

succeeded in proving that Parliament was only prevented by his intervention from doing a grave wrong—from committing a blunder which it has now been proved would have been a crime?

22. It is now said that the Minister of Lands did not concur in the course taken by Mr. Cooper, Mr. Baldwin, and Mr. Stafford, as counsel for the Public Trustee. We were never informed of any such want of concurrence: we were led to understand that the statements of counsel made in open Court were made with the approval of their clients—even now we have the Public Trustee as a witness stating that he accepted his counsel's advice. We first heard of the dissent of the Government when we read the memorandum of the Minister of Lands laid on the table of Parliament in the session of 1897, some time after the trial. If we had been told that the clients dissented we should very likely have, even in the face of so frank and complete a withdrawal of the charges as Mr. Cooper made, appealed to the Chief Justice to allow us to proceed to call the absolutely conclusive evidence we had there ready to disprove the charges. But surely if the dissent of the Government makes a difference, then the Government must have been the real plaintiff and not the Public Trustee; and, if so, what defence in equity have the real plaintiffs when called upon to satisfy the judgment obtained against their nominee in an action brought at their demand? It is an aggravation of the original wrong, of refusing us payment to reassert against us the charges discarded as incapable of proof by the nominal plaintiff on the advice of his counsel.

23. I desire to refer, in conclusion, to the two arguments, which I understand are put forward on behalf of the Crown, in defence of the claim asserted in the petition. First, Mr. Baldwin, on behalf of the Crown, says that the costs of the action in the Supreme Court would not have been incurred if we had not insisted upon going to trial. To that I reply that "The Horowhenua Block Act, 1896," destroyed Sir Walter Buller's title, and provided that it could only be restored by decree in an action, to be commenced by the Public Trustee within six months. If we had not insisted upon that action being tried we could not have had the titles restored. But it is said, "You could have waited." One answer to that is, "Why should we wait and leave our titles in that condition when Parliament had given us the right to have them restored to the register?" But that is not the principal answer. Sir Walter had been charged directly with dishonourable conduct. The statement of claim containing those charges lay on the file of the Supreme Court; and it is submitted it was not only the right but the duty of Sir Walter Buller to demand that at the earliest possible moment those charges should be brought into Court for proof or disproof.

24. Mr. Baldwin's second point is that after all Sir Walter Buller has done pretty well out of this Horowhenua legislation; that as he was Major Kemp's legal adviser and acted for him in the Native Appellate Court he made a profit there. I regret that I am unable to understand the relevancy of this argument. If Major Kemp had not employed Sir Walter Buller he would have had to employ, I presume, some one else. If Parliament did not intend that a defendant in an action directed by it should have to pay his own costs, then the question of whether that defendant did or did not earn money in another capacity cannot be relevant to the issue. Mr. Baldwin suggests that Sir Walter Buller is secured upon Major Kemp's property for these costs. Of course, he is not secured for his own (Sir Walter Buller's) costs, which Major Kemp is not and never was liable to pay. But it is true that he is secured for the sums he has paid for Major Kemp—that is to say, he has his mortgage upon Major Kemp's freehold in Division 14; but the result is that Major Kemp's estate pays costs which, it is submitted, Parliament intended he should receive out of the funds of the Crown if he succeeded.

STATEMENT OF CASE FOR THE CROWN, PUT IN BY MR. BALDWIN.

Sir Walter Buller claims from the country two sums for costs awarded by the Supreme Court: (1.) £335 8s. 5d. awarded to him as against the Public Trustee for his costs in the case, *Public Trustee v. Buller* and another. (2.) £300 9s. awarded to Major Kemp as against the Public Trustee for his costs in the same case, and paid by Sir Walter Buller to Kemp's solicitors at Kemp's direction and request.

In each instance the person responsible under the decree of the Supreme Court is the Public Trustee: he is directed to pay the costs.

The Main Factors of the Case.—The action *Public Trustee v. Buller* was brought in obedience to section 10 of "The Horowhenua Block Act, 1896."

The statement of claim filed in the action raised in the widest possible way the question at issue—the validity of Sir Walter Buller's dealings. Three main grounds were relied on as invalidating the dealings: (1.) That Sir Walter knew that there was an existing trust, and that his dealings were in fraud of the trust. (2.) That Sir Walter Buller took advantage of his position as Kemp's solicitor and obtained unfairly favourable terms. (3.) That in the carrying-through of his transactions Sir Walter Buller was guilty of concealing material facts.

All three grounds depended on the proof of the existence of a trust. Kemp declined to rely on grounds (2) and (3), and the Public Trustee could only do so on the assumption that he first proved that the Natives were interested—that is to say, that Major Kemp was a trustee for them. The cardinal factor of the whole case was therefore proof of the trust.

The Provisions of the Act.—By the Act jurisdiction was conferred upon two tribunals—the Native Appellate Court and the Supreme Court. To the Native Appellate Court was relegated the questions: First, whether Horowhenua No. 14 was held by Major Kemp upon trust? And, second, if it was, who were the beneficiaries? As pointed out before, this was the cardinal point in the whole matter at issue. To the Supreme Court was referred the question: (1.) Whether the dealings with Sir Walter Buller were valid?

The answer to this question depended on the subsidiary question of whether a trust did or did not exist. If no trust were proved to exist, then, in view of the attitude Major Kemp took up, the answer to the question could only be that the dealings were not invalid. The Supreme Court