


NEW ZEALAND
GOVERNMENT GAZETTE.

PROVINCE OF CANTERBURY.

Published by Authority.

 All Public Notifications which appear in this Gazette, with any Official Signature, are to be considered as Official Communications made to those persons to whom they may relate, and are to be obeyed accordingly.

By His Honor's command,

RICHARD PACKER,
Provincial Secretary.

VOL. IV.]

THURSDAY, MARCH 19, 1857.

[No. VI.]

*Provincial Secretary's Office,
Christchurch, March 16, 1857.*

HIS HONOR THE SUPERINTENDENT directs the following Correspondence to be published for general information.

RICHARD PACKER,
Provincial Secretary.

*Superintendent's Office,
Christchurch, Aug. 16th, 1855.*

SIR,—

I have the honor to state for His Excellency's information, that Captain Simeon being about to resign the offices now held by him previously to his return to England, I have temporarily, and until Her Majesty's pleasure shall be known, appointed Henry John Tancred, Esq., to be a Resident Magistrate for the districts of Lyttelton and Christchurch, and I contemplate, so soon as Captain Simeon resigns, also appointing Mr. Tancred to be the Sheriff of this Province, in the same manner provisionally. I have therefore the honor to request that his Excellency will be pleased to obtain Her Majesty's appro-

val of Mr. Tancred's appointment as a Resident Magistrate, and as the Sheriff of this Province.

I have the honor to be, Sir,

Your very obedient servant,
JAMES EDWARD FITZ GERALD,
Superintendent.

The Hon. the Colonial Secretary,
&c., &c., Auckland.

*Colonial Secretary's Office,
Auckland, Sept. 24, 1855.*

SIR,—

Referring to your Honor's letter of the 16th ultimo, No. 54, requesting that Mr. Tancred might be appointed a Resident Magistrate for the districts of Lyttelton and Christchurch, *vice* Captain Simeon, who is about to resign, I am directed by the Governor to forward to you a Commission under his Excellency's hand, appointing that gentleman Resident Magistrate accordingly, and I have to request that you will cause to be paid the sum of 10s. 6d., the fee on this Commission, into the hands of the sub-treasurer, who has been instructed to receive it. The

reason for his Excellency making this appointment is, that as in the Canterbury Empowering Ordinance, Sess. II., No. 2, the power of appointment of Resident Magistrate is also reserved to the Governor, and as the salary of that office has been passed in the General Estimates, his Excellency thinks the appointment should be made by the officer at the head of the Government that pays the salary.

I have the honor to be, Sir,
Your most obedient servant,
(Signed) ANDREW SINCLAIR,
Colonial Secretary.

His Honor the Superintendent,
Canterbury, &c. &c.

*Superintendent's Office,
Christchurch, March 31, 1856.*

SIR,—

With regard to your letter of the 23rd ult., acquainting me that his Excellency had been pleased to appoint Mr. Hamilton a Resident Magistrate, I have to observe, that as it is uncertain how long Mr. Hamilton may be able to perform the duties of that office, it would be desirable that his Excellency should add to the Commission of the Peace the name of William Sefton Moorhouse, Esquire, Barrister-at-Law, and appoint that gentleman to be a Resident Magistrate during Mr. Tancred's absence, and that the necessary documents should be sent by the return of the steamer, enabling him to act should Mr. Hamilton cease to do so before Mr. Tancred's return from Auckland.

I have the honor to be, Sir,
Your very obedient servant,
(Signed)
JAMES EDWARD FITZ GERALD,
Superintendent of Canterbury.

The Hon. the Colonial Secretary,
&c., &c., Auckland.

*Colonial Secretary's Office,
Auckland, 22nd April, 1856.*

SIR,—

In reference to your letter of the 31st of March last, requesting that the name of William Sefton Moorhouse, Esquire, Barrister-at-Law, should be added to the Commission of the Peace, and that that gentleman might be appointed a Resident Magistrate during the absence of Mr. Tancred, to act in case of the inability of Mr. Hamilton to fulfil the duties of that office :

I have the honor, by direction of his

Excellency the Governor to inform you that Mr. Moorhouse has been gazetted to the Commission of the Peace, as you have requested, and I herewith enclose to you a Commission under the signature of His Excellency appointing him a Resident Magistrate.

I have the honor to be, Sir,
Your most obedient
humble servant,
(Signed) ANDREW SINCLAIR,
Colonial Secretary.

His Honor the Superintendent,
Canterbury, &c., &c.

*Superintendent's Office,
Christchurch, Oct. 8, 1856.*

SIR,—

I have the honor to state that I have appointed William Guise Brittan, Esq., to be a Resident Magistrate, to hold Courts at Christchurch and Kaiapoi, and to request that his Excellency will be pleased to issue a Commission to that gentleman, as has been the case in similar appointments. The power is included in those vested in the Superintendent by the Empowering Ordinance, but the General Government has hitherto always issued a Commission.

I have the honor to be, Sir,
Your obedient servant,
(Signed)
JAMES EDWARD FITZ GERALD,
Superintendent.

The Hon. the Colonial Secretary,
&c., &c., Auckland.

*Superintendent's Office,
Christchurch, November 24th, 1856.*

SIR,—

I have the honor to state for His Excellency's information that Mr. Tancred has resigned the office of Resident Magistrate, and that I have appointed Mr. John Hall to that office in his place. I have the honor to request that His Excellency will be pleased to issue the usual commission to that gentleman, and also that His Excellency will appoint him to preside in the Courts under the Extension of Jurisdiction Act both at Lyttelton and Christchurch.

I have the honor to be, Sir,
Your very obedient servant,
(Signed)
JAMES EDWARD FITZ GERALD,
Superintendent.

The Hon. the Colonial Secretary,
&c., &c., Auckland.

*Colonial Secretary's Office,
Auckland, 27th November, 1856.*

SIR,—

I have to acknowledge the receipt of your Honor's letter of the 8th ult., reporting that you had, under the Canterbury Provincial Empowering Ordinance, appointed William Guise Brittan, Esquire, to be a Resident Magistrate, and requesting that the Governor would be pleased to issue a Commission to that gentleman.

In reply I have to state that, if your Honor possesses the power of appointing a Resident Magistrate, the Government of New Zealand does not think it advisable that a Commission should also be issued by the Governor in the case of such an appointment.

I have the honor to be,

Sir,

Your Honor's very obedient
servant,

(Signed) E. W. STAFFORD.

His Honor the Superintendent,
Canterbury, &c., &c.

*Superintendent's Office,
Christchurch, Dec. 10, 1856.*

SIR,—

I have the honor to acknowledge the receipt of your letter of the 27th Nov., 1856, in reply to mine of the 8th Oct., on the subject of appointing Mr. Guise Brittan to be a Resident Magistrate, from which I understand his Excellency's Government decline to issue a Commission to that gentleman.

It is true that the Empowering Ordinance of Canterbury purports to give to the Superintendent the power of appointing Resident Magistrates within that Province. It is also true that that power has been exercised from time to time during the last four years. But his Excellency's Government are aware that doubts in certain quarters have been expressed as to whether the jurisdiction of the Provincial Legislature extends to interfering with such appointments. I have never myself entertained a doubt upon that point, but the doubt having been expressed in influential quarters, is sufficient to deter any gentleman from acting under the commission of the Superintendent, and thereby incurring the serious risks which he would run, were such doubts to prove to have legal validity.

His Excellency's late Government voluntarily undertook to quiet those doubts by advising His Excellency to issue a Commission, in cases in which

I had appointed. I therefore applied to have the same course pursued in the present instance.

Since writing my despatch of the 8th of October, I have acquainted His Excellency that Mr. Tancred has resigned his offices and that I have appointed Mr. Hall in his room. It is probable that both Mr. Brittan and Mr. Hall, to whom I shall feel it my duty to communicate this correspondence, will refuse to act. There will, therefore, so far as I can perceive, be no Court of Law of any description whatever in the Province of Canterbury for the next two months.

The responsibility of this must rest entirely with His Excellency's Government, which instead of aiding, in a case of great doubt, to maintain the administration of Justice, has taken a course I beg respectfully to submit to His Excellency calculated to produce results of the most serious kind. If His Excellency's Government, charged as they are with maintaining the Government of the Country, and respect for the Law, were advised that the Superintendent's Commission to a Resident Magistrate was invalid, I submit that not an hour should have been lost in clearing up all doubts on the subject by a legislative enactment of the General Assembly. But your despatch under reply, I regret to say, seems to have no other effect than to confirm, by the deliberate sanction of His Excellency's Government, a state of confusion and doubt as to the jurisdiction of the local courts of law.

I have the honor to be, Sir,

Your very obedient servant,

(Signed)

JAMES EDWARD FITZ GERALD,
Superintendent of
Canterbury.

*Colonial Secretary's Office,
Auckland, Feb. 11th, 1857.*

SIR,—

I have the honour to reply to your letter No. 47, of the 10th December, last, referring to the refusal of the Government to issue a Commission to Mr. Brittan, whom your Honour had previously appointed, under the Canterbury Empowering Ordinance, to be a Resident Magistrate.

Before announcing the principle by which the Government is guided in determining to refuse to issue Commissions in cases of like character to the one in question, it is necessary that I should especially notice the

grave mis-statements and implications against the Government of New Zealand which this letter contains.

Your Honour observes that although the Canterbury Empowering Ordinance purports to confer upon the Superintendent the power of appointing Resident Magistrates within the Province, the knowledge that doubts have been expressed in influential quarters, as to whether the Provincial Legislature could confer such a power will, you believe, deter any gentleman from incurring the risks attendant upon his acting under the Commission of the Superintendent.

I am aware of these doubts, and of the serious risks which might be incurred by persons acting in cases where their authority for so acting is so liable to question, and cannot therefore understand why your Honour should persist in placing gentlemen in so doubtful, if not dangerous, a position, for it must not be overlooked that even if a commission were subsequently issued by the Governor to any person previously appointed a Resident Magistrate by your Honour, such Commission would give no retrospective validity to any acts of such person between the date of its issue, and that of the appointment by your Honour; and if it should be asserted that a knowledge of this fact will prevent the person appointed by your Honour, from acting until the Governor's Commission is received, the only possible reason for the appointment, (where so much doubt exists with respect to it), viz., the urgent necessity for immediate action following upon it, is entirely removed.

Your Honour would appear to be in error in stating that the late Government of the Colony voluntarily undertook to quiet these doubts, by advising the issue of a Commission in cases where you had appointed Resident Magistrates. No such undertaking is on record; nor did the issue of a Commission by the Governor follow the appointment of a Resident Magistrate by your Honour in any case, except that of Mr. Tancred, who received a Commission on the special ground stated in the Colonial Secretary's letter transmitting it, and as the General Government desired not to be implicated in any doubts as to the validity of acts done under the authority of the previous appointment by your Honour, it ignored that appointment altogether, and notified *de novo* in the

Government Gazette Mr. Tancred's appointment to the office by his Excellency.

Your Honour next states that since writing your despatch of the 8th of October last, (intimating your appointment of Mr. Brittan,) you had acquainted the Government that Mr. Tancred had resigned, and that you had appointed Mr. Hall in his place, who, as also Mr. Brittan, you, however, think it probable will refuse to act when made aware of the correspondence between your Honour and the Government on this subject; and you state that there will therefore, so far as you can perceive, be "no court of law of any description within the Province of Canterbury for the next two months," and assert that, "the responsibility of this must rest entirely with his Excellency's Government."

To these statements I have to reply that, at the date of my letter of the 27th November, I could have no knowledge of Mr. Tancred's intention, inasmuch as it was only announced in your letter of the 24th of the same month, received by the last *Zingari*, along with that of the 10th December. A grave doubt moreover exists whether Mr. Tancred can resign a Commission from the Governor of New Zealand to any but the authority by whom it was issued. Should such a resignation be valid, it, as still further confusing the responsibility for the administration of justice, adds to the many conclusive reasons why your Honour's appointments should not be supplemented by the Governor.

I am unable to conceive how the refusal, (should it occur,) of Mr. Hall or Mr. Brittan to act under the appointment of your Honour, although it may be a very sufficient reason for your not making such appointments, is a matter for which the General Government is responsible, as the latter Government has no knowledge of any determination with respect to the acceptance, resignation of, or refusal to act upon Provincial appointments, which may from time to time be come to by the persons holding such appointments.

I am equally at a loss how to construe your Honour's statement that there would be no court of law of any description in the Province at a time when, (in addition to Mr. Tancred,) Mr. Hamilton, Mr. Moorhouse, and Mr. Watson hold the commission of a Resident Magistrate, and 27 gentlemen

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residing, in the Province that of Justice of the Peace. Still less can I understand the assertion that, this Government would be responsible for a suspension of law, if it did take place, when the Government had nothing to do with Mr. Tancred's resignation, with your Honour's appointments of Mr. Brittan, and Mr. Hall, and their possible refusal to act under them, or with originating the doubts as to your power to make such appointments, and while it may be superfluous for me to state that whatever responsibility can at any time be fairly charged upon his Excellency's present Ministers will be at once accepted, I most emphatically decline to permit your Honour to hold this Government responsible for acts done by you, whether in the exercise, or in excess of your powers.

I would now state as a general rule having reference not only to questions like the present, but to all matters affecting the relations between the General and Provincial Governments, the present Ministry is most anxious to co-operate with the latter. I believe that it is only by the most cordial co-operation between them that the Government of the Colony generally can be conducted with satisfaction, either to the inhabitants, or to the respective authorities, to whom the conduct of public affairs may be for the time entrusted; and it is especially necessary, that a good understanding should exist with respect to the appointment of public officers. Acting upon this principle the present Government, has in every case hitherto, where it has previously been requested to that effect by any Superintendent, made appointments in accordance with such request. While it has therefore shown and will continue to show, every desire to co-operate with the Provincial authorities, it must decline to endorse, as a matter of course, all appointments made by Superintendents, where no previous intimation has been given so as to permit of due consideration, as to the fitness or otherwise of the proposed appointment. For your Honour must admit that although the gentlemen appointed by you in the cases now under notice are unexceptionally qualified for this office, it is by no means impossible that appointments might be made by Superintendents, especially as to judicial offices, which might be the reverse of benefi-

cial to the public service; and I cannot believe that you would consider that the General Government was placed in a proper position if it were required to confirm, without any discretion in the matter, all such appointments for the fitness of which it thus became responsible, I believe that such a position for the Government of the Colony would be not only most derogatory to it, but at the same time in entire opposition to the intention of the General Assembly when it established the principle of Responsible Government; as in this position the General Government, would be responsible not to the Assembly, but to the Superintendents, whose mere servant it would become. Such a position being totally opposed to the principle of the Constitution Act, is one which no Ministry could for a moment defend, and which his Excellency's present advisers can never consent to occupy.

I have the honour to be,

Sir,

Your very obedient servant,

E. W. STAFFORD.

*Superintendent's Office,
Christchurch, March 3rd, 1857.*

SIR,—

I have the honor to acknowledge the receipt late yesterday of your despatch of the 11th ultimo on the subject of the Commissions of Resident Magistrates in the Province.

From this Despatch, I can only infer that the Government of New Zealand does not recognize the appointment of Mr. Brittan and Mr. Hall as Resident Magistrates: that it declines to confirm their appointment whilst at the same times it considers them to be administering law illegally: that it declines to take any steps whatever to correct this state of things: that it is satisfied that the law will be sufficiently administered by Mr. Watson, Mr. Hamilton, Mr. Tancred, and Mr. Moorhouse as Resident Magistrates, and by 27 other Magistrates, notwithstanding that Mr. Watson's Court is not accessible except to a few families, Mr. Hamilton is fully employed in another department, and Mr. Tancred and Mr. Moorhouse have, as I conceive, resigned their offices, and the former has left the Province.

It does not become me to retort upon His Excellency's Government

charges of "mis-statements and implications." Such charges will be the subject of enquiry at the fitting time and place. I have now simply to acquaint the Government that although my own opinion as to the validity of the appointments is unchanged, yet I cannot continue to allow the gentlemen holding them to incur any risks which the weight of the Crown's law adviser is employed to aggravate. And although willing to act in all matters in concert with the General Government, I must decline to do so with a Government whose policy seems to be to watch the Provincial Government making what it believes to be a grave mistake and one involving the most serious consequences to the whole community, and await the result with indifference.

I beg, therefore to inform you that I have called upon Mr. Hall and Mr. Brittan to resign their offices, guaranteeing them against all actions for the past, and that after the present month no expences of any kind whatsoever will be paid by this Government on behalf of Resident Magistrates' Courts.

I have the honor to be, Sir,
Your very obedient servant,
(Signed)

JAMES EDWARD FITZ GERALD,
Superintendent of Canterbury.

*Provincial Secretary's Office,
Christchurch 3rd March, 1857.*

SIR,—

I am directed by his Honor the Superintendent to send you the enclosed copy of a despatch which his Honor has received from the Colonial Secretary, together with his Honor's reply.

[See previous letters of Feb. 11th and March 3rd.]

The Provincial Government will guarantee you against all consequences of your having acted as Resident Magistrate hitherto, but with the weight of the General Government against the validity of your appointment will not do so for the future. You will therefore deem it right to resign the appointment you hold under his Honor. I am further to acquaint you that no payment will be made by the Provincial Government on account

of the Resident Magistrate's Court after this month.

I have the honor, &c.,
(Signed) RICHARD PACKER,
Provincial Secretary.

John Hall, Esq.
W. G. Brittan, Esq.

*Resident Magistrate's Office,
Lyttelton, 5th March, 1857.*

SIR,—

I have the honor to acknowledge the receipt of your letter of the 3rd inst., transmitting copies of correspondence between the Colonial Secretary and his Honor the Superintendent, upon the subject of the appointment of Resident Magistrates in this Province, and conveying to me the opinion of his Honor that it would be right that I should resign the appointment of Resident Magistrate. In compliance with this letter I beg respectfully to tender to his Honor my resignation of the office in question. While acknowledging that the course which his Excellency's Government has in this case thought it right to pursue, leaves neither to the Provincial Government nor to myself any other alternative than the one now adopted. I must express in the strongest manner my sense of the inconvenience and injury to which it cannot fail to expose the public of this district. With a view of mitigating this inconvenience as far as possible, I shall be prepared, if the Provincial Government desire it, to continue to perform such of the routine duties of this office as I can discharge without subjecting myself to the consequences of acting without legal authority. I shall also be ready to sit as a magistrate in Lyttelton, when, for the purpose of constituting a Court, the services of another Justice of the Peace can be obtained. I fear, however, that on many occasions this will be a matter of great difficulty, as although the names of ten gentlemen were added to the Commission of the Peace so long ago as the 20th Dec. last, no documents have yet been received which will enable them to undertake the duties of their office.

I beg leave also to point out that the exercise of the extended jurisdiction of the Resident Magistrate's Court in the Province ceases altogether, and that

the judgments already obtained under it cannot now be enforced.

I have the honor to be, Sir,

Your obedient servant,

(Signed) JOHN HALL.

The Provincial Secretary,
&c., &c., Christchurch.

*Land Office, Christchurch,
March 11th, 1857.*

SIR,

I beg to acknowledge the receipt of your letter of the 3rd inst., No. 131, covering a copy of a Despatch received by his Honor the Superintendent from the Colonial Secretary on the subject of the appointment of Resident Magistrate together with his Honor's reply.

Acting on the suggestion conveyed in your letter, I have the honor to tender my resignation of the appointment of Resident Magistrate of Christchurch and Kaiapoi, and herewith beg to return the Commission by which I was appointed to that office by his Honor.

I have the honor to be, Sir,

Your obedient humble servant,

WILLIAM GUISE BRITTAN.

The Provincial Secretary.

*Provincial Secretary's Office,
Christchurch, 5th March, 1857.*

HIS Honor the Superintendent directs it to be notified for public information, that a writ for the election of a member of the Provincial Council for the Electoral District of the Town of Christchurch having been issued in accordance with clause 12 of an Act of Parliament passed in the 15th and 16th years of her present Majesty, entitled "An Act to grant a Representative Constitution to the Colony of New Zealand;" the Returning Officer for the said District hath returned the said Writ with a certificate to the effect that the under-mentioned gentleman has been duly elected to serve as a member of the Provincial Council.

For the Town of Christchurch—

RICHARD PACKER.

By command of His Honor,

RICHARD PACKER,

Provincial Secretary.

SALE OF TOWN RESERVES.

PUBLIC NOTICE.

*Provincial Secretary's Office,
Christchurch, March 10, 1857.*

NOTICE is hereby given,—That the several sections of Land specified in the subjoined list, having been applied for, in accordance with the notice already published, the same will be put up to sale by public auction, at the "White Hart" Hotel, in Christchurch, on *Tuesday, the 31st day of March*, instant, subject to the usual conditions of sale, in addition to the terms already notified.

Sale to commence at 12 o'clock, precisely.

By order of his Honor the Superintendent,

RICHARD PACKER, Provincial Secretary.

Lot.	Sections.	Quantity.			Upset Price.		
		A.	R.	P.	£	s.	D.
102	No. 96	1	0	17	57	10	6
103	" 97	1	0	17	57	10	6
104	" 114.....	1	0	17	57	10	6
105	" 115, and 116.....	2	0	35	115	7	6
106	" 121, 122, and 123	3	1	11	172	11	6
107	" 124, and 125.....	2	0	35	115	7	6
108	" 148, and 149.....	2	0	35	115	7	6
109	" 248, and 257.....	1	0	0	52	0	0
110	" 266, and 275.....	1	0	0	52	0	0
111	" 420.....	1	0	17	55	6	3
112	" 447, and 449.....	2	0	35	110	18	9
Total		18	2	19	961	10	6

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