

FURTHER PAPERS RELATIVE TO

No. 48.

THE SUPERINTENDENT, OTAGO, TO THE COLONIAL SECRETARY.

Superintendent's Office,
Dunedin, December 19th, 1861.

SIR,—

I have the honor to acknowledge the receipt of your letter, No. 901, of the 6th instant, intimating His Excellency's disallowance of "The Roads Ordinance, 1861."

I am not prepared at the present moment to submit a detailed reply to the reasons which have been urged for the disallowance, but, I hope to do so next mail. In the mean time, I can only regret that so extreme a measure has been recommended and adopted, as it throws this Province into very serious difficulties at a time when very large powers are absolutely necessary to open out roads to the diggings, and which alone, owing to the peculiarity of some of the earlier land sales, could be met by such an Ordinance as that I assented to.

I am exerting myself to meet the inevitable attendant difficulties, but I fear that during the ensuing winter, when the traffic will cut up the roads, the effect of this disallowance will be fruitful of injurious influences.

I have, &c.,

The Hon. the Colonial Secretary,
Auckland.J. RICHARDSON,
Superintendent.

No. 49.

No. 250. THE SUPERINTENDENT, OTAGO, TO THE COLONIAL SECRETARY.

Superintendent's Office,
Dunedin, 18th January, 1862.

SIR,—

19th Dec., 1861, No. 207.

In my letter of date and number as per margin, I informed you that on a future occasion I would address you again on the subject of the Roads Ordinance which was disallowed, and which I now beg to do.

I will not again dilate on the extreme difficulties into which the Province has been cast by the advice given by Ministers, which resulted in the disallowance by His Excellency the Governor of the "Roads Ordinance, 1861." The extent of such difficulty owing to the peculiarity in the purchase of land, can only be fully appreciated by those who have the duty to perform of opening out the communication of the country, and the inevitable consequences of such disallowance can only be understood by those with whom rests the responsible task of making the communication with the mining population easy, and thus materially reducing the price of provisions.

I have now only to regard the disallowance as a fact and to intimate for the information of His Excellency's Government, that it is my intention to re-introduce the Bill in the April Session of the Provincial Council, and, in the meantime to request the consideration of the Government to the following explanations, which I believe will remove the objections which have been urged.

Should such not be the case, I shall waive for the good of the Province, the right which I believe it possesses to legislate for itself, when such legislation does not infringe constitutional law and the rights of private property. To introduce a law for each road would be impracticable, and therefore I have to submit that, should His Excellency's Advisers be still indisposed to accept my views of the case, they will inform me precisely what they will sanction, in order that no time may be lost in extricating the Province from the serious derangement resulting from the action already taken.

With respect to the objection on which the assent of the Government has been withheld to the Ordinance, it may be observed:—

That the object of vesting the roads of the Province in the Superintendent, was suggested by the fact that in several instances land has been already purchased and conveyed to the Superintendent for roads, and as the now existing law and the Ordinance disallowed gave power to shut up useless roads and dispose of them to the owners of the adjoining lands or otherwise, it did not appear how this power could be exercised unless the roads generally were made to vest in the Superintendent, and it does not clearly appear that such a provision would divert the title to the soil of all roads from the Crown.

By the law of England, although all the lands are supposed to be held immediately or mediately from the Crown, the soil of all public highways, either roads or rivers, belongs (*ad mediam filam viæ*) to the owners of the adjoining lands, and it is the way through and over the same only which is held to belong to the Crown, and constitutes the Queen's highway, and there is no reason to suppose that in New Zealand anything than the right of way over a road vests in the Crown. In all Crown Grants of land the reservation of the Crown is merely the right to make a road in, through, and over the same.

It does not clearly appear to what part of clause 3, the objection, that it is in excess of the powers of the Superintendent and Provincial Council, applies, but if it be to the formation of new main lines of road, it may be observed that the Otago block having been originally surveyed in rectangular sections, and the roads laid off in accordance therewith without reference even to their practicability, it has been found necessary to form new main lines of road throughout nearly the whole of the block, and this has been already done to a very large extent by arrangements with the owners of