

PART III.—CHURCH-SITE.

PRELIMINARY.

86. The questions arising in respect of the church-site are :—

- (a) Whether the Crown should have abstained from purchasing ;
- (b) Whether the price paid was fair and reasonable ;
- (c) Whether the purchase-money has been applied as by law required ; and
- (d) Whether the Natives occupying the church-site have any valid reason for refusing to vacate and give the Crown vacant possession thereof.

HISTORICAL OUTLINE.

87. The land described as Lots, 1, 2, and 3 on Plan No. 1330P, deposited in the office of the Chief Surveyor, Auckland, is the land referred to in subsection (5) of section 7 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1925. The history of this piece of land is as follows :—

- (a) By section 169 of the New Zealand Native Reserves Act, 1856, the Governor was empowered to grant to trustees land appropriated by aboriginal Natives for sites for churches and burial-grounds and for endowments for schools for the benefit of Natives. In purported pursuance of this Act, certain aboriginal inhabitants on the 30th August, 1858, executed a deed of gift to Her Majesty the Queen of land therein described and delineated on a plan drawn in the margin thereof upon trust to grant the land to the Anglican Bishop "for a site for a church, for a burial-ground, and for the endowment of a school in connection with the Church of England."
- (b) A Crown grant issued in 1859 was expressed to be to "George Augustus, Bishop of New Zealand" upon trust "as a site for a church and burial-ground and as an endowment for schools for the benefit of the aboriginal inhabitants of the Colony of New Zealand." The land as delineated in the plan consists of two blocks divided by a road, one block being 3 acres 0 roods 36 perches and the other 1 acre. On the plan in the Crown grant a line appears to divide the larger block into two parts—namely, into a parcel of 1 acre 0 roods 18 perches and another parcel of 2 acres 0 roods 18 perches. The boundaries are referred to by measurements from stakes in the ground and by reference to a "Native chapel," which is shown in the plan as situated on the larger block. The road shown in the plan as dividing the block was never more than a paper road prior to the land being recently taken over by the Crown.
- (c) At one time there was a large number of Natives living in and about the area in question. Eventually there ceased to be a church or chapel on the ground, the explanation being that a church had been built on the flat at Orakei, a short distance away, where the Natives could attend. A schoolhouse and schoolmaster's house were, however, erected on the land and school was conducted there. At some time a fence was constructed, which included both blocks and the intervening paper road. A disastrous fire burned down the settlement, but the school and schoolmaster's house escaped. Most of the Maoris then moved elsewhere, but some remained. The schoolmaster apparently left, and the Maoris occupied the school and schoolhouse. Later the school was burned down, but the master's house is still in existence, and it and some three or four small cottages are occupied by Maoris.
- (d) There is a burial-ground on the area where a number of Maoris are buried. When the burials first commenced does not appear. It is doubtful whether it was established by the trustees, because it is for the most part situated upon the paper road. Burials have continued up to recently to be made in this plot.
- (e) The road shown between the two blocks became a public highway on the acceptance by the Crown of its dedication evidenced by the issue of the Crown Grant on the 28th June, 1859.

The above statement is taken substantially from the judgment of Mr. Justice Reed in the action *Whititiri v. the King*, (1938) G.L.R. 379.

Question 9 : Whether the Crown should have abstained from purchasing ?

88. There was a school and burial ground at the papakainga. For many years prior to 1926 the land held upon trust could not be applied for the primary purpose of the trust, and Natives were allowed to use the trust land as licensees. By 1921 it had become clear that the surrounding land would no longer be occupied by the Natives, that it would be used for subdivisational purposes, and that the retention of the land in such a suburb would not continue to serve the purposes for which the trust had been constituted. The Crown proposed to buy, and the trustees agreed to sell, the land. There existed no circumstance or reason why the Crown should have abstained from purchasing the said land. The price paid was a fair price, the burial-ground was substantially upon what was a highway, and the Crown having acquired the land might still hold such part of it upon which the burial-ground was situated for future use as a burial-ground, or as a burial-ground no longer in use.

On the 28th April, 1926, the church land was sold and conveyed to His Majesty the King. By Proclamation and otherwise a road which had included the paper road above referred to became vested in the Auckland City Council and was transferred to His Majesty the King on the 29th August, 1933.

89. Question 9 is, "Whether at the time the Crown purchased from the General Trust Board of the Diocese of Auckland the land described as Lots 1, 2, and 3 on Plan No. 1330P, deposited in the office of the Chief Surveyor, North Auckland District, being the land referred to in subsection (5) of section 7 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1925, there existed any circumstances or any valid reason why the Crown should have abstained from purchasing the said land or any part thereof (apart from any doubts as to the power and authority of the Diocesan Board to sell the land and apart also from any legally enforceable objection to such purchase)." The answer is "No."