

Appellate Court,
p. 87.

Horowhenua
Commission,
p. 238.

Public Trustee that when Sir Walter Buller took his mortgage, in October, 1894, he concealed from Major Kemp the fact that he intended it to cover all costs then due and all costs thereafter to become due in connection with the Horowhenua Block. Counsel for the Public Trustee stated that they had no strict legal evidence to prove that this was so. They may or may not have had; but it is clear from Sir Walter Buller's own evidence given before the Royal Commission and at the Native Appellate Court, and from the Trust Commissioner's own evidence, and from Major Kemp's evidence, that it was represented to Kemp himself merely as a mortgage to secure the sum of £500 advanced to Mr. Edwards for his conduct of the case; and Sir Walter Buller, when pressed on the subject, and given every chance to do so, never even dared assert that he had informed Kemp. It appears now, that at the time when the mortgage was executed a sum amounting to £1,000 and upwards was due by Major Kemp to Sir Walter Buller; that no account of these costs had ever been rendered to Major Kemp; that he was not told that these costs would be included in the mortgage; and that the only communication to Major Kemp on the subject was that the mortgage was read over to him. It is not alleged that Major Kemp was informed that the mortgage was to cover costs previously incurred, and the fact was certainly not made known to the Trust Commissioner.

Such is my comment on the Horowhenua proceedings, and nothing has thus far transpired in connection with them which weakens the belief I have already expressed, namely,—

(1.) That Sir Walter Buller knew prior to his leaving in 1886 for England that the whole block was held by Kemp in one title in trust for the tribe, and that on his return to New Zealand he, without making inquiry to ascertain that the trust was extinguished, purchased part and leased other parts of the trust property.

(2.) That Sir Walter Buller had knowledge that Kemp and Warena Hunia agreed in asserting that Major Kemp held this Block No. 14 for others as well as himself, both when he dealt with the land in October, 1894, and when he dealt with the land in October, 1892; and, all the evidence goes to show, when he dealt with the land in May, 1892.

(3.) That Sir Walter Buller took his leases at a great undervalue from his own client.

(4.) That Sir Walter Buller procured from Kemp a mortgage which he now alleges covers large sums of money for costs due to Sir Walter Buller, but which costs were never intended by Kemp to be covered by the mortgage, and which sums Kemp was never informed were covered by the mortgage.

(5.) That Sir Walter Buller fomented and encouraged legal proceedings which have resulted in casting the tribe in thousands of pounds of costs without making the least effort to avert this huge expenditure, a large proportion of which might probably have been easily saved had he approached Warena Hunia in the first instance, and a large proportion of which has gone into his own pocket.

It will be observed that my allegations are based on different considerations from those in the action brought by the Public Trustee. They were made prior to the report of the Royal Commission. They were investigated by that tribunal, and were substantially proved by its report.

The reason of the failure of the Public Trustee's action is not far to seek. By the Act of 1896 the Legislature referred it to the Appellate Court to determine whether a trust existed in respect of Subdivision No. 14, and to the Supreme Court to determine whether Sir Walter Buller's dealings were valid. The functions of the two Courts were separate and distinct, and the Supreme Court was not to be approached until the Appellate Court had given its judgment. That was the clear intention of Parliament. What happened? The Appellate Court, instead of itself deciding the questions referred to it, practically threw it upon the Supreme Court to do so. The Supreme Court with one hand threw back until October the case referred to it by the Appellate Court, and with the other forced the Public Trustee to go to trial in August. The consequence was that the Public Trustee was called upon to establish in the Supreme Court the existence of a trust, and also to accept the burden of proving that if the trust existed Sir Walter Buller had notice of it. This his counsel advised could not be done in that Court, and hence the proceedings failed. If, however, the intention of Parliament had been given effect to, and the Appellate Court had first decided the question of trust, the Public Trustee could in the Supreme Court have thrown on Sir Walter Buller the onus of proving that he had no notice of the trust, or that, if he had had notice of it, the trust was extinguished prior to his dealings. It is abundantly clear from his own admissions that this he could never have done. He has been impeached in a court of conscience, before the tribunal of public opinion. He has escaped in a Court of law by a series of legal quibbles.

For myself, I have no quarrel with Sir Walter Buller. Throughout the whole of this unpleasant matter I have been moved solely by a sense of public duty, and no considerations of personal convenience will induce me to swerve from what in my conscience I conceive my public duty to be.

Having regard to the report of the Royal Commission, and the fact that no evidence was attempted to be adduced in the Supreme Court, I am of opinion, and in this my colleagues concur, that a wrong has been done, and the matter should not be allowed to remain in its present unsatisfactory state. A Bill will therefore be introduced declaring Section 14 to be Native land, and providing for an investigation into the title, and the registration of all dealings therewith that have been made by the true owners and are in accordance with equity and good conscience.

JOHN MCKENZIE.

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