

33. As to paragraph 33, he denies that any matter was concealed from the Trust Commissioner, but avers that he and Mr. W. B. Edwards, as his solicitor, appeared before the Trust Commissioner. He avers that the Trust Commissioner had the deed in his possession for seven days. He denies that the Trust Commissioner abstained from making the inquiries therein referred to, and he further says that the Trust Commissioner sat as a Court of competent jurisdiction to determine the questions required by law to be determined by him prior to the granting of his certificate, and that the Trust Commissioner did grant a certificate under "The Native Lands Frauds Prevention Act 1881 Amendment Act, 1888," and that the same was final and conclusive, and he denies the right of the plaintiff to allege in this Court matters in contravention of that certificate.

34. As to paragraph 34, he admits the same, except that as to part of the land comprised in one of the leases the defendant Sir Walter Lawry Buller has not been in actual possession thereof as the same has been occupied by one Peter Bartholomew.

35. He alleges that the Subdivision No. 14 referred to in "The Horowhenua Block Act, 1886," is the Subdivision No. 14 in respect of which a certificate of title under the Land Transfer Act was issued, and he denies that any allegation of invalidity or insufficiency in the proceedings of the Native Land Court, or of the location of the said subdivision upon survey is relevant to the matters in issue in this action.

And for a further defence the said defendant repeats the allegations of his first defence, except so much of paragraphs 6 and 11 as conflict with this defence, and says:—

36. That if (as he denies) the 1,200 acres intended to be dealt with by the Court on the 25th day of November, 1886, and in respect of which a minute was made, but no location defined and no order drawn up, was the 1,200 acres now known as Subdivision No. 14, then the Native Land Court on the 1st day of December, 1886, after satisfying itself as to the consent of the registered owners, and the approval of the descendants of Te Whatanui and of the Native Department, by order allotted to him in trust for the descendants of Te Whatanui the block now known as "Horowhenua No. 9"; and that on the 2nd day of December, 1886, he applied to the Court to allot to himself personally as owner the block known as "Horowhenua No. 14," and on the 3rd day of December, 1886, after being satisfied that all parties consented to such application, the Court duly allotted Block No. 14 to him as owner thereof, and directed the issue of an order in freehold tenure to him.

And for a further defence the said defendant repeats the allegations of his first defence, and says:—

37. That the Native Land Court sat in the year 1886 for the partition of the Horowhenua Block, and an order in freehold tenure for Subdivision No. 14 was then made in favour of him the said defendant, and a certificate of title under the Land Transfer Act issued to him; and since then the said Maeha Keepa te Rangihwinui has dealt with the land as his own, and has received the rents and profits thereof; and no claim by any person as *cestui qui* trust, or as having any right, estate, or interest in the said Subdivision No. 14 was ever at any time made or suggested until the year 1895.

This statement of defence is filed and delivered on behalf of the defendant, Meiha Keepa te Rangihwinui, by Frank Cecil Beddard, his solicitor, whose address for service is at the offices of Messrs. Buller and Anderson, Solicitors, Featherston Street, in the City of Wellington.

E.

THE PUBLIC TRUSTEE AND ANOTHER v. SIR W. BULLER AND ANOTHER *re* HOROWHENUA.

[Shorthand notes taken by Mr. H. GORE of proceedings in the Supreme Court, on the 11th August, 1897.]

Mr. Cooper (who, with Mr. Stafford and Mr. Baldwin, appeared for the Plaintiffs) said,—If your Honour please, This is a statutory action brought by the Public Trustee under section 10 of "The Horowhenua Block Act, 1896," a section which directs and empowers him to institute on behalf of the original owners of Division 14, Horowhenua Block, an action for the purpose of testing the validity of the alienations in fee-simple of Sir Walter Buller, and of the registered dealings with him by Major Kemp upon the original certificate of title. I should like to say before I proceed further that the Act is one very difficult to construe indeed, and that the Public Trustee was advised that the obtaining of the judgment of the Appellate Court was a condition precedent to the exercise of any jurisdiction by the Supreme Court under section 10, and, entertaining that view, he applied to your Honour for a postponement of trial until the question should be determined, or until the Appellate Court should have delivered its judgment. After argument you determined that the application should not be granted. Some ten days ago I was myself introduced into the matter, and I have given it the most careful and anxious consideration. My first impression was that the judgment of the Appellate Court was a condition precedent to the exercise of the jurisdiction of the Supreme Court, but after going very carefully through the Act I felt I could not successfully maintain that position, and I think it my duty to say so at once. I have also made a most careful and anxious examination of the evidence which is in the hands of the Public Trustee for the purpose of ascertaining whether that evidence shows any notice on the part of Sir Walter Buller of any trust which might have existed in Major Kemp, and I feel bound to come to the conclusion that the evidence does not show any such notice on the part of Sir Walter Buller. It is probably within the knowledge of your Honour that there has been a very complete investigation of the circumstances connected with this portion of the Horowhenua Block in the Native Appellate Court, but the Court has not given its judgment although the taking of evidence has for some time been concluded. We have no evidence in the matter further than that before the Appellate Court and the Commissioners. It is on an examination of the evidence more fully adduced at the further investigation by the Native