

negative, but in the course of his judgment Mr. Justice Denniston used the words set out in the petition, which I repeat here: "There was provision under section 47 of the Public Revenues Act for unauthorised expenditure; that was, expenditure for which no parliamentary provision was directly made. Under this the expenses of this action had been provided, and the costs ordered to be paid could have been provided. His Honour thought it must be taken that Parliament had a right to assume that the Executive would take whatever steps were necessary to give effect to its directions, and would therefore assume that all payments properly incident to taking proceedings in terms of the Act, including, of course, the payment of costs directed by the Court to be paid, could and would be met by the proper authorities. He was of opinion that the Legislature must be taken to have relied on the Executive respecting the obligation imposed on a public officer by providing the necessary funds for all proper expenditure thereunder, including, of course, moneys directed by the Court to be paid to the successful defendants; and that, having so relied, it had not thought it necessary specifically to provide for such expenditure."

15. Sir Walter Buller paid Major Kemp's solicitor and counsel their costs pursuant to a written request, which I have placed before the Committee. He is therefore entitled to recover the amount, as Major Kemp would have been had he lived and paid them himself.

16. In "The Public Trust Consolidation Act, 1894," it is provided (section 27, subsection 14) that the Public Trustee may in his discretion pay debts, obligations, costs, and expenses. It is further provided (section 32) that if the common fund should 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; but the Court held that the action being directed by "The Horowhenua Block Act, 1896," and not by the Public Trust Office Act, the payment of the costs of this action is not within the express terms of the Public Trust Office Act.

17. It happens that the Public Trustee is a corporation sole; I think he is the only public corporation sole in New Zealand. He is therefore, curiously enough, not personally liable, as an Official Assignee, for instance, is personally liable, for the costs of an action brought by him.

18. This, then, is the position: Parliament has cancelled the indefeasible Land Transfer title of a subject. It has directed a public officer, whose statute makes him liable for costs, to bring an action against the person whose title has been so interfered with. It has declared that by the decree in that action alone shall the subject's title be restored. The public officer by the direction of the statute brings the action and fails, and by reason of Parliament having selected as plaintiff a corporation sole the defendant has no legal remedy to recover the costs to which he has been put. We are here before Parliament to ask Parliament whether that is what it meant. Did Parliament choose this particular public officer as plaintiff because he was a corporation sole and therefore could not be made personally liable? Did it intend, when it cancelled a subject's title, and directed a public action to be brought against him, that he should defend that action at his own expense? It is admitted on both sides that if Sir Walter Buller had been defeated he would have had to pay the Public Trustee's costs. Did Parliament mean that?

19. We should have, it is submitted, an unanswerable case if the matter rested there; but it does not rest there. The Public Trustee was able to find funds to pay part of his own solicitor's costs before the Native Appellate Court prior to the trial of the action in the Supreme Court; and the Government of the colony has actually paid to the Public Trustee's solicitors since the trial in the Supreme Court the whole of their costs of the proceedings in the Appellate Court and of the trial in the Supreme Court, amounting to over £1,100. The Public Trustee is therefore able to find funds from the Government to pay the losing party, but not the amount which, by a judgment of the Supreme Court, he is declared to be liable to pay to the successful party.

20. So far I have dealt only with the costs as between party and party which have been directed to be paid by a decree of the Supreme Court of New Zealand. But it is necessary to add a paragraph in support of my client's claim for costs as between solicitor and client. Did Parliament intend that he should be compelled to put his hand in his pocket to find money to defend his title which was cancelled, as it is now proved, wrongfully, and his character which was impugned, as it now is proved, without justification? Is no compensation due to him for the fact that for two years he has been deprived of his title and put to great expense in defending it? I submit that in equity the Parliament which cancelled by its power the titles, and which in its discretion directed the action, should direct the Government to pay out of the public fund at least the full amount of the expense to which the petitioner has been put.

21. The position may be put even more forcibly with regard to Major Kemp. In his case he was charged as a fraudulent trustee. The attempt to prove the charge in the Supreme Court was abandoned. It was prosecuted with the greatest vigour in the Native Appellate Court. In the year 1897 an Act was introduced into Parliament again declaring him as trustee, though the inquiry in the Appellate Court was almost concluded. Parliament determined to hear counsel for Major Kemp and Sir Walter Buller at the bar of the House, and the Act was never heard of after that resolution. Between the sessions of 1897 and 1898 the Native Appellate Court has spoken. It has declared, as the result of its judicial inquiry, that Major Kemp was never at any time a trustee. On the day after that decision was given Major Kemp died. He had lived to see two Acts—the Act of 1896 and the Act of 1897—brought before Parliament confiscating his land and declaring him a fraudulent trustee without judicial inquiry. He had in 1896 prayed for, and obtained from Parliament, at least a judicial inquiry. In 1897 he had prayed for, and obtained from Parliament, at least a right to be heard at its bar before such legislation was passed. He lived only long enough to see his course justified and the judicial inquiry determined in his favour. But he has been subjected to ruinous expense in consequence. Did Parliament mean that he was to pay out of his own pocket the expenses of proceedings which the law compelled him to defend and which have resulted in his favour—proceedings in respect of which the public chest has paid the full cost of the attacking and unsuccessful party? Is it not to be remembered that he has