

there was a trust or no trust, and I do not see myself what advantage it would be to Sir Walter Buller to shove the case on to the Supreme Court if the law was that the Appellate Court was the special statutory Court to settle the question, or whether there was a trust or no trust. The Supreme Court would say, "Very well, as it has to be settled by a special Court we cannot interfere."

150. But there was no need for Sir Walter Buller to hurry the case on; he could have let it remain for twelve months?—He could have let it remain.

151. Did he force the position?—He forced the position.

152. And in consequence incurred these costs he has now petitioned for. For instance, suppose the matter had been left in abeyance, then little costs would have been incurred; but in consequence of hurrying the case on these costs have been incurred?—Yes; if the Court had given a decision that Kemp was the absolute owner the costs would only have been a few pounds.

153. You applied to the Court to permit of the Appellate Court giving its decision—you applied for postponement?—Yes; we applied for that.

154. And that was refused?—Yes.

155. And then you were advised that, under the circumstances, it was unwise to go further?—I was advised that we could not succeed.

156. But the Appellate Court not giving its decision was an important factor?—Yes. We had to determine whether there was a trust, and the trust might have been established in the Appellate Court, because the evidence was available there which was not available in the Supreme Court, and if a trust was established in the Appellate Court and the decision of the Appellate Court was binding on the whole world, including the Supreme Court, the issue to be proved in the Supreme Court became a much smaller one. The first thing we had to do was to establish a trust practically by Maori evidence.

157. You were bound by statute to commence the action within six months?—Yes. The whole of the delay was to get the decision of the Appellate Court. We tried in every way we could to get that decision before this action came on.

158. If the final question had been allowed to go on for ten or twelve months, would Sir Walter Buller's position have been prejudiced by the delay in the Supreme Court?—He was prejudiced in this way, that he could not deal with his land. Moreover, the witnesses might die, and evidence be lost.

159. I mean from the legal point of view?—I do not see how, technically, his position would be worse from the legal point of view, except that evidence might be lost.

160. Apart from the question of witnesses dying, and his immediate interest in the land, the question might have stood over for some months longer, with a possibility of the decision of the Appellate Court being given, and none of these costs being incurred?—Yes, supposing he had the same evidence available to him at the end of the twelve months as he had at the beginning, and, putting aside the fact that he could not deal with the land, I do not see that he could be prejudiced, except that this thing would be hanging over his head.

161. *Mr. Lethbridge.*] And that there were other charges made against him?—Yes; the improper dealing.

162. And naturally a man would like to have that taken off his character as soon as possible?—Yes.

163. *Mr. McLean.*] About the funds; you said just now that you never had a similar case?—Yes.

164. What would be your position if you had a similar case? Are you never in a position to pay?—I do not know that ever such a case cropped up.

165. You surely have a fund?—I have a fund to do this: the Supreme Court has held that where an action is brought against me in respect of my duties as Public Trustee, I can pay; not only that I have the power, but I can be made to pay, in defiance of the Government, any just claims against the office. My office has nothing to do with the action. My name is simply used. This is no claim against me incident to my ordinary duty as Public Trustee. Supposing a person interested in an estate issues a writ and recovers against me, I must pay, in spite of every authority in the land; that is, neither the Audit, the Government, nor anybody else can stop me from paying. This is a special Act, which simply takes my name and orders me to do certain things, and gives me no means for doing them. I wrote to my legal advisers asking them whether I had power to use my funds.

166. Did you represent that to Ministers?—Yes; you will find all that. I represented that at once, before I commenced the action. You will find that is all set out in my examination. I can let you have the judgment given in the Supreme Court.

167. You do not know anything specially about the judgment of the Appellate Court?—No, nothing more than what appeared in the newspapers.

168. It was a personal surmise?—The Appellate Court said, after the close of the evidence, that they wanted to state certain questions of law for the Supreme Court. Those were stated, and the Chief Justice refused to hear them. He said he was not going to hear them, but would refer them to the Judges. We did not anticipate that, but thought the Appellate Court would have given its judgment in the course of six weeks or so.

169. *The Chairman.*] There has been a considerable number of questions put to you about issuing the writ within six months. Will you tell us the procedure, and how Sir Walter Buller came to know the writ was issued?—A document is prepared, and a statement of claim filed in the Supreme Court, and a duplicate is given to the person interested.

170. But in this case it was not served?—No.

171. Then, how did they know?—I can only surmise that they knew that I must take action within six months, and they must have searched the Supreme Court to find out.