

1900.

NEW ZEALAND.

PORIRUA, WAIRARAPA, AND OTHER SCHOOL GRANTS

(INTERIM AND FINAL ORDERS OF THE COURT IN THE ACTION WALLIS AND OTHERS
VERSUS THE SOLICITOR-GENERAL IN CONNECTION WITH THEM.)

Laid upon the Table of the House of Representatives by Leave.

1. JUDGMENT DELIVERED BY HIS HONOUR THE CHIEF JUSTICE.

WALLIS AND OTHERS *v.* THE SOLICITOR-GENERAL.—Hearing, 16th August; judgment, 7th September, 1900. Mr. Quick for the plaintiffs, Mr. Gully for the Solicitor-General.

IN this case the plaintiffs have, since the matter was before the Court on the 19th May, 1899, submitted a fresh scheme to the Court differing in some respects from the scheme that was filed on the 25th November, 1898.

In the amended scheme they ask that the trustees be empowered to expend the net rent and profits arising from the land, and the net income of the fund representing accumulated rentals and interest, in the assisting in the maintenance of an institute about to be erected in the Wairarapa Valley. This new institution is to be for the religious education and industrial training and instruction in the English language of youths being subjects of Her Majesty, youths of the Maori race being preferred. The General Synod of the Church of the Province of New Zealand, commonly called "the Church of England," or, by its consent, the Diocesan Synod of the Diocese of Wellington or its standing committee, is to have power to make rules and regulations to carry out the scheme.

The objections that were urged by the counsel for the Solicitor-General were the same as those urged before the Court last year, and on which a decision was given on the 19th May, 1899.

This Court is bound by its previous decision, and what has now to be considered is: (1) Whether it has been shown that the trust can be carried out in its entirety; and (2) if not, whether the scheme submitted should be approved.

The evidence is conclusive that it would be a waste of the trust-moneys to erect a school on the reserve, and if such a school were started there it would fail to fulfil the purposes of the trust.

The scheme proposed seems to us to go beyond what is necessary in utilising the trust. It practically proposes to absorb the trust-moneys for the support of a similar institution in the Wairarapa. The trust may be carried out without allowing the absorption.

If the scheme were amended so as to provide—(a.) For the maintenance of such a number of scholars in the Wairarapa institution as the rentals and income would permit, a fair sum being charged for maintenance and education; (b.) That preference should be given to the children belonging to the Ngatitōa Tribe; failing them, preference to the children of the West Coast tribes; (c.) That the proposed system of education be approved as appears in the original trust; (d.) That no youth be refused a scholarship on the ground of religious belief, no religious test whatever being applied to the applicants—the Court would be prepared to approve of it.

It was urged by counsel for the Solicitor-General that the Government intended to introduce into Parliament a measure dealing with this and similar trusts. The Court is aware that there are several trusts similar to this one, and held by various Church organizations. The approval of such a scheme as is here suggested cannot in any way hamper either the Government or the Parliament in dealing with this trust or the trusts referred to.

The costs of these proceedings, if a scheme such as has been suggested is carried out, will be paid out of the income of the trust.

2. ORDER AND SCHEME APPROVED BY HIS HONOUR THE CHIEF JUSTICE.

In the Supreme Court of New Zealand, Wellington District.—Between FREDERIC WALLIS, Bishop of Wellington, THOMAS FANOURT, Archdeacon of Wellington, EDWARD WILLIAM LOWE, JOHN ELISHA SMITH, WILLIAM HENRY QUICK, and GEORGE EDMENADES TOLHURST, plaintiffs, and WALTER SCOTT REID, Esq., Solicitor-General of our Lady the Queen for the Colony of New Zealand, defendant. On this 7th day of September, 1900.

THIS case having been argued on the 18th and 19th April, 1899, by Mr. Quick and Mr. Tolhurst, of counsel for the plaintiffs, and Sir Robert Stout and Mr. Gully, of counsel for the Solicitor-General, this Court did, on the 19th day of May, 1899 (amongst other things more particularly herein-after set out), declare that neither of the schemes filed on behalf of the plaintiffs and defendant

should be adopted, but that the matter should stand over for further consideration. Whereupon, the plaintiffs having filed an amended scheme, which was submitted to the consideration and for the adoption of this Court on the 16th August, 1900, by Mr. Quick, of counsel for the plaintiffs, and opposed by Mr. Gully, of counsel for the Solicitor-General, this Court has made certain modifications or additions to the said amended scheme, which, having been assented to by the plaintiffs, are embodied in the scheme set forth in the Schedule hereto.

Now this Court, having taken into consideration the facts which have been proved to its satisfaction at the first hearing of this case, doth hereby declare :—

1. That the land situate at the entrance to Porirua Harbour, described in the Crown grant set out in the statement of claim as having been granted to the late Bishop Selwyn, was held by him, and is now held by the plaintiffs his successors, as an endowment for a school for the Church of the Province of New Zealand, commonly known as “ the Church of England.”

2. That such school should be a training school for children of the poorer class who have progressed to some substantial extent at the common schools or their equivalent, and are then prepared to take full advantage of some industrial training—either, for instance, in farming operations, or farming and some other art or arts—it not being necessary to make instruction in English a principal feature.

3. That the religious teaching taught at such school shall be such as is approved of by the said Church.

And it appearing that it would be a waste of the trust-moneys to erect a school on the land so granted, and that if such a school were started there it would fail to fulfil the purpose of the trusts : And it appearing that certain trustees hold land in the Wairarapa district and funds accruing therefrom, which lands were granted to the late Bishop Selwyn on the same trusts as those set out in the Crown grant of the land at Porirua Harbour, excepting that they were granted for the use, maintenance, and support of a college in the Wairarapa Valley : And it appearing that the said trustees are about to start an institution in the Wairarapa Valley to comply with their trusts, and that they have agreed to accept scholars whose maintenance and education shall be provided for by the plaintiffs or their successors : And this Court being of opinion that the scheme set forth in the Schedule hereto is a proper scheme for the future management of the net rents and profits arising from the said land at Porirua Harbour, and the net income of the fund representing accumulated rentals and interest : Let the said scheme be adopted and carried into effect ; let the plaintiff's costs of and incidental to these proceedings as taxed by the Registrar as between solicitor and client be paid out of the income of the trusts.

SCHEDULE.

SCHEME for the application of rents accruing from a piece of land comprised in a Crown grant, dated the 28th day of December, 1850, to George Augustus, Bishop of New Zealand, of a piece of land granted for the endowment of a school at Porirua, and also for the application of the interest accruing from the investment of such rents. That the trustees of the said land be empowered to expend the net rent and profits arising from the said land, and the net income of the fund representing accumulated rentals and interest, in the following manner :—

1. A school or college being about to be established in the Wairarapa Valley out of endowments vested in trustees for the General Synod of the Church of the Province of New Zealand, commonly called “ the Church of England,” upon trusts the same as those expressed in the Crown grant of the land at Porirua, the net rental and income in the hands of the plaintiffs, as far as the same will permit, shall be devoted to the maintenance of scholars in the Wairarapa institution, a fair sum being charged for maintenance and education.

2. That preference shall be given to children belonging to the Ngatittoa tribes ; failing them, preference to children of the West Coast tribes.

3. That the proposed system of education shall be such as appears in this judgment.

4. That no youth shall be refused a scholarship on the ground of religious belief, no religious test whatever being applied to the applicants.

5. That the General Synod of the Church of the Province of New Zealand, commonly called “ the Church of England,” or, by its consent, the Diocesan Synod of the Diocese of Wellington or its standing committee, shall have power to make rules and regulations not inconsistent with the foregoing portion of this scheme under and subject to which the same shall be carried out.

By the Court.

W. A. HAWKINS, Deputy Registrar.

(The Seal of the Supreme Court, New Zealand.)

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