

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL on the Appeal of FREDERICK WALLIS AND OTHERS v. HIS MAJESTY'S SOLICITOR-GENERAL FOR THE COLONY OF NEW ZEALAND, from the Court of Appeal of New Zealand. Delivered 10th February, 1903.

Present at the Hearing: Lord Macnaghten, Lord Lindley, Sir Ford North, Sir Arthur Wilson.  
Delivered by Lord Macnaghten.

THIS is an appeal by persons claiming to be trustees of a certain charitable endowment in New Zealand against an order of the Court of Appeal of that colony. The order appealed from was made at the instance of the Crown on the occasion of an application by the trustees asking for the approval of a scheme for the administration of the charity.

The effect of the order was to pronounce the endowment null and void from its very commencement, and to discharge the trustees from all active duties in connection with it, declaring the charity property to have become the property of the Crown, but leaving it still in the hands of the trustees, and for the time being at least apparently derelict.

So far as the evidence goes, there can be no dispute about the facts. The documents relating to the formation of the charity are on record. The earliest of those documents in point of date, and the most important, is an instrument not under seal, which, in accordance with the legal phraseology in use in the colony, is described in a subsequent Crown grant as a "deed" of cession. It is in fact a letter addressed to Sir George Grey, the Governor of New Zealand, by certain Native chiefs and leading men among the Maoris, who were then in possession of lands called Whitireia, in the District of Porirua, near the south-western extremity of the northern island. The body of the letter is in the following terms:—

"FRIEND, GOVERNOR GREY,—

"Otaki, 16th August, 1848.

"Greeting.—It is a perfect consenting on our part that Whitireia shall be given up to the Bishop for a college. We give it up not merely as a place for the Bishop for the time being, but in continuation for those Bishops who shall follow and fill up his place to the end, that religion or faith in Christ may grow, and that it may be, as it were, a shelter against uncertain storms—that is, against the evils of this world. This is the full and final giving-up of that place as a college for the Bishop of the Church of England."

It is in evidence that some of the donors, and those the leading men amongst them, were converts to Christianity who had been educated under the superintendence of the Right Rev. George Augustus Selwyn, then Bishop of New Zealand, at St. John's College, Auckland. That college, founded by the Bishop and named after his own college at Cambridge, was established for the purpose of providing religious education, industrial training, and instruction in the English language for Her late Majesty's subjects of all races, and of children of poor and destitute persons being inhabitants of islands in the South Pacific. It was a flourishing institution and regarded as a powerful factor in the civilisation of the country. The Bishop, as is well known, had acquired an extraordinary influence in New Zealand. His striking personality, his devotion to his Master's service, and his zeal for the welfare of the Maori race, had produced a profound impression on the Native mind. It cannot be doubted that it was the object of the donors, so far as in them lay, to imitate the Bishop's example, and to make some provision towards the establishment of an institution like the Auckland College near their own homes, in the south of the island. The cession is in terms an absolute, unqualified, and unconditional dedication to charity, the general purpose or end of which is declared to be "that religion or faith in Christ may grow."

The Government at the time warmly commended the action of the Native donors. The answer to their letter has not been put in evidence, but its tenor may be gathered from the following minute, dated the 7th October, 1848, and signed by the Lieutenant-Governor, which is printed in the record:—

"Acknowledge this and say that I shall have much pleasure in sanctioning this giving up a portion of their reserves at Porirua for the benevolent and useful purpose of founding a college, and that I will communicate their offer to the Lord Bishop. Such laudable and generous conduct will be made known in England, and cannot fail of insuring the commendation of all good men, and the Queen will rejoice in seeing her Maori subjects setting so good an example to the Europeans. When they wish, I will send over a surveyor that they may indicate the quantity and boundaries of the land they wish to transfer to the Bishop, that a plan may be made and the arrangement completed."

"E. EYRE, Lieutenant-Governor."

The Governor, it will be observed, sanctioned the proposed cession and undertook to give effect to it without attempting to make any stipulation, condition, or reservation of any sort or kind. As the law then stood, under the Treaty of Waitangi the chiefs and tribes of New Zealand and the respective families and individuals thereof were guaranteed in the exclusive and undisturbed possession of their lands as long as they desired to possess them, and they were also entitled to dispose of their lands as they pleased, subject only to a right of pre-emption in the Crown. It was not until 1852 that it was made unlawful for any person other than Her Majesty to acquire or accept land from the Natives (15 and 16 Vict., c. 72, s. 72). The founders of the charity therefore were the Native donors. All that was of value came from them. The transfer to the Bishop was their doing. When the Government had once sanctioned their gift, nothing remained to be done but to demarcate the land, and place on record the fact that the Crown had waived its right of pre-emption. That might have been effected in various ways. The course adopted was to issue a Crown grant. That, perhaps, was the simplest way, though the Crown had no beneficial interest to pass. After all, it was only a question of conveyancing, as to which the Native owners were very possibly not consulted.

In accordance with the Governor's suggestion, the land intended to be included in the cession was marked out and surveyed. It was found to comprise about 500 acres. On the 28th December,