

above-named defendant, Sir Walter Lawry Buller, hath recovered against the Public Trustee in our Supreme Court of New Zealand by virtue of a judgment or decree given or made on the eleventh day of August, 1897, together with interest upon the said sum, at the rate of six pounds for every one hundred pounds by the year from the said eleventh day of August, 1897, and cause that money with such interest as aforesaid, immediately after the execution hereof, to be rendered to the said defendant, Sir Walter Lawry Buller.

Witness his Honour the Chief Justice of the Supreme Court of New Zealand, at Wellington, this 23rd day of
(L.S.) September, 1897.
W. A. H., D.-R.

In the Supreme Court of New Zealand, Wellington District.—No. 6147.—Between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of Wellington District. Greeting:

WE command you that of the real and personal estate of the above-named Public Trustee in your district you cause to be made the sum of three hundred pounds nine shillings (£300 9s.), which the above-named defendant, Meiha Keepa te Rangihwinui, hath recovered against the Public Trustee in our Supreme Court of New Zealand by virtue of a judgment or decree given or made on the eleventh day of August, 1897, together with interest upon the said sum at the rate of six pounds for every one hundred pounds by the year from the said eleventh day of August, 1897, and cause that money with such interest as aforesaid, immediately after the execution hereof, to be rendered to the said defendant, Meiha Keepa te Rangihwinui.

Witness his Honour the Chief Justice of the Supreme Court of New Zealand, at Wellington, this 23rd day of
(L.S.) September, 1897.
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The Sheriff has not levied under the said writs of sale.

(b.) The defendants have issued out of this Court a charging order in the words and figures following:—

In the Supreme Court of New Zealand, Wellington District.—No. 6147.—Between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

It is ordered that, until sufficient cause be shown to the contrary, all that the debt or sum of money owing by the Bank of New Zealand to the Public Trustee, representing the moneys standing to the credit of the Public Trustee in the Bank of New Zealand, in the City of Wellington, in an account known as the Public Trust Office Account, do stand charged with the sum of six hundred and thirty-five pounds seventeen shillings and fivepence (£635 17s. 5d.), being the amount for the payment of which the above-named defendants have obtained judgment against the plaintiff in the above action, and such interest as is properly payable thereon, and the sum of four pounds fifteen shillings (£4 15s.), the costs of this order.

Dated at Wellington, this 21st day of October, 1897.

W. A. D. B., D.-R.

(L.S.) W. A. D. BANKS, Deputy-Registrar.

The defendants have not served the said charging order pending the decision of this honourable Court upon the special case.

The defendants contend—(1.) That under the said decree they are entitled to levy execution against property in the possession of or vested in the Public Trustee. (2.) That they are entitled under the said charging order to charge the moneys mentioned in the said charging order, or some part thereof. (3.) That they are entitled to a mandamus commanding the Public Trustee to pay the said costs out of the Public Trustee's account, and that the said judgment creates a debt owing by the said Public Trustee for the costs so awarded, and that they are entitled to be indemnified out of, and to be paid the same out of, such account. (4.) That under the said decree they are entitled to levy execution against the property of James Crosby Martin, being property of which he is the beneficial owner.

The plaintiff, the Public Trustee, contends—(1.) That under the said decree the defendants are not entitled to levy execution against property in the possession of or vested in the Public Trustee, because he contends that all such property is the property of the Crown, or is held by the Public Trustee in trust. (2.) That the defendants are not entitled to enforce the said charging order, because the said charging order is directed against property which is the property of the Crown, or is held in trust. (3.) That the defendants are not entitled to a mandamus compelling the Public Trustee to pay the said costs out of the Public Trustee's account, because the Public Trustee is an officer of the Crown, and that such mandamus would, in fact, be a command by the Supreme Court to compel payment of (by an officer of the Crown) Her Majesty's moneys. (4.) That before payment of the said costs can be made by the Public Trustee sections 43 and 73 of "The Public Revenues Act, 1891," must be complied with. (5.) No warrant of the Governor has been issued, and no certificate of the Audit Office has been given pursuant to those sections. (6.) That the judgment in this action being against the Public Trustee in his corporate capacity, no execution can be levied against his private property.

The questions for the opinion of the Court are,—(1.) Can, under the said decree, any property, and, if so, what property, be levied upon by way of writ of sale? (2.) Can, under the said charging order, any moneys, and, if so, what moneys, be made available for the purpose of the payment of the said costs? (3.) Are the defendants entitled to a mandamus commanding the Public Trustee to pay the said costs out of any, and if so what, fund under his control? (4.) Is it not a condition, precedent to the Public Trustee paying these costs, that the consent of the Auditor-General or of the Audit Department should be given? (5.) Is it not a condition, precedent to the payment of these costs, that the warrant of the Governor should be given before the said costs can be paid? (6.) Can, under the said decree, an execution be levied upon the private property of James Crosby Martin, the Public Trustee?

If the Court shall be of opinion that a mandamus ought to issue commanding the Public Trustee to pay the said costs out of any funds under his control, then such writ of mandamus shall issue accordingly; and all proceedings are to be deemed and treated as having been taken which may be necessary to entitle the said writ of mandamus to so issue.

Whatever the decision of the Supreme Court may be, either party shall have the right to appeal to the Court of Appeal from such decision.