

main point to be observed in connection with the case is that the land in question, at the time it was set apart, was not the property of the Natives, but belonged to the Crown, and it was competent for the Governor, if he had the power to dedicate it, to set it apart for the purpose set forth in the grant, *i.e.*, for the use and towards the maintenance of a school for the education of children of poor and destitute persons being inhabitants of islands in the Pacific Ocean, &c.

The dedication of the aforesaid land to this purpose did not contravene any Trust, or deprive any person of their property, as was done in the case of the Motueka grant, as the land in question was lying waste at the time, and had not been appropriated to any other use.

TE AUTE ENDOWMENT.

With reference to the land comprised in the grant of Te Aute, this is also on an entirely different footing to the estates included in the Motueka grant.

The educational endowment at Te Aute is comprised in three grants of contiguous properties, of which two were ceded by the Maoris to the Crown under the provisions of "The Native Reserves Act, 1856," to enable a grant to be issued, and the third is a free gift of Crown land promised by Sir George Grey. These grants were made in favour of the Bishop of New Zealand, who subsequently conveyed them to trustees appointed by the General Synod.

The trust upon which the land was given by the Maoris differs from that affecting the free gift from the Crown.

The grants of the lands given by the Maoris comprise the blocks containing respectively 1,745 and 1,408 acres. One is dated the 10th June, 1857, and vests the land in the Bishop of New Zealand upon trust as an endowment for a school to be maintained at Te Aute for the benefit of the aboriginal inhabitants of New Zealand. The other also bears the same date, and is upon the same trust. The one comprising the lands given by the Government—*viz.*, 4,244 acres—is dated the 7th July, 1857, and is vested upon trust as an endowment for a school to be maintained in the District of Ahuriri, for the education of children of both races in New Zealand.

It will be seen that the two trusts are quite distinct, and, in the case of the 3,153 acres of Maori land, that the Natives gave it voluntarily for the purpose.

The matter as regards the endowments at Wanganui and Te Aute stands thus: The one at Wanganui comprises Crown land entirely, and the one at Te Aute consists partly of Native and partly of Crown lands, but the Native land was voluntarily ceded for the purpose.

It is obvious, therefore, that neither of the cases quoted by Mr. Hursthouse are on all-fours with the Motueka endowment, for, with the exception of a small parcel containing 160 acres of indifferent Crown land, the rest of the estate there consists of land that was specially allotted to the Natives by Commissioner Spain in 1844 for their use and occupation, and subsequently appropriated as an endowment in 1853 for the education "of children of our subjects of all races, and of other poor and destitute persons, being inhabitants of islands in the Pacific Ocean."

It will be observed that the condition of the grant was in contravention of the original intention for which the lands were set apart.

(*d.*) It is alleged that the Natives sanctioned the allocation of the aforesaid lands; but this they deny, and I am disposed to believe them, as their attitude throughout towards the school, on their becoming aware that their land had been appropriated to the purpose, entirely bears out the assertion that they were not parties to the transaction—in fact, some of the land was in their occupation at the time, and great dissatisfaction was manifested at their having to remove.

The draft deed submitted to the Secretary of State for the Colonies by Sir George Grey in 1851, at the time the proposal to set apart land for educational endowments for the Natives was under consideration, contains the words "has by a deed from the Natives been ceded for the support of the said school;" but the grant of the Motueka endowment contains no such words: and the inference is that the consent of the Natives was not sought, but that the land was set apart without their concurrence, and, as the evidence that was taken by the Commission in 1869–70 also tends to show, without the knowledge of any one else.

Major Richmond, who was then conservator of the estate, stated to the Superintendent of Nelson that the first he knew of it was the receipt by him of the grant; and the Provincial Government, on hearing of the appropriation, immediately protested against it, leave being subsequently given by the Imperial Government to try the validity of the grant: but no action was taken by the authorities.

(*e.*) The interests of the tenants will not be impaired by the change; but it is easy to guard them against any probability of such a result ensuing by inserting suitable words in the clause to that effect.

The conditions of the grant have been violated over and over again. The school has been permanently closed since May, 1881, and there is no likelihood of it being again reopened. The funds are now being spent entirely at variance with the intention for which the endowment was made, being disbursed by the Bishop of Nelson to provide education for the children of destitute persons on application being made to him.

This is the action that it is said is now being taken in regard to the expenditure of the funds; but, as education is free to all, it is difficult to perceive on what grounds this line of conduct can be justified, apart from the question of the propriety of abandoning the conditions of the grant that the proceeds of the estate are to be expended for the maintenance of a school at Motueka for certain purposes.

If legislative permission cannot be obtained for setting aside the grant, then the Natives should be permitted to test its validity in the Supreme Court, although it seems rather hard that they should be put to the expense of recovering their estate in this manner.

6th August, 1886.

A. MACKAY.