

52. Did you not understand that Mr. Cooper was going to say there was no evidence of notice of trust on the part of Sir Walter Buller?—I had no information at all, nor did I understand that. I have no recollection at all that Mr. Cooper intimated to me that he was going to say anything of the sort.

53. But you were a lawyer?—When I left Mr. Cooper on that night the impression upon my mind was that Mr. Cooper was going to say in effect what he had said to me to the Chief Justice—to recite the endeavours adopted in a certain course, and that they had failed, and that he had no evidence to offer, and would consent to judgment. Mr. Baldwin was present, and Mr. McClean, Mr. Stafford's managing clerk. Mr. Stafford is away now.

54. You do not suggest that Mr. Cooper is not an honourable man, and counsel of the highest standing in New Zealand?—Certainly not.

55. "Had the Appellate Court before the trial of this action said 'Aye' or 'No' whether there was a trust or not in Major Kemp, there would have been no necessity for further investigations. If it had been decided"—this is what Mr. Cooper said—"there was a trust in Major Kemp, then I should have advised the Public Trustee that he could not show any evidence of that trust having been notified to Sir Walter Buller, and that would be a logical and consistent termination of the matter." Did you not understand that that is what Mr. Cooper intended to say to the Court?—I did not understand, and now when you put it pointedly to me like this, still I say I did not understand that Mr. Cooper was going to say anything more than I have indicated.

56. You know that Mr. Cooper in Court was associated with your solicitor, Mr. Stafford, and the second counsel, Mr. Baldwin, all robed, and that Mr. Cooper purported to speak on behalf of himself and his learned friends?—Yes.

57. Have you ever stated to Mr. Cooper that he went beyond the authority you had given?—I do not think so. I do not think the matter has ever been mentioned.

58. With regard to the amount of these costs, there were some small sums in dispute—do you remember?—Yes.

59. Did you not ask Mr. Cooper if possible to settle the quantum of these small amounts with me?—Yes.

60. It was done through Mr. Cooper at your request?—Yes.

61. And I think I received a letter from you or your solicitor stating that was going to be done. You made no objection to the quantum of these sums?—No. I recollect a question arising as to the costs, and the Chief Justice intimated that he would allow costs, and there was some discussion between counsel as to the amount or what heading they would come under, and I think Mr. Cooper suggested it should be left to be settled in Chambers; and then there was some question as to how much would probably be allowed. I think Sir Walter Buller's solicitors were very glad to leave the question to Mr. Bell, and I was very glad to leave the question to Mr. Cooper, and we were quite satisfied to do that rather than to have the matter threshed out in Chambers. The matter was to be settled by these two gentlemen, and Mr. Cooper had my full authority to agree with Mr. Bell, and the amount which Mr. Cooper agreed to with Mr. Bell was embodied in the decree.

62. *The Chairman.*] Then, upon the case as stated, and as shown by this, a decree was made as set out in the petition?—No; that arose afterwards.

63. The decree as set out in the petition?

*Mr. Bell:* Yes.

64. *Mr. Baldwin* (to witness).] Do you remember having any communication from your solicitors as to the advisability of delaying these Supreme Court proceedings?—Yes, delaying them until the Appellate Court gave its decision.

65. The Horowhenua Block Act was passed in October, 1896?—Yes, I think so.

66. And the six months given to you to institute proceedings expired in April, 1897?—Yes.

67. The evidence was finished in the Appellate Court on the 7th April, 1897: do you know that?—No, I do not know what date it was.

68. And on the 14th April, 1897—within a few days before the expiry of the six months—the writ was filed in the Supreme Court?—Yes. I will not be sure about the date; as shortly before as possible.

69. You did not serve that statement of claim on the defendants at all?—No.

70. Why?—Because I was advised it was extremely doubtful whether an action would lie at all until the Appellate Court had given its decision, and, whether it would lie or not, it was extremely desirable to get the Appellate Court's decision before the Supreme Court action came on for trial, because on one view of the Act the Appellate Court's judgment would have been conclusive—I do not say it is right—would have been conclusive as against all the world as to the existence or non-existence of a trust in Major Kemp; and, secondly, if the Appellate Court found there was no trust in Kemp, it was useless trying to establish a trust in the Supreme Court, and it was not proposed to go on trial at all.

71. That is to say, if the Appellate Court had established there was no trust in Kemp you would have had to abandon the proceedings against Sir Walter Buller?—That is so.

72. And, as a matter of fact, that has been the decision of the Appellate Court, that there is no trust as against Major Kemp?—I saw it in the newspaper.

73. So that if you had been able to wait until the decision of the Appellate Court was given these costs would not have been incurred at all?—I do not know; I presume so. That was the intention.

74. *The Chairman.*] You would not have issued the writ?—I should have had to issue the writ. I should have had to commence the action, but it would have been waste of time to go on.

75. *Mr. Baldwin.*] You have a report from your solicitor as to the various steps taken in the action?—Yes.