

*Mr. Bell*: My learned friend pointed out, and I understand that this lease of Bartholomew's required to be reregistered; but the Public Trustee omitted to bring the action, and if there can be a validation of Mr. Bartholomew's lease in this action there would be no objection on our part. It is a matter which does not concern us. But if Mr. Bartholomew cannot get his title in consequence of action not having been commenced within the six months, we are quite content that there should be a validation of his title by this suit.

*Mr. Cooper*: I should like to say there has never been any approach by one side or the other for a settlement of the matter. What Mr. Bell has said is absolutely correct. I consider it was only right and courteous that I should intimate to counsel on the other side the course I proposed to adopt, and that was done.

*Mr. Bell*: Being absolutely at arm's length with the other side, I have not submitted to them the minutes of the decree. I will read them, with your Honour's permission, and my learned friends can say whether they would accept them or adjourn to consider them. [Then followed the proposed minutes.]

*Mr. Cooper* then asked for a little time to consider the minutes, and that they should be settled before His Honour. He then says: On the question of costs, I ask the Court to bear in mind that the Public Trustee is an officer appointed by statute, and it was his duty to bring this action. He could not avoid bringing this action, and to mulct him in costs for carrying out what was his duty—

*His Honour*: Personally?

*Sir R. Stout*: The Public Trustee has half a million of money behind him.

*Mr. Cooper*: The Public Trustee is directed by the statute to bring this action for the benefit not only of the registered owners themselves but also for those whose dealings are affected, and it is because the matter is in that position that I felt it my duty to state frankly to the Court that we have no evidence to affect Sir Walter Buller's title. Of course, I quite admit that the question of costs is one solely in your Honour's discretion. I am only submitting, as a matter for your Honour's consideration, the statutory position of the Public Trustee under the statute passed by the Legislature, and that there is no provision in the Act as to costs.

*His Honour*: I suppose he has a good purse behind him?

*Mr. Cooper*: I consider it my duty to place that question before you; and I submit that in any case, if costs are allowed, they should be only scale costs. There is no provision under which the Court can apply any other principle.

*Judgment of Mr. Justice Denniston, delivered February, 1898.*

By "The Horowhenua Block Act, 1896," section 10, it is enacted that, "For the purpose of testing the validity of the alienation referred to in subsection (f) of section eight herewith, and also of dealings the registration whereof have been cancelled as aforesaid, the Public Trustee is hereby directed and empowered to institute, on behalf of the original registered owners of the said block as set forth in the Second and Sixth Schedules hereto, or any of them, such proceedings in the Supreme Court at Wellington as may be necessary for that purpose within six months from the date of the passing of this Act."

There is no provision in the Act as to the costs of or in connection with such proceedings. No property or interest is by the Act given to the Public Trustee in the land affected by the dealings which are to be the subject-matter of the suit. The effect of establishing the invalidity of these dealings would (assuming them to be onerous upon the land affected) have inured for the benefit of such of the registered owners (if any) as might be ultimately found to be the owners of such land. It is not contended that the persons on whose behalf the action is directed to be brought were liable for costs, and the Public Trustee has no money of theirs in his hands. Any money received by him under the Act is from specific payments, and is by section 20 directed to be held for such purpose and in such relative proportions as the Court determines are entitled to it. It is therefore clear, and was admitted by all parties, that defendants' costs, the subject of these proceedings, if payable by the Public Trustee out of funds at his own disposal, must be paid out of moneys in his hands by virtue of his position as administrator of the "Public Trust Office" as created and defined by the consolidating Act of 1894.

That Act, "The Public Trust Office Consolidation Act, 1894," provided that there should be a "Public Trust Office" administered by an officer called "the Public Trustee," who was constituted a corporation sole, with perpetual succession and a seal of office. His duties under the Act are confined to acting as a trustee, executor, administrator, guardian, committee, agent, or attorney, and to administering and dealing, under the provisions of the Act, with estates placed in the Public Trust Office by his appointment in such capacity. Very full and special powers are given him under the Act, but they are all relative to his position as trustee, executor, &c. See, for instance, section 27, some of the provisions of which were much relied on in the defendants' argument. As to all estates consisting of property other than money, and as to money expressly prohibited from being dealt with as a common fund, the Public Trustee occupies the ordinary position of a trustee. They are trust property, and no question can arise as to the right of the Public Trustee to deal with any part of them, or their proceeds, other than in discharge of their respective trusts. As to all other capital moneys it is provided that they shall become one common fund, which shall be invested as described by the Act, and that any investments made from such common fund shall not be made on account of or belong to any particular estate. A fixed rate of interest on all such investments is to be credited to each estate. If the common fund shall be insufficient to meet the lawful claims thereon, the Colonial Treasurer shall pay such sums out of the Consolidated Fund as may be necessary to meet the deficiency.

The effect of these provisions is that such moneys cease to be, as between the beneficiaries and the Public Trustee, trust moneys. The relation of trustee and *cestui que trust* ceases. They become moneys placed on deposit at interest with the colony, with the colony's guarantee for the repayment of principal and interest. As between the colony and the Public Trustee, or rather the Public Trust Office, the latter, through the Public Trustee, invests the moneys as prescribed by the Act. If the transactions of the office, including the administration of this common fund, show a profit, one-fourth part of such is to be invested as an assurance and reserve fund, and the balance is to be paid into the Consolidated Fund. If there is a deficiency, then, after exhausting the assurance fund, the Colonial Treasurer may advance such sums out of the Consolidated Fund as may be necessary to meet such deficiency. The Public Trust Office is, in fact, a trading or banking department, out of which money may be and, in fact, has been made.

I think the Public Trustee has, under the Act, very full powers to manage the business of his office, and, as incident to such management, to pay all proper claims or demands arising out of such management. Such powers are given, *inter alia*, by sections 27 and 54. It was contended for the plaintiffs that section 33, which makes moneys in or payable into the Public Trustee's account the property of Her Majesty for the purposes of this Act, made such moneys subject to the provisions of "The Public Revenues Act, 1891." To support this, counsel were driven to the extreme contention that in strictness the Public Trustee had no power to pay any moneys except by the cumbrous machinery provided by Part 5 of the last-mentioned Act. It was, indeed, necessary for their argument to contend that all payments by the Public Trust Office were