the property of the Crown for two reasons: In the first place, they thought "the grant had become void on the ground that it sufficiently appeared from the evidence that Her Majesty was deceived in her grant." In the second place, assuming that a school satisfying the terms of the grant had been at one time established, they held that the duration of the trust must have come to an end, because the trust was only to last "so long as religious education, industrial training, and instruction in the English language should be given to the youth educated therein or maintained thereat."

Now, as it is common ground that no school was ever established at or in the neighbourhood of Porirua, it would seem to follow that the occasion on which the trust, according to the construction placed on the grant by the Court of Appeal, was to cease and determine never arose and never could have arisen. It appears therefore hardly necessary to consider the second ground on which the Court of Appeal determined the case in favour of the Crown. It was not pressed at their Lordships' bar. The learned counsel for the respondent were in much the same difficulty in attempting to support the first ground upon which the Court of Appeal relied. There, too, the Court had recourse to an assumption which has no basis in fact. What evidence is there that the Crown was deceived? Absolutely none. The evidence is entirely the other way. The Governor undertook to complete the arrangement proposed by the Native donors as soon as he received their letter. He did not even wait to communicate with Bishop Selwyn. It is not suggested that he communicated on the subject with anybody else.

Now, it would be absurd to found a charge of misrepresentation on the letter of the Native donors. But, if the Native donors were innocent, with whom is the blame to rest? The evidence which the Court of Appeal said was sufficient to prove misrepresentation was discovered by them in the introductory recitals of the Crown grant. But the grant is not a deed *inter partes*. The statements in it are the statements of the Crown. The statement that a school was "about to be established at Porirua" is just as consistent with an intention on the part of the Governor to establish the school by the aid of public money, or an expectation on his part that the announcement in England of the generosity of the Native donors, coupled with the approval of Her Majesty, would bring in ample funds for the object in view, as it is with the supposition of representations made to the Governor by some unknown persons interested in procuring this grant from the Crown. If the representative of Her Majesty was unduly sanguine; if he did think that the hopes and aspirations of the Native donors would attain a speedy consummation, that is no ground for suggesting that the Crown was deceived. And, indeed, expectations which may now seem to have been over-sanguine, or even unfounded, might not improbably have been fulfilled if it had not been for the Maori war and the removal of Bishop Selwyn to an English see before the war was finished.

After all, what does the statement in question come to? The Crown grant says that a "school is about to be established at Porirua." That does not imply that the school was to be established within any fixed and definite period of time. The Governor must have known the circumstances as well as anybody. He knew that, so far, nothing whatever had been contributed toward the establishment of this school but a piece or parcel of land for the present wholly unprofitable. How could he have been deceived into thinking that the school was to be established in the immediate future? Suppose some one at his elbow, with more sense and foresight than he seems to be credited with, had pointed out with effect that many hindrances might arise—that there might be a Native war, that the Bishop might be removed, and that the school might not be established for fifty or even one hundred years—would that have altered the action of the Governor? It might have modified the language of the grant. It might perhaps have led to the omission of the word "about," or to the substitution of the expression "intended to be," for the words "about to be," or to the adoption of some other phrase not obnoxious to hypercriticism. But the substance of the transaction would not have been altered. The attitude of the Governor would have remained just the same. What the Governor was looking to when he welcomed the offer of the Native donors was not the immediate establishment of a school, but the effect that the action of the Natives would produce in the colony and, above all, in England. Why should the Court attribute to a Government of the past more than childlike simplicity, in order that the Government of to-day may confiscate and appropriate property which never belonged to the Crown, and which the Crown encouraged the rightful possessors to dedicate to charity?

The learned counsel for the respondent, feeling that they could not support the judgment of the Court of Appeal on either of the reasons assigned, fell back on the argument suggested by the Solicitor-General, that there was no general purpose of charity, but only an intention to erect "a specific school on a specified site." But that is a very narrow view of the transaction, at variance, in their Lordships' opinion, with the express terms of the gift, and opposed to principles laid down in recognised authorities such as The Attorney-General *v.* The Bishop of Chester (1 B.C.C. 444), and The Incorporated Society *v.* Price (1 J. and L. 498). Counsel also dwelt on the length of time which has elapsed since the date of the original gift without anything having been done in the way of establishing the proposed school. But it is well settled, as stated in Tudor's "Charitable Trusts" (3rd ed., p. 53), that where there is an immediate gift for charitable purposes the gift is not rendered invalid by the fact that the particular application directed cannot immediately take effect or will not of necssity take effect within any definite limit of time, and may never take effect at all. In support of this proposition the learned writer cites a number of authorities, the latest of which is Chamberlayne *v.* Brockett (8 Ch. 206) before Lord Selborne, L.C.

So far their Lordships have treated the case as if the order under appeal had been made on a proper application and in a suit properly constituted. In fact, however, the application was entirely irregular, and the suit was not one in which such an order as that obtained by the Solicitor-General ought to have been made. It is contrary to the established practice of the Court to permit a defendant to an action for the administration of the trusts of a settlement, not void on the face of it, to impeach the settlement in his defence to that action. If he thinks he has a case for setting aside the settlement, or having it declared null and void, he must attack it openly and directly in an action or counterclaim in which he comes forward as plaintiff. Any other course would be inconvenient, embarrassing, and unfair. The present case affords a good illustration of