

FURTHER PAPERS RELATIVE TO

So far as it destroys the effect of Her Majesty's pardon, it appears to me to interfere with Her Majesty's prerogative.

If each place within Her Majesty's dominions were in turn to exercise such a power, the practical effect would be to add to the punishment appointed by law that of perpetual exile.

I call Your Honor's attention also to the 9th section, which interferes with the jurisdiction of the Supreme Court, and is at variance with the Constitution Act; and to the 11th section, which is at variance with the fundamental principle of the English Law of Evidence.

I shall be glad to receive Your Honor's reply before finally advising His Excellency on the above subject.

His Honor the Superintendent,
Otago.

I have, &c.,

HENRY SEWELL,
For the Colonial Secretary.

No. 65.

MR. SEWELL TO THE SUPERINTENDENT, OTAGO.

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

SIR,—

With reference to the "Water Police Ordinance" submitted for His Excellency's approval, I desire to draw your Honor's attention to the 3rd section, which purports to authorize the Superintendent to declare a certain hulk a prison. I am aware that the power of declaring prisons has been assumed under Provincial Ordinances by Superintendents of Provinces, though in derogation of the Governor's authority established by the Law of the Colony. It has always appeared to me at least doubtful whether such a power could have been so transferred; at all events, the present Government are not prepared to advise His Excellency to recognize such a principle. The power has, as you are aware, been misused in the Province of Otago.

As regards the general object of the proposed Ordinance, which is calculated for the better protection of the "Merchant shipping interest," by enforcing contracts between masters of ships and seamen, and the punishment of desertion, I must remark that as to Foreign ships, the "Foreign Seamen's Act, 1860," is the governing Law applicable throughout the Colony. That Act, though passed by the General Legislature of the Colony, was regarded with great jealousy by the Imperial Government. It was the subject of correspondence with the Secretary of State. It would be impossible for His Excellency to assent to a Provincial Ordinance dealing with such a subject, certainly not to an Ordinance conflicting with or extending the provisions of the general law.

The third part of the "Merchant Shipping Act," (adopted by the "Merchant Shipping Act Adoption Act, 1858,") provided for the cases contemplated by the proposed Ordinance as effectually as possible. I refer you to that Act as, I think, supplying all the power which the Provincial Government would desire.

Before finally advising His Excellency on the question of allowing or disallowing the Ordinance, I shall be happy to be favoured with your Honor's reply.

I have, &c.,

His Honor the Superintendent,
Otago.

HENRY SEWELL.

No. 66.

MR. SEWELL TO THE SUPERINTENDENT, OTAGO.

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

SIR,—

I call your Honor's attention to points arising with reference to the "Vagrants Ordinance, 1861," transmitted with your Honor's letter of the 21st ultimo.

Section 2 sub-section 10 appears open to verbal criticism. The use of "felt or other slippers" is no doubt intended to be coupled with the other circumstances mentioned in the clause, namely being found by night with a felonious intent. It is desirable to making the meaning of the clause now clear.

Some of the provisions of the Ordinance are of an excessively stringent nature, and should, I venture to submit, be re-considered by your Honor and the Provincial Council. The over stringency of a law in general tends to defeat itself.

Section 11, so far as it interferes with the jurisdiction of the Supreme Court, is of no force. It ought, however, to be expressly repealed as it may otherwise mislead the public.

I have to request that your Honor will propose to your Council an amendment of the Ordinance in this particular.

On hearing from your Honor to that effect, I shall be prepared to advise His Excellency to leave the Ordinance to its operation.

I have, &c.,

His Honor the Superintendent,
Otago.

H. SEWELL,
For the Colonial Secretary.