

any notice on the part of Sir Walter Buller of any trust which might have been in existence affecting Kemp, is one which I ought to state to the Court at the very outset, and so save the Public Trustee and the parties concerned the expense of a long and complicated trial, which, in my opinion, could only now result in a judgment in favour of Sir Walter Buller. I therefore submit to a decree being pronounced in terms of section 10 of the Act. I think I may be permitted to remark that if the Native Appellate Court had, within the six months referred to in section 5, determined the question which manifestly was submitted to them for determination, and the judgment upon which they have not yet pronounced, a very considerable amount of difficulty and embarrassment would have been avoided. I make no reflection upon the Appellate Court. It is the unfortunate circumstance that the judgment of the Appellate Court has been postponed, it may be for a considerable time, which to my mind has placed this action in its present position. Had the Native 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 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. Major Kemp is a party to this suit, and I submit—and I do not think my friends of the other side will disagree with me—that, whatever view your Honour will take, no decree of the Court can be pronounced in favour of Major Kemp. The only decree that can be pronounced is one under section 10 of the Act, to order the certificates of title for the two small sections which were conveyed in fee-simple to Sir Walter Buller to be reissued, or decreeing their validity; and also ordering the reregistration of the dealings on the certificate of title to Block 14. The Native Appellate Court must, in due course, determine the question whether Major Kemp was a trustee; but in this case the only question is the validity of the dealings of Major Kemp, who was the ostensible owner of the property, and Sir Walter Buller. The decree, therefore, that your Honour should pronounce is one under section 10 setting up the validity of these two certificates which are mentioned in the statement of claim. The total area is 11 acres; there are also the leases and mortgage, which are registered in the name of Sir Walter Buller. I shall also ask your Honour to include in the decree the lease to Mr. Bartholomew—a lease which has never been attacked; but the effect of the statute is to set aside all dealings upon the certificate of title unless they are ordered to be reregistered. I think my friends will agree with me that Mr. Bartholomew's lease should be validated, otherwise the effect of the statute might be to prevent his taking advantage of the lease, which has never been attacked at all. I feel the course I am taking is the only one I could take, consistent with my duty to tender the best advice I can to the Public Trustee. It is a course which meets with the approval of my learned friends, Mr. Stafford and Mr. Baldwin, and I think, therefore, that the decree which I have suggested is the one the Court should make. I shall have something to say on the question of costs after my friends have said what they have to say on these questions, and will then leave the question of costs to be determined by your Honour.

*Mr. Bell:* I have listened carefully to the statement made by my learned friend, Mr. Cooper. He has omitted to notice that there are two charges in the claim of personal fraud against my client: one is, that he obtained land from Major Kemp, while he was his confidential adviser, at grossly inadequate rentals and values; and the other is, that he obtained the certificates to his mortgage by preventing matter coming to the knowledge of the Trust Commissioner. I submit that we are entitled to a frank withdrawal, and I submit that there is no evidence.

*Mr. Cooper:* That is so. It was an omission on my part. I have no evidence to support either of those statements, and I say so now.

*Mr. Bell:* It has been stated publicly, not, I believe, by or in any way with the consent of my learned friend, that this action has been settled. The statement is absolutely incorrect. What I desire to do is to make it clear that no compromise of the kind has ever been proposed or suggested to us; and they will concede that, if they had proposed anything of the kind we should have indignantly refused it. Charges have been made against my client which can be met and disposed of only in open Court; and Sir Walter Buller has consistently and persistently claimed the right of having the charges inquired into in the Supreme Court. As late as Saturday last this correspondence took place: A letter dated the 7th August—that is, on Saturday—addressed to the solicitor for my client, and signed by the solicitor for the Public Trustee, Mr. Stafford, was as follows:—

"DEAR SIR,—

"7th August, 1897.

"*Public Trustee, and Buller and Kemp.*—I hereby give notice that at the hearing of this cause the plaintiff will rely upon and argue the questions of law arising upon the amendments annexed to the original statement of claim, and discussed before his Honour the Chief Justice yesterday, and will adduce no evidence other than the proof that the Appellate Court has heard the evidence adduced upon the application to that Court by Major Kemp and others, and that such Court has not yet delivered its decision. No doubt you will admit these facts. The object of sending this letter to you is to enable you to avoid, as far as possible, the expenses of the attendance of witnesses.

"A. P. Buller, Esq., Solicitor, City."

"Yours faithfully,

"E. STAFFORD.

And immediately the following answer was addressed to Mr. Stafford:—

"DEAR SIR,—

"Wellington, 7th August, 1897.

"I am in receipt of your letter of to-day's date, giving me notice that at the hearing of this action the plaintiff proposes to rely upon and to argue the questions of law arising upon the amendments to the original statement of claim, and that he will adduce no evidence other than proof that the Appellate Court has heard the evidence adduced to that Court by Major Kemp, and that such Court has not yet delivered its decision. On behalf of the defendant, Sir Walter Buller, I give you notice that I object to the course you propose to adopt; that the defendant insists that he is entitled to have tried the issues of fact which the Public Trustee has taken upon himself to assert in the original statement of claim, or, at all events, such of them as are within the scope and intention of section 10 of 'The Horowhenua Block Act, 1896.' The defendant will request the Court to try such issues, and to hear evidence to be adduced on his behalf as to the question of trust, as to the question of notice thereof, and as to the question of value.

"Yours faithfully,

"E. Stafford, Esq., Solicitor, Wellington."

"A. P. BULLER.

That was on Saturday morning; and on the afternoon of Saturday my learned friend, Mr. Cooper, informed me that he intended to take the course which he has just notified to the Court. That communication was made in fairness and courtesy to Sir Robert Stout and myself; but it was a statement made by my learned friend to me without any suggestion of compromise, or any suggestion that we should accept it. If my learned friend chose to take that course, that was for him. We discussed nothing and arranged nothing. It was simply an intimation made by one counsel to another of the course which the plaintiffs intended to take. My client wishes through me to make it clear that we have not directly nor indirectly proposed or been asked by the other side to agree to the course which my learned friend has just notified to the Court.

*His Honour:* I do not quite understand with regard to Mr. Bartholomew.