

1873.

NEW ZEALAND.

DISALLOWANCE OF PROVINCIAL BILLS,

(CORRESPONDENCE RESPECTING).

Presented to both Houses of the General Assembly by command of His Excellency.

No. 1.

His Honor W. ROLLESTON to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Christchurch, Canterbury, 17th January, 1873.

I have the honor to transmit herewith copies of the under-mentioned Ordinances passed by the Provincial Council, to which I have assented on behalf of His Excellency the Governor, namely:—

“The Diversion of Roads Special Ordinance, No. 6, 1872.”

“The Public Domains Ordinance, 1872.”

“The Canterbury Roads Ordinance Amendment Ordinance, 1872.”

“The Appropriation Ordinance, 1872-73.”

I have reserved the under-mentioned Ordinance for the signification of His Excellency's pleasure thereon, namely:—

“The Reserve No. 424 Ordinance.”

I may state that this Ordinance was passed for the purpose of enabling me to surrender to the General Government a portion of the reserve for a telegraph station.

I have, &c.,

WM. ROLLESTON,
Superintendent.

The Hon. the Colonial Secretary.

No. 2.

The Hon. G. M. WATERHOUSE to His Honor W. ROLLESTON.

SIR,— Colonial Secretary's Office, Wellington, 7th February, 1873.

I have the honor to acknowledge the receipt of your letter of the 17th ultimo, forwarding the following Ordinances passed by the Provincial Council of Canterbury, which your Honor had assented to on behalf of His Excellency the Governor, namely:—

“The Diversion of Roads Special Ordinance No. 6, 1872;”

“The Public Domains Ordinance, 1872;”

“The Canterbury Roads Ordinance Amendment Ordinance, 1872;”

“The Appropriation Ordinance, 1872-73;” and

“The Reserve No. 424 Ordinance, 1872,”

which your Honor had reserved for the signification of the Governor's pleasure thereon.

In reply, I have the honor to inform you that the Governor has not been advised to exercise his power of disallowance with respect to the four first-named Ordinances.

With regard, however, to “The Reserve No. 424 Ordinance, 1872,” the Government is advised that the land having been appropriated to the purposes of, or used as a site for, a telegraph station, nothing more was necessary than a surrender by your Honor under the authority of the second section of “The Public Buildings Reserve Act, 1867,” which surrender may be made without reference to the Provincial Council.

The Government is further advised that as in the Ordinance the words “dispose of” follow the words “sell and let,” it is open to question whether, read by the light of the Public Reserves Act, a surrender to the Queen without consideration is authorized by it. However, the more serious objection is that it undoubtedly authorizes the Superintendent to sell what he is (under arrangement already made by Government) to surrender gratuitously to the Crown; and as the Superintendent has power to make the surrender without Ordinance, the Ordinance has not been properly framed.

His Excellency has been consequently advised to withhold his assent.

I have, &c.,

His Honor the Superintendent, Canterbury.

G. M. WATERHOUSE.

No. 3.

His Honor W. ROLLESTON to the Hon. the COLONIAL SECRETARY.

SIR,—
 Superintendent's Office,
 Christchurch, Canterbury, N.Z., 20th March, 1873.
 Referring to your letter of the 7th ultimo, in which you inform me that His Excellency the Governor has been advised to withhold his assent to "The Reserve No. 424 Ordinance, 1872," I have the honor to forward, for your consideration, copy of a memorandum written by the legal adviser of the Provincial Government.

I have, &c.,
 W. ROLLESTON,
 Superintendent.

The Hon. the Colonial Secretary.

Enclosure in No. 3.

THE letter of the Colonial Secretary proceeds upon the assumption that the land has been appropriated to the purposes of, or used as a site for a telegraph station, and, supposing that to be the case, the General Government are correctly advised; but, as I am informed, the land has not been used or appropriated for any such purpose. I do not see how land granted to the Superintendent upon trust for a specific purpose can be said to be appropriated or set apart for any of the purposes mentioned in section 2 of "The Public Buildings Reserves Act, 1867," except under the authority of an Ordinance. Section 8 of the Public Reserves Act enacts that the specific purposes for which any land may be held by the Superintendent shall only be changed or appropriated to other purposes under the authority of an Act or Ordinance of the Provincial Council. There has been, then, no appropriation or use which would enable the Superintendent to convey the land.

I am aware that section 2 uses the words "shall be appropriated set apart or used;" but it seems to me that the Superintendent would not be justified in permitting the land to be used for any other purpose than that for which it has been granted, and would, in fact, be guilty of a breach of trust. Section 8 of "The Public Reserves Act, 1854," is conclusive as to his duty in the matter. If the Superintendent were to allow the land to be used as a site for the telegraph station, with the intention that as soon as it had been so used he would grant a surrender to the Crown, he would initiate a system by which the most valuable lands of the Province might be transferred by him to the Crown without any reference to the Provincial Council.

If this land can be transferred without an Ordinance, then the reserves in Christchurch can be, by following the same plan.

11th February, 1873.

W. P. COWLISHAW.

No. 4.

The Hon. W. H. REYNOLDS to His Honor W. ROLLESTON.

SIR,—
 Colonial Secretary's Office, Wellington, 4th June, 1873.
 I have the honor to acknowledge the receipt of your letter of the 20th March last, enclosing for the consideration of the Government a copy of a Memorandum written by the legal adviser of the Provincial Government on the subject of "The Reserve No. 424 Ordinance, 1872," from which His Excellency's assent was withheld.

In reply, I have to inform your Honor that the Government do not agree with Mr. Cowlshaw that the words "used for" mean "used for under Ordinance of Provincial Legislature," and that it has been the practice to pass Ordinances in such cases. There are several cases in which like surrenders have been made to the Crown by the Superintendent of Canterbury without intervention of Provincial Ordinances: for instance, Superintendent of Canterbury to Crown—Grant of Reserve 168, at Temuka (for telegraph station), dated 11th May, 1870; Superintendent of Canterbury to Crown—Section 224, Sumner, dated 3rd October, 1870.

If however, your Honor is still advised otherwise, I have to request you to be good enough to obtain the sanction of a Provincial Ordinance for the purpose.

His Honor the Superintendent, Canterbury.

I have, &c.,
 WILLIAM H. REYNOLDS.