

*Mr. Cooper* : First of all, in reference to the minutes of the decree, I think we should have a little time to consider those minutes, and that they should be settled before your Honour. Secondly, upon the question of how Major Kemp should be dealt with, I submit the proper course would be to strike Major Kemp out of the action. If the action is dismissed against Major Kemp, it should be distinctly stated that it is without prejudice to the position before the Native Appellate Court. I understand Sir Robert Stout agrees that this Court would not be able to pronounce judgment "Aye" or "Nay" in so far as Major Kemp's position is concerned. On the question of costs, I ask the Court to bear in mind that the Public Trustee is an officer appointed by statute, and it was his duty to bring this action. He could not avoid bringing this action, and to mulct him in costs for carrying out what was his duty —

*His Honour* : Personally?

*Sir R. Stout* : The Public Trustee has half a million of money behind him.

*Mr. Cooper* : The Public Trustee is directed by the statute to bring this action for the benefit not only of the registered owners themselves, but also for those whose dealings are affected, and it is because the matter is in that position that I felt it my duty to state frankly to the Court that we have no evidence to affect Sir Walter Buller's title. Of course, I quite admit that the question of costs is one solely in your Honour's discretion. I am only submitting as a matter for your Honour's consideration the statutory position of the Public Trustee under the statute passed by the Legislature, and that there is no provision in the Act as to costs.

*His Honour* : I suppose he has a good purse behind him.

*Mr. Cooper* : I consider it my duty to place that question before you, and I submit that in any case, if costs are allowed, they should be only scale costs. There is no provision under which the Court can apply any other principle.

*Mr. Bell* : I understood my friend wished this question referred to Chambers.

*Mr. Cooper* : I am quite content that it should be referred to Chambers.

*His Honour* : Very well. I do not think there can be any question about costs.

*Mr. Bell* : What we propose to ask is for an order for the whole costs which the scale authorises you to make.

*His Honour* : I do not see how I can do that if there is no evidence before me.

*Mr. Bell* : We shall be able to bring evidence as to the enormous preparation in connection with this case. The issue to my client was one of very grave importance, quite apart from the question of a few acres of land.

*His Honour* : What is the value of the land?

*Mr. Bell* : £7,741. That is supposed to be the value of the land without improvements. I do not think it was the intention of the Act that we should have an action brought against us and be cast in very great expense, even though costs would be allowed to both defendants on the ordinary scale. I do not know what your Honour would consider a fair remuneration for reading the Horowhenua Commission. It was impossible for my learned friend Sir Robert Stout or for ourselves to have come into this Court without an enormous amount of work, if we are to do our duty, and to enable the Court to conduct the trial with a reasonable economy of the public time. We submit, therefore, that under the circumstances we are entitled to a certificate for the whole costs of the action. There is, of course, the limit of £300, but the Court can allow such sum as it may think proper above that.

*His Honour* : I have always understood the £300 limit was supposed to apply to a case where the scale costs would come to more.

*Mr. Bell* : I would submit there might be a case involving an amount of only £10. Suppose this land had been only a small piece of freehold, could it be said that we are to come here prepared to try a matter of immense private importance and of considerable public importance without the expenditure that is necessary to obtain the evidence, and in order to place it before the Court in something like proper shape? Here we have to come to the Court by statute, and it might pay a person in an ordinary case to pay, say, £200, rather than come to Court. In this case we have spent something like £100 in typewriting, and it cannot be contended that should be paid by the percentage. I am asking the Court to certify to the whole costs of the action.

*Mr. Cooper* : Between party and party?

*Mr. Bell* : We submit under that we should be entitled to the actual costs out of pocket—the amount we have paid, including counsel's fees.

*His Honour* : I have always thought the meaning of the rule is this : Suppose the value of this property was £100,000, then the percentage under scale costs would be too much. Then there is a limit of £300, although in another case scale costs might be allowed.

*Mr. Cooper* : I understand a double set of costs is asked for—one on behalf of Sir Walter Buller and one on behalf of Major Kemp.

*Mr. Bell* : There are two sets of solicitors and two sets of briefs.

*Sir R. Stout* : I submit, as far as Major Kemp is concerned, he is entitled to his own costs, as he had separate counsel, and the mere fact of his being drawn into this—

*His Honour* : I do not doubt about that; and if this case had lasted a long time—say, thirty days—there would be very little difficulty about the matter; but it is an important case in which a good deal of expense, probably, has been incurred, which has collapsed without money being earned in Court. I do not see how I can allow £300 without having some evidence before me on affidavit.

*Mr. Bell* : I am quite prepared to bring before your Honour evidence of actual expenditure out of pocket.

*Mr. Cooper* : I would suggest that the question of costs stand over for Chambers—that is, the scale upon which they are to be allowed—as I understand your Honour to rule that both the parties on the other side are entitled to their costs.

*His Honour* : I think both the defendants are entitled to their costs. The amount can be