

In the Supreme Court of New Zealand, } Action No. 6147.
Wellington District.

Between the Public Trustee, plaintiff, and Sir Walter Buller, K.C.M.G., and Meiha Keepa te Rangihiwini, defendants.

THIS action coming on for trial before his Honour the Chief Justice on Wednesday, the 11th day of August, 1897; and Mr. Cooper, Mr. Stafford, and Mr. Baldwin appearing as counsel for the plaintiff; and Mr. Bell and Mr. A. P. Buller appearing as counsel for the defendant Sir Walter Buller, and Sir Robert Stout appearing as counsel for the defendant Meiha Keepa te Rangihiwini: This Court doth by consent order that, inasmuch as Wirihana Hunia, an original co-plaintiff, has been struck out by order of his Honour the Chief Justice, made upon the application of the said original co-plaintiff on the 7th day of August, 1897, the statement of claim be amended by substituting the word "plaintiff" for the word "plaintiffs" wherever the latter word appears therein, and by making all consequential grammatical amendments: And, by consent of Sir Robert Stout, as counsel for the defendant Meiha Keepa te Rangihiwini, and by consent of Mr. Cooper, as counsel for the plaintiff, this Court doth order and decree that this action be dismissed as against the said defendant Meiha Keepa te Rangihiwini, without prejudice to the determination of any matters which are by "The Horowhenua Block Act, 1896," to be determined by the Native Appellate Court: And the plaintiff admitting by his counsel that he can adduce no evidence to substantiate the charges against the defendant Sir Walter Buller alleged in the statement of claim, and submitting to a final judgment in favour of the said defendant Sir Walter Buller, establishing the validity of the alienations and dealings specified in sub-paragraphs (a) to (f) inclusive of paragraph 28 of the original statement of claim, this Court doth further decree and order that the validity of each and every of the alienations and dealings specified in sub-paragraphs (a) to (f) inclusive of paragraph 28 of the original statement of claim is established by this final judgment in this action: And all parties consenting that Peter Bartholomew, of Levin, sawmiller, should be added as a party to this action in respect of the dealing appearing upon the certificate of title for Division No. 14 of the Horowhenua Block as lease numbered 2196, this Court doth order that the name of the said Peter Bartholomew be so added as a defendant in this action: And this Court doth further adjudge and decree that the validity of the said dealing is established by this final judgment in this action: And this Court doth further adjudge and decree that each and every of the dealings specified in sub-paragraphs (a) to (f) inclusive of paragraph 28 of the original statement of claim, and the said lease, No. 2196, by the defendant Meiha Keepa te Rangihiwini to the said Peter Bartholomew, is and each of them are entitled to be reregistered pursuant to section 10 of "The Horowhenua Block Act, 1896": And this Court doth further adjudge and decree that the plaintiff do pay to the said Sir Walter Buller his costs of this action, computed at the sum of £335 8s. 5d.: And this Court doth further adjudge and decree that the plaintiff do pay to the said defendant Meiha Keepa te Rangihiwini his costs of this action, computed at the sum of £300 9s.

[L.S.]

By the Court,

W.A.H., D.R.

W. A. HAWKINS, Deputy Registrar.

4. Your petitioner had made himself responsible for the costs incurred by the defendant Meiha Keepa te Rangihiwini, and has accordingly paid such costs, and is therefore entitled to receive the amount of the costs payable under the said decree of the Supreme Court to that defendant.

5. The Public Trustee, notwithstanding the judgment and decree of the Supreme Court, submitted that he had no funds out of which to pay the costs; and your petitioner has never been paid his own costs, or the costs incurred by him for Major Kemp, and which the Public Trustee was by the decree directed to pay, amounting together to £635 17s. 5d.

6. The sole reason why the plaintiff is not able to exercise the ordinary right of a litigant in the Supreme Court in this matter is that the Public Trust Fund has been held to be free from liability, and the Public Trustee himself not personally liable; and therefore the nominal plaintiff selected by Parliament to institute the proceedings was a plaintiff who could recover if he succeeded, but could not be compelled to pay if he lost.

7. Your petitioner is informed, and believes, that the costs incurred by the Public Trustee in prosecuting the said action have been paid by the Government of the colony to the solicitors for the Public Trustee.

8. Your petitioner submits that it could not have been the intention of your honourable House and of Parliament in passing the Horowhenua Block Bill, and directing that an action should be brought against your petitioner by the Public Trustee, to prevent your petitioner from recovering the costs incurred by him in defending his Land Transfer title if the judgment of the Supreme Court should be, as it has been, in your petitioner's favour.

9. In order to determine the question whether the Public Trustee, either personally or out of the Public Trust Funds, was liable to pay your petitioner's costs, a special case was stated by consent for the opinion of the Supreme Court, and was heard before his Honour Mr. Justice Denniston. In the course of the judgment delivered by his Honour Mr. Justice Denniston (see the report of the *New Zealand Times* of the 7th February, 1898) the following passages occur:—

"There was provision under section 47 of the Public Revenues Act for unauthorised expenditure—that was, expenditure for which no parliamentary provision was directly made. Under this the expenses of this action had been provided, and the costs ordered to be paid could have been provided. His Honour thought it must be taken that Parliament had a right to assume that the Executive would take whatever steps were necessary to give effect to its directions, and would