

7. That before an Executive was definitely formed, a memorial (copy of which is annexed and marked "B") was sent to His Honor the Superintendent, signed by twenty-seven members of the Council.

8. That His Honor declined to call the Council together, the grounds of his decision being set forth in the letter also annexed hereto, marked "C."

9. That the Council was opened on the sixth day of May instant, and when His Honor the Superintendent's address came on for consideration, a reply, annexed hereto and marked "D," was moved by Mr. Fish; and Mr. Reid thereupon moved an amendment, a copy of which is annexed hereto and marked "E." After discussion, Dr. Webster moved a further amendment, copy of which is annexed hereto and marked "F." To this amendment one or more members of the Executive assented, and the Executive thereupon resigned.

10. That Mr. Tolmie, the leader of the Government, in intimating the resignation of the Executive to the Council, said that it was the general feeling of the supporters of the Government that they should resign.

11. Mr. Reid's amendment was carried.

12. That His Honor the Superintendent sent for Mr. Reid, and intrusted him with the task of forming an Executive.

13. That, before Mr. Reid had time to form an Executive, His Honor the Superintendent, without the advice and consent of his Executive, sent a Message, No. 3, urging the Council to agree to a dissolution, copy of which message is annexed and marked "G."

14. That, seeing a dissolution threatened, and that the business of the country would suffer in consequence, Mr. Reid, with the consent of the party in

the majority, submitted to the party in the minority proposals for a coalition.

15. That the party in the minority met this proposal by the following resolution:—"That Dr. Webster be requested to intimate to Mr. Reid that the Opposition, whilst thanking him for the overtures he has made, are of opinion that no good to the country would result from a coalition."

16. That, finding there was thus no hope of a coalition, and knowing that he had a sufficient majority to carry on the business in the Council, Mr. Reid submitted the following names to His Honor the Superintendent, as members who were willing to form an Executive, viz., Mr. Donald Reid, Provincial Secretary and Treasurer; Mr. James Green, Secretary for Lands and Works; Mr. James Clarke Brown, Secretary for Gold Fields; Mr. Robert Stout, Provincial Solicitor; Mr. George Lumsden, without office.

17. That His Honor declined to accept those members, but assigned no reasons for doing so except the following:—"That he did not think the Executive was a satisfactory one, and that he did not think either the country or the Council would approve of it."

18. That His Honor transmitted to the Council another Message, No. 5, also without the advice and consent of his Executive, copy of which is also hereto annexed marked "H."

19. That no opportunity whatever was given to the Council to discuss His Honor's messages. Mr. Tolmie, the head of the Executive, gave notice that he would move that Message No. 3 be taken into consideration, but before this motion could come on for hearing, adjournments of the House from time to time were moved by the Government and agreed to.

20. That Dr. Webster, one of the party in the minority, was entrusted by His Honor the Superintendent with the formation of an Executive, but he was unsuccessful.

21. That Mr. Clark gave notice of the motion, copy of which is also annexed and marked "I," but the house was prorogued on the same day.

22. That, before the prorogation of the Council, His Honor forwarded Message No. 6, copy of which is annexed hereto and marked "K."

23. That your memorialists believe that it will be seen from the foregoing that the Provincial Council has never declined to consider any proposals submitted to it by His Honor the Superintendent, nor has it refused to proceed with the consideration of the matters affecting the well-being of the Province: your memorialists therefore pray that, for the following reasons, amongst others, your Excellency will refrain from dissolving the Council:—

(1.) That there is a majority in the Council sufficient to carry on the business of the country, there being, not including the Speaker, twenty-seven members out of a total number of forty-six willing to act together in all matters of general policy.

(2.) That in no Council is it probable that a greater proportion of members will agree to act together as one party.

(3.) That no proposals ever submitted to the Council by His Honor the Superintendent have been refused consideration by the Council.

(4.) That it would be at variance with the principles of responsible Government for the Superintendent to force on the Council an Executive that does not possess its confidence.

(5.) That while censuring the Executive, as the Council did by adopting Mr. Reid's amendment, it was vindicating its constitutional position; and should the Council be deprived of this power, its existence is an absurdity and an anomaly.

(6.) That the expense to the country of an election would be great, and, your memorialists believe, per-

fectly useless, as the parties would not be materially changed by an appeal to the country.

(7.) That there are various pressing matters of public interest requiring speedy action on the part of the Council, the delay of which will entail considerable injury on the Province,—such as opening land for settlement, and providing buildings for schools, &c.

(8.) That there is no question of policy whatever to submit to the country, except indeed it be considered a question whether the powers granted by the Constitution Act and the various Provincial Councils Ordinances are to be set aside by the dictatorial action of a Superintendent.

(9.) That if the Superintendent of a Province is to be allowed to choose his advisers from feelings of personal likes or dislikes, the system of responsible Government, which has hitherto worked well in this Province, will cease to exist.

(10.) That an election at the present time would be most inopportune, as many members of the Council are members of the General Assembly, which will soon meet.

(11.) That no supplies whatever have been voted by the Council, and unless the business of the country be carried on in violation of the provisions of the Provincial Audit Acts, great loss must necessarily result to the Province.

(12.) That there has been already paid, under special order, a sum of upwards of £19,000 during the past twelve months, for which no appropriation as yet has been made.

(13.) That the financial year of the Province ended on 31st March, 1873, but provision was made, by the Appropriation Ordinance, for an expenditure at the same rate for two months longer, and this time ends on 31st May, 1873.

(14.) That the settlement of the country has already been delayed by the provisions of the Waste Lands Act of 1872, relating to the disposal of land on deferred payments, not being taken advantage of, and a dissolution of the Council will necessitate a further and needless delay.

(15.) That your memorialists have at all times been ready to carry on the business of the country, but they decline to be forced to submit to an Executive conducting the business of the country which has not their confidence.

(16.) That your memorialists respectfully submit that were the request of His Honor the Superintendent complied with, a most dangerous precedent would be established, as an Executive in whom the Council has no confidence would be allowed to remain in power; and whenever a Superintendent could not get an Executive according to his own liking, a dissolution would have to take place, notwithstanding that the Council did not concur with him in requesting it.

(17.) That the present Executive, notwithstanding that it has not had the confidence of the Council, has held office for six months, and if a dissolution be granted, will hold office for some months longer.

And your memorialists, as in duty bound, will ever pray.

J. A. R. Menzies, M.L.C.  
 Mathew Holmes, M.L.C.  
 B. Hallenstein, M.H.R.  
 Jas. W. Thomson, M.H.R.  
 D. H. Mervyn, M.H.R.  
 J. C. Brown, M.H.R.  
 J. B. Bradshaw, M.H.R.  
 Donald Reid, M.H.R.  
 George Lumsden.  
 Wm. Wood (by G. Lumsden).  
 George Sumpter.  
 W. H. Cutten.

Alex. Mollison.  
 J. P. Armstrong.  
 D. Henderson.  
 A. Innes.  
 John McKenzie.  
 R. Stout.  
 C. Hickey.  
 H. Clark.  
 J. Allan.  
 D. Hutcheson.  
 Geo. Duncan.  
 Jas. Green.  
 Jno. Smith.  
 G. M. Webster.  
 Jas. Shand.  
 Wm. Barr.  
 J. L. Gillies, M.P.C. for Milton.

THE FOLLOWING ARE THE EXHIBITS.

[A.]

Superintendent's Office,  
 Dunedin, 14th November, 1872.

SIR,—As there exists considerable misapprehension with respect to the reasons which have led to Mr. Reid ceasing to be a member of the Provincial Executive, I am directed by the Superintendent to forward, for the information of the members of the Provincial Council, the annexed correspondence between Mr. Reid and himself on the subject.

I have, &c.,

JOHN LOGAN,  
 Secretary to Superintendent.

Wellington, 16th September, 1872.

MY DEAR SIR,—I have waited several days in the expectation that you would have communicated with me on the subject of the position which you have accepted in the Colonial Government. It is true that, in taking office, you have assumed a position which is considered superior to that of Superintendent of the Province, and that therefore it may seem to you anomalous that I should call upon you for an explanation; but you must recollect that you still hold the position of head of the Provincial Executive, and in that capacity I have a right to call on you for advice and assistance. It was in your power, before taking office, to have relieved yourself of the anomaly of the position, by resigning your seat in the Provincial Executive. You not only have not done so, but you have failed even to apprise me of your intention to accept a position which it is of course obvious is entirely inconsistent with your other position as head of the Provincial Executive. You are aware that I have not allowed difference of opinion to influence our relations, and that I have scrupulously left to you all the discretion and awarded you the consideration to which under a system of constitutional government you were entitled; but as you now hold an office which, as already stated, is altogether inconsistent with your position as the head of my Executive, it is incumbent upon me to say (and I regret that the necessity of doing so has been thrown on me), that I have to beg of you to be so very kind as to place me in a position at once to make more satisfactory arrangements. I have to observe that I consider this letter official.

Yours faithfully,

J. MACANDREW.

The Hon. D. Reid, Esq.

Wellington, 17th September, 1872.

MY DEAR SIR,—I beg to acknowledge the receipt to-day of your letter of yesterday's date. I regret to find that the acceptance by me of a seat in the Colonial Executive should have caused you so much uneasi-

ness. Had I known that you expected me to apprise you of my intention to accept such a position, or reason to believe that such a course would have met with your approval, it is possible that I might have consulted you, and asked your advice, before coming to a decision. I thank you for the information that you have not allowed differences of opinion to influence our relations, and that you have scrupulously left me all the discretion and awarded to me the consideration to which, under a system of constitutional government, I was entitled. I was not aware that Members of the Provincial Executive could, when absent from their Province, occupy a position as Members of the Executive, and act in that capacity. If they could, it is difficult to understand the necessity for appointing deputies to act in their stead. The tone of your letter will be my excuse for reminding you that I have my responsibilities to the Provincial Council, and that I shall be prepared to justify my conduct to that assembly.

Yours faithfully,

D. REID.

James Macandrew, Esq., M.H.R.

Wellington, 19th September, 1872.

MY DEAR SIR,—I have received your letter of 17th instant, in reply to mine of 16th. You are mistaken in assuming that I expressed what you are pleased to term "uneasiness" at your having accepted a seat in the Colonial Executive, or that I arrogated to myself any right to be consulted as to your decision on the subject. No such construction can fairly be placed upon my letter. I regret that you have evaded the real point at issue, namely, the incompatibility of the position of Minister of Public Works with that of head of the Provincial Executive. You must be quite aware, both as regards myself and the Members of the Provincial Executive at present in Wellington, that, although absent from the Province, we have been to some extent practically directing its affairs. In fact, there are at this moment questions of more or less importance which require mutual consultation on our part.

As to your responsibilities to the Provincial Council, I feel assured that that body will share my surprise at the unceremonious manner in which, even without the courtesy of a notice, you have accepted an office incompatible with those responsibilities. It now only remains to say that, in consequence of the complaints which have reached me of the neglect which has characterized the conduct of public business in the Province during our absence, and the necessity for making other Executive arrangements owing to your services being no longer available as my responsible adviser, I purpose proceeding to Dunedin to-morrow, with a view to placing matters on a more satisfactory footing, and that I shall be glad if you will spare me the disagreeable duty of making fresh Executive arrangements other than in the usual way.

Yours faithfully,

J. MACANDREW.

The Hon. Donald Reid, Esq.

Wellington, 19th September, 1872.

MY DEAR SIR,—I have to acknowledge the receipt of your letter of this date.

Yours very truly,

D. REID.

James Macandrew, Esq., M.H.R., &c.

Superintendent's Office,  
 Dunedin, 25th September, 1872.

SIR,—Referring to the correspondence which took place between us at Wellington, as to you resigning your seat as a Member of the Executive Council of Otago, I have now the honor to intimate to you that

the position you have accepted as a Member of the Colonial Executive, is in my opinion so utterly incompatible with the proper performance of your duties as a Member of the Provincial Executive, that I feel it my duty to exercise the power vested in me by the Executive Council Ordinance, and to remove you from your office as a Member of my Executive.

I have, &c.,

JAMES MACANDREW,

The Hon. Donald Reid, Superintendent.  
Wellington.

Wellington, 10th October, 1872.

MY DEAR SIR,—The circumstances which led to your ceasing to be a member of the Provincial Executive having now determined, I shall be glad if you resume your former position in the Executive, in which case directions will be sent to Dunedin to communicate with you officially to that end. Please reply as early as convenient.

Yours faithfully,

D. Reid, Esq., M.H.R.,  
Wellington.

J. MACANDREW.

Wellington, 12th October, 1872.

SIR,—I have to acknowledge the receipt of your letter of the 10th inst., in which you inform me that the circumstances which led to my ceasing to be a member of the Provincial Executive having now determined, you would be glad if I would resume my former position in the Executive. Before proceeding to reply thereto, allow me to review the position in which matters stood at the time those circumstances arose, which you state led to my ceasing to be a member of the Provincial Executive. You will, no doubt, recollect that, before I left Dunedin to attend to the interests of my constituents in Parliament, arrangements were made and a deputy appointed, with the concurrence of yourself and the other members of the Executive, for carrying on the business of my department during the term of the Session. I may also state that I informed the Provincial Council that I would be absent from the Province during the meeting of the General Assembly. I at the same time intimated to the Council, that if, in its opinion, my absence from the Province during that period would prejudice my position as a member of the Executive, it would be necessary to make other provision to fill the office; and the Council acquiesced in the arrangement, on the understanding that a deputy should be appointed temporarily to discharge the duties of the office. It was therefore with surprise that I received your letter of the 25th ult., intimating that, in consequence of my acceptance of the appointment of Minister of Public Works, you had removed me from office as a member of your Executive, on the ground that the appointment was, in your opinion, incompatible with the proper performance of my duties as a member of the Provincial Executive. It must have been obvious to you that I had no intention of filling both offices, and that in due course my resignation would have been placed in your hands; but I considered it was due alike to myself, to my colleagues in the Provincial Executive, and to the Provincial Council, that I should return to the Province before tendering my resignation. One reason which induced me to take this course was my desire to conclude certain negotiations now pending, which were entered into by myself, acting on behalf of the Executive, and which could not be completed before I left the Province. Having conducted these negotiations so far, I felt it my duty to see them carried out in the spirit in which they were entered into. I believe this could have been accomplished in such a manner as to fulfil the engagements made, and at the same time conserve the interests of the Province and

ally the excitement which has in some instances been created in regard to them. It was also my intention, before resigning, to have asked that the Provincial Council should be convened immediately after the prorogation of the General Assembly, in order to comply with an opinion very generally expressed by members during the last Session of the Council, to the effect that it was desirable that the meetings of the Council should in future be held immediately after the meetings of the General Assembly, and also for the purpose of bringing the Highway Boards Empowering Act into operation within the Province. Owing to an oversight on the part of the Provincial Solicitor, this matter was overlooked during the last Session of the Council, and I take this opportunity of reminding you that it is a question which very seriously affects the position of the Road Boards of the Province, and which, if not attended to, may lead to embarrassment and litigation. It appeared to me that the reasons given for requiring my immediate resignation were not of a valid nature. You must be fully aware that none of the Executive business was transacted here; and while I was always ready and willing to give my opinion on any matter in regard to which I was consulted, it could neither be required from me as a member of the Executive while I remained in Wellington, nor could I, while residing out of the Province, interfere in the slightest degree in Provincial matters, even if I had the desire to do so, which I had not. Under these circumstances, I am at a loss to know what necessity existed for the hasty action taken by you in requiring, in terms at once discourteous and peremptory, my immediate resignation, or for summarily removing me from office. I have only to add, in reply to your letter now under consideration, that while I consider it and trust it will always be esteemed to be an honorable position to be leader of the Provincial Council of Otago, and while I will be prepared, should the Council again require my services, to place them with pleasure at its disposal, nevertheless, after the uncalled for and unmerited indignity to which I have been subjected, a sense of the respect which is due to myself, and a consideration of what is due to the important constituency whom I have the honor to represent, compels me firmly but respectfully to decline to accede to your request.

Yours faithfully,

James Macandrew, Esq., M.H.R. D. REID.

Wellington, 19th October, 1872.

MY DEAR SIR,—I have to acknowledge the receipt of your letter of 12th instant. In doing so I have to express my regret that you decline to accede to my request that you should resume your former position in the Otago Provincial Executive. My action in this matter has been taken, from first to last, purely on public grounds, and in the exercise of an official duty which was incumbent on me, and which, as the correspondence shows, I should have been glad to have been spared. I altogether disclaim having been actuated by desire to cast upon you "indignity" in any shape or form, and can only reiterate my regret that our opinions should be so entirely different as regards our respective duties in the public interests under the circumstances in question.

Yours faithfully,

D. Reid, Esq., M.H.R., &c. J. MACANDREW.

[B.]

To His Honor the Superintendent of Otago.

SIR,—We the undersigned, being members of the Provincial Council of Otago, would most respectfully request your Honor to immediately convene a meeting of the Council. We ask this for the following amongst other reasons:—First. The new Land Act

has to be brought into operation, and appointments made under its provisions, that will exercise a permanent influence on the due administration of the Act, and on the management of the waste lands of the Crown in Otago. Second. A new Executive has been chosen by your Honor, and of the views of its members regarding the administration of the Land Act we are ignorant. Third. It is of the utmost importance, we believe, that land should be set aside for occupation by settlers on the deferred payments system, and the Provincial Council ought to be consulted as to the locality, character, and quantity of the land so to be set aside. Your Honor and the Executive Council have, moreover, no power to open any land not at present open for sale for settlement under this system. Fourth. There is, we believe, an urgent necessity for at once bringing the Highway Boards Empowering Act into operation in the Province, and this can only be done by a resolution of the Provincial Council. Fifth. It was understood by the Council, last session, that a meeting should be held immediately after the prorogation of the Assembly, so that in future the meetings of the Council might always be held immediately after the Assembly had been prorogued. Sixth. A sum of money has been voted by the Assembly for subsidies to the Road Boards: this was not calculated on by the Provincial Council at its last sitting, and consequently no resolutions were passed as to the manner in which it should be distributed.

We are, &c.,

[C.]

Superintendent's Office,  
Dunedin, 5th December, 1872.

SIR,—Referring to the request signed by yourself and twenty-six members of the Provincial Council, to the effect that I should convene an immediate meeting of the Council, I have now to express my regret that, after duly considering the reasons adduced by you for such a step, I am unable to concur with you in the matter. The considerations which influence me in arriving at this decision, are embodied in general terms in the correspondence which passed between two of the members of the late Executive and myself, a copy of which is hereto annexed. As regards the specific reasons urged by you as demanding an immediate meeting of the Council, I observe that much stress is put on the initiation of the new Land Act, which, it is presumed, means chiefly the appointment of the Waste Land Board. I venture to submit, however, that the appointment referred to is an Executive function, and does not require the action of the Provincial Council. You state that you are ignorant of the views of my present responsible advisers as to the administration of the Land Act. I have much pleasure in expressing my assurance that these gentlemen are fully alive to the responsibility which devolves upon them in this matter, and that, in advising the appointments in question, the grand aim will be to select those who are most likely to administer the Act unbiassed by party feeling—men who will administer it in a spirit of fairness, equity, and independence, without favour or affection to any one particular class in the community more than another. The following extract from the letter of the Provincial Treasurer, defining the conditions on which he agreed to join the Executive, may be taken as an expression of the views of his colleagues on the subject. Mr. Turnbull wrote as follows:—

“To give the new land law which will shortly come into operation a fair trial, and to endeavour to get the Waste Land Board composed of competent and unprejudiced men, likely to administer the Act fairly and impartially towards every interest throughout the Province.”

As regards the setting aside of land for occupation on deferred payments, which requires the joint action of the Provincial Council and Executive, it is obvious that no action on the subject can be taken until the Statute comes into operation. You may rely upon it that no unnecessary delay will intervene before bringing the provisions of the Act into force. Should it be found expedient to place land in the market on deferred payments, before the Provincial Council meets, there is an express provision in the 47th section of the Act whereby this can be done. I am not aware that there is any such urgent necessity for bringing the Highway Boards Empowering Act into operation, as would warrant the convening of a special session of the Provincial Council for that purpose. It was competent for the Council, at its last session, to have passed a resolution bringing this Act into operation. With regard to altering the date of the annual session of the Provincial Council, so as that it shall be held immediately after the session of the General Assembly, I am not prepared to say that such an arrangement might not be advantageous. At the same time, it involves many important considerations, both *pro* and *con*, and I should not feel warranted in altering the existing arrangement, except upon a deliberate expression of opinion on the part of the Council. As respects the distribution of the money voted by the Assembly for subsidies to Road Boards, “The Payments to Provinces Act, 1872,” provides for this. (See sec. 11).

It is proposed during the present year to subsidize local rates to the extent of two pounds to one under similar regulations, with certain modifications, to those which have hitherto been in force, a proposal which, I venture to think, will be generally acceptable. I have only further to express a hope that on reconsideration, my action in this matter may commend itself to your judgment, and that it will be conceded that responsibilities attach to the Superintendent as well as to the Provincial Council—responsibilities which, in the present case, lead him to the conclusion that it is inexpedient to convene the Council much before the usual time, unless some unforeseen emergency should occur.

I have, &c.,

J. MACANDREW,  
Superintendent of Otago.

Memorandum for His Honor the Superintendent.  
Provincial Secretary's Office,  
15th November, 1872.

WE the undersigned members of your Executive present our compliments to your Honor, and, in consequence of the present unsatisfactory state of affairs, advise your Honor to call a meeting of the Provincial Council at the earliest possible date.

W. H. CUTTEN,  
Acting Provincial Secretary and Treasurer.

J. B. BRADSHAW,  
Secretary for Public Works and Gold Fields.

16th November, 1872.

GENTLEMEN,—In reply to your memorandum of yesterday's date, in which you advise me to call a meeting of the Provincial Council at the earliest possible date, in consequence of “the present unsatisfactory state of affairs,” I have to observe that, in as far as the public interests are concerned, affairs are not more unsatisfactory than usual, but, on the contrary, the departmental business of the Province is being promptly attended to. The Executive Government, as you are aware, is using every exertion to give effect to the votes and resolutions of the Provincial Council at its last session; and, notwithstanding the increasing demand for labour, will, I



trust, be able to congratulate the Council in due course upon most, if not the whole, of the works authorized by it being either completed or in progress. I need not say that practically the chief function which is now left to the Provincial Council is the appropriation of the moneys at the disposal of the Province, and as the revenue up to the 31st March has been already fully appropriated, I am unable to see what public benefit could result from calling the Council together at present, the more especially seeing that the expenditure usually involved in holding a session of Council (£2,000) may be more beneficially expended otherwise. If there were any great question of public policy, requiring an immediate expression of the opinion of the Council, I should not for a moment hesitate in at once convening it, either on pecuniary or any other grounds. As it is, however, I can see no possible object to be gained by an immediate session, excepting personal inconvenience to many of the members, and perhaps an acrimonious discussion as to the Executive changes at present in progress—a discussion which, however gratifying, either in itself or in its results, it might be to individuals, can be productive of no practical advantage whatever in so far as the public interest is concerned.

I have, &c.,  
J. MACANDREW.

[D.]

Proposed reply moved by Mr. Fish—

“We join with your Honor in expressing satisfaction at the steady advancement which has characterized the progress of the Province during the past year. We have to assure you that the many important proposals suggested by you will have our earnest consideration. As respects the executive changes which have taken place during the recess, no doubt much may be said. We are of opinion, however, that it will serve no practical purpose to discuss the subject now, and shall be prepared to deal with the policy of the Government upon its merits.”

[E.]

Mr. Reid's amendment—

“That this Council is of opinion that the appointment of the gentlemen at present occupying the Government benches, and their retention of office, is in direct opposition to the system of responsible Government sanctioned by the Council, and this Council hereby records its protest against any Government being appointed or holding office under such circumstances.”

[F.]

Dr. Webster moved—

“That this Council do not approve of the action of His Honor the Superintendent in dismissing the late Executive and appointing another, without immediately calling the Council together, and while having confidence in the present Executive, thinks, from the mode of their appointment, that in the interests of the Province, and to settle the question, they should resign.”

[G.]

Message No. 3.—Referring to the amendment to the proposed reply to his opening address to the Provincial Council, the Superintendent desires to express his regret that a majority of the Council has seen fit to censure the action which, in the exercise of a public duty, and having regard to the public interests, he felt constrained to take in connection with the late Executive changes—action

which the Superintendent has yet to learn was unconstitutional, and which he should feel bound to adopt again under similar circumstances. The fact that the leader of the late Executive, by accepting office in the Colonial Ministry, assumed a position both incompatible with that of head of the Provincial Executive, and with his responsibilities to the Provincial Council, amply warranted the Superintendent's action in the matter—action which was due alike to the dignity of the Provincial Council itself and to the Superintendent's own position. The constitutional position of the members of Executive is not, as some would have it, to be a check upon and to thwart the Superintendent, but to render him advice and assistance on all questions of policy, and in promoting the public interests—advice and assistance which, in the nature of things, could not be rendered by a Minister of the Crown at Wellington.

In order to the successful working of the Constitution, of which the Superintendent and the Provincial Council are each an integral part, it is of the utmost importance that more correct notions should prevail as to their position in relation to each other, so that neither may arrogate to themselves the functions of the other. Probably it would serve no good purpose to dilate upon the question at present; let it suffice to say that the Superintendent deprecates nothing more than being at variance with the Provincial Council. He would willingly sacrifice much in order to work together harmoniously; at the same time he cannot ignore the fact that he has responsibilities equally with the Provincial Council, and he is fortified in the conviction that his action in the matter in question has vindicated an important principle, has conduced to the public good, and has met with the approval of the people of Otago, to whom he is primarily responsible. Referring to his opening address, the Superintendent had hoped that the Provincial Council would have reciprocated at least some of the opinions expressed by him with regard to various matters bearing upon the advancement of the Province; instead of which, however, the Council appears altogether to have ignored the matters referred to. As it is, the Superintendent cannot but feel that there is, between the majority of the Council and himself, an absence of that mutual desire for progress, and of that community of sentiment, which are so essential to the promotion of the public weal. Under all the circumstances of the case, therefore, the Superintendent is of opinion that it would be better to afford the people an opportunity of electing a Superintendent and Provincial Council which may work together harmoniously; with which view he respectfully solicits the concurrence of the Provincial Council in an application to His Excellency the Governor for an immediate dissolution.

J. MACANDREW, Superintendent.  
Dunedin, 12th May, 1873.

[H.]

Message No. 5.—Referring to his Message No. 3, in which the Superintendent, for the reasons therein stated, solicited the concurrence of the Provincial Council in an application to His Excellency the Governor for an immediate dissolution, and to which there has been no reply, the Superintendent again desires to reiterate this request, and to express a hope that in the public interest the Council may see its way to concur in the proposed application. The fact that the Provincial Council has now been ten days' in session, at a cost of some £500 to £600, without any practical result, speaks for itself, and furnishes an additional reason for the adoption of the course now indicated. In the event of the proposed dissolution being granted by His Excellency, it is

hoped that a new Superintendent and Provincial Council may be elected, say, within two months from this date, till when there will be little difficulty in providing for the public service under authority of law. At the same time, in order to guard against any possible inconvenience, the Superintendent would venture to suggest the expediency of the Council agreeing to grant temporary supply pending the assembly of the new Provincial Council.

J. MACANDREW, Superintendent.

15th May, 1873.

[I.]

Mr. Clark to move—

(1.) That, in regard to His Honor's Messages Nos. 3 and 5, this Council is of opinion that if His Honor would consent to carry out constitutional precedent in accepting an Executive from the majority of this Council, there need be no interruption to public business. (2.) That the Council will be prepared, as soon as the business absolutely necessary for the welfare and progress of the Province is disposed of—especially in the matter of initiating the system of selling land on deferred payments, too long delayed, and providing for the better encouragement of settlement, and also determining the best steps to be taken for the immediate construction of the Clutha and Mataura and Dunedin and Moeraki Railways, and for deepening the harbour so that vessels of the largest tonnage visiting our port may come up to Dunedin—to take into consideration the question of dissolution of the Council. (3.) That if His Honor will join issue with the Council in asking that an alteration of the Constitution Act should be effected, determining whether his position is to be that of a dictator or simply that of an executive officer, this Council will agree to recommend a dissolution immediately after the rising of the Assembly. (4.) That Mr. Speaker be requested to forward a copy of these resolutions to His Honor, and also telegraph the same to His Excellency the Governor.

Dunedin, 19th May, 1873.

[K.]

Message No. 6.—It is with the utmost reluctance that the Superintendent is compelled to convey to the Provincial Council his regret that the Council has not seen fit to reply to his former messages, an act of courtesy which he had hoped would have been deemed due to the office which he holds, apart altogether from personal considerations. The Provincial Council will have been in session a fortnight to-morrow without making the slightest pro-

gress in the practical business for which it was convened; and for aught that the Superintendent can see to the contrary, this state of things is as likely as not to continue for an indefinite period. There appears, therefore, to be no alternative but to prorogue the Council and appeal to the people, a course which, after his ineffectual attempts to form an Executive, the Superintendent, with the advice and consent of the Executive Council, has resolved to adopt. It is hoped that, under the circumstances, His Excellency the Acting Governor will not refuse his assent to a dissolution, seeing that otherwise the affairs of the Province will speedily arrive at a deadlock.

The Superintendent need scarcely say that the step which he has now adopted is a painful one to himself, and has been taken under a very grave sense of responsibility. Elected by and responsible to the whole body of the people, he should be betraying the trust reposed in him were he quietly to submit to the office being trampled upon, and to the business of the Province being brought to a standstill. The Superintendent would respectfully point out to the majority of the Provincial Council, that if the somewhat anomalous political machinery, in the shape of responsible Government with an elective head, which the Province has seen fit to tack on to the Constitution, is to work at all beneficially, there must needs be, in the choosing an Executive, mutual concessions, and that the feelings and views of the Superintendent have at least as much right to be consulted as have those of the Provincial Council.

The Superintendent has been chosen by the majority of the people to administer the affairs of the Province, and has been pledged to a policy of progress. It is manifest, therefore, that the majority of the Council, by seeking to force upon his acceptance Advisers who, it may be, entertain opposite views from the Superintendent, are seeking to place him in a false position,—a position which he refuses to accept. The Superintendent came down to the Council, at its opening, with very important proposals bearing upon the advancement of the Province,—proposals which it was intended to have followed up by others equally important. Instead of entertaining any of these, however, the time has been occupied in discussing matters which have little or no practical bearing upon the public interests: circumstances which the Superintendent trusts will amply justify, in the eyes of the people, the action which, in the interest of the country, he has been compelled to take.

JAMES MACANDREW,  
Superintendent.