

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 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, &c.,

A. P. BULLER.

E. Stafford, Esq., Solicitor, Wellington.

13. Of course, a defendant in an action is not bound to do more than meet the case of the plaintiff. If the plaintiff produces no evidence the defendant can claim judgment; but here, because charges affecting his honour and credit had been made, Sir Walter Buller declined to take the advantage which the law gave him, and insisted upon his right to have the charges tried out.

14. The Government and the Public Trustee were now faced with the position that the allegations so long pending against Sir Walter Buller were to be finally tried and determined. They had no evidence to support the allegations, and no case. On the afternoon of Saturday, the 7th August, and again on Sunday, the 8th, Mr. Cooper, the leading counsel for the Public Trustee, informed the counsel for Major Kemp and Sir Walter Buller that he proposed to admit the Public Trustee had no evidence to support the charges. The case actually came on for trial on the 11th August, Mr. Cooper then appearing with Mr. Stafford and Mr. Baldwin for the plaintiff, the Public Trustee, Sir Robert Stout appearing for Major Kemp, and Mr. A. P. Buller and myself appearing for Sir Walter Buller. Mr. Cooper rose and made the statement reported in the Appendices of 1897—G.-2B, page 12. He said in the course of his speech, to every part of which I call the attention of the Committee: "My first impression was that the judgment of the Appellate Court was a condition precedent to the exercise of the jurisdiction of the Supreme Court, but, after going very carefully through the Act, I find I could not successfully maintain that position, and I think it my duty to say so at once." That view had been already taken by the Supreme Court. It was expressly—as the Committee will see—adopted as the legal interpretation of the statute by Mr. Cooper, Mr. Stafford, and Mr. Baldwin; but it is the view which we are even now attacked before the Committee for asserting. Surely, if the advisers of the Government and the Public Trustee concur in the decision of the Supreme Court on this point, we ought to be commended, rather than blamed, for having insisted upon that view from the first. Mr. Cooper proceeded: "I have also made a most careful and anxious examination of the evidence which is in the hands of the Public Trustee for the purpose of ascertaining whether that evidence shows any notice on the part of Sir Walter Buller of any trust which might have existed in Major Kemp, and I feel bound to come to the conclusion that the evidence does not show any such notice on the part of Sir Walter Buller."

Later on Mr. Cooper said: "I think also that the view that I take, that there is no evidence to support 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 to 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." Then Mr. Cooper says (and this is a curious commentary on Mr. Baldwin's suggestion that it was necessary first to have the judgment of the Appellate Court on the question left to its determination—as to the existence of a trust at all): "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." He said, further, "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 then rose, and began by pointing out that Mr. Cooper had omitted to notice that there were two charges in the claim of personal fraud against Sir Walter Buller. Mr. Cooper said, "It was an omission on my part. I have no evidence to support either of those statements, and I say so now." I then continued (G.-2B, page 13): "It has been stated publicly 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."

14A. Then came the question of costs. His Honour the Chief Justice said, "I think both the defendants are entitled to their costs. The amount can be fixed in Chambers." The argument on the question of costs the Committee will find set out in G.-2B, page 15. When Mr. Cooper suggested that there was no provision in the Act as to costs, his Honour said, "I suppose he has a good purse behind him." His Honour afterwards decided that he could only give as against the plaintiff the costs as between party and party. It was obvious that considerable costs as between solicitor and client were necessarily incurred. The costs as between party and party were ascertained, and the decree of the Court sealed, by which it was awarded that Sir Walter Buller was entitled to recover the sum of £335 8s. 5d., and Major Kemp the sum of £300 9s. Then the Public Trustee found he had no money to pay these costs, and applied to the Government to enable him to satisfy the judgment of the Supreme Court. His request was refused, and a special case was stated for the opinion of the Supreme Court to ascertain whether either the Public Trustee personally or the Public Trust Fund was liable for the costs. The Supreme Court decided in the