

Touching your suggestion that either yourself or Mr. Stafford would come to Levin in connection with the suggested alterations by yourself or Mr. Bell, it is proposed to forward the copies of the case containing the suggested alterations by both sides to the Registrar of the Native Land Court, Wellington, to enable counsel to meet and discuss the question there, and, if both sides can agree, the case as amended could be typewritten; but if a difference of opinion should arise about any of the alterations, the discussion will have to be left to the Court.

With reference to your joint letter of the 5th instant, the Court was extremely surprised to note the opinion expressed therein relative to the case prepared by it for submission to the Supreme Court, as it was under the impression that you were not opposed to the course the Court has indicated from the outset it intended to pursue with regard to the several questions of law that were involved in the case, and it is at a loss to understand now why your opinion has veered in the opposite direction at the eleventh hour. It is only now that the Court has been made aware that it was your joint opinion from the outset that the question for its decision is confined simply to the determination of the single question whether Kemp had been declared the beneficial owner of Subdivision No. 14 by the Court of 1886. The main question the Court understood was before it, and which appeared also to be advocated by you, was whether a trust did or did not exist in respect of Section No. 14; but that is a question which involves a much wider range of procedure than you appear to consider is attached to it.

As regards the conclusive proof you assert is apparent that Kemp has failed to prove that he is entitled to be declared the beneficial owner of Lot No. 14 by this Court, it is pointed out, with all deference to your opinion, that the proof is not so manifest on that point as to place the matter beyond doubt, and it will require a very careful analysis of the evidence adduced before the Appellate Court, coupled with the evidence taken before other tribunals, before a pronounced decision can be given in either direction.

As regards the question of expense, the Court has no desire to cause the smallest expense to any one beyond what is absolutely necessary in dealing with the several matters before it; neither is it specially bent on referring the case to the Supreme Court if there is any other mode of obviating the necessity; but it has appeared from the outset, and still appears so, that there are several questions of law which are so enwrapt with the whole procedure, that it is impossible to disassociate them so as to reduce the case to the simple position you appear to imagine it to be in, so far as this Court is concerned.

I have had an opportunity of perusing the statement of case to be submitted by the Public Trustee, and as many of the points of law set out therein are similar to the questions included in the case prepared by the Appellate Court, it would seem fruitless to go on with both cases, and this Court is willing to leave it to the decision of counsel for the parties concerned as to which course would be the best and least expensive to follow, and if counsel on both sides agree that no good will result in submitting the Appellate Court case, that will determine the matter. It would seem, however, so far as it is possible to view the whole question from another standpoint, that the case stated by the Appellate Court would be the least expensive one to adopt. Many of the points that are raised in the Public Trustee's statement can be dealt with at very much less expense, as there would be no need to call and examine a number of witnesses, or render futile to a great extent the whole of the work done by the Appellate Court, as the procedure need not have been so protracted had it been known then that there was a possibility of its labours being rendered abortive.

Mr. Bell has suggested that the following papers should be omitted from the schedule, as they do not appear to be needed in the case, and the Supreme Court might object to having such a number of documents referred to it:—(a.) The evidence before the Supreme Court in 1894. (b.) The evidence given before the Royal Commission in 1896. (c.) Judge Wilson's evidence before the Native Appellate Court in 1897. If Mr. Stafford and yourself are of the same opinion as Mr. Bell, the papers referred to may be eliminated from the schedule.

P. E. Baldwin, Esq., Wellington.

Yours, &c.,

A. MACKAY.

DEAR SIR,—

Wellington, 17th May, 1897.

Horowhenua, No. 14.—I am in receipt of your letter of the 8th instant, and in reply have to say: As you find yourselves unable to strike out the last five lines of the second question, then we suggest that after the words, "to the effect that the Court," should be added the words "as part of the Court's administrative function in giving effect to the alleged voluntary arrangement ordered," and that the word "intended" should be struck out.

If I may say so, I think you have a little misunderstood the purport of our previous letter. We did not presume to dictate to the Court as to whether Major Kemp had or had not proved that he was beneficially entitled to Subdivision No. 14 at the Court of 1886. What we were referring to was the subdivision now No. 14, and it is a decision on that point that we are anxious to have. It would appear that the Appellate Court must give its decision, as far as we can judge, entirely apart from the Supreme Court. The Supreme Court has expressed an opinion that it will not feel itself in any way bound by the decision of the Appellate Court; that the Appellate Court is proceeding under a different jurisdiction altogether from the Supreme Court, and, as we understood the Chief Justice, that while it may be that a trust may be proved in one Court it may quite well be that a trust is not proved in the other Court. It does not appear to us, from what the Supreme Court stated, that in any case the labours of the Appellate Court would be rendered abortive.

From what fell from the Chief Justice we gathered that it is only in the action in the Supreme Court against Sir Walter Buller that the decision of the Appellate Court would not be binding; and it could not, indeed, be given in evidence in the Supreme Court. Of course, it might quite well be that Major Kemp might be trustee for the Natives, and yet that fact be, under the particular section of the Horowhenua Block Act, incapable of being proved in the Supreme Court as against Sir Walter Buller.