

certain Natives who had been left out of the title. No. 9 was awarded to Major Kemp, and unquestionably upon trust for the descendants of Te Whatanui; and No. 10 was awarded to Major Kemp, with the condition that it was to be sold and the proceeds spent in the payment of a certain bill of costs of Kemp's. No doubt the land was given to Kemp himself, but it was given to him for the purpose of discharging a certain debt. No. 11 was awarded to Major Kemp and Wirihana Hunia, as it is asserted, upon trust for the whole of the Muaupoko. No. 12 was awarded to Ihaia Taueki upon trust for the whole of the Muaupoko, and it is also alleged that No. 14 was awarded to Major Kemp upon trust as an alternative section for the Ngati-raukawa. Now, all these sections were awarded in an untrammelled state to Major Kemp, or to Major Kemp and Wirihana Hunia, or to Ihaia Taueki. Land Transfer certificates were issued absolutely in the names of these persons, and, as far as could be judged from the title, the whole of these sections were awarded to the nominal owners as absolute beneficiaries; and that was the position with regard to the great bulk of them on the return of Sir Walter Buller from England in 1890. Judged by the Land Transfer books, for years after the partition there was everything to show that Major Kemp, Wirihana Hunia, and Ihaia Taueki all held these respective allotments in exactly the same manner: if beneficially, then all beneficially; if in trust, then all in trust. There was no doubt a caveat issued in respect to No. 11 by Mr. Bartholomew, but that was simply to protect a flax license which he had obtained from Major Kemp.

SIR WALTER BULLER'S NOTICE OF THE TRUST.

Sir Walter Buller returned from England in May, 1890. The Horowhenua case was at Appellate Court that time exciting a considerable amount of interest. In the early part of 1890 an application had been made by Kemp for the partition of No. 11, which was in the names of Major Kemp and Warena Hunia, and for the first time in the course of the proceedings in connection with the partition of the block it was alleged by Major Kemp that No. 11 was a trust block. The proceedings at this partition were lengthy, and very complete minutes were taken; and during the course of these proceedings Major Kemp, on cross-examination, defined his position with regard to the whole of the sections the titles for which had been issued in his name. Amongst others he stated, with regard to No. 14, *that it was held by him upon trust for the descendants of Te Whatanui*; and, with regard to No. 9, *that it was not held for himself alone; that he held it for a special purpose; that he would see that the tribe did not suffer, and, if necessary, it would be transferred to them*. The whole of the evidence is contained in one of the ordinary minute-books of the Native Land Court, and is accessible to the public in the ordinary way. Appellate Court evidence, p. 83.

Immediately after the decision of the partition Court, which held that it could not take notice of any trust as against the title of the registered proprietors, Major Kemp caused a caveat to be registered as against No. 11, asserting this trust.

It was while matters were in this ferment with regard to this particular block that Sir Walter Buller—Major Kemp's guide, philosopher, and friend—returned from England. Two or three months afterwards Parliament sat; Major Kemp and a large number of the tribesmen came down to Wellington, and took part in the proceedings before the Native Affairs Committee in the House with a view to having a trust declared. And yet Sir Walter Buller states that he has not the slightest recollection of having any communication with Kemp in Wellington in that year, and that he has absolutely no recollection of having taken any part whatever in connection with these proceedings, although he was unable to say definitely that he did not. What an extraordinary statement. Sir Walter Buller, with a promise of a lease of part of the block, to take no interest in the block, or in his great and honoured client Major Kemp's proceedings! I venture to think that Sir Walter Buller, whose house on the Terrace was such a well-known rendezvous for important Natives, would not have allowed a man for whom he has such high respect as Major Kemp to be in Wellington during this long period of time without communicating with him, nor would Major Kemp be likely to forget his friend and adviser Sir Walter Buller in the troubles that were then pressing him. I think it is very reasonable to suppose that not only did Major Kemp see Sir Walter Buller at that time, but that Major Kemp informed him very fully what his business in town was; and, if so, it seems more than likely a man of Sir Walter Buller's industry and interest in Native matters would not have omitted to have satisfied himself by personal perusal of the minute-books of the state of the Horowhenua Block. I pause here. *If Sir Walter Buller did peruse the minutes, then, even then in 1890, he had clear notice that a trust was alleged by Major Kemp himself with regard to Section 14*. However, up to this point we have no direct evidence that this was so, although I certainly consider it a very strong inference. Appellate Court evidence, p. 86.

In 1891 the rehearing Court sat in connection with his Section No. 11. The main point in dispute before the rehearing Court was as to whether a trust could or could not be declared by the rehearing Court in respect to this block. One of the Judges who sat on the rehearing Court was Judge Mair, a brother-in-law of Sir Walter Buller. The rehearing Court finally gave its judgment, and decided that it could not give effect to any trust that might exist. This ended the matter as far as the Native Land Court was concerned.

In the session of 1891 Judge Mair was in Wellington staying with Sir Walter Buller. Again, in that year Kemp and a large number of the Muaupoko were present in town striving strenuously to have a trust declared in connection with Subdivision 11. Sir Walter Buller admits that at that time Judge Mair, who was living in his house, informed him of what had taken place in connection with Horowhenua No. 11, and, although Sir Walter Buller has said he has no recollection of having seen Kemp or taken any part in connection with Horowhenua during the session of 1891, the fact seems almost incredible. If it be true that Sir Walter Buller did have communication with Kemp, then I can hardly credit that he did not, with his usual thoroughness, go into the matter and make the ordinary inquiries. In all probability, indeed, the very books in connection with the case were with Judge Mair at Sir Walter Buller's own house, and if Sir Walter Appellate Court evidence, p. 87.