



AUCKLAND PROVINCIAL GOVERNMENT GAZETTE.

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Superintendent's Office, Auckland,
8th May, 1855.

THE following Correspondence between the General Government and the Superintendent is published for general information.

WM. BROWN,
Superintendent.

Superintendent's Office, Auckland,
2nd May, 1855.

SIR,—It has become my duty in consequence of the unsatisfactory relations which exist between the Provincial Council and myself, to pray your Excellency for the sake of the order, and good government of the Province, that a dissolution of the Council may take place.

The grounds of my request are these,

Firstly,—That I have not the means of forming a suitable Executive Council; out of twenty-four members there are but two upon whose support I can depend; one of these has already declined a seat at the Executive Board; the other, although he has enabled me to comply with the law, requiring one member at least of the Executive to be chosen from among the Provincial Council, is unwilling to carry on even the formal duties of an Executive Officer during another Session.

Secondly.—That a material portion of the supplies have been voted, not until the termination of the current year but only until

the last day of June; to the detriment as I believe of the Public Service.

Thirdly.—That the Provincial Council notwithstanding a resolution agreed to by themselves, that they were "ready at once to enter on the consideration of any business, which in His Honor's opinion the public interests required should be disposed of without delay," have separated, leaving without consideration, measures of pressing necessity which I had laid before them.

Fourthly.—That they have separated by means of a long adjournment, notwithstanding the intimation conveyed in my Message No. 29, that long adjournments were objectionable, and that it was my intention to attend at the Council Chamber for the purpose of prorogation, so soon as the state of the public business would allow; and notwithstanding my intimation, conveyed through the honourable member representing the Executive, that the long adjournment would be considered as an act of defiance.

Fifthly.—Because the Provincial Council by resorting to the expedient of a long adjournment, have disabled me from meeting them to prorogue in person; leaving me no means of proroguing, except by proclamation; a copy of which, together with my Message No. 29, I have the honour to enclose.

Your Excellency is aware that the present Council was elected during the period of your

own Superintendency, shortly after my unsuccessful contest with your Excellency for the Office, and more than eighteen months previously to my election; it was therefore unlikely, from the first, that the same Council would repose that trustful confidence in me, which is so necessary to the harmonious working of the Provincial Government.

I may perhaps be permitted to observe, that the risk of difficulties arising from the election of the Superintendent at a distant period, from that of the Provincial Council, possibly under opposite states of feeling and opinion in the constituency, was perceived, and so far as might be, provided against by the framers of the Constitution Act. For not only is it provided by the fourth section of that Act that the Superintendent of Provinces shall be chosen in the first instance, before the elections of members of the Provincial Councils—evidently in order that the several district constituencies, knowing the Superintendent, might be enabled to elect such persons as would be likely to work in harmony with that individual person;—but it is likewise provided, that on the termination of the Provincial Council by dissolution or otherwise, the Superintendency shall determine also, so that the Superintendent and the Council should go to the country together.

In the event, however, of the resignation of the Superintendent, the Constitution Act leaves a discretionary power to the Governor enabling him to carry out the intention of the Act. ~~For it is possible that the resignation of a Superintendent might take place immediately after the election of a Provincial Council; in which event, the difficulty that may be expected to result from distant elections would not arise.~~

But as, in the present case, it has arisen, your Excellency's discretionary power is appealed to, for the purpose of allowing the Province to relieve itself from an embarrassment that is being productive of serious injury, and retardation of general progress. Should the constituency be content with the present Council, they will still be able to retain that Council, and to elect a Superintendent who would obtain the full confidence of that Council, or should the constituency continue their confidence in myself, they will be able to guard their own interests by giving me a Council which will heartily support my endeavours for the public good.

In the event of your Excellency acceding to my request, I would also ask a few days' notice of the dissolution, in order that as little inconvenience as possible might accrue to the Provincial Service.

I have the honor to be,

Sir,

Your obedient servant,

WM. BROWN,

Superintendent.

His Excellency
The Officer administering
The Government.

Colonial Secretary's Office, Auckland,
5th May, 1855.

SIR,—I am directed by His Excellency the Officer administering the Government, to acknowledge the receipt of your Honour's letter of the 2nd inst., praying His Excellency for the sake of the order and good government of the Province of Auckland that a dissolution of the Council may take place.

I am further directed to inform you that the subject of your Honour's letter is under the serious consideration of the Officer administering the Government, and His Excellency's decision thereon will, when it has been made, be in due course communicated to your Honor.

I have, &c.,

ANDREW SINCLAIR,

Colonial Secretary.

To His Honor
the Superintendent
of Auckland.

Colonial Secretary's Office,
Auckland, 8th May, 1855.

SIR,—In pursuance of my letter to your Honor, dated the 5th instant, I am now directed by the Officer Administering the Government to communicate to you His Excellency's decision on your Honor's request, contained in your letter of the 2nd instant, for a dissolution of the Auckland Provincial Council.

His Excellency, with the advice and concurrence of the Executive Council, can only come to the conclusion that, in a country like this, where, from the rapid increase of population, every year adds so many eligible persons to the constituencies, it would be improper for His Excellency to bring about a General Election immediately before the completion of the Electoral Roll for the year, and probably, by that means, exclude by a few weeks only, a numerous and respectable body of settlers from exercising, perhaps for four years, any influence in the government of the country.

His Excellency, therefore, feels that he can only take the course, which he has adopted in reference to other applications for the dissolution of Provincial Councils (even when the additional support of a recommendation from the Council has accompanied the application), and he must accordingly decline acceding to your Honor's application.

I have, &c.,

ANDREW SINCLAIR,

Colonial Secretary.

To His Honor
the Superintendent,
of Auckland.

Superintendent's Office,
Auckland, 9th May, 1855.

THE opinion of the Provincial Law Officer on the following case submitted to him by the Superintendent is published for general information.

WM. BROWN,
Superintendent.

THE Law Officer for the Province of Auckland is requested to advise whether the Superintendent of the Province could have tested the legality of the body styling itself "The Auckland City Council," by suing out of the Supreme Court a writ of *quo warranto* against such body, or by filing a *quo warranto* information against it, in that Court.

OPINION.

The British Constitution has vested in the Sovereign for the time being, the whole executive power of the laws. It being, however, impossible for the Sovereign to execute in person a trust so extensive, courts of justice have been erected, from time to time, and public law-officers have been appointed to sue or prosecute therein, on behalf of the King or Queen regnant, all persons charged with the commission of public offences. But such courts and officers cannot legally administer or enforce the laws without royal authority. To attempt to do so, would be a usurpation of the Sovereign's prerogative, which no one is justified in doing, how conducive soever he or others may deem it to be, to the public welfare.

"All executive power, all enforcement of the laws in being, is derived mediately or immediately, from the Crown. Whatever the law requires to be done, can only be done ultimately by royal authority."—Wooddson i, 79.

"Though the Constitution of the Kingdom has entrusted him with the whole executive power of the laws, it is impossible as well as improper, that he should personally carry into execution this great and extensive trust: it is consequently necessary that courts should be erected to assist him in executing this power, and equally necessary that if erected, they should be erected by his authority."—Bl. i., 311.

"The King of England is therefore not only the chief, but properly the *sole* magistrate of the nation: all others acting by commission from, and in due subordination to him."—Bl. i., 292.

For any person to usurp a public office, or for any number of persons to usurp a public franchise, such as that of being a municipal corporation, is a misdemeanour at common law.

Against persons so offending, her Majesty's Attorney-General, or some other such public law-officer, but no other person, may sue out a writ of *quo warranto*, or file an information in the nature of that writ. This latter is now the usual mode of procedure in such cases.

"A writ of *quo warranto* is in the nature of a writ of right for the Queen against him who claims or usurps any office, franchise, or liberty."—Bl. iii., 313-14.

"The judgment on a writ of *quo warranto* (being in the nature of a writ of right) is final and conclusive, even against the Crown, which, together with the length of its process,

probably occasioned that disuse into which it is now fallen, and introduced a more modern method of prosecution, by information filed in the Court of King's Bench by the *Attorney-General* in the nature of a writ of *quo warranto*, wherein the process is speedier and the judgment not quite so decisive. This is properly a criminal method of prosecution, as well to punish the usurper by a fine for the usurpation of the franchise, as to oust him, or seize it for the Crown."—*Ibid.*

To remedy the evils resulting to the peace, order, and good government of cities, boroughs, and towns corporate in England and Wales, from the intrusion of persons into public offices in and connected with such places, the 9 Ann, c. 20, was passed. It empowers the proper officer in the Queen's Bench to exhibit, with the leave of the Court, a *quo warranto* information, at the relation of any person desiring to prosecute the same against the party so intruding. But in every case of the kind, the right of the alleged intruder to hold the office, and not the legality of the corporation itself, can be tried or called into question.

"No information upon this statute can be had against the corporation itself as a body.—*Rex v., Corporation of Carmarthen, 2 Burr, 869.*"—*Chitty's Statutes, i., 207.*

"This Act only extends to corporation offices."—*Ibid.*

"The Court will not grant a *quo warranto* information against an officer of a corporation established by charter pursuant to the 7th Wm IV., and 1 Vic. c. 78, if it appear that the object in prosecuting such information is to try the legality of the charter.—*Regina v. Taylor, 11 Adolphus and Ellis, 949.*"—*Harr. Dig. iii., 5779.*

None but her Majesty's Attorney-General, or some other such public law officer, can file a *quo warranto* information against a number of persons acting as a corporation: no private officer or person can do it.

"An information in the nature of a *quo warranto* against persons for claiming to act as a corporation *must* be filed by and in the name of the *Attorney-General.*—*Rex v. Ogden, 10 B and C, 230.*"—*Harr. Dig. iii., 5786.*

"A *quo warranto* information will not lie, at the instance of a private individual, against persons for claiming to act as a corporation."—*Law and Practice of the Queen's Bench, by G. and S., 99.*

Her Majesty's Charter of the 23rd December, 1846, conferred nearly all her executive power pertaining to these Islands upon the Governors or Lieutenant-Governors (as the case might be,) of the Provinces of New Ulster and New Munster, respectively. But a very small portion of it vested in the Governor-in-Chief. The former were empowered to appoint and constitute, within their respective Provinces, all judges and other officers necessary for the administration of justice, and the enforcement of the law made or to be made for the government.*

thereof, as well as all officers requisite for the administration of the Civil Government.

A new and a very different state of things has, however, supervened since the passing of the Constitution Act of 1852, which extinguished those two provinces and created others, and appointed that there should be for each of them a Superintendent and a Provincial Council.

Her Majesty, by letters patent, bearing date September 13, 1852, appointed Sir George Grey, Governor of this Colony, and vested in him, and (in case of his absence,) in the Acting Governor, the whole of the executive power pertaining thereto; and required and commanded him to do and execute all things belonging to his command, according to such laws as were then, or should be thereafter in force, in the Islands of New Zealand, and in the several Provinces thereof.

No executive power whatsoever has been conferred on the Superintendent of this Province by or under any Act of Parliament, and none has been delegated to him by Her Majesty: he is not Her Majesty's Attorney-General for the Colony or the Province, and he has not the power of appointing any one to act in that capacity.

I am therefore of opinion that his Honor could not, either in person or otherwise, have caused a writ of *quo warranto* to be sued out of the Supreme Court, or a *quo warranto* information to be filed therein, against the persons styling themselves "The Auckland City Council."

Proceedings of that nature can only, as already stated, originate with Her Majesty's

Attorney-General, or with the person lawfully acting in that capacity.

SINGLETON ROCHFORD,
Law Officer for the Province of
Auckland.

Princes-street, Auckland,
May 8, 1855.

AUCTIONEERS' LICENSES.

Superintendent's Office, Auckland,
3rd May, 1855.

A LIST of Persons to whom Licenses have been issued to exercise the business or calling of Auctioneer, within the Province of Auckland, for the term of One Year, from the 25th day of April, 1855.

Names.	Place of Abode.	Calling.
A. W. Hansard,	Auckland,	General Agent.
Thos. Weston & Co.,	Ditto	Ditto
T. F. M'Gauran	Otahuhu	Ditto
Joseph Newman	Remuera	Ditto
Connell & Ridings	Auckland	Ditto
R. Schultz & Co.	Ditto	Ditto
David Nathan	Ditto	Ditto

R. F. PORTER,
Provincial Treasury Clerk.

Public Pound, Newmarket,
4th May, 1855.

IMPOUNDED, at the Public Pound, Hundred of Auckland, Newmarket, by the Ranger of the Auckland Hundred, for running at large on the Waste Lands:—

One red and white Bull, no brand.

If not claimed, to be sold at the Public Pound at noon on Saturday, 2nd June next agreeable to the provisions of the Impounding Ordinance Victoria 11, sec. 8, No. 6.

JOSEPH OSBORNE,
Poundkeeper.