the propriety of the rule. The Solicitor-General declined his proper duty and refused to bring an information. The trustees were compelled to come forward as plaintiffs. The Solicitor-General put in a defence. He submitted that the Crown might be entitled.

The case of the Crown was launched in a half-hearted fashion. The point was suggested rather as a difficulty in the way of administration than as a claim to property. In argument before the late Chief Justice, the Solicitor-General seems to have become rather bolder, but his contention was disregarded. Then he appealed to the Court of Appeal, asserting that property of which the Crown was never possessed had reverted to the Crown. But the validity of the charitable trust was not in issue in the suit. There could be no issue in that suit between the Crown and the charity. There was no evidence adduced on behalf of the Crown. There was no one put forward by the Crown who could be cross-examined on behalf of the charity. The Native donors, whose claim would at any rate be superior to that of the Crown, and whose interest is alternately magnified and ignored by the Solicitor-General, were not represented either directly or indirectly. Then on the hearing of the appeal the Solicitor-General applied for and obtained leave to amend his defence. A formal order for the amendment was afterwards obtained on the ground that such amendment was necessary "to more clearly define the ground of defence of the Crown." But the amendment only made the confusion worse. It was a medley of allegations incapable of proof, and statements derogatory to the Court. But the Court accepted it and treated it with extreme deference. The learned Judges intimate pretty plainly that, if they had not been able to find satisfactory reasons for deciding in favour of the Crown, the amendment would of itself have prevented their making an order in favour of the trustees. The amendment divides itself into two parts. In the first place, it asserts that the Crown has come under some undefined and undisclosed obligations to the Natives. The Court seems to think that this assertion must place the Court in a considerable difficulty. Why? Why should a Court which acts on evidence and not on surmise or loose suggestions pay any attention to an assertion which, if true, could not have been proved at that stage of the proceedings, and which the evidence in the cause shows to have been purely imaginary? According to the evidence, the only obligation which the Crown undertook was to waive its right of pre-emption.

The view of the Court of Appeal is to be found in a passage towards the end of their judgment, which runs thus: "What the original rights of the Native owners were, what the bargain was between the Natives and the Crown when the Natives ceded the land, it would be difficult if not impossible for this Court to inquire into, even if it were clear that it had jurisdiction to do so." Their Lordships are unable to follow this observation. The land was part of the Native reserves, as appears from the Government minute of the 7th October, 1848. At the date of the cession to Bishop Selwyn the rights of the Natives in their reserves depended solely on the Treaty of Waitangi. There is not in the evidence the slightest trace of any cession to the Crown or of any bargain between the Crown and the Native donors. Of course, if the Crown comes forward as plaintiff the transaction may assume a different complexion. There may be in existence evidence which has not yet been disclosed. But if the Crown seeks to recover property and oust the present possessors, it must make out its case just like any other litigant. All material allegations must be proved or admitted. Allegations unsupported go for nothing. Notwithstanding the doubts expressed by the Court of Appeal, it is perfectly clear that the Court has jurisdiction to deal with a claim to property made on behalf of the Crown when properly brought forward. It has no right to decline jurisdiction, still less has it a right to stay its hand at the instance of a claimant who may present a case, into which it may be difficult if not impossible for the Court to inquire, even though that claimant be the Crown. The second part of the amendment, to which also the Court seemed disposed to yield, is more extraordinary still. It asserts that the Executive Government has determined . . . that any departure from the precise terms of the grant by the application *cy-près* of the . . . land and funds without the assent of the Parliament of the colony would contravene the terms of the . . . cession, and be a breach of the trust thereby confided in the Crown." "We see great difficulty," say the learned Judges, "in holding that in such circumstances the Court could or ought to interfere." The proposition advanced on behalf of the Crown is certainly not flattering to the dignity or the independence of the highest Court in New Zealand, or even to the intelligence of the Parliament. What has the Court to do with the Executive? Where there is a suit properly constituted and ripe for decision, why should justice be denied or delayed at the bidding of the Executive? Why should the Executive Government take upon itself to instruct the Court in the discharge of its proper functions? Surely it is for the Court, not for the Executive, to determine what is a breach of trust. Then, again, what has the Court to do with the prospective action of Parliament, as shadowed forth by the Executive? No one disputes the paramount authority of the Legislature. Within certain limits it is omnipotent. But why should it be suggested that Parliament will act better if it acts in the dark, and without allowing the Court to declare and define the rights with which it may be asked to deal? The present Chief Justice, who was not a party to the judgment of the Court of Appeal, took a truer view of the situation, when he said that the approval of a scheme could not "in any way hamper either the Government or the Parliament in dealing with this trust."

In the opinion of their Lordships the respondent has been wrong in every step from first to last. Their Lordships will therefore humbly advise His Majesty that the order of the Court of Appeal should be discharged, except as to the direction therein contained for payment of the costs of the trustees; that any costs paid under that order to the Solicitor-General should be returned; that this appeal should be allowed with costs, to be paid by the respondent, and that the trustees should be at liberty to retain any extra costs incurred by them, as between solicitor and client, out of the trust funds in their hands.

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