

1875.

NEW ZEALAND.

REPORT ON PETITION

OF

SIX HUNDRED AND SEVENTY INHABITANTS OF WANGANUI.

Presented to both Houses of the General Assembly by Command of His Excellency.

REPORT.

THE Committee, having given the petition their careful consideration, have directed me to report as follows:—

“The Committee regret that, owing to the refusal of the Government to furnish, for the information of the Committee, a copy of the opinion of the Attorney-General on the Industrial School Estate at Wanganui, they are not in as full possession of the legal bearings of the case as could be desired. The Committee, however, are satisfied that the spirit and intention of the grant have not been fulfilled. They find that the grant was the subject of inquiry by a Royal Commission in 1867, which resulted in the following report being made:—

“Wanganui Industrial School Estate.

“This was a grant of about one-third of the then existing town site of Wanganui to trustees of one religious denomination, for the purposes of education. The whole of the land had been laid out in streets and quarter-acre sections, the former of which were shut up by the Grant, and the latter abolished, and the extension of the town in that direction precluded.

“The rents of this estate have been appropriated to the erection of a schoolmaster’s house and Grammar School, except a small portion to the support of the school, which, though excellent of its kind, is not a fulfilment of the trust contemplated, inasmuch as the class of children apparently intended by the grant to be benefited are not such as can afford to pay the fees necessarily payable, to enable them to attend the school. Looking at the magnitude of the grant, and the loss which the people of the place have suffered by the diversion of the land from its original purpose, the Commissioners recommend that the land should, whenever practicable, be laid out again, and rendered available for town purposes, and that the annual proceeds should be so appropriated as to give the inhabitants of every denomination and every class a fair share in the benefits accruing from the grant.”

In the opinion of this Committee the Government ought to take the subject of this trust into their most serious consideration during the recess, with a view to such legislative action next session as may be required for the purpose of placing the valuable estate in question under trustees periodically elected, and for insuring the application of the proceeds to the purposes originally intended by the grant.

13th October, 1875.

THOMAS KELLY,
Chairman, Public Petitions Committee.

APPENDIX.

To the Honorable the Speaker and Members of the House of Representatives of the Colony of New Zealand, in Parliament assembled.

The Memorial of us the undersigned, Inhabitants of the Borough of Wanganui,

Humbly sheweth,—

1. That in the year 1852 the following Crown grant was issued: “Victoria, &c.—Whereas a school is about to be established at Wanganui, in the Province of New Munster, New Zealand, under the superintendence of the Right Reverend George Augustus, Lord Bishop of New Zealand, for the education of children of Our subjects of all races, and of children of other poor and destitute persons, being inhabitants of islands in the Pacific Ocean: And whereas it would promote the objects of the said institution to set apart a certain piece or parcel of land in the neighbourhood thereof for the use and towards the maintenance and support of the same: Now know, that We, for Us, Our heirs, and

successors, do hereby grant unto the said George Augustus, Bishop of New Zealand, all that piece or parcel of land containing 250 acres and 32 perches, to hold unto the said George Augustus, Bishop of New Zealand, and his successors, in trust nevertheless, and for the use and towards the maintenance of the said school, so long as religious education, industrial training, and instruction in the English language shall be given to the youth educated therein or maintained thereat. Witness Sir George Grey, &c."

2. That, so far from the conditions of the grant having been carried out by the trustees and others having control over the management of this valuable estate, they have been systematically ignored, and the land let out in large blocks, and the rents devoted towards the maintenance of a "Collegiate School," where the children of well-to-do persons are instructed principally in the dead languages and mathematics. That, your Honorable House having appointed a Royal Commissioner to inquire into the management of this valuable estate, the following report was made by Mr. Hart, the Commissioner:—"This was a grant of about one-third of the then existing town site of Wanganui, to trustees of one religious denomination for the purposes of education. The whole of the land had been laid out in streets and quarter-acre sections, the former of which were shut up by the grant and the latter abolished, and the extension of the town in that direction excluded. The rents of this estate have been appropriated to the erection of a schoolmaster's house and Grammar School, except a small portion to the support of the school, which, though excellent of its kind, is not a fulfilment of the trust contemplated, inasmuch as the class of children apparently intended by the grant to be benefited are not such as can afford to pay the fees necessarily payable to enable them to attend the school. Looking at the magnitude of the grant, and the loss which the people of the place have suffered by the diversion of the land from its original purpose, the Commissioners recommend that the land should, whenever practicable, be laid out again and be rendered available for town purposes, and that the general proceeds should be so appropriated as to give the inhabitants of every denomination and every class a fair share in the benefits accruing from the grant."

That the failure to observe the industrial conditions of the grant, and the general departure from the intention of the granter, has deprived the poorer classes of the borough of a valuable educational provision for their children, and imposed on the rest of the inhabitants the burden of providing in other ways for the support of poor and destitute children. That in consequence of so large a part of the best portion of the borough being let in large blocks, and used as grazing ground, notwithstanding the fact of its having its greatest frontage to the main thoroughfare, the progress of the borough is materially affected. That, in consequence of the streets originally laid off through the estate having been cancelled by the grant, great damage is done to surrounding property, and to the general prosperity of the borough. Your memorialists would therefore earnestly pray that your honorable House would take the above facts into your favourable consideration, and adopt such means for the insuring of the better management of the Wanganui Industrial School Estate as shall secure the inhabitants of this borough the full benefits derivable from so valuable an educational endowment.

(Signatures.)

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,—

Superintendent's Office, Wellington, 3rd April, 1872.

I have the honor to forward to you herewith a copy of a memorial signed by the residents of the town and neighbourhood of Wanganui, which I have received from his Worship the Mayor of Wanganui.

I beg to state that I concur in the expressions therein contained, and shall be glad if the General Government will take the opinion of the Attorney-General as to the best means to be adopted in order to carry out the wishes of the memorialists.

I have, &c.,

WILLIAM FITZHERBERT,

Superintendent.

The Hon. the Colonial Secretary.

To the Hon. WILLIAM FITZHERBERT, Superintendent of the Province of Wellington.
The Memorial of the undersigned, Residents of the Town and Neighbourhood of Wanganui,

Respectfully sheweth,—

That your memorialists take much interest in the cause and progress of education, and especially in those educational matters particularly pertaining to their town and district.

That the town of Wanganui possesses within its boundaries a large and valuable educational endowment, but that unfortunately proportionate educational advantages have not been derived from it.

That this endowment, which is known as the Wanganui Industrial School Estate, consists of 250 acres of the town of Wanganui as laid off by the New Zealand Company, including streets and reserves, and was granted by Sir George Grey in the year 1852 to trustees, for certain educational purposes defined in the grant.

That it must be apparent that so large and valuable an estate ought, under proper management, to have been productive of important and tangible advantages in the interest of education.

That, so far from this being the case, your memorialists believe that no beneficial results whatever have accrued to the public from this magnificent grant of 250 acres of town land.

That for a very considerable part of the time which has elapsed since the grant was made no school of any description was kept upon the property, and that even now the school at present established on the estate is not conducted in terms of the grant.

That your memorialists beg to refer your Honor to a report (published in the Parliamentary Blue Books) made by the Commissioner appointed in 1869 to inquire into educational and trust estates, which report, and the evidence taken by the Commission, fully bear out the allegation of your memorialists herein contained.

That the object of addressing you at the present time is to endeavour to enlist your sympathies and efforts in the cause of your memorialists, which is also the cause of education and of the public of Wanganui generally.

That gentlemen versed in legal matters, and well qualified to form an opinion, have, from time to time, expressed a conviction that the grant in question is absolutely null and invalid in law, and your memorialists are therefore encouraged to believe that it can be set aside by the adoption of the proper means.

We, your memorialists, do most earnestly request your Honor, as the elected head of the Province of Wellington, will cause full inquiry to be made into this matter, which is very important to the district of Wanganui, with the view of causing the said grant to be annulled, and a new one issued under happier auspices.

That your memorialists do not by any means desire to see the endowment diverted from educational purposes, but on the contrary wish to see it made productive and applied to those purposes in a broad, liberal, unsectarian manner, and they are firmly convinced that if the endowment were placed upon such a basis their children and succeeding generations would be benefited to an extent impossible to estimate.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,—

Superintendent's Office, Wellington, 6th June, 1872.

On the 3rd of April last I had the honor of addressing a letter to you enclosing a memorial signed by the residents of the town and neighbourhood of Wanganui, relative to a grant of land by Sir George Grey for educational purposes.

As I have not yet received a reply, I shall be obliged by your giving it your early attention.

I have, &c.,

WILLIAM FITZHERBERT,

Superintendent.

The Hon. the Colonial Secretary, Wellington.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,—

Colonial Secretary's Office, Wellington, 31st January, 1873.

Adverting to your letter of the 3rd of April last, in which you enclose the copy of a memorial from certain inhabitants of Wanganui, who desire that the grant of 250 acres of land adjoining that town in trust to the Bishop of New Zealand, as an endowment for the uses of an Industrial School, should be cancelled on the ground that the trust on which the land was granted has not been properly carried out, and in which letter you request that the opinion of the Attorney-General should be taken as to the best means to be adopted in order to carry out the wishes of the memorialists, I beg to inform your Honor that the subject has been referred, as you requested, for the opinion of the Attorney-General. That opinion has now been received, and is to the effect that the proper course for those persons to take, who believe that the school has not been, or is not being, conducted in conformity with the conditions of the trust upon which the land was granted, is to commence a suit by writ in the Supreme Court in the name of the Attorney-General, with his leave, in which suit they will be relators.

The question is one in which the Government do not consider it to be within their province to interfere.

I have, &c.,

JOHN HALL.

His Honor the Superintendent, Wellington.

EXTRACT from the JOURNALS of the HOUSE of REPRESENTATIVES, 30th September, 1875.

RESOLVED,—That it is desirable that the Public Petitions Committee should be furnished with a copy of the Attorney-General's opinion on the case of the Wanganui Industrial School Grant.—(On motion of Mr. T. Kelly.)

The Hon. the COLONIAL SECRETARY to Mr. T. KELLY.

SIR,—

Colonial Secretary's Office, Wellington, 6th October, 1875.

Adverting to the resolution of the House of Representatives which was passed on your motion on the 30th ult. to the effect, "That it is desirable that the Public Petitions Committee should be furnished with a copy of the Attorney-General's opinion on the case of the Wanganui Industrial School Grant," I have the honor inform you that the Government have taken the subject into their most careful consideration, and have arrived at the following conclusion:—

They still think that it would not be a matter of wise policy to furnish the Committee with a copy *in extenso* of that opinion.

Mr. Prendergast himself says, in the concluding portion of his opinion, "I have gone fully into this question for the information of the Government; but I submit that, as it is no part of the duty of the Executive Government of the colony to advise the public on such matters, this opinion, so far as it relates to the validity of the grant, ought not to be communicated to the Superintendent except as unofficial or confidential. Of course, if the Government determine to take proceedings to test the validity of the grant, or to enforce the trust, it is competent for it to call for and make use of its law officers; but if, as I assume, it will not actively interfere against the grantee, then it ought not to prejudice the interests of the grantee by the publication of the opinion of its law officers, an opinion which of course, like that of others, may be erroneous."

But the Government have no objection to take the course which I understand was suggested during the debate by Sir George Grey, and accepted by the Minister of Justice—namely, to communicate the substance of the opinion to the Committee.

I accordingly enclose a copy of that part of the opinion which contains as much as the Government feel themselves at liberty, under all the circumstances, to communicate.

T. Kelly, Esq., Chairman Public Petitions Committee,
Wellington.

I have, &c.,
DANIEL POLLEN.

MEMORANDUM for the Hon. the COLONIAL SECRETARY.

THOSE who have presented the memorial to the Superintendent allege that the school maintained at Wanganui by the trustees of certain land at Wanganui, granted by the Crown upon trust, "is not conducted in terms of the grant." They also state that it is alleged to be "absolutely null and invalid," and that it can be set aside by the adoption of proper means.

They state that they desire to see the "endowment applied to educational purposes in a broad, liberal, unsectarian manner."

The memorialists do not state any facts which prove the assertion that the school "is not conducted in terms of the grant," nor do they state the grounds upon which the grant is deemed invalid.

In 1867 some of the inhabitants of Wanganui had an interview with the Hon. the Prime Minister, and it was pointed out to them that, if the trustees were not conducting the school in accordance with the trust, proper remedy was by writ in the Supreme Court.

In my opinion, that is the appropriate remedy now. Those who conceive that the trustees are guilty of a breach of trust may commence a suit in the name of the Attorney-General, with his leave, in which suit they will be relators.

Mr. T. KELLY to the Hon. the COLONIAL SECRETARY.

SIR,—

Public Petitions Committee, 8th October, 1875.

I am directed by the Public Petitions Committee to acknowledge the receipt of your letter of the 6th instant in reference to the resolution of the House of Representatives which was passed on my motion—viz., "That it is desirable that the Public Petitions Committee should be furnished with a copy of the Attorney-General's opinion on the case of the Wanganui Industrial School Grant." You state that the Government have taken the subject into their most careful consideration, and have arrived at the conclusion that it would not be a wise policy to furnish the Committee with a copy *in extenso* of that opinion. The opinion of Mr. Prendergast is quoted to justify the Government in coming to that conclusion; and you state that the suggestion made by Sir G. Grey and accepted by the Minister of Justice, "That the substance of the opinion be communicated to the Committee," is the course which the Government have decided to adopt; and you enclose a document as the substance of the opinion of the Attorney-General.

With reference to the above, I have to express my regret that the Government have decided not to accede to the reasonable request of the Committee as expressed by the resolution of the House.

I cannot admit that the furnishing of the opinion to the Committee would be an unwise policy, as the end the Committee have in view is to deal more effectually with a grievance which is alleged to inflict serious injury on a large section of the community who have petitioned the House for redress.

I submit that the opinion of the Attorney-General quoted by you has no bearing on the present application, and it ought not to influence the Government as to its action at the present time. The Attorney-General suggested that his opinion should not be communicated to the Superintendent of Wellington, except as unofficial or confidential, and I fail to see any sufficient reason why that suggestion, made in 1872, should be advanced as a plea for declining to carry out the expressed recommendation of the House of Representatives in 1875.

During the debate in the House I stated that I could not accept the suggestion of Sir G. Grey, as the Committee had already in its possession a paragraph which had been furnished to the Superintendent of Wellington as the purport of the Attorney-General's opinion, and that, having read that opinion, I remarked that it was an absurdity to call that the purport of it. The paragraphs from the Attorney-General's opinion which you enclose to me have been for some time before the Committee, being portions of the correspondence with the Superintendent of Wellington, and, as they throw no additional light on the matter, are practically worthless to the Committee.

I very much regret to find that the Government do not appear desirous of assisting the Committee in dealing with the petition of the people of Wanganui, but on the contrary seem disposed to exercise their authority in withholding from a Committee of the House a document the production of which might very materially promote the public interest.

I have, &c.,
T. KELLY,
Chairman Public Petitions Committee.

The Hon. the Colonial Secretary.