

re-registered: "For the purpose of testing the validity of the alienation referred to in subsection (f) of section 8 hereof, and also all dealings the registration whereof has been cancelled as aforesaid, the Public Trustee is hereby directed and empowered to institute on behalf of the original registered owners of the said block, as set forth in the second and sixth schedules hereto, or any of them, such proceedings in the Supreme Court at Wellington as may be necessary for that purpose within six months from the date of the passing of this Act, and every dealing the validity whereof is established by final judgment in such proceedings shall be entitled to be re-registered on any new certificate of title issued under the provisions of this Act for the land the subject of such dealing." There was dual authority given under this Act: first of all there should be an Appellate Court to inquire into the circumstances of the trust reported on by the Commission; then, within six months of the passing of the Act, the Public Trustee should undertake certain action to determine the titles affecting those who had alienated by sale, mortgage, or lease, and how such affected the beneficiaries. Major Kemp mortgaged to Sir Walter Buller as absolute owner.

*Mr. Monk*: And the result has been that his title was suspended.

*Hon. J. Carroll*: Yes. Going from that, the latter part of the preamble which recites these points will clearly show the position sought to be acquired by this Royal Commission. [See preamble of Bill.] That shows that the action to be taken by the Public Trustee in the Supreme Court was dependent, or was intended to be dependent, on the finding of the Appellate Court. Well, the Appellate Court, having undertaken its work of investigation, refused—or, at any rate, did not take—the responsibility of deciding the questions of fact within the six months the Public Trustee had, under instructions of the principal Act, to move in the Supreme Court. So that when he did move in the Supreme Court, the Appellate Court had not found on the facts, and there was no case for the Public Trustee to take before the Supreme Court at all. The Supreme Court would not postpone the matter until the question had been settled by the Appellate Court, but took the stand that the six months given under the Act were up, and therefore the case could not be postponed. The Public Trustee had no case, and the whole thing went by default; and yet the Appellate Court was specially directed by Parliament to find out the facts and trusts in Division 14, which work it had not done. It is an anomalous position, and the legislation we propose this time is to declare a trust, and in the meantime suspend the decree given in Wellington by the Supreme Court.

*Mr. Field*: If the Public Trustee had elected to proceed, and the Supreme Court had elected to go into the case itself, a very peculiar complication might have arisen. There is no appeal from the Appellate Court, and one Court might have decided there was a trust and the other might have decided there was no trust.

*Mr. Monk*: It seems to me we ought to have some one here to explain the position of the Appellate Court. It seems extraordinary that such a body as the Appellate Court went to a certain point, as you maintain, and that their proceedings were not made complete.

*Hon. J. Carroll*: That is without doubt, because they referred certain questions to the Supreme Court, and pending answers to these questions they adjourned their Court.

*Mr. Monk*: But what reason had a superior Court to refer to an inferior one?

*Hon. J. Carroll*: But they did; that is a matter of fact. That they had no right to do so is borne out by the decision of the Supreme Court, which referred the questions back to the Appellate Court, and said, "You are the Court to decide these points." Clause 3 really means suspending the decree given by consent in the action instituted by the Public Trustee, because, if you look at the following sections you will find they give further power to the Public Trustee within two months of this Act coming into operation to institute an action in the Supreme Court.

*The Chairman*: Why not a similar action?

*Hon. J. Carroll*: Because this Act declares right off Division 14 to be a trust block. Then it is perfectly plain that the Public Trustee will act on behalf of the Māupoko Tribe.

*Mr. Monk*: You are claiming that the Appellate Court had no power to investigate whether Kemp was owner or trustee. I thought that was one of the issues.

*Hon. J. Carroll*: I do not claim so. The Appellate Court was directed to ascertain matters of fact in respect to a trust alleged by the report of the Commission to exist in Division 14 of the Horowhenua Block.

*Mr. Monk*: But when it comes before the Appellate Court that Court omits to give its decision, and passes it on to the Supreme Court.

*Hon. J. Carroll*: The decree of the Supreme Court is in favour of Kemp and Sir Walter Buller: that where any transaction has been effected according to law, and there were no fraudulent circumstances relating to it, the title was to pass in respect to any instrument of disposition at the time covered.

*Mr. Monk*: Up to that point Kemp was the owner.

*Hon. J. Carroll*: Unless Sir Walter Buller was aware at the time of the existence of the trust. If he was aware, then the transaction was illegal.

*Mr. Monk*: It is so complex, to my mind: that some individual, being a trustee, can perform an illegal transaction, validated in the Supreme Court of the land, and yet part of the same property, held by the same instrument, whether a trusteeship or ownership, is determined by this Bill to be a trust.

*Mr. Heke*: I recognise that we do not understand the position properly at present, and, to enable the Committee to get some guidance, I think we should have before us the decision of the Supreme Court referring back the matter to the Appellate Court; and I move, That the consideration of the Bill be postponed, to enable the Committee to have the decision of the Supreme Court before it.

*Mr. Stevens*: That means that this Bill is not to be passed this session. I say you should have armed yourselves with all the information, because you have had more than a week's notice. If we are going to postpone the consideration of this Bill for any consideration whatever, it means that the Bill is not to pass.