

39. Why? In what?—In the Supreme Court—in winning the action. Of course, I was a solicitor myself, and possibly Mr. Cooper did not think it necessary to go into details with me as he might have done with a layman; but I think he said he was satisfied I would not succeed. There were two things I would have to prove. I would have to prove the existence of a trust, and Sir Walter Buller's knowledge of that trust, and I think his exact words were, "I am satisfied you cannot succeed"; and then we went into the reasons why—the credibility of witnesses and other things which I possibly need not allude to. Then he said, "Under these circumstances I take upon myself the responsibility of advising you to consent to judgment for the defendant." I do not say those were the exact words, but that was their effect. Well, I thought over the matter for a time, and then turned round to Mr. Stafford and Mr. Baldwin and asked them if they concurred or agreed with that, and they replied "Yes." Then I said, "I am not justified; I am purely an official in this matter, and I am not justified, if that is your advice, in carrying on a long litigation at great expense in the face of your positive advice; and, that being so, I authorise you to consent to judgment being entered." Then I thought for a minute, and I think Mr. Cooper said, "Very well, I shall tell the Chief Justice we have tried to get these points of law argued, and he has refused to have them argued before trial; we have tried to get a postponement of the Supreme Court action until the Native Court has given its decision, and that has been refused; and we have tried to raise as a point of law that it was necessary to get the Appellate Court's judgment before the Supreme Court action could be tried, and that has been refused; and, under these circumstances, I have taken upon myself the responsibility to advise the Public Trustee, and he has instructed me to consent to judgment for the defendant." I said, "Very well; but you must recollect that the other side will not be satisfied with that. They will say attacks have been made upon them, and they want to clear themselves; and then if I offer no evidence they may say we want to call evidence—we have had assertions made against us, and we want to call evidence." He said, "If they do that I shall say to the Judge, 'If your Honour likes to listen I shall not take any part in it. There my functions cease; I have consented to judgment.'" That is all that passed. I did not see Mr. Cooper again, I think, after that.

40. Did you not see the Minister of Lands, together with Mr. Cooper and your other advisers?—Between what time?

41. Between that conference you have mentioned to me and the actual time of the trial?—No.

42. Did you not with your advisers interview the Minister of Lands?—I do not think between those dates I did. [Documents referred to.] The day I saw you at the office of the Minister of Lands was the 9th August. I received a telephone message from the Minister of Lands that he wished to see me, and I went up to him with Mr. Cooper.

43. And your other advisers?—No. Subsequently I had a conference with Mr. Cooper, Mr. Stafford, and Mr. Baldwin; but on this occasion I went with Mr. Cooper himself. Mr. McKenzie asked us to explain the position, and Mr. Cooper explained it. The Minister simply stated that he disapproved the course Mr. Cooper suggested.

44. Are you sure the Minister of Lands disapproved?—Quite positive.

45. That is not Mr. Cooper's suggestion?—Here is my note made immediately after I went back to the office: "On receipt of telephone from Minister that he wished to see me, attended on him with Cooper. He wanted to know position. Cooper explained it fully, and also the course decided on. Minister stated he disapproved of it, and asked us to remember that he had done so." I turned round to Mr. McKenzie and said, "But you see, sir, I am Public Trustee, and not you."

46. *The Chairman.*] It was subsequent to that?—It was subsequent to that, in the evening. It was past 10 o'clock when I left. My recollection is that it was on the Monday night when positive instructions were given. That is borne out by Mr. Stafford and Mr. Baldwin. I made a note of these things. The consultation took place on the Monday before the trial, and was a final consultation before the trial. To the best of my recollection, the conversation Mr. Bell refers to with Mr. Cooper took place some time between 9 and 10 o'clock.

47. *Mr. Bell.*] You must have had some communication on the Saturday?—Very possibly.

48. Before you went into Court you had communication with the Minister of Lands, and you informed the Government of the course you were going to take?—Yes; and I will state the course it was proposed to take, or what was decided upon, if necessary. I have no recollection that definite positive instructions were given to Mr. Cooper before between 9 and 10 o'clock in the evening on the Monday.

49. I now refer to G.-2B, Appendices to the Journals of the House for 1897. I want to refer you to Mr. Cooper's statement there reported, on the 12th page: "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." He did not make that statement on your authority?—Mr. Cooper never suggested to me what language he should use in the Court at all, Mr. Bell. As nearly as I can recollect, all that passed between Mr. Cooper and myself was that I authorised him to consent to judgment. How far I am bound by his statement is, of course, another matter.

50. Did you not understand as a lawyer that Mr. Cooper and your advisers advised there was no evidence of any notice of trust?—There was no evidence that would satisfy the Supreme Court. The onus of proof lay upon us, and we could not prove it.

51. Is that not the same?—I do not know what construction you may put on your language by-and-by, and I wish to be particularly careful.