

MEMORANDUM relative to the MOTUEKA SCHOOL ENDOWMENT.

Government Buildings, Wellington, 1st November, 1887.

I HAVE very little more to add to the information already furnished in my memoranda of the 9th July, 1883, and the 6th August, 1886. The position of the matter is the same now as it was then.

With reference to the telegram of the Bishop of Nelson* included in the above extract, "the destitute children" alluded to are the children of Europeans; but the fact cannot be set aside that the condition of the grant—i.e., that a "school should be maintained at Motueka"—has been violated over and over again, and for a considerable time; consequently anything that may now be attempted cannot retrieve the past or operate as a waiver of the breach of covenant.

With regard to the statement made by the Bishop of Nelson that he is prepared to maintain that the Maoris agreed to give the land for the purpose, his Lordship proposes to undertake a task that others who are more familiar than he can be with the early circumstances connected with the setting-apart of these lands are not prepared to do; but, even supposing this position was established, it is a matter of little consequence, as the Maoris had no right of disposal over these lands, the Government being virtually the trustee in accordance with the New Zealand Company's scheme.

In connection with the matter there is another point on which a doubt exists, and that is, whether the Bishop of Nelson has any legal status in regard to the lands comprised in the endowment. The land was originally granted to the Bishop of New Zealand and his successors; but, as his Lordship was appointed under Letters Patent, which he surrendered, he could have no legal successors, as the term "successors" in the grant meant successors under the Patent.

An Act was passed in 1858, intituled "The Bishop of New Zealand Trusts Act, 1858," authorising the Bishop to convey lands vested in him for religious, educational, charitable, or other purposes to trustees nominated by the General Synod; but it has not been shown that action of this kind was taken in the case of the Motueka lands, and the assumption is that no steps were taken, as Bishop Selwyn, who was one of the trustees originally appointed by the Governor to manage these lands, was fully aware of the objections raised against the Motueka grant, as will be seen by the subjoined letter written by his Lordship relative to the action taken by the Provincial Government of Nelson to obtain the necessary legal facilities to set the grant aside.

I pointed out at the beginning of this memorandum that the position of the matter is not altered, anything that the Bishop of Nelson may now be doing notwithstanding.

In view of all the circumstances, I would beg to submit that immediate measures be taken to have the grants set aside, either by the aid of the Legislature or else by permitting the Maoris to have recourse to the Supreme Court.

The following reasons appear to form a sufficient cause why action should be taken in the matter:—

(1.) The grants are both illegal and inequitable: illegal, irrespective of the position of trustee occupied at the time by the Government in respect of these lands, because the lands so appropriated have been applied to uses entirely at variance with the intention for which they were originally set apart—viz., for the special benefit of certain Natives; inequitable, because lands that were set apart in fulfilment of a special engagement with the Natives have been made available for the education of European children and children of other poor and destitute persons of islands in the Pacific Ocean.

(2.) Because the terms of the grant—that religious education, industrial training, and instruction in the English language should be constantly taught—have not been maintained, the school having been frequently closed. The school was closed in the first place from March, 1864, to May, 1868. It was reopened again then, and remained so, with varied success, for about thirteen years, and was again permanently closed in May, 1881, in which condition it has remained ever since. An attempt has been made recently to give matters an appearance of activity by putting in operation the objectionable conditions of the grant by utilising the funds of the estate in educating destitute children of European parents—a very insufficient reason for leaving the matter in its present unsatisfactory condition.

The Under-Secretary, Native Department, Wellington.

A. MACKAY.

COPY of the BISHOP of NEW ZEALAND'S LETTER relating to the MOTUEKA GRANTS.

SIR,—

7, Old Square, Lincoln's Inn, 6th March, 1855.

In answer to the inquiries contained in your letter of the 20th February, 1855, I beg to state that the grants in question were executed by the late Governor without any previous application on my part. I have not taken any steps in consequence of these grants, excepting such as appeared to be necessary for the conservation of the property—viz., executing a power of attorney to enable competent persons in the settlement of Nelson to act for me in the management of these estates; but I have done nothing which would amount to an appropriation of the land, and I have never sold or agreed to sell any part of it, and have never received anything either on account of rents or otherwise.

It now appears that there are serious questions as to the trusts to which these lands and their rents are properly applicable, and as to the power of the Government to appoint trustees or to delegate the trusts, if any, reposed in itself, and I do not feel it within my province to decide any such question, but shall be ready to act with respect to these lands in any manner which may be directed by any Court of competent jurisdiction.

H. Merivale, Esq.

G. A. N. ZEALAND.

* *Hansard*, 6th May, 1887, p. 121. (Copy of telegram attached.)