

decided that it was unable to pronounce any judgment on the question of trust, as that had been expressly relegated to the Native Appellate Court. The sole question the Supreme Court had jurisdiction to deal with was the bare question of invalidity or otherwise of the dealing.

*The Course of Litigation.*—(1.) *In the Appellate Court.*—The Appellate Court commenced its sittings on the 25th day of February, 1897, and completed the hearing of the evidence on the 5th day of April, 1897. At the expiration of the hearing the Judges of the Native Appellate Court declined to give judgment until certain questions of law were decided by the Supreme Court; and Sir Walter Buller's counsel prevented a decision on these points until November, 1897, long after the Supreme Court action was finished.

(2.) *In the Supreme Court.*—(a.) *Institution of Action:* By section 10 of "The Horowhenua Block Act, 1896," the Public Trustee was directed to institute proceedings before the 17th day of April, 1897, to test the validity of Sir Walter Buller's dealings. In compliance with the section the Public Trustee filed his writ and statement of claim in the Supreme Court, at Wellington, on the 15th day of April, 1897.

(b.) *Interlocutory Proceedings:* The Public Trustee was advised that he could not succeed in his action unless he could prove that Major Kemp was a trustee; he was further advised that the Appellate Court judgment must decide that point, and that it was hopeless to go to trial in the Supreme Court without obtaining that judgment of the Appellate Court.

The Public Trustee was also advised that he was in duty to the Natives bound to prevent the Supreme Court action from being heard until this judgment was obtained. The Public Trustee therefore, acting under this advice, took the following steps:—

1. By the Supreme Court rules the plaintiff is allowed twelve months to serve his writ upon the defendant after the filing of the writ. The Public Trustee, having complied with the statute as to commencing proceedings, did not serve his writ pending the decision of the Appellate Court.

1A. Sir Walter Buller's counsel thereupon moved to compel the plaintiff to serve the writ upon him, or in default that he should be allowed to file his statement of defence as if he had been served.

1B. The Supreme Court decided that this was an exceptional and unique case and the every-day rules did not apply, and ordered that the plaintiff should serve Sir Walter Buller, or in default Sir Walter Buller should be allowed to file his statement of defence as if he had been served.

1c. In deference to this decision the plaintiff served Sir Walter Buller.

1d. Sir Walter Buller promptly put in his statement of defence, and set the case down in the list of cases for hearing at the June sittings, beginning within ten days after the date of service of the writ.

2. The Supreme Court rules provide that cases shall be set down in a list for the sittings a certain number of days after service of the writ, computed by a scale varying with the distance at which the defendant resides. The number of days applicable in this case was fourteen days. The case was therefore not entitled to be heard at the June sittings.

2A. Counsel for the Public Trustee therefore moved to have the case struck out of the list for the June sittings.

2B. The Supreme Court gave no direct ruling on the point, but the Judge strongly intimated his opinion that the Public Trustee should agree to a hearing in two months.

2c. The Public Trustee, in deference to this intimation of opinion, agreed to the 6th day of August, 1897, for the day of trial, saving all proper grounds for postponement.

3. The parties interested having in vain urged the Native Appellate Court to give judgment, and that Court having declined to give its judgment before the questions of law submitted by it to the Supreme Court were decided, the Public Trustee moved the Supreme Court to postpone the trial of the action until that decision was given.

3A. Sir Walter Buller strenuously opposed this motion on the technical ground that he was not an actual party in the Native Appellate Court proceedings.

3B. The Supreme Court declined to postpone the trial of the Supreme Court action for this reason.

4. The Public Trustee and parties interested in obtaining a decision upon the Native Appellate Court's questions of law thereupon moved to have those questions of law decided at once.

4A. Sir Walter Buller's counsel, acting ostensibly for Major Kemp, strongly opposed this course, as they claimed that they wanted the opinion of the whole of the Supreme Court Judges, a position which has never been acceded to before without the consent of all parties.

4B. The Supreme Court acceded to their application, and adjourned the hearing of the special case until the Court of Appeal. This step counsel knew, and the Court knew, must have the effect of postponing the hearing of the special case and the judgment of the Appellate Court until weeks after the Supreme Court action was heard.

5. The Public Trustee thereupon moved to have the question of law as to whether the decision of the Native Appellate Court was not a condition precedent to the hearing of the Supreme Court action argued before the trial.

5A. Sir Walter Buller again strongly opposed.

5B. The Supreme Court decided that the matter could be argued at the trial, the Judge remarking that the delay might be with a view to an amending Act being applied for.

*Summary of Interlocutory Proceedings.*—To shortly summarise: The Public Trustee did everything in his power to prevent a hearing which it was known to all parties and to the Court must inevitably prove abortive. Sir Walter Buller used every effort (1) to render the trial necessarily abortive, (2) to compel the trial to proceed when it must prove abortive. And Sir Walter Buller succeeded in both directions.

*The Position just before the Trial.*—The trial was fixed for the 6th day of August, 1897. The position on the 6th August stood that Sir Walter Buller had by the means mentioned pre-