

In 1868 the New Zealand University Endowment Act was passed, and that Act recites that certain lands specified in a schedule had been set aside for the endowment of a University, but that doubts were entertained of the validity of the reserves for the purpose, and that it was expedient to validate them, and authorizes reserves to be thereafter made for a like purpose.

The Act validates the reserves so made, and authorizes reserves of waste lands of the Crown to be made for a like purpose to a limited extent, not exceeding 10,000 acres in each Province.

The Act provides that the reserve shall be for the endowment of such University as the Legislature shall declare to be the University to be endowed thereby.

This Act therefore validates certain specified reserves, and authorizes reserves of "waste lands" of the Crown to be made.

As to reserves to be made, the Act does not apply to confiscated lands, for such lands are not "waste lands." The main and primary object of the Act was to enable the Governor to make reserves of "waste lands" for the endowment of an University, though none then existed; for the endowment even of an existing institution was not within the powers held by the Governor over waste lands of the Crown.

But amongst the lands specified in the Schedule as having already been made is a block of 10,000 acres of confiscated land in the Province of Auckland.

The land is not more definitely described; but Mr. Masters states (*see* his Memo. Feb. 24th, 1874) that this block of 10,000 acres is one of the blocks of 10,000 acres specified in the notice of the Hon. J. Hall, referred to by Mr. Tancred. Mr. Masters is not clear on this subject; but assuming him to be correct, then that block was, at the time of Mr. Hall's notice, a reserve for an University to be specified by the Legislature, not by the Governor or his Ministers. If Mr. Masters is correct, then as to the 10,000 acres the effect of Mr. Hall's notice would have been to divert from the purpose fixed by the Legislature that reserve. However, I believe that examination proves that the notice was issued in error, not only as to the 10,000 acres, but also as to the other two blocks of 10,000 acres.

On the 3rd June, 1871, the Under Secretary wrote on behalf of the Colonial Secretary to Dr. Pollen, enclosing description of these three blocks, describing them as reserved or intended to be reserved under "The New Zealand University Endowment Act, 1868," and requesting to have them properly surveyed, &c., so as that they might be effectually reserved in the manner required by law.

On 28th August, 1871, Dr. Pollen wrote stating that he had caused the proposed reserves to be marked off, and he sent plans, &c., of these reserves.

This correspondence was laid on the table of the Legislative Council in the Session of 1872, as a Return to an Order made on motion of Mr. Stokes.

In the preceding Session, Mr. Stokes moved for a Return of Reserves made for the Colonial University, and whether any, and if so which, had been granted by the Crown, and what steps taken for carrying out the provisions of "The University Act, 1868."

Mr. Stokes meant, no doubt, "The New Zealand University Endowment Act, 1868." (See letter of Major Richardson to Mr. Sewell, 71-3131.)

An order was made for the return, and in this return, made by Mr. Joshua Strange Williams as Secretary for Crown Lands, there are mentioned these three blocks of land, together with all other reserves made under "The Endowment Act, 1868." At the foot of the return it is stated as follows:—

"By 'The University Endowment Act, 1868,' lands reserved under its provisions remain vested in the Crown until the application of the same has been determined by the General Assembly. No Act has yet been passed determining the application, and consequently Crown grants have not been issued."

It is clear, therefore, from the correspondence between Mr. Gisborne and Dr. Pollen, and the return just mentioned, and other evidence, that there was no intention to treat these sections of land otherwise than as reserved under "The University Endowment Act, 1868;" that is, as endowment for such University as should thereafter be expressly named by the Legislature as the object of the endowments.

The error originated in the supposition of Mr. Hall that the reserves were for the endowment of the existing University. This error was not an unlikely one to fall into, because it is clear from the proceedings in connection with the attempts to unite this University and the Otago University, it was supposed that, if the union were effected, the existing University would obtain the endowment.

On Mr. Tancred applying by letter, in December, 1873, for power to the University to deal with these lands, the subject came up for consideration, and not only was the error above mentioned disclosed, but it also appeared that two out of these reserves had not been properly made.

"The New Zealand Settlements Act, 1866," expressly authorized the making of reserves of confiscated lands for such purposes as "The Waste Lands Act, 1858," authorized the Governor to reserve waste lands. These purposes did not include endowment of any institution, whether educational or otherwise.

"The Confiscated Lands Act, 1867," authorized the Governor, by Proclamation, to make reserves for endowment of educational institutions; but that such reserves should be made generally, and be appropriated to special purposes only by Act of Assembly.

No proclamation has been made under this section of these lands; and if such had been made, it will be observed that an Act of Assembly would be required in order to appropriate the land as a reserve for the existing University. But the regulations of 1871, already referred to, for the sale and disposal of confiscated land, do affect to authorize the reservation of lands "for education," and it was under these regulations that Mr. Hall issued his notice. I think it clear that the regulations would be *ultra vires* if the true construction of them is to purport to authorize the endowment of any educational institutions; for "The New Zealand Settlements Act, 1866," and "The Confiscated Land Act, 1867," are quite inconsistent with such a power.

Consequently, I am of opinion that no valid reserve has been made of two of the blocks for any University; that as to these two, there is a clear intention to reserve them for the same University which shall be declared to be the object of the reserves made under "The University Endowment Act, 1868." That as to these two and the third, (that one specified in the Schedule to "The Endowment