

FURTHER PAPERS RELATIVE TO

"The Port Chalmers Municipal Estate Ordinance, 1861,"
passed by the Provincial Council of the Province of Otago, Session XIV., and assented to by me on behalf of the Governor. These are in duplicate, you will be good enough, therefore, to return one of the copies.

I have, &c.,

J. RICHARDSON,
Superintendent.

The Honorable the Colonial Secretary.

No. 56.

MR. SEWELL TO THE SUPERINTENDENT, OTAGO.

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

SIR,—

With the view of enabling the Government finally to advise His Excellency with reference to the proposed "Port Chalmers Estate Ordinance," I draw Your Honor's attention to the following points :—

The object of the Ordinance appears to be to set apart as an endowment for the town of Port Chalmers, an estate to be composed of various Public Reserves in that town, of which grants have not yet been issued under the "Public Reserves Act."

I do not enter on the question of the general policy of such a measure, which is a proper one for the consideration of Your Honor's and the Provincial Council, but the Ordinance now submitted for His Excellency's approval does not appear to be well adapted for the purpose.

So far as it purports to enable the Superintendent to obtain grants of Public Reserves it is superfluous, because that power exists under the Public Reserves Act, beyond which the Provincial Ordinance would be inoperative. The Public Reserves Act enables the Governor to make, and the Superintendent to receive, such grants, and His Excellency will be advised to exercise that power in accordance with the provisions of that Act upon the request of Your Honor, though, I may add, it will be an additional fact in favor of such transfer that the Provincial Council approve of it, but the grant must be made for the specific objects of the Reserve for which it was originally made, and it will be necessary that His Excellency should be provided with the proper particulars to enable this to be done. If, after the grant so made, the Provincial Council, with Your Honor's concurrence, should desire to change the object of the reserve, the Public Reserves Act enables that to be done by Provincial Ordinance. The clause in the present Ordinance purporting to give to the Superintendent and Provincial Council that power, so far as it agrees with the Act of the General Assembly, is nugatory, and so far as it may be in excess of it, is inoperative.

It is, no doubt, the intention of Your Honor and the Council to vest in the Superintendent the power of granting leases of the land for twenty-one years, but it seems doubtful whether the 3rd section of the Ordinance will have that effect. The Public Reserves Act enables the Superintendent and Provincial Council to vest such power in the Superintendent, but the proposed Ordinance does not contain any enactment to that effect except by way of inference. It would seem to be at all events desirable to declare the intention of the Provincial Legislature in express terms.

But the greatest difficulty which I have felt in advising His Excellency on the question of this Ordinance is with reference to the 4th section, which is clearly in conflict with the Public Reserves Act. That Act expressly directs that all funds arising from Public Reserves should be paid to the Provincial Treasurer, and be appropriated by the Provincial Ordinance. Instead of this, it is proposed to lodge the funds with the Treasurer of the Town Board.

According to my present view, it would be impossible for me to advise His Excellency to allow an Ordinance so plainly at variance with the general law of the Colony; but before coming to a final decision, I shall be able to receive Your Honor's reply to this letter.

I have, &c.,

HENRY SEWELL,
In the absence of Mr. Fox.

His Honor the Superintendent,
Otago.

No. 57.

THE SUPERINTENDENT, OTAGO, TO THE COLONIAL SECRETARY.

Superintendent's Office,
Dunedin, January 20th, 1862.

SIR,—

In reply to your letter as per margin, I have the honor to state that on a consideration of the whole of the circumstances of the case, it would appear to be desirable that the "Port Chalmers Estate Ordinance" should be disallowed.

I have, &c.,

J. RICHARDSON,
Superintendent.

The Honourable the Colonial Secretary,
Auckland.

Jan. 7, 1862.