

SIR,—

Dunedin, 19th November, 1891.

I have the honour to acknowledge receipt of your letter of the 11th November instant, enclosing a voluminous mass of papers in reference to Mr. Ell. I have carefully perused the documents sent to me, and I shall deal with what I understand to be the suggestion of the Public Petitions M to Z Committee [p. 2 of this paper]. The recommendations by the Committee are contained in the 18th paragraph of their report. That paragraph is as follows: "The Committee are therefore of opinion that Ell has suffered grievous wrong by the abuse of the powers of the Courts of Law and Bankruptcy, and beg to recommend that he be appointed trustee in his own estate, or that some other impartial person be so appointed: First, for the payment out of his estate of all his just debts; second, to hold the residue of his own estate (if any) for his own benefit."

I am of opinion there is no power to carry out the suggestion, unless by statute. I think it is proper, however, to make some remarks on some of the statements made by the Petitions Committee. I feel certain that all the facts could not have been brought before the Committee, else it would not have come to the conclusions that it has done. The conclusions arrived at by the Committee that appear to me to be negatived by the documents and by the judgments of the Court of Appeal and Supreme Court, are as follows, viz.: Conclusions 5, 6, 7, 9, 14, and 15. So far as I can gather from the documents, and the report of decisions in the various cases which have been brought before the Supreme and Appeal Courts by Mr. Ell, the facts are as follows:—

It appears from the statement in the N.Z. L.R., C.A., Vol. iv., p. 142, that G. W. Ell brought two actions for account, one against L. Harper and the other against L. Harper and P. Hanmer. Accounts were taken, and the Registrar and the Accountant appointed by the Court made their certificates. In the action against L. Harper the sum of £2,166 9s. 7d. was found due by the plaintiff to the defendant, and in the action against Harper and Hanmer the sum of £2,120 16s. 10d. was due by the defendants to the plaintiff. There was an appeal against the finding of the Registrar and Accountant on the ground of mistake. When that matter was argued before the Court of Appeal the Court of Appeal set aside the Registrar's certificate, but not on the ground mentioned in paragraph 6 of the Committee's report. The ground of the decision was that the certificate signed by the Registrar and the Accountant did not set out, in accordance with the rules, sufficient material to explain the accounts, nor the evidence upon which the findings of the Registrar and Accountant were based. I think it proper to set out the full judgment of the Court of Appeal. It is as follows:—

"In this case we think that the judgment should be set aside and the certificate reviewed by the Registrar and Accountant. The certificate, when looked at, shows us that the proceedings in Chambers were not taken as intended by the rules, and therefore not in a way which enables the Court to deal with the cause when it comes before it on a motion for a decree on further consideration. It is quite clear that when accounts have to be taken the party accounting brings in his account and the Registrar takes evidence on the account. That was not done in this case, but an account was prepared by the Registrar and Accountant and appended to the certificate. There is nothing to show what conclusions were arrived at. This is an account with interest added to it, but there is no indication as to what the items represent. There is nothing in the certificate as to the evidence the Registrar has acted on. This being so, no Judge could make a decree on such materials. That was the position the matter was in before Mr. Justice Johnston, and we think if this had been represented to him he certainly would not have made the decree.

"It is the fault of the appellant that he has consistently made wrong applications. In this case, he was making application to review the certificate on the ground of mistake; and the Judge decided rightly that there was no mistake, and he was right in refusing to review on the ground of mistake in the sense of that term in the rule. But, as we find ourselves unable to make a decree upon this certificate, so he should have found himself unable to do so. Before concluding, I think I ought to say that the blame falls more on the representatives of the litigants than on the Registrar, in making his certificate and in proceeding as he has done. The Registrars in the Supreme Court have not had the experience they have elsewhere, and it is incumbent on litigants to see that the proceedings are taken in the manner contemplated by the rules. The costs ought to fall on those who represent the litigants, but there is no complaint against the officer. We therefore think the judgment ought to be set aside, and the certificate reviewed. We have considered whether or not we can limit the items on which the review should take place; but, on the whole, we think in the interests of both parties it should be at large. Most of the items will, no doubt, be agreed to, and only a few of the matters gone into again, and the evidence already taken can be admitted to be sufficient. We think each party must pay his own costs of this appeal, as the appeal was limited to the certificate being void on the ground of mistake; but the case goes back on entirely different grounds—namely, that this Court itself, seeing the certificate, finds it so insufficient that no conclusion can be come to on it. The other two appeals, inasmuch as the appellant has not come within the right time, the orders appealed from being interlocutory orders and orders of refusal, must be dismissed with costs in each case on the lowest scale."

The judgment was that of the Chief Justice and Justices Richmond and Williams. This judgment negatives the 5th and 6th conclusions of the Committee, which were as follows:—

"5. That the said Registrar, in disobedience of an order of the Supreme Court, went behind a settlement of accounts made between the contesting parties in 1873, and brought in a verdict for Messrs. Harper against Ell for upwards of £2,000.

"6. That thereupon Ell appealed against the said last judgment, and the judgment was set aside by the Court of Appeal, and referred back to the Registrar and Accountant at Christchurch, on the ground that he had no right to inquire into accounts prior to the settlement between the parties in 1873."

When this judgment was given, judgment being pronounced on the 3rd June, the certificate from the Court of Appeal was forwarded to Christchurch.