

1852.

VICTORIA.

REPORT

FROM THE

SELECT COMMITTEE

OF THE

LEGISLATIVE COUNCIL

ON

DISTRICT COUNCILS,

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

Minutes of Evidence,

AND

APPENDIX,

ORDERED BY THE COUNCIL TO BE PRINTED,

SEPTEMBER 15th, 1852.

MELBOURNE:

PRINTED BY JOHN FERRES, AT THE GOVERNMENT PRINTING OFFICE.

EXTRACTED FROM THE MINUTES.

WEDNESDAY, 14TH JULY, 1852.

6. DISTRICT COUNCILS.—Mr. Mercer moved, pursuant to amended notice, That a Select Committee of four Members and the Mover, be appointed to enquire into the working of the District Councils, established in this province under the 5th and 6th Victoria, c. 76, s. 41, and the causes of their meetings and practical workings having been discontinued, and to take evidence and report upon the expediency of their being revived, with such alterations in their constitutions, duties, or powers, as to the said Committee may seem advisable.

That the said Committee consist of Mr. Riddell, Mr. Rutledge, Mr. Strachan, Mr. Snodgrass, and the Mover.

Debate ensued.

Question put.

Council divided, Ayes 12, Noes 5.

LIST OF WITNESSES EXAMINED.

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REPORT.

THE Select Committee appointed on July 14th “To enquire into the working
“ of the District Councils established in this Province under the 5th
“ and 6th Victoria, c. 76, and the causes of their meetings and practical
“ workings having been discontinued, and to take evidence and report
“ upon the expediency of their being revived, with such alterations in
“ their constitutions, duties, and powers as the said Committee may
“ deem advisable,” have agreed to the following Report :—

Your Committee, having carefully examined the clauses of the above Act relating to District Councils, and having weighed the information afforded them in evidence, of the difficulty experienced by the Councils formerly established in parts of the Province, are satisfied—That their discontinuance is to be attributed to the arbitrary and unconstitutional nature of some of the provisions contained in the Act, and to the expensive details which were rendered unavoidable in giving it practical effect; that these details were necessary in attempting to carry out the multifarious and too comprehensive duties imposed upon the Councils; and, that a most inadequate provision was made for such funds as were essential for the purposes of the Councils.

Your Committee are of opinion, that with certain alterations and restrictions, the re-establishment of the system would be attended with very great benefit to the Colony; and they would suggest that under the powers conferred upon your Honorable House by 13th and 14th Victoria, c. 59, s. 24, the boundaries of Districts as formerly defined, should be altered, and that in no case should such Districts extend beyond a radius of twenty-five miles; that, in order to avoid unnecessary expense, the 6th Clause of the 41st Section of 5th and 6th Victoria, c. 76, should be so modified as to leave it optional to the District Council to have the necessary Surveyor’s work done by contract; that Clause 7 of Section 42 of the same Act, relating to Education, should be omitted, as being a subject which, in the present circumstances of the Colony, should not fall within the sphere of the duties of a District Council; that Section 43 of said Act should be omitted, because it is unfair that equal benefits should be derived by settled and ungranted lands, from the application of funds supplied entirely from the former. Your Committee would here remark, that Clause 6 of Section 42, and Sections 47, 48, 49, and 50 of the said Act, relating to Police, are repealed by 13 and 14 Victoria, c. 59, Section 23, and that by their repeal a great objection to the system has been removed.

The attention of your Honorable House is earnestly directed to a Report of the Right Honorable the Lords of the Committee of the Privy Council, under date of 1st May, 1849, which received the sanction of Her Majesty. By it your Committee are made aware that one half of the Territorial Revenue (subject to certain charges) has been placed at the disposal of the Lords Commissioners of the Treasury, for the Public Service of the respective Colonies; and it is there recommended, that of the Territorial Revenue realized in each District, the proportion thus left under their Lordships’ control should be placed by them at the disposal of the District Councils (with certain minor reservations) for objects of local concern; and it is further proposed, that the sums so placed should be applied *exclusively* to public works within

the respective Districts. The Report goes on to state, that the above application of the said funds cannot be ratified by Parliament until it be seen whether District Councils (under an amended form as is now proposed) will be re-established, and that no Bill would be brought into Parliament authorizing such a distribution of the Funds, until such recommendation shall have been complied with.

As the Lands of this Colony are now being rapidly alienated, and the monies already received otherwise appropriated, and not available for the proposed purpose, delay in organising an efficient system is therefore inflicting a serious injury on those Districts where, from the extent and population of the alienated Lands, improvements are more imperatively required; more especially as, in the mean time, the Executive are taking no active steps to effect them.

Your Committee, without expressing any opinion as to the appropriation of the Territorial Revenue, would remark that they consider the principle involved in the above Report to be a correct one.

These form obvious reasons why the constitutions of the District Councils should be revised, and placed on such a footing as will be consonant with the wishes, and secure the confidence of the Colonists.

Not only would there be very great difficulty in framing any other body so as to meet the intentions and desire of Her Majesty, as above expressed, and the approval of Parliament, but the position should be fully recognised, of the right of the local Inhabitants to have their improvements effected, and their funds applied by a legally constituted body of their own choice.

It should also be borne in mind, that by 13 and 14 Victoria, c. 59, s. 20, the establishment of such Councils is left entirely to the option of the inhabitants.

Your Committee would therefore propose, that in accordance with the 24th Section of the same Act, a Bill should be introduced into your Honorable House for the modification of the provisions of 5 and 6 Victoria, c. 76, relating to District Councils, which would confine their powers and duties exclusively to the care and superintendence of Public Works; and that His Excellency the Lieutenant-Governor be requested to represent to Her Majesty the urgent necessity of the principle involved in the above mentioned Report receiving the sanction of Parliament.

Your Committee, in pursuance of their labors, also deem it their duty to notice the position in which the late District Councils in this Province were left by the Government of New South Wales. The documents laid upon the table of Your Honorable House in connection with this subject, and those which appear in the Appendix to the Evidence taken before your Committee, seem to them to demand serious attention. Feeling that the honor of that Government was compromised in admitting that the District Councils had a right to be held harmless, so long as they conducted themselves with propriety and due caution, and afterwards refusing to interfere when applied to for assistance in difficulties, which could by no means be attributed to those connected with the District Councils, Your Committee would venture to suggest that, for the honor of the Government of Victoria, His Excellency should be requested to place upon the supplementary Estimates for 1853 a sum of money sufficient to discharge the outstanding liabilities of the District Councils of Bourke and Grant.

(Signed)

J. HENRY MERCER,

Chairman.



PROCEEDINGS OF THE COMMITTEE.

THURSDAY, JULY 29TH, 1852.

Members present :—

Mr. Strachan ; Mr. Rutledge ; Mr. Mercer

Mr. Mercer called to the Chair.

5th and 6th Victoria, c. 76, considered.

Adjourned to Wednesday, August 4th, at 10 o'clock.

WEDNESDAY, AUGUST 4TH.

Members present :—

Mr. Mercer, Chairman ; Mr. Rutledge.

No Quorum.

Adjourned to Wednesday, August 11th, at eleven o'clock.

WEDNESDAY, AUGUST 11TH.

Members present :—

Mr. Mercer, Chairman ; Mr. Strachan ; Mr. Rutledge.

Privy Council Report considered.

Adjourned to Wednesday, August 18th, at twelve o'clock.

WEDNESDAY, AUGUST 18TH.

Members present :—

Mr. Mercer, Chairman ; Mr. Rutledge.

No Quorum.

Adjourned to Thursday, August 19th, at two o'clock.

THURSDAY, AUGUST 19TH.

Members present :—

Mr. Mercer, Chairman ; Mr. Riddell ; Mr. Rutledge.

C. J. Dennys, Esq., examined.

Adjourned to Thursday, August 26th, at twelve o'clock.

THURSDAY, AUGUST 26TH.

Members present :—

Mr. Mercer, Chairman ; Mr. Strachan ; Mr. Rutledge.

J. Simpson, Esq., (Sheriff,) examined.

Adjourned to Thursday, September 2nd, at 10 o'clock.

THURSDAY, SEPTEMBER 2ND.

Members present :—

Mr. Mercer, Chairman ; Mr. Rutledge ; Mr. Strachan.

Consideration of Report.

Report adopted.

MINUTES OF EVIDENCE.

THURSDAY, 19TH. AUGUST, 1852.

PRESENT :—MR. MERCER, Chairman ; Mr. Riddell, and Mr. Rutledge.

Charles J. Dennys, Esq., called in and examined.

C. J. Dennys,
Esq.,
19th August, 1852.

1. *By the Chairman.*—Q. You were Secretary to the District Council of Grant? A. Yes ; and Treasurer also, for some time.

2. Q. Will you state to this Committee what was the particular cause of the discontinuance of that Council? A. It was owing to the impossibility of obtaining a guarantee to the Council against any loss occurring from actions being brought against it in consequence of a defect in the Charter of Incorporation, in case of any attempt on the part of the Council to levy the rate imposed, by distress and sale.

3. Q. Could not this defect have arisen from an accidental informality? A. No doubt the power of distress and sale was omitted accidentally.

4. Q. It did not arise from any want of confidence in the Council on the part of the public? A. Not on the part of the public towards the Council itself, but a great deal from a desire on the part of the public to quash the system, which was then most unpopular. This feeling, however, has been much altered since.

5. Q. Was any opposition offered to the levy? A. A meeting was held in opposition, and much excitement prevailed, more particularly amongst the Squatters, and funds were raised in order to test the legality of the levy in case it were made. The Warden, having no funds at his command, applied to the Governor to guarantee him in case of an adverse verdict, but his Excellency refused to do so.

6. *By Mr. Rutledge.*—Q. And did you assess the squatters? A. Yes, we assessed sheep and cattle in the same way as other chattel property.

7. *By the Chairman.*—Q. Were there any practical inconveniences in carrying out the system? A. Only those that arose from a legal quibble from our having made an assessment on stock according to the numbers given in the Commissioner's returns ; and if we had levied, and an action had been brought against us, and it had been proved that there was one over or one under the number mentioned in the levy, we should not have been able to recover. To provide against this, it would have been necessary to pass a law authorising the Commissioner's returns to be taken in making the assessment.

8. Q. Do you consider that these Councils would work well, if they had the confidence of the Colonial Government? A. Even at the time they were established they would have done good service ; and latterly we have been seriously inconvenienced from their cessation.

9. Q. Was that countenance given by the Government that the Councils had a right to expect? A. It was not. The Government always most carefully avoided any reference to themselves ; they would not compromise themselves in the least ; but, when addressed, always referred us to our charter. Our Warden ultimately applied to the Warden of Sydney requesting to be informed of the steps taken, and to know whether Sir George Gipps had expressed any opinion as to the Executive guaranteeing the Council against loss from actions at law. In answer to this he received the letter which I now produce (Appendix A.)

10. Q. You were also Treasurer? A. Yes ; the Council considering that under its unfortunate pecuniary circumstances, it would be unadvisable to pay a Treasurer as well as a Secretary, asked me to accept the office honorarily, and I did so.

11. Q. And did you, as Treasurer, consider yourself bound to guarantee the debts of the Council? A. Only that of Mr. Harrison, for which I made myself personally responsible at the time of giving the order.

12. Q. Do you know what the debts of the Council amount to? A. The public debts are only four small accounts ; exclusive of officers' salaries, the debts are not above £50. I have not brought with me the list of debts due, but the total amount, including salaries, is about £817.

13. Q. Have you any other documents relating to the guarantee that was demanded of the Government? A. When Mr. Haines was Warden he wrote a very strong letter to the Government requiring them to pay the debts of the Corporation. I now produce this letter and reply (Appendix B and C). There was then a reply from Mr. Haines, in which he resigned the Wardenship, and also his commission as a Magistrate in consequence of the annoyance he felt at the Council having been so treated by the Government. A copy of the letter I now produce, (Appendix D.)

14. Q. You are now a farmer and landholder? A. I am.

15. Q. Do you think that District Councils would now work well? A. Yes, and would be of the utmost benefit. I have been present at several meetings held lately to consider the propriety of getting the locality brought under the operation of the Parish Roads' Act, and regrets were repeatedly expressed that the District Councils were not in operation. But, if called into operation, to carry them out properly some endowment is necessary, because the population generally is too limited to support them ; but, with a moderate endowment, they

C. J. Dennys,
Esq.,
continued,
19th August, 1852.

would succeed and work well. The roads now, owing to the want of some local supervision, are so impassable that we cannot get out a bag of flour to our farms.

16. *By Mr. Rutledge.*—Q. I think you said the people in the country parts wished to have District Councils established, but with some assistance? A. Yes.

17. Q. Would you not very much limit the bounds of the districts from what they were? A. Yes, originally the extent of country given to a District Council to preside over was perfectly impracticable for assessment purposes.

18. Q. What extent would be best? A. A radius of, say twenty miles.

19. Q. Would you not confine them to the settled districts? A. No; because in many places these are so extremely limited.

20. Q. Then from twenty to twenty-five miles of a radius would give quite area enough? A. Quite.

21. Q. How would you propose to endow them? A. Perhaps at present, as they have no funds, they might be assisted from the Land Fund, and afterwards, if the Legislature would grant an equal amount to that raised by assessment, they would work well.

22. Q. You think they could not of themselves raise funds sufficient? A. Not at first.

23. Q. But would it not be to the interest of the District to make their roads? A. That would depend greatly upon the population.

24. Q. I speak with reference to the colony at large; if these Councils were set in motion to comprehend the country within a radius of twenty-five miles, and an assessment were raised to which would be added a similar amount to be granted by the Legislature, would they, do you think, operate beneficially, as regards the roads? A. The difficulty would lie in the making of the road in the first instance, as it would be quite certain the roads would have to be made in the first instance. There would thus be need of heavy assistance at first, in order to set them going.

25. Q. But would it not be an improvement on the existing state of things, as far as the roads are concerned? A. I think not; without an endowment to commence with they would fall into disuse as they formerly did.

26. Q. Do you understand the present system of Road Trusts, or Local Road Committees? A. I do, I am myself a member of one of these Committees.

27. Q. Have they, in the expenditure of the grants of public money for the repairs of roads, a better chance of success? A. Most decidedly, because they are worked more economically than the Councils can be.

28. Q. Are you led to form this opinion from Committees having no power to assess? A. No, not from that reason, because if they had such a power there would be no very material objection to it, with the exception that they should have an endowment to commence with.

29. Q. What is your reason for thinking that if District Councils are established, there must necessarily be a great expense incurred? A. Simply from the officers required. Most unquestionably each Council must have a Surveyor, and such a one as would be required could not be had under £300 a-year; then there would be a Secretary and a Treasurer, or these two offices might be combined, though there is always a jealousy in such a case, as the Secretary is considered to be a check upon the Treasurer. For these offices, if combined, a further sum of £250 would be required; then there would be stationery and incidental expenses that cannot be avoided; so that the whole annual expenditure could not be reduced below £700 or £800.

30. Q. Could not the office of Treasurer be honorary? A. It could be, if you could find people to take it.

31. Q. But there are many Societies, which, with regard to the amounts raised, would have more extensive funds than the District Councils; and yet the Treasurers of these Societies are Honorary officers? A. There are.

32. Q. And might there not also be Honorary Treasurers to the District Councils? A. Yes.

33. Q. Would the services of a Surveyor be constantly required? A. That would depend very much on the amount of money the Council would have to spend.

34. Q. Under any circumstances would his whole time be employed? A. I think not.

35. Q. Could not the Councils do as well without a Surveyor as the Committees do? A. Yes, they might employ a Surveyor when required. There need not be a regular Surveyor appointed, unless the Council were compelled to it by the Act, as was the case with the old Councils, but one could be engaged for any special service.

36. Q. Then the District Councils need not occasion more expense, in performing the same works, than the local Committees? A. No, they need not.

37. Q. For the proper working of one of these Committees, would it not be necessary to have a paid Secretary? A. It might be so.

38. Q. Then the District Councils could be conducted with as small an expense as the Committees? A. Yes; they would be the same as each other in all but the name.

39. Q. Then do you not think that the District Councils might be made extremely useful in rendering roads and bridges passable, if they had power to raise an assessment on land and chattel property; and if the Legislature were to give an equal amount to that raised by assessment; and would not their establishment be an improvement on the present state of things? A. I conclude that you would have the assessment on all kinds of property; and I would ask whether you would assess unimproved as well as cultivated land?

40. Q. To assess all kinds of property coming within the Act? A. But under the Act would unimproved lands be rated, or would they be left out of its operation.

41. Q. That question will be left to the judgment of the Legislature? A. There are so many questions that occur to me, as necessary to be answered before I can give an opinion, that

I should not like to reply to your question without having this information. But, as it appears to me, what applies to one, will not apply to the others, since the Council would have charge of all the main lines of road, whilst the local Committees are appointed for mere local improvements. The Council therefore would have to consider the wants of a whole District, but the Committees being confined to a purely local object, can always work beneficially if they get £500 to expend on the one line. The Council however would require to take a larger range, and if they were to set to work and expend all their money upon one line, it would be said that they benefitted one portion of the District and neglected the other.

C. J. Denny,
Esq.,
continued,
19th August, 1852.

42. Q. But their duty would be to repair only those that were impassable? A. That they must necessarily do, but then you would have men as members of the Council from various parts of the District; and there would be diversity of opinion as to what really was the most necessary. The local Committees being for one locality, the roads of that locality would be the subject of consideration; but in a Council were different places would be the subject of discussion, the interest cannot possibly be so condensed as where one single road only is concerned.

43. Q. Do you think that the Councils would act in a partial manner? A. No more than Corporations generally do; these are always more disposed to improve that which comes more immediately under their own observation, and this is generally in their own neighbourhood.

44. Q. For this reason you prefer the Committees? A. If I give an opinion on the case on its own merits, on the simple point of the Council's having no endowment, I say that we shall be much better without them.

45. Q. You prefer then a local Committee with full coffers, to a District Council with less funds? A. Yes; unless the latter were very largely endowed.

46. Q. Then your objection to the Councils is solely based on the deficiency of funds? A. Decidedly.

47. Q. But you say you do not see why they should not be carried on with as little expense as the Committees? A. I say, that possibly they may be so.

48. Q. Then in that case which do you think, as regards the public, will be the most practicable and the most efficient body? A. In my opinion, a special Committee, appointed for a special road, will be as far as the public is concerned, the more popular body.

49. Q. More popular than a Council elected by the inhabitants, and with full powers vested in them? A. Do you mean a Council with full powers to assess for schools, police, and roads, as the old Councils were.

50. Q. I mean them to do nothing more than the local Committees now do? A. In that case then I can give a distinct answer. I think that local Committees or Boards will be found to be the more efficient.

51. *By the Chairman.*—Q. But in this case, there would not be roads, where the inhabitants did not take the matter into their hands? A. Yes, that would be the case.

52. Q. And the roads would consequently go unattended? A. Yes; unless the Government interfered, to induce by an offer of assistance, the inhabitants to take the matter up.

53. *By Mr. Rutledge.*—Q. Are you not aware that in several parts of the country, it would be difficult to get together a Committee capable of managing the repair of bridges? A. I will not say that.

54. Q. Do you think then that it is practicable to get such Committees from the inhabitants resident on those roads that are impassable? A. I think there would be no difficulty, and I will go further and say that there would be no difficulty in getting such Committees, if the Government would give assistance to an equal amount to what the Committees could collect.

55. Q. What objection would there be to the principle of the Councils, under the New Constitutional Act? A. I have not yet seen that this Act proposes any alteration.

56. Q. Are you not aware that, under this Act, the powers of the District Councils over Police and Schools are done away with? A. I was not aware of it.

57. Q. Does this knowledge make any alteration in your opinions? A. No, it rather confirms them, as on the simple question of roads, local Committees are far the best.

THURSDAY, AUGUST 26, 1852.

PRESENT;—Mr. Mercer, Chairman; Mr. Rutledge and Mr. Strachan.

James Simpson, Esq., called in and examined.

J. Simpson, Esq.,
20th August, 1852.

58. *By the Chairman.*—Q. You were Warden of the District Council of Bourke? A. Yes.

59. Q. Can you state from your own experience what you believe to be the cause of the discontinuance of its sittings? A. The principal cause was that we had no funds to proceed with the valuation, in order to make an assessment, we applied to Government for assistance, but were unable to obtain it.

60. Q. Did that arise from any informality in the constitution of the Council? A. Not that I am aware of; the principal cause was that we were unable to go on without the appointment of officers for valuing, assessing, &c.

61. Q. Did it appear to you that there was any want of confidence in the Council? A. Such appeared to be the general impression, but I am not aware if it really were so. The Members were all men of landed property.

J. Simpson, Esq.,
continued,
26th August, 1852.

62. Q. Do you consider that the Council would have worked to advantage, if it had received assistance from Government? A. I can scarcely express an opinion on that point.

63. Q. In fact the District was too large? A. Yes; and at the same time lands open to assessment were very widely separated from each other, thereby increasing the difficulty in the valuation.

64. Q. Then you are of opinion that the Council was premature? A. Yes.

65. Q. Do you think that the public, in the County of Bourke, would be willing to submit to a District Council? A. The fact is, the matter has been so long dropped, that it would be difficult to give an opinion; many persons are anxious to have the roads repaired at any price; and as I have before stated, I think it would be the ground work of a very useful institution.

66. Q. What was the debt incurred by the Council of the County of Bourke? A. It was £153 odd; and I might say that we agreed to give £100 to Mr. Moor, who acted as Secretary, but as he was kind enough not to press the claim, the matter stood over, and he was kinder still in discharging certain expenses the Council had incurred.

67. Q. Is he the only creditor? A. No; the City Council also have a claim, as we agreed to pay a portion of the premium that was offered for the best design for the Princes' Bridge.

68. Q. Are you aware that any Officer of the Council is personally liable for that money? A. I should doubt it much.

69. Q. Had you a Treasurer? A. Yes; an Honorary Treasurer—Mr. James Smith.

70. Q. Have you ever applied to Government for payment of the debt? A. I think that we have.

71. Q. If so, would it be found in the letter book? A. Yes.

72. Q. Could you allow the Committee to have that letter book? A. I must decline to do so without a reference to the Council.

73. Q. Did the Local Government ever express an opinion as to the recognition of their liability for that debt? A. I do not think they did.

74. Q. You state that there are documents to bear upon that point? A. I think so; if I find there are, I shall be happy to furnish them.

75. *By Mr. Rutledge.*—Q. Are you aware that there is a clause in the Old District Councils Act, that made it incumbent on them to raise money for Police expenses? A. I do not know.

76. Q. What I wish to ask is, from your experience of District Councils, do you think that they could be so constituted, as to their boundaries and limits, as to work well? A. No doubt of it.

77. Q. Then do you not think that District Councils under the Constitutional Act would be likely to work much better by not having the expense of Police thrown on them? A. My own opinion is, that if they had less work to do, they ought to become more efficient.

78. Q. Would it not work better in respect of Gaols, Lock-ups, and other Public Works? A. I think I should confine its operations regarding Public Works to the repair of Roads and Bridges.

79. Q. Then you think that Gaols, &c., ought to be supported and paid for by the Central Government? A. Yes, with the exception perhaps, of a Sessions House for Petty Sessions, &c., &c.

80. Q. Do you recollect another duty devolving upon them under the Old Act? A. Schools?

81. Q. Yes. A. I do not think Schools should be in any way connected with them.

82. Q. Then have you any knowledge of the working of any other body with regard to Roads and Bridges? A. The Town Council of course.

83. Q. From your experience in matters not only of District Councils, but in Colonial affairs generally, do you consider a District Council a more likely body to work well than an Honorary Committee formed at a public meeting? A. My own opinion is that a District Council would be much more efficient.

84. *By the Chairman.*—Q. Do you think that the public would not have as much confidence in a Committee so appointed as in the regular District Courts? A. I see no reason why the public should not have confidence in them: my own impression is, that if District Courts are not properly constituted they cannot work to the satisfaction of the public,—I mean if their duties extend over too large a space for careful supervision.

85. *By Mr. Rutledge.*—Q. Are you acquainted with any of the Committees expending money on roads during the past year? A. Only that of Heidelberg.

86. Q. Do you think that there is any great practical difficulty under the new Act in laying on a moderate assessment not to extend beyond the settled districts? A. None, if a reasonable limit be given to the operations of the Council.

87. Do you not think that the failure of the District Councils is attributable in a great degree to the too great size of the Districts? A. Yes, it is, in a great degree, one of the principal causes of their failure.

88. Q. How do you think District Councils would work if they were established in one or more Districts with limited boundaries; do you think that they would be bodies likely to work well in the making and repair of roads? A. That must depend on the nature of the road and the amount of assessment.

89. Q. What I want to ask you is, do you think such a body likely to be efficient? A. I believe there is no doubt of it if there is a reasonable space only for its operation.

90. Q. Do you think that funds in aid of these general assessments should be contributed from the general revenue? A. Yes. J. Simpson, Esq.,
continued.
26th August, 1852

91. Q. Do you not think that a District Council can be of considerable service, even though it may not be able to make Macadamised roads through districts, and be efficient in repairing bad parts of roads, and making and repairing bridges? A. Yes.

92. Q. Do you think that it is only fair that the public lands should contribute their quota to the repair of the roads and bridges? A. It appears to me to be but right that they should.

93. Q. If such is the case in Van Diemen's Land under an Act of the Legislature, why should it not be so here? A. I see no reason why it should not.

94. Q. Would not the District Councils be an improvement on the present measure of the expenditure of funds by Local Committees? A. Yes.

95. *By the Chairman.*—Q. I should like to ask, may there not be roads in certain places where from the nature of the population it would be difficult if not impossible to obtain a Local Committee? A. There is no doubt of it.

96. Q. Would not such roads be practically cut off from improvement? A. I think they would.

97. Q. I allude to cases where there is little purchased land but where the roads lead to a large extent of country? A. I think the result would be the same in each case.

98. Q. Would District Councils be more useful than such Committees? A. There is no doubt of it *in such localities.*

APPENDIX A.

(No. 454.)

Sydney, February 17th, 1845.

SIR,

With reference to your communication of the 29th ultimo, desiring information respecting the proceedings and purposes of the Sydney District Council, I have much pleasure in affording you the fullest information on the various points adverted to.

With a view to the levying of a rate for the various purposes contemplated by the Charter, the Council, so early as February last, resolved on the appointment of a qualified person who, together with the District Surveyor, should assess the value of all improved or occupied freehold and leasehold property, within the District, while it was at the same time further resolved that waste lands should be subject to an uniform rate per acre, without reference to locality, or prospective value.

The completion of this valuation, required a considerable period of time, but was at length effected in September last, after an expenditure of about (£1000) one thousand pounds, for which amount the Council had previously obtained, on individual responsibility, a Cash Credit at the Commercial Bank; the Government having declined making any advance in aid of the operations of the Council.

In prosecution of the original design, a Bye-law was accordingly introduced, for regulating the collection of tolls, and for imposing, levying, and collecting, a rate on certain property within the District, a copy of the draft of which is herewith enclosed.

The various clauses of the Bye-law were passed in Committee, but doubts having arisen as to the powers of the Council, it was deemed expedient to defer the passing of the Bye-law in Council, until legal advice should be obtained.

The case was accordingly referred to Mr. Michie, Barrister at Law, in the Terms contained in the enclosure No. 2, which also contains the opinion of that gentleman, on the case submitted to him.

The defect pointed out by Mr. Michie, is the absence of an ordaining clause after the recital of the powers contained in the Imperial Act, declaring that these powers, or some or all of them, should be exercised by the particular Council created by the Charter in every instance.

The Council in these circumstances resolved to suspend operations until further powers were conferred, or some guarantee afforded.

On applying, by address, to His Excellency the Governor on the subject, an official communication was received through the Colonial Secretary, the following extract from which will sufficiently answer your third enquiry:—

His Excellency admits the right of the District Council to look to the Government and Legislature, Imperial as well as local, to secure to them the powers which are necessary to enable them to exercise the functions which the Constitutional Act has allotted to them, and to guarantee them collectively and individually against loss, so long as they, in the exercise of their functions, proceed with due discretion and caution.

The District Council of Sydney, is therefore, for the present inoperative.

I have the honor to be, &c.,
THOS. BARKER,
Warden, S. D. C.

P. S. The enclosure (No 1,) never having passed the Council, is not an official document, but is enclosed with a view to the fuller explanation of the case, and the legal opinion given thereon.

(COPY.)

CASE.

The Sydney District Council having found it expedient to pass the Bye Law or Order herewith sent, together with the Charter constituting that body, and referring to the Act of the late Legislature commonly called the "Parish Road Acts," and the Act of Parliament, 5 and 6 Victoria, ch. 76, s. 42, and the Council being desirous of acting in strict conformity with the powers vested in them,

Your Opinion is requested,—

- 1st. Whether the Council have power, by virtue of the Charter, to assess and levy a Rate?
 - 2ndly. Whether, if they have that power, such Rate may be levied as proposed in the Bye Law, for the various objects, &c., or whether such objects should specially appear on the face of the Bye Law?
 - 3rdly. Whether the power of the Council extends to levying on real as well as personal estate?
 - 4thly. Whether the Parish Road Acts are overridden or neutralised by the 5th and 6th Victoria, ch. 76.?
- And, Whether the 42nd section of the 5 and 6 Victoria, c. 76, is inoperative by the 53rd section appearing to nullify that clause until the repeal of the Parish Road Acts?

OPINION.

- 1st. I am of opinion that the District Council have no power by virtue of the within-mentioned Charter or otherwise to levy a Rate; the 45th clause of the 5th and 6th Victoria, ch. 76, provides for the granting of Charters, which, amongst other things, are to define the powers of the District Councils and to enable them to exercise their functions. The Imperial Act has thus directed that whatever powers the Council are to exercise shall be defined for them in their Charter. The present Charter, however, is silent as to any power of levying, and, notwithstanding that the Bye Law supplies the omission, it cannot enlarge the terms of the Charter in this or in any other respect. The case of *Kirk v. Howell*, 1st Term Reports, p. 118, decides, that a Corporation created by Act of Parliament, cannot make a Bye Law imposing a forfeiture of goods, unless the power be expressly given by the Act, and as the present District Council derives its existence immediately from the Charter, and not from the Act 5 and 6 Victoria, that instrument should expressly confer every power which it is intended the Council shall exercise.
- 2ndly. As the reasonableness or otherwise of Bye Laws must, if questioned, be determined by the Supreme Court, (see *Kidd on Corporations*, p. 107, vol. 2.) I am of opinion that they should specify on the face of them the objects for which they are enacted, in order to enable the Court to pronounce upon the propriety of assessments in relation to the subject matter for which they are imposed; and, although the *Innholders* case, reported in *Ford's MS cases*, vol. 5, and mentioned in the case of the *London Tobacco Pipe Maker's Company*. *Woodroffe*, 7 *Barnewall and Cresswell* p. 853, shows that a Bye Law of a Company has been upheld although containing no special mention of the purposes of taxation, yet, inasmuch as that case was questioned, and as the Judges here might hold that the Bye Law of a company was not sufficiently in point with the present case to bind them, it is very desirable to be particular in this respect in framing the Bye Laws of the District Council.
- 3rdly. At present, for the reasons appearing in my answers to the first question, I am of opinion, as already stated, that the Council cannot levy either on real or personal estate. If, however, the Charter in that respect had been sufficiently specific in its terms, the Council might, by virtue of the 42nd clause of the Act, make a Rate on real or personal property, or both, and levy the same on the one or the other, or both.
- 4thly. I am of opinion that the Parish Road Act is not repealed by the 5th and 6th Vict. ch. 76. The 53rd clause of the latter Act contains an express proviso that nothing contained in it shall extend or be construed to extend to repeal or abrogate any law or ordinance made in pursuance of any of the Acts of Parliament recited in the same clause, one of the Acts so recited is the 9th Geo. 4th, chap. 83, and the Parish Road Act being passed by the Colonial Legislature constituted under the provisions of the 9th Geo. 4th, continued by the succeeding Acts recited, must be held to have been made in pursuance of that Act. This natural result of imperfect acquaintance with our Colonial Acts in the framers of the Imperial Act, appears to have been apprehended by them as likely to occur, for it will be found that the remedy for any inconsistency of construction has been pointed out by anticipation in the last proviso of the same 53rd clause.
- 5thly. I do not think the 42nd clause of the 5th and 6th Vict. ch. 76, is rendered inoperative by the Parish Road Acts, except in so far as that clause refers to the subject of Roads, but I am of opinion, that until it is enacted that the management of the Roads for the District of Sydney shall be no longer under the authorities mentioned in the Parish Road Acts, the Governor will not be able to grant a Charter, placing the control of the Roads of the District in the hands of the Council thereof.

(Signed,)

ARCHD. MICHIE.

Elizabeth-street North,
Sept. 27th, 1844.

APPENDIX B. }
APPENDIX C. } See correspondence laid upon the Council Table, and ordered to be
APPENDIX D. } printed, 9th September, 1852.