

As originally introduced, it actually confiscated the estate of Major Kemp without remedy and without trial, declaring him to be a mere nominal owner, and directing the Registrar to issue a certificate of title to the Crown for so much as he had not validly alienated in fee-simple. As to Sir Walter Buller, the 6th section of the Act as originally introduced provided that the dealings under which his titles were acquired should be reregistered unless within three months an action was brought, by or on behalf of the persons entitled to the benefit of the alleged trust, to have such dealings declared void.

6. The Act was amended as it passed through the Legislature, and as it emerged and is found on the statute-book it contains the following provisions:—

First: The Land Transfer titles were declared void and cancelled.

Second: The Native Appellate Court was directed to inquire whether Kemp was a trustee. If they found that he was not, then Kemp's original Land Transfer title should be restored.

Third: The Public Trustee was directed to begin an action in the Supreme Court, within six months after the passing of the Act, to attempt to establish against Sir Walter Buller (a) that Kemp was a trustee, and (b) that Sir Walter Buller had notice of the trust when he acquired his title; and if Sir Walter Buller succeeded in the action in the Supreme Court his titles should be reregistered.

7. So far as Sir Walter Buller was concerned, this amendment was to his detriment. In the first place, as the Act was originally introduced, his title was confirmed unless an action was brought against him within three months; and, secondly, the action was to be brought against him by Natives, so that he would have had a complete remedy for costs. It was suggested by Mr. Baldwin that the alteration directing an action to be brought and making the Public Trustee the plaintiff was at the instance of Sir Walter Buller. This is obviously absurd upon the face of it, because, first, the Journals show that the amendment was moved by the Minister of Lands, who is scarcely likely to have accepted a suggestion from Sir Walter Buller; and, secondly, the last person whom Sir Walter Buller would have proposed to bring an action against him was the Public Trustee, who, in another capacity, had sat as Chairman of the Horowhenua Commission.

8. After the session of 1896 proceedings were commenced in the Native Appellate Court to attempt to establish the trust against Major Kemp. The proceedings lasted a long time. The Native Appellate Court stated questions for the opinion of the Supreme Court. Meantime the six months limited by the statute within which the Public Trustee must commence his action in the Supreme Court was slipping away. If the action was not commenced by the Public Trustee within six months, then Sir Walter Buller's titles disappeared, for the Act made their restoration contingent upon the result of such action. Two or three days before the expiration of the six months the Public Trustee commenced his action.

9. Mr. Baldwin has recounted to the Committee some of the numerous devices and methods adopted by the advisers of the Public Trustee to prevent that action coming on for trial. From first to last, admittedly, the advisers of the Public Trustee endeavoured to avoid, by device after device, the necessity of going to trial in what was a hopeless action. There never was a trust, and they could not prove the trust, still less any notice of it to Sir Walter Buller; but they hoped that possibly the Native Appellate Court might find the existence of a trust, which they felt they could not establish in the Supreme Court. Even then they had to establish notice against Sir Walter Buller, and of this there was not a scintilla of evidence.

10. Sir Walter Buller's advisers met and defeated every such device. They insisted on the plaintiff going to trial. Sir Walter Buller was lying under the imputations contained in the statement of claim filed by the Public Trustee, a copy of which will be found in G.-2B, 1897. He was charged with fraud of various kinds—the words "actual fraud" being used and repeated in paragraphs 28 and 30, and allegations amounting to gross fraud being contained in paragraphs 29, 31, 32, and 33. Until the trial of the action in the Supreme Court, therefore, not only did Sir Walter Buller's titles remain cancelled and void, but he himself lay under imputations such as no man of honour would submit to if he could force the plaintiff who made them into Court and to trial.

11. Among other devices attempted by the plaintiff's advisers was a discontinuance of the action. The Supreme Court ordered the action to be restored. The plaintiffs then amended the statement of claim by striking out every allegation against Sir Walter Buller. Sir Walter Buller's advisers applied to the Court to reinstate those charges, in order that they might be disposed of by trial; the Court directed the reinstatement, and the plaintiff was forced to attempt to prove the case he had alleged.

12. The trial in the Supreme Court stood fixed for Monday, the 9th August. On Saturday, the 7th August, the Public Trustee's solicitors wrote to Sir Walter Buller's solicitors, the letter appearing in G.-2B, page 14, as follows:—

DEAR SIR,—

7th August, 1898.

*Public Trustee and Buller and Kemp.*—I hereby give notice that at the hearing of this case 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 the 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.

Yours, &c.,

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

E. STAFFORD.

This was the last and despairing effort to avoid the issue. The plaintiff said, "I will not attempt to prove my charges, but I will submit some legal arguments to show that the trial ought not to take place." Immediately thereupon, and on the same day, the 7th August, Sir Walter Buller's solicitors wrote that they themselves would undertake to disprove the charges. The letter is contained on the same page of G.-2B, 1897, and is as follows:—