

SESS. II.—1897.
NEW ZEALAND.

HOROWHENUA CASE.

MEMORANDUM BY THE HON. THE MINISTER OF LANDS IN CONNECTION WITH SECTION XIV.
OF THE HOROWHENUA BLOCK.

Laid upon the Table by the Hon. J. McKenzie, with the Leave of the House.

It was stated by counsel for the Public Trustee in the course of his address to the Court on the 11th day of August, 1897, the date on which the trial of the action Public Trustee against Sir Walter Buller was set down for hearing, that the Public Trustee was not in a position to adduce evidence to justify the Supreme Court in setting aside the registration of the defendant's dealings with Section 14. According to the ordinary rules of equity, a man who, knowing another to be a trustee, deals with him as absolute owner, is not permitted to retain the benefit of his dealing. But I am told that if the dealing is under the Land Transfer Act the Judges have decided that much more than mere notice or knowledge of the trust must be proved in order to invalidate the dealing—active fraud, they term it.

If this is the correct position of the matter, it is not for me to question the course adopted by counsel for the Public Trustee. But if that is the position, then I am satisfied that Parliament did not by its Act of last year effect what it was intended should be effected; and certainly the statement by counsel that they had no evidence to support such a case does not in the least affect the position which I have taken up in this matter.

The statements which, as a layman unversed in the nice distinctions between ordinary fraud and “active fraud,” I made against Sir Walter Buller were shortly as follows: (1) That he had robbed Natives of their land in the Horowhenua Block; (2) that he had induced the Natives to squander their land for the purpose of keeping on foot litigation which could only benefit the lawyers engaged. The finding of the Royal Commission practically sustained these statements, but it has been alleged that they have failed in the Supreme Court. With this view I do not concur. Indeed, notwithstanding the admission by counsel for the Public Trustee in the Supreme Court that they could not adduce evidence in that Court against Sir Walter Buller, I am satisfied that there was plenty of evidence to support what I have averred; and I intend now to point out the evidence which justifies this statement, and leads me to the belief that there has been a miscarriage of justice in the Supreme Court.

I will premise by saying that everything I affirm in this connection will be based upon what Sir Walter Buller has stated himself, and will consist in great part of extracts from his own evidence. The evidence is available to any person who wishes to see it. It is recorded in the Horowhenua Commission papers, and it is recorded in the books of the Native Appellate Court. Some of it is to be found in the pages of *Hansard*, so that the statements I make can be verified, and any person who likes can satisfy himself that I am not in any sense overstating the matter.

SIR WALTER BULLER'S MEANS OF KNOWLEDGE.

In the first place, then, Sir Walter Buller is to be judged in this matter by a somewhat strict standard. He is a man who possessed a very extensive Native practice for a very long period of time. In fact, from 1874 to 1886 he had the largest Native Land Court business in New Zealand. He was, further, a man who was well conversant with Native titles, with the means of searching for and ascertaining the title to any block and the evidence given in respect of the investigation into or partition of any block. Horowhenua Commission evidence, p. 242.

Another circumstance is this: that Sir Walter Buller was extremely well acquainted with the history and the internal position of all the West Coast blocks. His practice lay in a very large measure on the west coast of this Island, and no man probably was more intimately acquainted than he was with the titles to and the position of the various blocks between here and the Rangitikei River.

We therefore start with Sir Walter Buller as a man who had special means and opportunities of knowing all the salient facts connected with the West Coast blocks, and the greatest possible facilities and the best knowledge how to obtain access to all the necessary information in