

the land, and it is absolutely necessary that the Government, upon whom the duty of opening up the public roads devolves, should be enabled to exercise the functions given to it by this section, and great delay and inconvenience would ensue if the Superintendent and Provincial Council could not confer on the General Road Board, by a general Act, authority to do anything which the "Highways and Watercourses Act, 1858," empowers them to do by particular Acts.

With respect to the objection to clause 11, it may be observed that the existing Ordinances, although in a very confused and perplexed manner, give power to do all which this section authorises the new Board to do, without giving to the owners such notice and right to object to any such proceeding as is contained in this clause, and when it is considered that a right to make a road in, through, and over all land in the Province, has been expressly reserved and an allowance of land made for the same, it is difficult to discover how the power of making a road could be exercised in a fairer manner than is provided by this clause; nor could the owners of land have any better protection if the Provincial Council were called upon to pass a particular Act in every instance in which it was necessary to make or alter any particular line of road.

The Ordinance of 1861 having been in operation for some time before its disallowance was notified, was found to work well and satisfactorily, and the Government has been urged to call the Council together for the purpose of re-enacting it, but, as in the case of the Education Ordinance, has declined to do so without first ascertaining what specific alterations the General Government considers absolutely necessary to be made in its provisions.

The Honorable the Colonial Secretary,
Auckland.

I have, &c.,

J. RICHARDSON,
Superintendent.

No. 50.

MR. SEWELL TO THE SUPERINTENDENT, OTAGO.

Colonial Secretary's Office,
Auckland, 7th February, 1862.

SIR,—

Your Honor's letter, No. 250, of the 18th ultimo, on the subject of the disallowed Road Ordinance of the Province of Otago, having been submitted to the Hon. the Attorney-General, I have the honor to annex for your information a copy of a Memorandum, from that Officer, relative thereto.

I have, &c.,

His Honor the Superintendent,
Otago.

HENRY SEWELL,
For the Colonial Secretary.

MEMORANDUM BY MR. SEWELL.

February 5, 1862.

I regret extremely that the Superintendent of Otago should have suffered inconvenience from the disallowance of the "Roads Ordinance," referred to in his letter of the 18th ulto.

The rule applied in this case has been applied in all similar cases. Indeed, it would be impossible for Ministers to adopt any other course than that which is prescribed by the Constitution Act and the Laws of the Colony. If, unfortunately, the Acts of a Provincial Legislature are so framed as to conflict with the General Law, the responsibility for the consequences of disallowance rests with the Provincial, not with the General Government.

As regards the right of the Legislature of the Province to legislate for itself, independently of the Imperial or Colonial Legislature (a right which I understand his Honor asserts), I regret that I am obliged to differ from his Honor in opinion.

Where the soil of a public road, as in general is the case, has not been granted by the Crown, it remains vested in the Crown, and cannot be divested by an Act of the Provincial Legislature, which is expressly debarred from legislating on that subject.

His Honor will observe that the 2nd section of the disallowed Ordinance is expressly in contravention of this principle. It purports to vest all public roads in the Superintendent of the Province.

The 16th Land Regulation (confirmed by the "Waste Lands Act, 1858,") provides that it shall be lawful for the Superintendent, with the advice and consent of the Provincial Council, to reserve from sale and set aside for public uses any land within the Province of Otago; and such reserves shall be dealt with by Ordinance of the Superintendent and Provincial Council.

The roads in the Province are at present reserved under this power and the mode of dealing with lands so reserved is expressly pointed out in the Regulation, viz., that it must be by Ordinance of the Superintendent and Provincial Council.

This power is by the Ordinance taken from the Council and vested in the Superintendent alone.

The Highways and Watercourses Diversion Act prescribes the conditions under which highways may be diverted, and the mode in which roads stopped up may be disposed of, viz., by Crown Grant.

His Honor will see that the 7th section of the proposed Ordinance is altogether at variance with the law as settled by the Act of Assembly.

If it should be thought desirable to extend the powers of that Act, it will be proper to introduce a measure for that purpose to the General Assembly.