

132. That matter, then, would be left in the hands of the Chief Justice as to whether he would allow the case to proceed any further after Mr. Cooper, so to speak, had confessed judgment?—Of course; it has nothing to do with me.

133. *Mr. Symes.*] It has been suggested by Mr. Bell that there was something with an Act of Parliament in connection with this. I understood Mr. Martin had said it was on no suggestion of his?—The first I heard of the Act of Parliament, I believe, was when counsel came back from Chambers and were complaining about a statement made by the Chief Justice, to the effect that he had insinuated that they were not *bonâ fide* in their application for postponement, because they wanted an Act of Parliament passed. That was, I believe, the first I heard of it.

134. It really came from the Judge, then?—Yes. The shorthand note referred to me afterwards says this:—

The Chief Justice: Why can't you abandon action? You can abandon action.

Mr. Bell: We will lodge protest against discontinuance.

The Chief Justice (to Mr. Stafford): I suppose you want to get an Amendment Act. You must bring action within six months.

Mr. Stafford denies that plaintiff wants amending Act. We expect to get Appellate Court's decision before six months; certainly before 9th August, date fixed for trial. . . . We want decision from your Honour whether we are entitled to bring this action until Appellate Court had decided under section 5.

The Chief Justice: Has not the Legislature determined to inquire into merits?

Mr. Stafford: That is so, if action was maintainable.

Mr. Bell: Date of trial fixed by consent on 9th August. That is preliminary objection.

Mr. Stafford: Date was so fixed in accordance with his Honour's suggestion that there should be accommodation. We might have got and expected to get Appellate Court's decision in the interval. That might not have helped if we had no right to bring action.

The Chief Justice: You are anxious because of this doubt not to go to trial; but if going to trial entails expense, and action of defendant causes you to go to trial, it will entail extra costs on defendants.

Mr. Stafford: This may be a fatal blot on the proceedings and render them absolutely abortive.

The Chief Justice: You might wish to postpone trial till after April to get remedying Act.

Mr. Stafford: I do not say that. On behalf of Public Trustee I say Public Trustee has nothing to do with any such idea."

That is the first I heard of an amending Act. Subsequently, Mr. Stafford said something about Sir Walter Buller might want an amending Act because he could not get his title without.

135. *Mr. R. McKenzie.*] Has the decision of the Appellate Court been given on this case?—I am sure I cannot tell you. As soon as judgment was given I had nothing more to do with the case. My functions ceased, but I have seen in the newspaper that the Appellate Court has given a decision; but, on the other hand, I have seen applications in the Supreme Court and the Appellate Court, until I could not tell you in what position the thing is. I have not been interested, and have taken no steps in it, and know nothing about it.

136. What I gathered from your evidence was, that if the case had been postponed until the Appellate Court had given its decision it might have influenced the other case or caused it to be abandoned?—Had the Appellate Court found that Kemp was the absolute owner of Section 14, what I believe I should have done was to have served a writ on Sir Walter Buller, or his solicitor, and said, "I cannot go on with it. I must bring my action in order to clear your title," and I should have issued the writ within six months.

137. *Mr. Lethbridge.*] If the six months had elapsed, what would have been the effect?—I would not have let the six months elapse. If it had not been for the statute forcing me to act within six months I would not have issued the writ.

138. *Mr. R. McKenzie.*] Did you not wish to infer that the other side forced you to bring the action?—They did force me. The statute ordered me to issue the writ. Under the Supreme Court rules we can bring an action, but need not serve the writ for twelve months; but, in this case, the other side went to the Court and asked it to order us to serve the writ, and I was forced to go on; and then they forced us on to trial.

139. Has Sir Walter Buller exhausted all his legal remedies to recover his legal expenses?—I think so. I do not know what more he could do. It was a question of law whether I was personally responsible, or whether the Trust Office funds could be attached, and so proper proceedings were taken to get the facts from me, and they were brought before the Supreme Court, and the Court has decided that I am not personally responsible, nor can the office funds be attached.

140. The Supreme Court does not say the colony is liable?—Mr. Justice Denniston says, I think, that the costs should be paid. The Appellate Court made an order, and said it was an interlocutory order.

141. *Mr. Lawry.*] Has any attempt been made to obtain the costs from you personally?—I have been applied to over and over again. The evidence of what has exactly taken place the Chairman has. All applications have been made by Sir Walter Buller's solicitors to me.

142. Do you know whether there has been any parallel case connected with your office?—I do not think so. I suppose at Home the Attorney-General would take proceedings such as these, and would get an indemnity.

143. *Mr. Hall-Jones.*] I understand you to say you had six months within which to issue the writ?—Yes.

144. And the writ once issued it could stay in abeyance, according to the Supreme Court rules, for twelve months?—Yes.

145. But you were forced into the Court?—Yes.

146. By whom?—By the defendants, Sir Walter Buller and Major Kemp.

147. A very important issue in this matter was that a certain matter should be referred to the Appellate Court?—Yes; that is the construction my solicitors took of the law.

148. And the Appellate Court had not decided the point referred to?—No.

149. Would the reason be that it improved the position of Sir Walter Buller if this case was forced into the Supreme Court before the Appellate Court had given a decision?—Well, I do not know. Under ordinary circumstances the Supreme Court would be the Court to settle whether