1898.

NEW ZEALAND.

PUBLIC PETITIONS A TO L COMMITTEE

(REPORT OF) ON THE PETITION OF SIR WALTER LAWRY BULLER, K.C.M.G., WITH EVIDENCE AND APPENDIX.

Brought up the 5th November, 1898, and ordered to be printed.

REPORT.

No. 50.—Sir WALTER LAWRY BULLER, of Wellington.

THE petitioner prays that the Government may make provision for the payment of his costs in the case of the Public Trustee *v.* Sir Walter L. Buller and Major Kemp.

I am directed to report that, upon the evidence adduced, the Committee has no recommendation to make.

JOHN JOYCE,
Chairman.

4th November, 1898.

PETITION.

In Parliament,
In the House of Representatives.

To the Honourable the Speaker and Members of the House of Representatives in Parliament assembled.

THE humble petition of Sir WALTER LAWRY BULLER, of Wellington, in the Colony of New Zealand, K.C.M.G., showeth,—

1. That by "The Horowhenua Block Act, 1896," section 5, it was, *inter alia*, provided that any existing Land Transfer certificate, and all registrations of dealings thereon in respect of, *inter alia*, Division 14, Horowhenua Block, and all registrations of dealings thereon in respect of any such land, should, subject to registration of dealings found not to be invalid as thereinafter provided, be deemed to be null and void as from the date of the passing of the said Act. By section 7 of the same Act, all dealings with, *inter alia*, Division 14 were prohibited pending proceedings under the provisions of the Act. By section 8 of the same Act the Registrar was directed to issue Land Transfer certificates, *inter alia*, for (*f*) any portion of Division 14, of which any valid alienation in fee-simple had been made, in the name of the person or persons entitled by virtue of such alienation, provided that no certificate of title as last mentioned should be issued except pursuant to final judgment in the proceedings thereinafter directed to be instituted by the Public Trustee. By section 10 of the same Act it was provided as follows: "For the purpose of testing the validity of the alienation referred to in subsection (*f*) of section eight hereof, and also of all dealings the registration whereof has been cancelled as aforesaid, the Public Trustee is hereby directed and empowered to institute on behalf of the original registered owners of the said block, as set forth in the Second and Sixth Schedules hereto, or any of them, such proceedings in the Supreme Court, at Wellington, as may be necessary for that purpose within six months from the date of the passing of this Act; and every dealing the validity whereof is established by final judgment in such proceedings shall be entitled to be reregistered on any new certificate of title issued under the provisions of this Act for the land the subject of such dealing."

2. Pursuant to the said section 10, the Public Trustee instituted in the Supreme Court, at Wellington, an action (No. 6147) against your petitioner and Meiha Keepa te Rangihiwinui.

3. That action came on for trial at the Supreme Court, at Wellington, on the 11th day of August, 1897, before Sir James Prendergast, Chief Justice, and the said Supreme Court thereupon made a decree, in the following terms:—

In the Supreme Court of New Zealand, Wellington District. } Action No. 6147.

Between the Public Trustee, plaintiff, and Sir Walter Buller, K.C.M.G., and Meiha Keepa te Rangiwihinui, defendants.

THIS action coming on for trial before his Honour the Chief Justice on Wednesday, the 11th day of August, 1897; and Mr. Cooper, Mr. Stafford, and Mr. Baldwin appearing as counsel for the plaintiff; and Mr. Bell and Mr. A. P. Buller appearing as counsel for the defendant Sir Walter Buller, and Sir Robert Stout appearing as counsel for the defendant Meiha Keepa te Rangihiwinui: This Court doth by consent order that, inasmuch as Wirihana Hunia, an original co-plaintiff, has been struck out by order of his Honour the Chief Justice, made upon the application of the said original co-plaintiff on the 7th day of August, 1897, the statement of claim be amended by substituting the word "plaintiff" for the word "plaintiffs" wherever the latter word appears therein, and by making all consequential grammatical amendments: And, by consent of Sir Robert Stout, as counsel for the defendant Meiha Keepa te Rangihiwinui, and by consent of Mr. Cooper, as counsel for the plaintiff, this Court doth order and decree that this action be dismissed as against the said defendant Meiha Keepa te Rangihiwinui, without prejudice to the determination of any matters which are by "The Horowhenua Block Act, 1896," to be determined by the Native Appellate Court: And the plaintiff admitting by his counsel that he can adduce no evidence to substantiate the charges against the defendant Sir Walter Buller alleged in the statement of claim, and submitting to a final judgment in favour of the said defendant Sir Walter Buller, establishing the validity of the alienations and dealings specified in sub-paragraphs (*a*) to (*f*) inclusive of paragraph 28 of the original statement of claim, this Court doth further decree and order that the validity of each and every of the alienations and dealings specified in sub-paragraphs (*a*) to (*f*) inclusive of paragraph 28 of the original statement of claim is established by this final judgment in this action: And all parties consenting that Peter Bartholomew, of Levin, sawmiller, should be added as a party to this action in respect of the dealing appearing upon the certificate of title for Division No. 14 of the Horowhenua Block as lease numbered 2196, this Court doth order that the name of the said Peter Bartholomew be so added as a defendant in this action: And this Court doth further adjudge and decree that the validity of the said dealing is established by this final judgment in this action: And this Court doth further adjudge and decree that each and every of the dealings specified in sub-paragraphs (*a*) to (*f*) inclusive of paragraph 28 of the original statement of claim, and the said lease, No. 2196, by the defendant Meiha Keepa te Rangihiwinui to the said Peter Bartholomew, is and each of them are entitled to be reregistered pursuant to section 10 of "The Horowhenua Block Act, 1896": And this Court doth further adjudge and decree that the plaintiff do pay to the said Sir Walter Buller his costs of this action, computed at the sum of £335 8s. 5d.: And this Court doth further adjudge and decree that the plaintiff do pay to the said defendant Meiha Keepa te Rangihiwinui his costs of this action, computed at the sum of £300 9s.

[L.S.] By the Court,

W.A.H., D.R. W. A. HAWKINS, Deputy Registrar.

4. Your petitioner had made himself responsible for the costs incurred by the defendant Meiha Keepa te Rangihiwinui, and has accordingly paid such costs, and is therefore entitled to receive the amount of the costs payable under the said decree of the Supreme Court to that defendant.

5. The Public Trustee, notwithstanding the judgment and decree of the Supreme Court, submitted that he had no funds out of which to pay the costs; and your petitioner has never been paid his own costs, or the costs incurred by him for Major Kemp, and which the Public Trustee was by the decree directed to pay, amounting together to £635 17s. 5d.

6. The sole reason why the plaintiff is not able to exercise the ordinary right of a litigant in the Supreme Court in this matter is that the Public Trust Fund has been held to be free from liability, and the Public Trustee himself not personally liable; and therefore the nominal plaintiff selected by Parliament to institute the proceedings was a plaintiff who could recover if he suceeded, but could not be compelled to pay if he lost.

7. Your petitioner is informed, and believes, that the costs incurred by the Public Trustee in prosecuting the said action have been paid by the Government of the colony to the solicitors for the Public Trustee.

8. Your petitioner submits that it could not have been the intention of your honourable House and of Parliament in passing the Horowhenua Block Bill, and directing that an action should be brought against your petitioner by the Public Trustee, to prevent your petitioner from recovering the costs incurred by him in defending his Land Transfer title if the judgment of the Supreme Court should be, as it has been, in your petitioner's favour.

9. In order to determine the question whether the Public Trustee, either personally or out of the Public Trust Funds, was liable to pay your petitioner's costs, a special case was stated by consent for the opinion of the Supreme Court, and was heard before his Honour Mr. Justice Denniston. In the course of the judgment delivered by his Honour Mr. Justice Denniston (see the report of the *New Zealand Times* of the 7th February, 1898) the following passages occur:—

"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."

10. Your petitioner has, in addition to his costs between party and party, incurred considerable costs, as between solicitor and client, in successful defence of his Land Transfer title in the proceedings directed by Parliament to be commenced against him, and he submits to your honourable House that it was also the intention of your honourable House and of Parliament to indemnify him against such charges in the event of his successfully defending his title; and your petitioner is informed and believes that costs, as between solicitor and client, incurred by the Public Trustee have been paid by the Government of the colony to the solicitors for the Public Trustee.

Your petitioner therefore humbly prays,—

(1.) That your honourable House will be pleased to make provision for the payment to him of the sum of £335 8s. 5d., adjudged to be paid to him by the decree of the Supreme Court as his costs between party and party, and will further make provision for the payment to your petitioner of the sum of £300 9s., adjudged by the Supreme Court to be paid to the defendant Meiha Keepa te Rangihiwinui, and paid by your petitioner on behalf of that defendant.

(2.) That your honourable House will also be pleased to make provision for the payment to your petitioner of the costs incurred by him, as between solicitor and client, in defence of the said action, in addition to the costs adjudged to be payable to him as between party and party. Such additional costs to be taxed as your honourable House may direct.

And your petitioner, as in duty bound, will ever pray, &c.

W. L. BULLER.

MINUTES OF EVIDENCE.

TUESDAY, 26TH JULY, 1898.—(J. JOYCE, Esq., Chairman.)

Sir W. L. BULLER in attendance and examined.

1. *The Chairman.*] Have you anything to state with regard to the petition which you have presented to the House and which we are now considering?—I have nothing to add to what is stated in the petition itself. It states simple facts, and upon those facts I ask for payment of the costs which were awarded to me by the Supreme Court a year ago. I have been very careful to set out nothing in the petition but facts, and I have nothing to add to them.

Mr. P. BALDWIN in attendance and examined.

2. *The Chairman.*] In what capacity do you appear?—I appear for the Crown.

3. Do you wish to ask Sir Walter Buller any questions?—With your permission I should like to do so.

Sir W. L. Buller: If the Crown is to be represented by counsel, I think it is only fair that I also should be represented by counsel. I should like to be represented by Mr. Bell, who has acted for me throughout. It would be only fair to him too that he should be present.

THURSDAY, 4TH AUGUST, 1898.

JAMES CROSBY MARTIN, Public Trustee, examined.

1. *Mr. Bell.*] You were examined before his Honour the Chief Justice upon the question of your liability for the payment of these costs (£335 8s. 5d., proceedings under "The Horowhenua Block Act, 1896")?—Yes.

2. And you subsequently agreed, I think, to the statement of a special case for the opinion of the Supreme Court?—Yes.

3. On the point of your liability, either personally or in your corporate capacity?—Yes.

4. And in that special case the evidence given by you before his Honour the Chief Justice was set out?—Yes, I believe so.

5. Did you see the special case?—I do not recollect whether I saw it.

6. In the course of the correspondence read before his Honour the Chief Justice you referred to a letter received by you from your solicitor, Mr. Stafford, stating, "I think you should finally urge the Government either to furnish you with funds to pay these costs, or to authorise you to pay them out of the Public Trust Office Account. It would be a very deplorable position if execution is put into the Public Trust Office to enforce payment of the costs, or if the Public Trustee is charged with contempt in disobeying the decree of the Supreme Court. Under any circumstances it appears to me that the Government lay themselves open to criticism in not furnishing you with the funds to pay these costs, or, in the alternative, giving you authority to pay them out of the Public Trust Office Account. If the costs are not paid, then, apart from the public scandal, further costs will be the result; and it is impossible to say what the outcome of the proceedings may be." Then you said, "I forwarded that to the Hon. the Premier, and still with no result; and so I thought then I would see whether the Audit would pass the amount, and I would put it through without reference to the Government. I laid the matter before the Audit Inspector, and on the 30th September he informed me that he had seen the Auditor-General, and the Audit Office would not pass such payment except out of 'Unauthorised expenditure,' and then only on the approval of the Minister. Then, the Minister of Lands, who by arrangement amongst the Ministers is the Minister to whom the ordinary correspondence of this office is addressed, being out of town, I forwarded the following letter to the Premier with a copy of past correspondence." This is the letter from yourself to the Premier: "As the Hon. the Minister of Lands is, I understand, absent from Wellington, I forward herewith, as the matter is urgent, copy of a letter which I have just received from Mr. Stafford. I also enclose copies of previous correspondence. I understand that the Hon. Mr. McKenzie wished to receive the costs of Messrs. Stafford and Co. before dealing with the matter. These costs, however, have to be made up and taxed, so that some considerable time must elapse before they can be submitted for payment." Then you said, "I received back a memorandum to the effect that, as soon as the costs of my solicitors were rendered and taxed, the whole thing would be considered by Cabinet." "I wrote to the Government," you say, "on the 5th October, 'The defendants have applied to the Court for an order directing me to attend and be examined as to what property is under my control, so that they may ascertain whether I have any property which can be charged and attached to pay their costs. The Chief Justice to-day adjourned their application, but intimated that I ought to apply to the Government and obtain a definite answer as to whether the Government would pay, or ask the House to vote, the amount of the costs in question; and the matter has to come on again for hearing to-morrow week.'" These are parts of the evidence you gave before his Honour the Chief Justice?—Yes.

7. Then you say, on page 10 of the special case stated, "I wrote to the Government informing them that the taxation was completed, and at what amount the bill had been allowed"—that is,

Mr. Stafford's costs. "There the matter rests," you say, "and I do not know that I could have done more than I have done to endeavour to get these costs"?—Yes.

8. Then you were asked this question on page 10: "I understand you, therefore, to say that, so far as you are personally concerned, you have done all in your power to provide the necessary funds to satisfy the judgment?" and you replied, "Yes; of course, if I had power to pay them I should pay them immediately"?—Yes.

9. That is all I wish to refer to in this document, and I put it in. You have always admitted that those costs should be paid?—Yes.

10. And have done your best to get them paid?—Yes. Of course, when you say I have admitted that they should be paid, I admit this: that I consented, after discussion with my legal advisers, and on their advice, that the amount of the costs should be inserted in the decree, and I admit that I ought to pay them had I the means.

11. There are two defences—first, that you are not personally liable; and, secondly, that the Public Trust Office funds are not liable?—Yes; they cannot legally be applied. If I could have legally applied these funds I should have paid the costs as a matter of course like any other charges.

12. Have the costs of your solicitors in the action been paid?—Yes.

13. As between solicitor and client?—As between solicitor and client.

14. By whom paid?—The Treasury, or the country, I suppose.

15. Then, the costs of the unsuccessful litigant have been paid by the Treasury, and the costs of the successful litigant have not been paid by the Treasury?—Yes, as far as I know.

16. Have you the bills of costs?—No.

17. To whom were they rendered?—They were rendered to me. The amount, I think, was £1,051 12s. 9d.

18. What did you do with them?—I had them taxed; I believe I had them taxed. I knew it was no good forwarding them for payment without having them taxed, and if I had forwarded them they would have been sent back to me to have them taxed.

19. Although you were not liable for them?—Yes; and they were forwarded to the Government.

20. Then, you had not the record?—No.

21. I ask you, Mr. Chairman, to ask the Treasury for those costs?—Those were the costs of the action.

22. Can you say to what Minister you sent those costs?—It would be either to the Minister of Lands or to the Premier. Here is the copy of the bill that my solicitor used on the taxation. [Papers referred to.] I forwarded these costs to the Minister of Lands on the 9th October.

23. There were two proceedings directed by "The Horowhenua Block Act, 1896"—one in the Native Appellate Court to ascertain whether Major Kemp was a trustee, and the other in the Supreme Court to ascertain whether Sir Walter Buller had notice of a trust, if any?—I would not like to say what those actions were. That has been the doubtful point all the way through. There were two proceedings directed to be taken, but what the effect was I do not pretend to say.

24. You appeared in the Native Appellate Court by your counsel where one of the two proceedings was taken under the same Act of 1896?—I wish to be clear. Do you refer to the proceedings at Levin?

25. I am speaking of the action taken under authority of the Horowhenua Block Act—at Levin, if you like?—Yes.

26. You appeared by your solicitor, or counsel, in that Court?—Yes.

27. As Public Trustee?—Yes.

28. Did you not make payments to your solicitor and counsel at the commencement or during those proceedings in the Native Appellate Court?—At some period. I cannot say whether it was at the commencement or during the proceedings; but at some time during the proceedings or immediately after payment was made.

29. From what fund?—The General Government.

30. Then, you applied to the General Government for the costs of your solicitor in that Court, and you got the payment necessary to comply with his request for costs?—Yes; it was a lump-sum of £150. I think it was before the Court gave judgment, but after the bulk of the evidence had been taken. Mr. Stafford wrote to me and I got it, or it was sent to him. I think the date was the 3rd June.

31. Then, you were able to get from the Government an advance for costs incurred by you as Public Trustee, and subsequently payment of costs incurred by you as Public Trustee?—Yes.

32. And in both Courts you were the unsuccessful litigant?—Yes, I suppose so. As a matter of fact, I believe I did not appear in the Appellate Court. I believe it was ruled that I had no *locus standi*, and I instructed Mr. Stafford to watch the proceedings.

33. *The Chairman.*] Did you apply to the Government for the costs incurred by you?—Yes.

34. *Mr. Bell.*] You were the nominal plaintiff in the Supreme Court?—Yes.

35. By direction of the Act, the Public Trustee was to bring the action?—Yes.

36. Your counsel were whom?—Mr. Stafford was my solicitor. At a later stage of the proceedings Mr. Baldwin was associated with him, and finally Mr. Cooper.

37. It has been suggested that Mr. Cooper, the leading counsel, took a course which was not authorised by you?—I will tell you exactly what passed between Mr. Cooper and myself.

38. Were Mr. Baldwin and Mr. Stafford present?—The trial was to have taken place, I think, on a Tuesday or a Monday. It was postponed on account of the Governor's arrival, and I think it was the evening before the trial was to go on that I had a final consultation with Mr. Cooper, Mr. Stafford, and Mr. Baldwin. Up to that time I had been advised that a certain course should be adopted, and at that interview Mr. Cooper told me he felt convinced that I could not succeed.

39. Why? In what?—In the Supreme Court—in winning the action. Of course, I was a solicitor myself, and possibly Mr. Cooper did not think it necessary to go into details with me as he might have done with a layman; but I think he said he was satisfied I would not succeed. There were two things I would have to prove. I would have to prove the existence of a trust, and Sir Walter Buller's knowledge of that trust, and I think his exact words were, "I am satisfied you cannot succeed"; and then we went into the reasons why—the credibility of witnesses and other things which I possibly need not allude to. Then he said, "Under these circumstances I take upon myself the responsibility of advising you to consent to judgment for the defendant." I do not say those were the exact words, but that was their effect. Well, I thought over the matter for a time, and then turned round to Mr. Stafford and Mr. Baldwin and asked them if they concurred or agreed with that, and they replied "Yes." Then I said, "I am not justified; I am purely an official in this matter, and I am not justified, if that is your advice, in carrying on a long litigation at great expense in the face of your positive advice; and, that being so, I authorise you to consent to judgment being entered." Then I thought for a minute, and I think Mr. Cooper said, "Very well, I shall tell the Chief Justice we have tried to get these points of law argued, and he has refused to have them argued before trial; we have tried to get a postponement of the Supreme Court action until the Native Court has given its decision, and that has been refused; and we have tried to raise as a point of law that it was necessary to get the Appellate Court's judgment before the Supreme Court action could be tried, and that has been refused; and, under these circumstances, I have taken upon myself the responsibility to advise the Public Trustee, and he has instructed me to consent to judgment for the defendant." I said, "Very well; but you must recollect that the other side will not be satisfied with that. They will say attacks have been made upon them, and they want to clear themselves; and then if I offer no evidence they may say we want to call evidence—we have had assertions made against us, and we want to call evidence." He said, "If they do that I shall say to the Judge, 'If your Honour likes to listen I shall not take any part in it. There my functions cease; I have consented to judgment.'" That is all that passed. I did not see Mr. Cooper again, I think, after that.

40. Did you not see the Minister of Lands, together with Mr. Cooper and your other advisers?—Between what time?

41. Between that conference you have mentioned to me and the actual time of the trial?—No.

42. Did you not with your advisers interview the Minister of Lands?—I do not think between those dates I did. [Documents referred to.] The day I saw you at the office of the Minister of Lands was the 9th August. I received a telephone message from the Minister of Lands that he wished to see me, and I went up to him with Mr. Cooper.

43. And your other advisers?—No. Subsequently I had a conference with Mr. Cooper, Mr. Stafford, and Mr. Baldwin; but on this occasion I went with Mr. Cooper himself. Mr. McKenzie asked us to explain the position, and Mr. Cooper explained it. The Minister simply stated that he disapproved the course Mr. Cooper suggested.

44. Are you sure the Minister of Lands disapproved?—Quite positive.

45. That is not Mr. Cooper's suggestion?—Here is my note made immediately after I went back to the office: "On receipt of telephone from Minister that he wished to see me, attended on him with Cooper. He wanted to know position. Cooper explained it fully, and also the course decided on. Minister stated he disapproved of it, and asked us to remember that he had done so." I turned round to Mr. McKenzie and said, "But you see, sir, I am Public Trustee, and not you."

46. *The Chairman.*] It was subsequent to that?—It was subsequent to that, in the evening. It was past 10 o'clock when I left. My recollection is that it was on the Monday night when positive instructions were given. That is borne out by Mr. Stafford and Mr. Baldwin. I made a note of these things. The consultation took place on the Monday before the trial, and was a final consultation before the trial. To the best of my recollection, the conversation Mr. Bell refers to with Mr. Cooper took place some time between 9 and 10 o'clock.

47. *Mr. Bell.*] You must have had some communication on the Saturday?—Very possibly.

48. Before you went into Court you had communication with the Minister of Lands, and you informed the Government of the course you were going to take?—Yes; and I will state the course it was proposed to take, or what was decided upon, if necessary. I have no recollection that definite positive instructions were given to Mr. Cooper before between 9 and 10 o'clock in the evening on the Monday.

49. I now refer to G.-2B, Appendices to the Journals of the House for 1897. I want to refer you to Mr. Cooper's statement there reported, on the 12th page: "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 felt I could not successfully maintain that position, and I think it my duty to say so at once. 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." He did not make that statement on your authority?—Mr. Cooper never suggested to me what language he should use in the Court at all, Mr. Bell. As nearly as I can recollect, all that passed between Mr. Cooper and myself was that I authorised him to consent to judgment. How far I am bound by his statement is, of course, another matter.

50. Did you not understand as a lawyer that Mr. Cooper and your advisers advised there was no evidence of any notice of trust?—There was no evidence that would satisfy the Supreme Court. The onus of proof lay upon us, and we could not prove it.

51. Is that not the same?—I do not know what construction you may put on your language by-and-by, and I wish to be particularly careful.

52. Did you not understand that Mr. Cooper was going to say there was no evidence of notice of trust on the part of Sir Walter Buller?—I had no information at all, nor did I understand that. I have no recollection at all that Mr. Cooper intimated to me that he was going to say anything of the sort.

53. But you were a lawyer?—When I left Mr. Cooper on that night the impression upon my mind was that Mr. Cooper was going to say in effect what he had said to me to the Chief Justice—to recite the endeavours adopted in a certain course, and that they had failed, and that he had no evidence to offer, and would consent to judgment. Mr. Baldwin was present, and Mr. McClean, Mr. Stafford's managing clerk. Mr. Stafford is away now.

54. You do not suggest that Mr. Cooper is not an honourable man, and counsel of the highest standing in New Zealand?—Certainly not.

55. "Had the Appellate Court before the trial of this action said 'Aye' or 'No' whether there was a trust or not in Major Kemp, there would have been no necessity for further investigations. If it had been decided"—this is what Mr. Cooper said—"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." Did you not understand that that is what Mr. Cooper intended to say to the Court?—I did not understand, and now when you put it pointedly to me like this, still I say I did not understand that Mr. Cooper was going to say anything more than I have indicated.

56. You know that Mr. Cooper in Court was associated with your solicitor, Mr. Stafford, and the second counsel, Mr. Baldwin, all robed, and that Mr. Cooper purported to speak on behalf of himself and his learned friends?—Yes.

57. Have you ever stated to Mr. Cooper that he went beyond the authority you had given?—I do not think so. I do not think the matter has ever been mentioned.

58. With regard to the amount of these costs, there were some small sums in dispute—do you remember?—Yes.

59. Did you not ask Mr. Cooper if possible to settle the quantum of these small amounts with me?—Yes.

60. It was done through Mr. Cooper at your request?—Yes.

61. And I think I received a letter from you or your solicitor stating that was going to be done. You made no objection to the quantum of these sums?—No. I recollect a question arising as to the costs, and the Chief Justice intimated that he would allow costs, and there was some discussion between counsel as to the amount or what heading they would come under, and I think Mr. Cooper suggested it should be left to be settled in Chambers; and then there was some question as to how much would probably be allowed. I think Sir Walter Buller's solicitors were very glad to leave the question to Mr. Bell, and I was very glad to leave the question to Mr. Cooper, and we were quite satisfied to do that rather than to have the matter threshed out in Chambers. The matter was to be settled by these two gentlemen, and Mr. Cooper had my full authority to agree with Mr. Bell, and the amount which Mr. Cooper agreed to with Mr. Bell was embodied in the decree.

62. *The Chairman.*] Then, upon the case as stated, and as shown by this, a decree was made as set out in the petition?—No; that arose afterwards.

63. The decree as set out in the petition?

Mr. Bell: Yes.

64. *Mr. Baldwin* (to witness).] Do you remember having any communication from your solicitors as to the advisability of delaying these Supreme Court proceedings?—Yes, delaying them until the Appellate Court gave its decision.

65. The Horowhenua Block Act was passed in October, 1896?—Yes, I think so.

66. And the six months given to you to institute proceedings expired in April, 1897?—Yes.

67. The evidence was finished in the Appellate Court on the 7th April, 1897: do you know that?—No, I do not know what date it was.

68. And on the 14th April, 1897—within a few days before the expiry of the six months—the writ was filed in the Supreme Court?—Yes. I will not be sure about the date; as shortly before as possible.

69. You did not serve that statement of claim on the defendants at all?—No.

70. Why?—Because I was advised it was extremely doubtful whether an action would lie at all until the Appellate Court had given its decision, and, whether it would lie or not, it was extremely desirable to get the Appellate Court's decision before the Supreme Court action came on for trial, because on one view of the Act the Appellate Court's judgment would have been conclusive—I do not say it is right—would have been conclusive as against all the world as to the existence or non-existence of a trust in Major Kemp; and, secondly, if the Appellate Court found there was no trust in Kemp, it was useless trying to establish a trust in the Supreme Court, and it was not proposed to go on trial at all.

71. That is to say, if the Appellate Court had established there was no trust in Kemp you would have had to abandon the proceedings against Sir Walter Buller?—That is so.

72. And, as a matter of fact, that has been the decision of the Appellate Court, that there is no trust as against Major Kemp?—I saw it in the newspaper.

73. So that if you had been able to wait until the decision of the Appellate Court was given these costs would not have been incurred at all?—I do not know; I presume so. That was the intention.

74. *The Chairman.*] You would not have issued the writ?—I should have had to issue the writ. I should have had to commence the action, but it would have been waste of time to go on.

75. *Mr. Baldwin.*] You have a report from your solicitor as to the various steps taken in the action?—Yes.

76. Under the Supreme Court code, in an ordinary case you have twelve months for service on a defendant?—Yes, I think so.

77. On the 3rd May, 1897, a summons was taken out on behalf of Sir Walter Buller and Major Kemp to compel you to serve them, or, in the alternative, to allow them to file statements of defence?

78. *The Chairman.*] Who is the letter from?—From Mr. Stafford to myself.

79. Dated?—The 4th September, 1897.

80. *Mr. Baldwin.*] On the 3rd May a summons was taken out, and on that his Honour the Chief Justice compelled you to serve the defendants?—Yes.

81. On the 22nd May the defendants were served, and on the 28th they filed their statements of defence?—Yes, so it is reported.

82. And immediately thereupon the case was set down for hearing at the June sittings?—Yes.

83. You thereupon took out a summons to prevent the hearing at the June sittings in order that the Appellate Court could give its decision—on the 29th, I think, you will find the summons was taken out to have this case struck out of the list for the June sittings?—Yes, so it says here.

84. What was the reason for that?—The reason is the reason I have already told you, that every effort was to be made to obtain the Appellate Court's decision before the Supreme Court action came on, so far as I know.

85. There was no decision given on that summons, but as a matter of arrangement it was suggested that the case should stand over for two months?—I do not know. I was not present.

86. This letter, or report, from Mr. Stafford says so. That is what is in the report to you?—Yes.

87. The Chief Justice, you say, gave no decision?—Yes.

88. You find there that on the 31st May a summons was taken out to have certain questions of law argued?—Yes.

89. One of which was, whether it was a condition-precedent that the Appellate Court should give its decision?—"The main point involved in these questions of law was, in substance, whether the Public Trustee could test the validity of Sir Walter Buller's dealings before the Appellate Court had decided upon Major Kemp's titles."

90. And the Chief Justice's decision declined to allow the question of law to be argued?—Yes.

91. Do you remember as to a special case being sent by the Appellate Court to the Supreme Court for its decision?—Yes, I believe the Appellate Court did send a case.

92. At the conclusion of the evidence taken before the Appellate Court at Levin the Court declined to give a judgment as to whether there was a trust or not. That was about the 7th April. The Court said the question of law would have to be argued before they would give a decision as to whether there was a trust or not. This special case was sent forward to the Supreme Court, and the next step in the action was in reference to the special case. You will find there a report as to the application to have the hearing or trial of this action, the Public Trustee against Buller, postponed until the hearing of the special case?—Yes.

93. And that was refused by the Chief Justice?—Yes.

94. Then you find that on the 23rd July a further application was made to have the trial of the action postponed until the decision on the special case was given?—That was the application I was referring to in answer to your last question.

95. Then, on the 27th July you filed a discontinuance of the action?—Yes.

96. What was the reason?—Because I was advised we could not go to trial until the Appellate Court gave its decision, and they could not give a decision until the Supreme Court gave its decision on the questions referred to it; and the Chief Justice would not hear or give a decision until the full Court met in October.

97. And in order to avoid this expense you filed a notice of discontinuance?—Yes; I was advised to do so.

98. Advised by Mr. Cooper?—No; by Mr. Stafford. Mr. Cooper was not in it at that time.

99. And then Sir Walter Buller and Major Kemp took out a summons to force on a trial?—No; I think the order in the alternative was to file a judgment for the defendants.

100. And the discontinuance was struck out and the case came on for trial?—Yes.

101. Since the decree has been made in this case awarding these costs to Sir Walter Buller further costs have been incurred, have they not?—Since the decree, yes.

102. Between the Public Trustee—or whoever is responsible for them—and his solicitor?—Yes, owing to the endeavour by Sir Walter Buller and Major Kemp to get payment of the costs. There was a certain amount of correspondence between their solicitors and mine, and my examination before the Chief Justice; also an argument on a special case as to whether the office fund could be used.

103. And on that application you were successful?—Yes.

104. And yet you have been subjected to the payment of a considerable sum for costs?—The costs were £94 19s. They have not yet been paid.

105. These particular costs have not yet been paid?—No. No costs were allowed. Each party paid their own costs.

106. I want to ask one or two questions as to what occurred between Mr. Stafford, Mr. Cooper, Mr. McClean, and myself on the evening you referred to. Did you make a note of what passed on that evening—it was on the Monday night before the trial?—No, I do not think I did at the time. I think what we had done was this: I had seen Mr. Cooper, probably on the Saturday or Sunday, and possibly on the Monday morning, and the probability is that we had practically decided on what should be done, but no formal instructions had been given. It was probably tacitly agreed on, although formal instructions had not been given. It was not definitely settled until the Monday night.

107. *Mr. Bell.*] The case was fixed for the Monday, and it was only in consequence of something connected with the Governor's arrival that the case was postponed until the Wednesday, and communication was made by Mr. Cooper, as your counsel, to me on Sunday; therefore I put it to you that the advice or determination of what should take place must have been made on the Saturday?—I am quite clear about the matter; it was on the Monday night.

108. *Mr. Baldwin.*] Did you have a report from Mr. Stafford and myself as to our recollection of it?—Yes. When the Premier returned—he was away at the time, but when he came back—he asked me whether I had authorised Mr. Cooper to make the statement he did when withdrawing the case. I told him then what had occurred, and I said, "I have no note of the matter, but Mr. Stafford, Mr. Baldwin, and Mr. McClean were all present, and I will write to them immediately and forward my letter to you with their replies, and you will see whether their recollection agrees with mine." And this is the letter:—

Public Trust Office, Wellington, 17th September, 1897.

Horowhenua.—Referring to my interview with you yesterday, at which you asked me whether I authorised Mr. Cooper to make the statements which he was reported to have done, I beg to repeat what I then told you. Mr. Cooper did not outline to me, or otherwise indicate to me, what language he proposed to use to the Court. My recollection as to what passed between Mr. Cooper and myself is very clear, but, as I told you, Mr. Stafford, Mr. Baldwin, and Mr. McClean were present, and I therefore this morning wrote to Mr. Stafford and Mr. Baldwin letters in the same terms, substituting Mr. Stafford's name for Mr. Baldwin's and Mr. Baldwin's for Mr. Stafford's where necessary. The following is a copy of my letter to Mr. Stafford:—

"The Hon. the Premier has asked me whether I instructed Cooper to make the statement which he did make in Court on the 11th August. My recollection of what passed is set out below, but, as I am speaking from memory, I should be glad if you would say if my recollection is correct. I am writing a similar letter to this to Mr. Baldwin. Mr. Cooper on the evening before the case came on stated, in effect, that he was clear the action could not succeed. Mr. Baldwin and yourself concurred. The Chief Justice had previously refused to adjourn the trial until after the Appellate Court's decision, or to have the questions of law which you raised argued before the trial. Mr. Cooper advised, and you and Mr. Baldwin concurred in that advice, that no reason should therefore be offered, and that judgment should by consent go for defendant Buller. Mr. Cooper stated that he proposed to inform the Court that after the evidence that had been taken in the Appellate Court he was satisfied that the action could not be successful in maintaining, and that therefore he advised me I ought to consent to judgment for the defendant. I drew his attention to the fact that the other side would probably not be satisfied with such a statement, and that they would possibly try to call evidence. Mr. Cooper replied that if they did so he should point out to the Judge that he had consented to judgment for the defendant, and if the Judge chose to allow them in the face of that to call evidence, that was a matter for the Judge himself, but that he (Cooper) should decline to cross-examine witnesses or to take part in the proceedings. To the best of my recollection this was all that occurred. I think Mr. McClean was also present. Would you please let me know as soon as possible if what I have stated is correct."

J. C. MARTIN.

I have just received the following in reply: "We have read your memorandum of the 17th instant addressed to us respectively, and your statement of what transpired at the consultation you refer to is correct. The consultation took place on the Monday preceding the Wednesday, the day of trial, and was a final consultation before the case was called on for trial. Mr. McClean, barrister and solicitor, who has from the first acted as confidential clerk in these proceedings, was present at the consultation, and has the same recollection of what transpired.

"E. STAFFORD,
P. E. BALDWIN."

And in Mr. Stafford's letter of the 13th instant, a copy of which has already been forwarded: "I was quite prepared to acquiesce in his views that final judgment should be given for Sir Walter Buller, although I thought, and still think, that the questions of law were arguable; but I was surprised at the extent of Mr. Cooper's admissions. I was not prepared for the complete withdrawal of the charges made against Sir Walter Buller, but, of course, as Mr. Cooper was senior counsel in charge of the case and took full responsibility I could not interfere." I should be glad if you would let me know if there is any other point upon which you want explanation. If so, upon hearing from you I will at once reply.

The Hon. the Premier, Wellington. J. C. MARTIN, Public Trustee.

109. *Mr. Bell.*] Your statement of claim against Sir Walter Buller is set out in the Appendices G.-2B to the Journals?—Yes.

110. You saw defendant's statements?—Yes, I saw them.

111. Do you say he had notice of trust?—No.

112. Did you accuse Sir Walter Buller of taking advantage of Major Kemp as his confidential adviser?—Very possibly I did.

113. You charged Sir Walter Buller with taking fraudulent advantage of his client, Major Kemp?—I do not recollect what the statement of claim is.

114. I put it before you as it is in G.-2B?

115. *The Chairman.*] Is that one of the blue-books of the colony?—Yes.

116. And is the print there a copy of the original in the Supreme Court?—Yes, I believe so.

Mr. Bell: I refer you to paragraph 32: "Plaintiffs further say that, when the defendant Sir Walter Lawry Buller obtained from the defendant Meiha Keepa te Rangihiwinui the mortgage referred to in the said paragraph 28 hereof, he was the solicitor and confidential adviser of the defendant Meiha Keepa te Rangihiwinui, and he then represented through the defendant Meiha Keepa te Rangihiwinui that the said mortgage was intended to secure a sum of £500 then advanced by the defendant Sir Walter Lawry Buller to the defendant Meiha Keepa te Rangihiwinui, and also further moneys to be thereafter advanced to and owing by the defendant Meiha Keepa te Rangihiwinui to the defendant Sir Walter Lawry Buller; but he concealed from the said defendant Meiha Keepa te Rangihiwinui that the said mortgage was intended by the said defendant Sir Walter Lawry Buller to cover a large sum of money for costs then alleged to be owing, amounting to £1,000 and upwards, and all further costs thereafter to become due and owing by the defendant Meiha Keepa te Rangihiwinui to the defendant Sir Walter Lawry Buller, all of which said costs the defendant Sir Walter Lawry Buller now claims are secured by the said mortgage."

117. *The Chairman.*] You were one of the plaintiffs in the statement of claim?—Yes.

118. *Mr. Bell.*] Will you read paragraph 33? "The plaintiffs further allege that it appears from the said mortgage that the said defendant Sir Walter Lawry Buller obtained from one Robert Ward, a Trust Commissioner under 'The Native Lands Frauds Prevention Act, 1881,' a certificate under 'The Native Lands Frauds Prevention Act, 1881 Amendment Act, 1888'; but the plaintiffs

say that the defendant Sir Walter Lawry Buller obtained such certificate by not disclosing to the said Trust Commissioner that the said mortgage was intended to cover a large sum of money for costs, amounting to £1,000 and upwards, and all further costs thereafter to become due and owing by the defendant Meiha Keepa te Rangihiwinui to the defendant Sir Walter Lawry Buller, and left the said Trust Commissioner under the belief that the sole consideration for the said mortgage was the sum of £500 then advanced to the defendant Meihi Keepa te Rangihiwinui by the defendant Sir Walter Lawry Buller. And they further allege that the said Trust Commissioner gave the said certificate without making any inquiry whether the land included in the said mortgage was held by the said defendant Meiha Keepa te Rangihiwinui in trust or beneficially." Also paragraph 31? "The plaintiffs say that when the defendant Sir Walter Lawry Buller obtained from the defendant Meiha Keepa te Rangihiwinui the transfers and leases referred to in paragraph 28 hereof he (was?) the solicitor and confidential adviser of the defendant Meiha Keepa te Rangihiwinui, and that he obtained the said transfers and leases at grossly inadequate values and rentals." Did you say that those charges had any relation to the question of trust to be found by the Native Appellate Court—you are a lawyer?—No.

119. Then how can you say that the trial of those charges ought to be delayed until the Appellate Court determined the question of trust or no trust?—I did not say so. I have told you what I was advised.

120. *Mr. Baldwin.*] You could only have set that up against Sir Walter Buller if it was decided you were acting for the *cestui que trust?*—I do not know. That is a matter of law.

121. That is the position you took up; it was on behalf of the *cestui que trust* you made those charges?—Yes.

122. And if there was no *cestui que trust* it was not any concern of yours?—It was my duty on behalf of these Natives.

123. *The Chairman.*] And all the way through you were acting under advice?—Yes. I have answered Mr. Bell's questions because I am responsible for what my solicitors have done; but, as far as I am personally concerned in the matter, I practically left the matter in the hands of my solicitors. At different times they referred to me, but I have throughout been advised by them, I think in every instance in writing. Personally I have taken no active part in this matter.

124. And you have no personal feeling in the matter?—No, certainly not. I have told my solicitors in writing from the very first that they were to endeavour to meet Sir Walter Buller's convenience in this matter. In the first letter I wrote I said I had heard he was leaving the colony and they should meet his convenience. I have not allowed my duty as a statutory officer to be affected by politics or anything of that sort. My solicitors were instructed to assist me in my duty as a statutory officer and no more.

The Chairman: I think I can express what is in the minds of the Committee: that you have not suggested by any inference whatever, Mr. Bell, that Mr. Martin has displayed any personal feeling in the matter.

125. *Mr. Bell.*] That is so, certainly. Mr. Martin and I are perfectly good friends. But Mr. Cooper made the statement I referred to to me on the Saturday. Mr. Martin no doubt had seen the Minister on the Monday and had communication with Mr. Cooper. Mr. Martin admits himself that he might have had communication with Mr. Cooper?—Yes, I had communication with Mr. Cooper almost daily.

126. Perhaps you are aware that Mr. Cooper had an interview with me on the Sunday?—I would not like to say. I am not sure if Mr. Cooper did not communicate with you on the Monday. He certainly told me this in the course of discussion: that we had to do so-and-so, that we ought to stop the other side's witnesses, and I certainly recollect Mr. Cooper saying to me, "Oh well, I will tell Mr. Bell to stop his witnesses," or something of that sort. I recollect that perfectly well, but I am equally positive that the final instructions I gave Mr. Cooper were on that Monday night. We might have come to a tacit understanding before, but the definite and positive instructions were not given until the Monday night.

127. I never endeavoured to accuse Mr. Martin, but I think he is wrong because of the statements made by Mr. Cooper to me?—I say this: of course I have seen Mr. Cooper, I dare say sometimes three times a day. One day he saw me in the street, and later on I saw him at Mr. Stafford's office, and at a subsequent period in the evening I saw him again. Well, in talking over and discussing things we might come to some conclusion without saying formally we will do so-and-so.

128. *The Chairman.*] That is the tacit understanding?—It would be an understanding to his mind and my mind.

129. And now as to the formal understanding?—The formal understanding would be, "I authorise you to do so-and-so."

130. *Mr. Crowther.*] There seems to be a desire to impress on the minds of the Committee that Mr. Cooper was not authorised by your solicitors to take the steps he did at the final moment in the Court—to use the words he did?—I do not think any client would say to his counsel, "I want you to say so-and-so, and not say something else," nor would counsel say, "I propose to use certain words." But the effect would be arranged, "Very well, you consent to judgment," and then you leave the rest to your counsel's sense of what is right to express your meaning.

131. Would not this practical and tacit understanding that it was not considered advisable to encourage the plaintiffs to obtain and examine witnesses amount to such an inference on Mr. Cooper's mind as to encourage him to take the steps he did?—What I said was this: I pointed out to Mr. Cooper that the other side might not be satisfied with his consent of judgment, that they might say, "We have had charges brought against us, and we are now satisfied simply to have the plaintiff get up and say 'I consent to judgment,' and we want to call witnesses to clear ourselves." I said, "What do you say?" and Mr. Cooper said, "I will say, 'Well, your Honour, if you like to allow them to call witnesses I shall not cross-examine them or take any part in the proceedings.'"

132. That matter, then, would be left in the hands of the Chief Justice as to whether he would allow the case to proceed any further after Mr. Cooper, so to speak, had confessed judgment?—Of course; it has nothing to do with me.

133. *Mr. Symes.*] It has been suggested by Mr. Bell that there was something with an Act of Parliament in connection with this. I understood Mr. Martin had said it was on no suggestion of his?—The first I heard of the Act of Parliament, I believe, was when counsel came back from Chambers and were complaining about a statement made by the Chief Justice, to the effect that he had insinuated that they were not *bonâ fide* in their application for postponement, because they wanted an Act of Parliament passed. That was, I believe, the first I heard of it.

134. It really came from the Judge, then?—Yes. The shorthand note referred to me afterwards says this:—

The Chief Justice: Why can't you abandon action? You can abandon action.
Mr. Bell: We will lodge protest against discontinuance.
The Chief Justice (to Mr. Stafford): I suppose you want to get an Amendment Act. You must bring action within six months.
Mr. Stafford denies that plaintiff wants amending Act. We expect to get Appellate Court's decision before six months; certainly before 9th August, date fixed for trial. . . . We want decision from your Honour whether we are entitled to bring this action until Appellate Court had decided under section 5.
The Chief Justice: Has not the Legislature determined to inquire into merits?
Mr. Stafford: That is so, if action was maintainable.
Mr. Bell: Date of trial fixed by consent on 9th August. That is preliminary objection.
Mr. Stafford: Date was so fixed in accordance with his Honour's suggestion that there should be accommodation. We might have got and expected to get Appellate Court's decision in the interval. That might not have helped if we had no right to bring action.
The Chief Justice: You are anxious because of this doubt not to go to trial; but if going to trial entails expense, and action of defendant causes you to go to trial, it will entail extra costs on defendants.
Mr. Stafford: This may be a fatal blot on the proceedings and render them absolutely abortive.
The Chief Justice: You might wish to postpone trial till after April to get remedying Act.
Mr. Stafford: I do not say that. On behalf of Public Trustee I say Public Trustee has nothing to do with any such idea."

That is the first I heard of an amending Act. Subsequently, Mr. Stafford said something about Sir Walter Buller might want an amending Act because he could not get his title without.

135. *Mr. R. McKenzie.*] Has the decision of the Appellate Court been given on this case?—I am sure I cannot tell you. As soon as judgment was given I had nothing more to do with the case. My functions ceased, but I have seen in the newspaper that the Appellate Court has given a decision; but, on the other hand, I have seen applications in the Supreme Court and the Appellate Court, until I could not tell you in what position the thing is. I have not been interested, and have taken no steps in it, and know nothing about it.

136. What I gathered from your evidence was, that if the case had been postponed until the Appellate Court had given its decision it might have influenced the other case or caused it to be abandoned?—Had the Appellate Court found that Kemp was the absolute owner of Section 14, what I believe I should have done was to have served a writ on Sir Walter Buller, or his solicitor, and said, "I cannot go on with it. I must bring my action in order to clear your title," and I should have issued the writ within six months.

137. *Mr. Lethbridge.*] If the six months had elapsed, what would have been the effect?—I would not have let the six months elapse. If it had not been for the statute forcing me to act within six months I would not have issued the writ.

138. *Mr. R. McKenzie.*] Did you not wish to infer that the other side forced you to bring the action?—They did force me. The statute ordered me to issue the writ. Under the Supreme Court rules we can bring an action, but need not serve the writ for twelve months; but, in this case, the other side went to the Court and asked it to order us to serve the writ, and I was forced to go on; and then they forced us on to trial.

139. Has Sir Walter Buller exhausted all his legal remedies to recover his legal expenses?—I think so. I do not know what more he could do. It was a question of law whether I was personally responsible, or whether the Trust Office funds could be attached, and so proper proceedings were taken to get the facts from me, and they were brought before the Supreme Court, and the Court has decided that I am not personally responsible, nor can the office funds be attached.

140. The Supreme Court does not say the colony is liable?—Mr. Justice Denniston says, I think, that the costs should be paid. The Appellate Court made an order, and said it was an interlocutory order.

141. *Mr. Lawry.*] Has any attempt been made to obtain the costs from you personally?—I have been applied to over and over again. The evidence of what has exactly taken place the Chairman has. All applications have been made by Sir Walter Buller's solicitors to me.

142. Do you know whether there has been any parallel case connected with your office?—I do not think so. I suppose at Home the Attorney-General would take proceedings such as these, and would get an indemnity.

143. *Mr. Hall-Jones.*] I understand you to say you had six months within which to issue the writ?—Yes.

144. And the writ once issued it could stay in abeyance, according to the Supreme Court rules, for twelve months?—Yes.

145. But you were forced into the Court?—Yes.

146. By whom?—By the defendants, Sir Walter Buller and Major Kemp.

147. A very important issue in this matter was that a certain matter should be referred to the Appellate Court?—Yes; that is the construction my solicitors took of the law.

148. And the Appellate Court had not decided the point referred to?—No.

149. Would the reason be that it improved the position of Sir Walter Buller if this case was forced into the Supreme Court before the Appellate Court had given a decision?—Well, I do not know. Under ordinary circumstances the Supreme Court would be the Court to settle whether

there was a trust or no trust, and I do not see myself what advantage it would be to Sir Walter Buller to shove the case on to the Supreme Court if the law was that the Appellate Court was the special statutory Court to settle the question, or whether there was a trust or no trust. The Supreme Court would say, "Very well, as it has to be settled by a special Court we cannot interfere."

150. But there was no need for Sir Walter Buller to hurry the case on; he could have let it remain for twelve months?—He could have let it remain.

151. Did he force the position?—He forced the position.

152. And in consequence incurred these costs he has now petitioned for. For instance, suppose the matter had been left in abeyance, then little costs would have been incurred; but in consequence of hurrying the case on these costs have been incurred?—Yes; if the Court had given a decision that Kemp was the absolute owner the costs would only have been a few pounds.

153. You applied to the Court to permit of the Appellate Court giving its decision—you applied for postponement?—Yes; we applied for that.

154. And that was refused?—Yes.

155. And then you were advised that, under the circumstances, it was unwise to go further?—I was advised that we could not succeed.

156. But the Appellate Court not giving its decision was an important factor?—Yes. We had to determine whether there was a trust, and the trust might have been established in the Appellate Court, because the evidence was available there which was not available in the Supreme Court, and if a trust was established in the Appellate Court and the decision of the Appellate Court was binding on the whole world, including the Supreme Court, the issue to be proved in the Supreme Court became a much smaller one. The first thing we had to do was to establish a trust practically by Maori evidence.

157. You were bound by statute to commence the action within six months?—Yes. The whole of the delay was to get the decision of the Appellate Court. We tried in every way we could to get that decision before this action came on.

158. If the final question had been allowed to go on for ten or twelve months, would Sir Walter Buller's position have been prejudiced by the delay in the Supreme Court?—He was prejudiced in this way, that he could not deal with his land. Moreover, the witnesses might die, and evidence be lost.

159. I mean from the legal point of view?—I do not see how, technically, his position would be worse from the legal point of view, except that evidence might be lost.

160. Apart from the question of witnesses dying, and his immediate interest in the land, the question might have stood over for some months longer, with a possibility of the decision of the Appellate Court being given, and none of these costs being incurred?—Yes, supposing he had the same evidence available to him at the end of the twelve months as he had at the beginning, and, putting aside the fact that he could not deal with the land, I do not see that he could be prejudiced, except that this thing would be hanging over his head.

161. *Mr. Lethbridge.*] And that there were other charges made against him?—Yes; the improper dealing.

162. And naturally a man would like to have that taken off his character as soon as possible?—Yes.

163. *Mr. McLean.*] About the funds; you said just now that you never had a similar case?—Yes.

164. What would be your position if you had a similar case? Are you never in a position to pay?—I do not know that ever such a case cropped up.

165. You surely have a fund?—I have a fund to do this: the Supreme Court has held that where an action is brought against me in respect of my duties as Public Trustee, I can pay; not only that I have the power, but I can be made to pay, in defiance of the Government, any just claims against the office. My office has nothing to do with the action. My name is simply used. This is no claim against me incident to my ordinary duty as Public Trustee. Supposing a person interested in an estate issues a writ and recovers against me, I must pay, in spite of every authority in the land; that is, neither the Audit, the Government, nor anybody else can stop me from paying. This is a special Act, which simply takes my name and orders me to do certain things, and gives me no means for doing them. I wrote to my legal advisers asking them whether I had power to use my funds.

166. Did you represent that to Ministers?—Yes; you will find all that. I represented that at once, before I commenced the action. You will find that is all set out in my examination. I can let you have the judgment given in the Supreme Court.

167. You do not know anything specially about the judgment of the Appellate Court?—No, nothing more than what appeared in the newspapers.

168. It was a personal surmise?—The Appellate Court said, after the close of the evidence, that they wanted to state certain questions of law for the Supreme Court. Those were stated, and the Chief Justice refused to hear them. He said he was not going to hear them, but would refer them to the Judges. We did not anticipate that, but thought the Appellate Court would have given its judgment in the course of six weeks or so.

169. *The Chairman.*] There has been a considerable number of questions put to you about issuing the writ within six months. Will you tell us the procedure, and how Sir Walter Buller came to know the writ was issued?—A document is prepared, and a statement of claim filed in the Supreme Court, and a duplicate is given to the person interested.

170. But in this case it was not served?—No.

171. Then, how did they know?—I can only surmise that they knew that I must take action within six months, and they must have searched the Supreme Court to find out.

172. That would be their only means of knowing?—Yes.

173. You had given no notice?—No.

174. Now, about the address Mr. Cooper made when withdrawing the case from the Supreme Court. If he had outlined the statement he made in the Court before the case went there, would you have concurred therewith?—I cannot answer that question. I do not know what I would have done.

175. Supposing he had outlined his statement before he made it in the Court, would you have concurred in it?—I cannot tell you that, for this reason: up to the present moment I have never been through all the evidence, that the solicitors had, to weigh it at all. I have accepted their interpretation of that evidence. I have never been through all this evidence they got to see if it was good, bad, or indifferent. You ask me whether I would have concurred; probably I should have said, "We will go through all the evidence."

176. But, when the Premier returned to the colony, he asked you some questions upon what Mr. Cooper had said, and then you applied to Mr. Stafford and Mr. Baldwin, and wrote a letter to the Premier telling him that you only told Mr. Cooper to do so and so, implying that you did not give him full instructions for the statement he made?—I say so now. I do not think it ever occurred to me to wonder what Mr. Cooper would say, or as to what form he would put his statement in.

177. *Mr. R. McKenzie.*] In answer to Mr. Bell, you stated it was ruled by the Supreme Court that there was no *locus standi*?—It was the Appellate Court.

178. *Mr. Crowther.*] Were you justified in accepting and defending an action knowing that if you lost you could not be compelled to pay the costs thereof?—I could not help myself; Parliament ordered me to do so; I had no option. Parliament did not say to me, "You may bring an action," but, "You shall bring an action"; and, whether I could support it or not, I think Sir Walter Buller would have compelled me to bring that action, and would have been right in doing so, because, until that, he could not deal with the land. If I had not brought the action at the end of six months Sir Walter Buller would probably have gone to the Court and said, "Parliament has ordered this officer to do it, and will you compel him to do it."

179. *Mr. Bell.*] If you had succeeded in this action, would not Sir Walter Buller have been liable for the costs to you?—Yes; I certainly should think so. I do not know what defence he would have had. I do not for a moment suggest that Mr. Cooper did not with my full sanction and concurrence consent to judgment and the amount of costs being inserted in the decree.

180. Will you kindly distinguish between this: if a plaintiff brings charges of fraud, and then abandons them, is that not equivalent to retractation?—Of course, the abandonment of an action is equivalent to saying "I cannot prove it."

181. *The Chairman.*] And a withdrawal of your allegations?—Yes, of course. What I wanted to make clear was that, although there may be some difference and our memories may not agree as to the actual words which passed between Mr. Cooper and myself, there was no question that as between myself, as plaintiff, and Sir Walter Buller, as defendant, he was entitled to his costs.

SIR,— Public Trust Office, Wellington, 9th August, 1898.

I return herewith transcript of shorthand notes forwarded with your letter of the 8th instant. I have made some alterations in red ink and initialled them, and, subject to these alterations and to the quotations from the various documents being correct and to what I say in this letter, I believe the transcript to be practically a correct account of what passed before the Committee. I have not checked the quotations, as all my papers are with you.

I notice that the reporter, in detailing conversations which passed, has placed various expressions in inverted commas. This might lead to the supposition that I was deposing to certain words as having been used. I distinctly stated, when giving evidence, that I was referring to something which had happened a year ago, and I could not give the exact words, but could only give the effect of what was said.

On page 19* I am made to say, "and the probability is that we had practically decided on the language of the formal instructions to be given." What I believe I said was, "the probability is that we had practically decided on what should be done, but no formal instructions had been given." I did not intend to convey that we had decided on the language of the formal instructions to be given.

On page 22 there is, I think, some mistake in the questions, "You saw defendants' statements?" and "Do you say he had notice of trust?" I do not think I was asked anything about the defendants' statements, and it was necessary in order to succeed in the action in the Supreme Court to allege and prove notice of trust.

The last answer on page 38* might be construed into an expression of opinion on my part that Sir Walter Buller was entitled to the payment of the costs as asked for by him in his present petition. What I intended to convey was, that Mr. Cooper was authorised by me to consent to judgment for the defendant and to the defendant being awarded his costs, and to settle the amount of those costs, and that, however we might differ as to our recollection of what passed, there was no question that, as between myself, as plaintiff, and Sir Walter Buller, as defendant, he was entitled to his costs.

Yours, &c.,
J. C. MARTIN, Public Trustee.

The Clerk, Public Petitions A to L Committee, House of Representatives.

NOTE.—* Ordered by the Chairman to be corrected accordingly.

FRIDAY, 5TH AUGUST, 1898.

Sir WALTER LAWRY BULLER examined.

1. *Mr. Baldwin.*] You remember the Native Appellate Court giving its judgment in reference to Block 14 a short time ago?—The last judgment, yes.

2. I think that was on the 14th March?—We shall have the judgment here in a minute; it has been sent for.

3. Shortly, the decision of the Court, Sir Walter, was that the Court found that Major Kemp was not intended to be a trustee?—It was a lengthy judgment, its effect being that Major Kemp was found to be the absolute owner; but ten days after its delivery the Court called the judgment back, and said it was an interlocutory order, so that there is no final order yet.

4. Mr. Bell has admitted, and I suppose you also will admit, that you took every step that you could to prevent this decision of the Appellate Court from being given?—Certainly not; and

Mr. Bell made no such admission. On the contrary, I gave every assistance and did all in my power to have the decision given. I was damnified by the delay, and by these charges being allowed to hang over my head.

5. You said you did everything in your power to have the decision of the Appellate Court given before the Supreme Court action?—You put your questions in such an awkward way. You said I took every step to prevent this decision being given. I was waiting patiently for the judgment.

6. Did you not know that the Appellate Court had stated certain questions for the opinion of the Supreme Court?—I did, of course—questions of law.

7. And you knew the Appellate Court had decided not to give its judgment until those questions were answered?—I believe so. I was in no way responsible for or desirous for the delay in the decision. On the contrary, I wanted the judgment.

8. You know there was an application made by Mr. Stafford and myself on behalf of the Public Trustee to have those questions of law argued at as early a stage as possible?—I do not know exactly what applications you made; you made so many.

9. Do you know if an application was made to have the questions of law argued at as early a date as possible?—I believe so. Both sides were anxious.

10. Do you know whether Mr. Bell and Sir Robert Stout decided to have these questions dealt with or argued before all the Judges?—I think it was the suggestion of the Chief Justice himself.

11. Do you suggest that it was not the opinion of Mr. Bell and Sir Robert Stout that they should be argued there?—I gave no such instructions. I left myself entirely in the hands of counsel, and my belief is that the Chief Justice himself suggested it.

12. What was your reason for wishing to force on the trial?—I had every reason. I had been attacked by a Minister in a privileged place in 1895, and all sorts of wild charges had been hurled at me. I had no chance of meeting these charges except when I appeared at the bar of the House. Then an Act was passed directing a statutory officer—the Public Trustee—to bring an action against me within six months thereafter; and was I to wait until the judgment was given by the Appellate Court? Was I to remain under such charges indefinitely?

13. It was because of all those charges you wanted to have the case settled?—I also wanted my title. My title was destroyed, and my property was unmarketable; and I was seriously injured and damnified. I had other reasons. My own personal convenience was concerned. Three years ago I let my house, intending to go to England. I have been detained here ever since, and how much longer I shall have to stay I cannot say.

14. There were three reasons,—(1) The charges hanging over you; (2) the titles of your property were not negotiable; and (3) your own personal convenience?—Yes.

15. With regard to the second point, has your title, except as to the 11 acres of freehold, been put right yet?—Not yet—through no fault of mine. The Supreme Court has given me the title to the 11 acres, and has said in its judgment that when the ownership to the other land has been ascertained—to whomsoever the certificate may issue—my dealings must be registered thereon, and that decision makes my titles right.

16. At the same time, pending those proceedings, all the negotiations with your dealings have been prohibited?—The Act speaks for itself. The Native Appellate Court found that Major Kemp was absolute owner of the land: that was the effect of the judgment. But, inasmuch as the Appellate Court, for some reason or other, said afterwards that its order was not a final one, the Chief Justice would not allow my dealings to be registered. He said, however, that when the title was found for Block 14 the whole of my dealings must be registered upon it.

17. But in the meantime you are unable to proceed with your dealings, so you are still awaiting the final decision of the Appellate Court?—Yes.

18. The ground on which you are petitioning the Government for this money, I understand, is that this litigation was forced upon you by Act of Parliament, and that you have had to pay away a large sum of money?—I would put it in this way: A statutory action was brought against me, and I have got a decree with costs. The decree is in favour of Major Kemp and myself, but I have had to pay Major Kemp's costs. Sir Robert Stout declined to go on unless I gave him an undertaking to pay Major Kemp's costs, and I did so. I had paid all Major Kemp's costs for years before, and there was no hesitation on my part in telling Sir Robert Stout that I would guarantee the costs; and, as a matter of fact, I have paid the costs.

19. And you are now asking the Government or the country to pay this money?—I ask the House to make provision for the payment of a debt due to me under the Judge's decree. I ask the Government for nothing. I ask the House of Representatives to provide for the debt incurred under the statutory action brought by the Public Trustee, and settled by the decree.

20. And your reason is that this litigation was forced on you, that the costs were incurred through no fault of yours, and that you were out of pocket over the litigation?—My broad reason is that I am entitled to be paid my costs, and I claim them. I cannot go beyond that.

21. I want to go a little beyond that. You are making an appeal to the country to do an exceptional thing?—On the contrary, I am asking for my ordinary rights. I want no favour.

22. You are appealing to the country to pay costs incurred?—By a statutory officer, the Public Trustee. I am taking this course in consequence of the failure of my application to Mr. Justice Denniston for a mandamus to compel the Crown to pay. The motion was refused. Mr. Justice Denniston said, "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 opinon 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." (This report appeared in the *New Zealand Times* of the 7th February, 1898.) That being so, I come to Parliament to make the provision now.

23. You say that Parliament directed the Public Trustee to bring action against you?—By "The Horowhenua Block Act, 1896," it did.

24. And made provision for costs?—The Act speaks for itself. As Mr. Justice Denniston says, the direction as to costs is implied.

25. Then, you say that certain costs were awarded to you?—Yes, by the Court.

26. And the costs could not be obtained from the Public Trustee?—For the reasons stated in Mr. Justice Denniston's judgment, and set out in my petition.

27. Who was the solicitor for Major Kemp in that litigation?—Mr. Beddard.

28. And your solicitors were Messrs. Buller and Anderson?—Yes, Messrs. Buller and Anderson.

29. How much of this amount mentioned in your petition have you actually paid in cash?—I have paid the whole amount of Major Kemp's costs. Sir Robert Stout was counsel for one defendant, and Mr. Bell for the other.

30. Could you give the Committee an account of the amounts you have paid?—I will put in receipts if the Committee desires it. Mr. Beddard's fees have been paid, and Sir Robert Stout's have been paid.

31. Major Kemp's solicitor and counsel have been paid by you?—Yes.

32. And your solicitor and counsel have not been paid?—My own counsel in this action, Mr. Bell, has not been paid, but I am ready to give him a cheque at any moment; and my solicitors, I may state, have funds of mine in their hands far exceeding the amount due to them.

33. With regard to these costs of Major Kemp, have you not a security made by Kemp in your favour under which you would charge these costs to Major Kemp?—I have unregistered, as it happens now, a mortgage on Block 14 for a sum of money advanced, and for further advances and costs.

34. And this amount paid on behalf of Major Kemp would be covered by that mortgage?—That is a matter of law. I have not charged it on the mortgage yet, because I look upon it as a debt due by the colony which will have to be paid.

35. But it is an amount actually paid by you?—Yes. Sir Robert Stout's full claim and Mr. Beddard's also were paid by cheques.

36. And this mortgage is for amounts paid on certain occasions, and for all further sums paid by you on account of Major Kemp?—Yes. It was a mortgage given to me, I think, on the 9th October, 1894, to secure repayment of the sum of £500 which I advanced to Mr. Edwards; also to secure payment of a debt owing to me, and to secure all future advances and claims in account current with Major Kemp.

37. So far as you are concerned, even if the petition was not granted, as far as Major Kemp's costs are concerned you will still be able to charge them against him?—I may or may not; the land may not be able to pay everything.

38. Do you remember that when you were before the Commission you put in a certain claim as due to you by Major Kemp under your mortgage?—Yes.

39. A sum of £2,000 odd for costs, and £800 odd for moneys advanced?—For costs and disbursements, and divers other sums. With regard to the costs, I have informed the solicitors to the estate that I am quite prepared to have all the costs taxed in the usual way; and I desire to have them taxed.

40. A will of Major Kemp's was put in for probate a short time ago in the Native Land Court?—That is so; but I did not apply for probate.

41. And application for probate is gazetted for the 8th of this month?—I think so.

42. Under that will there is a devise of all Kemp's property?—You had better put the will in.

43. And there is a charge in your favour on the proceeds of sale of £6,810?—I believe there is.

44. The bulk of that money is due for costs and disbursements in connection with the Horowhenua Block?—A great proportion of it.

45. And the balance, after deducting the amount you mention for the Horowhenua Commission, is £2,921?—It is more than that.

46. Roughly, £3,000. The balance, some £3,800, is for costs and disbursements since the date of the Horowhenua Commission up till now?—The difference between the amount stated before the Royal Commission and the amount provided for in Major Kemp's will is made up by cash advances, costs, and disbursements since that period.

47. It is about £3,800?—And interest, of course, since 1894 at 8 per cent., in terms of the mortgage drawn by Mr. Edwards—simple interest only.

48. Could you for the information of the Committee tell me what proportion of that sum is actual cash payment to Major Kemp—payments to solicitors and others on behalf of Major Kemp, and costs owing to yourself in connection with litigation?—I cannot do it here. I do not know whether the Committee desires to go into a question of that kind.

The Chairman: I would like to ask if Sir Walter Buller has an assignment of these costs?

Mr. Bell: No; he paid them at Major Kemp's request.

49. *Mr. Baldwin.*] What is the value of the 1,200 acres at Horowhenua—about?—The property is under lease to me for twenty-one years, and I have improved a large portion of it. I have cleared about 400 acres and put it under grass and fenced it. Those improvements had been effected at the time the Royal Commission had it valued, and their valuation of the block leased to me, with improvements, was £6 10s. an acre.

50. *The Chairman.*] What is the lease—the area?—The whole of it. The unexpired term is fifteen years for the improved part, but the unimproved portion I have only just come into possession of. It was under a timber lease to Mr. Peter Bartholomew. No improvements of any kind have been made since, except the building of a cottage. That is to say, there are 1,200 acres at £6 10s. an acre. I was wrong in saying I had the whole of it. Mr. Peter Bartholomew has 100 acres, and on the expiration of his lease it falls to me for six years.

51. *Mr. Baldwin.*] And your mortgage is over Mr. Bartholomew's land as well as over your own?—Over the whole.

52. *The Chairman.*] That mortgage is registered?—It was originally registered. The effect of the Act was to destroy all my titles, which at present are floating as it were between heaven and earth, until the Native Appellate Court gives its final judgment; but as soon as that is given the Chief Justice has said the mortgage is to be registered.

53. *Mr. Baldwin.*] I would like to get the exact amount Sir Walter Buller charged Major Kemp for his own costs and expenses. I will ask you now, Sir Walter, can you give the Committee approximately the amount you actually paid to Major Kemp, the cash you paid to other persons on behalf of Kemp, and the sum—the portion of the £6,810—which represents your own costs and charges?

The Chairman: What will that have to do with the amount awarded by the Supreme Court for Sir Walter Buller, leaving out Major Kemp's?

Mr. Baldwin: I should submit to the Committee that Sir Walter Buller, instead of suffering by this legislation, has earned a very considerable benefit by it.

The Chairman: But you say that Major Kemp's estate should pay the amount decreed by the Supreme Court for his own costs in the action.

54. *Mr. Baldwin.*] Yes. I say Sir Walter has received or charged—I do not say improperly—against Major Kemp a large sum, and that the sum includes any costs he has been put to?—It is quite impossible, without the dates being given, to state the amounts asked for. All I have to say is that I have given the solicitors for the estate full particulars, and have asked that the costs may be submitted to the taxing-master. They are on the usual scale, and I will only take what the taxation gives me.

55. This sum of £6,810 is payable to you under a trust, is it not?—The will has not been proved yet.

56. Who is the executrix in the will?—The successor, Major Kemp's daughter, is the executrix.

57. Who are the solicitors?—Messrs. Borlase and Barnicoat, of Wanganui.

58. And who the legatees?—Under the trust my advances, costs, and disbursements are protected in the first instance, and provision is made for other just debts and funeral expenses. I am speaking from recollection. The military decorations, accoutrements, and presentation sword go to testator's nephew. A life-sized painting of himself he bequeaths to the Town of Wanganui, to be placed in the public Museum. The rest of his estate goes absolutely to his daughter Wiki.

59. Is that your recollection of the contents of the will?—Yes. The will was not drawn up by me.

60. *The Chairman.*] Can you charge the estate with the £335 which the Court decreed as your costs in the action?—I assume I can charge everything I pay or advance.

61. I mean your own costs?—As to the amounts which I have paid Sir Robert Stout and Mr. Beddard, I take it I have a perfect right to charge on the mortgage, but not my own costs. I never dreamt of it. I cannot charge the amount of £335 petitioned for to Major Kemp.

The Chairman: You appreciate my question, Mr. Baldwin?

Mr. Baldwin: I appreciate your question, Sir. If the Committee is satisfied that Sir Walter Buller has received very full remuneration himself, I take it that will affect this question. My reason for urging this is that immediately you give relief to Sir Walter Buller you will have Major Kemp's representatives applying for £6,000 for costs, and the Muaupoko appealing for tens of thousands for expenses they have been put to. I shall ask Sir Walter Buller, with your permission, to produce the statement showing what proportion of this £6,800 are costs actually owing to him for his services. We have nothing to do with taxing-masters?—I say all costs charged were fairly earned by me, and can have nothing to do with this matter. I could go through every account, but it might take some time. The accounts extend over a period of some years.

62. I only want you to go back subsequent to the sitting of the Horowhenua Commission—that is, the accounts from October, 1896. That is all I ask for?—It has nothing to do with this matter.

63. You took, I suppose, considerable interest in the Horowhenua legislation?—I suppose I did; I had reason to.

64. I presume you saw the Horowhenua Block Bill, 1896, as introduced by the Hon. Mr. McKenzie?—Yes.

65. I draw your attention to clause 6: "Every dealing the registration whereof has been cancelled as aforesaid shall, after the expiration of three months from the date of the coming into operation of this Act, be entitled to be reregistered on any new certificate of title issued under the provisions of this Act for the land the subject of such dealing, unless within the said period of three months proceedings to set aside such dealings are commenced by or on behalf of the persons named in the Fifth Schedule hereto, or the successors of any of them deceased, or some one of them." That is in the Bill as introduced by Mr. McKenzie?—I believe so.

66. By that the attack was to be made within three months, and to be made by the registered owners or some one of them?—That was the proposal.

67. And had that proposal been carried out you would have had a remedy for costs against those persons?—That is so.

68. At whose suggestion was the Public Trustee put in?—I do not know—certainly not at mine. It is about the last suggestion I should dream of making. After my experience of him, the Public Trustee was the very last man in the world I should have suggested.

69. Was it not suggested by Sir Robert Stout?—Not within my knowledge. As a matter of fact, I was never consulted by any one about it.

70. *Mr. Bell.*] These costs, Sir Walter, as fixed by the Supreme Court between party and party: do they represent the amount you are liable for as between yourself and client?—Certainly not. I am responsible myself for a large amount of costs as between solicitor and client.

71. *The Chairman.*] Then, the costs as between party and party, would they run concurrently with the decree of the Judge—would they be incurred during the same period?—Yes; in the same period. I mean the costs in that particular action.

72. You applied for costs as between party and party?—Yes; and also costs as between solicitor and client.

73. And the Court in its judgment estimated the costs you should receive at £335 8s. 5d.?—Yes. It was to come by arrangement. Mr. Cooper and Mr. Bell settled the amount, as there were some questions to be considered. I also asked for payment of these other additional costs.

74. All these additional costs were anterior to the judgment?—Yes; anterior to the judgment.

75. All these costs were in the mind of the Judge when he made the decree?—That is so, Sir.

Mr. Bell: The Judge gave judgment that the costs as between party and party should be paid. He had no power to give costs as between solicitor and client. The Judge held that he had no power.

The Chairman: All the costs applied for now by Sir Walter Buller were in the mind of the Judge when this decree was made, and the costs were settled as between party and party upon the scale fees, and estimated in the way you describe?

Mr. Bell: Yes.

Mr. Baldwin: Costs on the highest scale as arranged between counsel were allowed to each of the defendants, Kemp and Buller.

Mr. Bell: They could not have been allowed on any other scale—the amount was over £500. The order of the Native Appellate Court, asked for yesterday, I have here. It is dated the 14th April, 1898: "It is hereby declared that the order of the Native Land Court, dated the 3rd December, 1886, made in the name of Meiha Keepa te Rangihiwinui was made to him as sole beneficial owner." That was made two years after the passing of the Horowhenua Block Act. Then, on the 24th April, 1898, the Appellate Court added this: "Provided, and it is hereby expressly declared, that the foregoing declaration is in the nature of an interlocutory decision, and it is not intended as a vesting order under section 5 of 'The Horowhenua Block Act, 1896.'"

Mr. Baldwin: It is only eighteen months after, and less than twelve months after bringing the action.

Mr. Bell: I would refer the Committee to Mr. Cooper's address to the Supreme Court on the 11th August, 1897, and which will be found set out in G.-2B, page 12, of the Appendices to the Journals of the House. Mr. Cooper said:—

If your Honour pleases, this is a statutory action brought by the Public Trustee, under section 10 of "The Horowhenua Block Act, 1896," a section which directs and empowers him to institute, on behalf of the original owners of Division 14, Horowhenua Block, an action for the purpose of testing the validity of the alienations in fee-simple of Sir Walter Buller, and of the registered dealings with him by Major Kemp upon the original certificate of title. I should like to say, before I proceed further, that the Act is one very difficult to construe indeed, and that the Public Trustee was advised that the obtaining of the judgment of the Appellate Court was a condition precedent to the exercise of any jurisdiction by the Supreme Court under section 10, and, entertaining that view, he applied to your Honour for a postponement of trial until the question should be determined, or until the Appellate Court should have delivered its judgment. After argument, you determined that the application should not be granted. Some ten days ago I was myself introduced into the matter, and I have given it the most careful and anxious consideration. 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 felt I could not successfully maintain that position, and I think it my duty to say so at once. 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. It is probably within the knowledge of your Honour that there has been a very complete investigation of the circumstances connected with this portion of the Horowhenua Block in the Native Appellate Court, but the Court has not given its judgment, although the taking of evidence has for some time been concluded. We have no evidence in the matter further than that before the Appellate Court and the Commissioners. It is on an examination of the evidence more fully adduced at the further investigation by the Native Appellate Court, during which all the witnesses were fully examined and cross-examined, that I have felt it my duty, with the full sense of the responsibilty which rests upon me—a responsibility in which my learned friends associated with me are quite prepared to share—to advise the Public Trustee that there is no evidence of notice on the part of Sir Walter Buller of any trust—if any trust exists—in Major Kemp. Under these circumstances it seems to me—and I may say my view is concurred in by those learned friends associated with me—that it is the plain duty of the Public Trustee to say so to this Court, and to submit to a decree under section 10 of the Act, stating that the transactions appearing upon the original certificate of title are valid, and that "they shall be reregistered on any new certificate of title which may be issued under the provisions of the Act for the land, the subject of such dealing." Those are the words of the section. It is only due to the Public Trustee that I should say that the views which were taken up a few days ago have very considerable force in them in the provisions of the Act. They are views, however, which I have come to the conclusion I cannot be successful in maintaining. Then, the applications which were made for the determination of these questions, and for the postponement of the trial, although refused by your Honour, I feel it is due to the Public Trustee to say were made in perfect good faith. I think, also—and my learned friends on the other side will agree with the course I am taking in stating the view I hold—that the view 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 so 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. I therefore submit to a decree being pronounced in terms of section 10 of the Act. I think I may be permitted to remark that if the Native Appellate Court had, within the six months referred to in section 5, determined the question which manifestly was submitted to them for determination, and the judgment upon which they have not yet pronounced, a very considerable amount of difficulty and embarrassment would have been avoided. I make no reflection upon the Appellate Court. It is the unfortunate circumstance that the judgment of the Appellate Court has been postponed, it may be for a considerable time, which to my mind has placed this action in its present position. Had the Native Appellate Court, before the trial of this action, said "Aye" or "No," whether there was a trust or not in Major Kemp, there would have been no necessity for further investigations. 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. Major Kemp is a party to this suit, and I submit—and I do not think my friends of the other side will disagree with me—that, whatever view your Honour will take, no decree of the Court can be pronounced in favour of Major Kemp. The only decree that can be pronounced is one under section 10 of the Act, to order the certificates of title for the two small sections which were conveyed in fee-simple to Sir Walter Buller to be reissued, or decreeing their validity; and also ordering the reregistration of the dealings on the certificate of title to Block 14. The Native Appellate Court must, in due course, determine the question whether Major Kemp was a trustee; but in this case the only question is the validity of the dealings of Major Kemp, who was the ostensible owner of the property, and Sir Walter Buller. The decree, therefore, that your Honour should pronounce is one under section 10 setting up the validity of these two certificates which are mentioned in the statement of claim. The total area is 11 acres; there are also the leases and mortgage, which are registered in the name of Sir Walter Buller. I shall also ask your Honour to include in the decree the lease to Mr. Bartholomew—a lease which has never been attacked; but the effect of the statute is to set aside all dealings upon the certificate of title unless they are ordered to be reregistered. I think my friends will agree with me that Mr. Bartholomew's lease should be validated, otherwise the effect of the statute might be to prevent his taking advantage of the lease, which has never been attacked at all. 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 shall have something to say on the question of costs after my friends have said what they have to say on these questions, and will then leave the question of costs to be determined by your Honour.

Mr. Bell: I have listened carefully to the statement made by my learned friend, Mr. Cooper. He has omitted to notice that there are two charges in the claim of personal fraud against my client: one is, that he obtained land from Major Kemp, while he was his confidential adviser, at grossly inadequate rentals and values; and the other is, that he obtained the certificates to his mortgage by preventing matter coming to the knowledge of the Trust Commissioner. I submit that we are entitled to a frank withdrawal, and I submit that there is no evidence.

Mr. Cooper: That is so. It was an omission on my part. I have no evidence to support either of those statements, and I say so now.

Mr. Bell: It has been stated publicly, not, I believe, by or in any way with the consent of my learned friend, 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. As late as Saturday last this correspondence took place: A letter dated the 7th August—that is, on Saturday—addressed to the solicitor for my client, and signed by the solicitor for the Public Trustee, Mr. Stafford, was as follows:—

"DEAR SIR,— "7th August, 1897.

"*Public Trustee, and Buller and Kemp.*—I hereby give notice that at the hearing of this cause the plaintiff will rely upon and argue the questions of law arising upon the amendments annexed to the original statement of claim, and discussed before his Honour the Chief Justice yesterday, and will adduce no evidence other than the proof that the Appellate Court has heard the evidence adduced upon the application to that Court by Major Kemp and others, and that such Court has not yet delivered its decision. No doubt you will admit these facts. The object of sending this letter to you is to enable you to avoid, as far as possible, the expenses of the attendance of witnesses.

"Yours faithfully,

"A. P. Buller, Esq., Solicitor, City." "E. STAFFORD.

And immediately the following answer was addressed to Mr. Stafford:—

"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 to 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 faithfully,

"E. Stafford, Esq., Solicitor, Wellington." "A. P. BULLER.

That was on Saturday morning; and on the afternoon of Saturday my learned friend, Mr. Cooper, informed me that he intended to take the course which he has just notified to the Court. That communication was made in fairness and courtesy to Sir Robert Stout and myself; but it was a statement made by my learned friend to me without any suggestion of compromise, or any suggestion that we should accept it. If my learned friend chose to take that course, that was for him. We discussed nothing and arranged nothing. It was simply an intimation made by one counsel to another of the course which the plaintiffs intended to take. My client wishes through me to make it clear that we have not directly nor indirectly proposed or been asked by the other side to agree to the course which my learned friend has just notified to the Court.

His Honour: I do not quite understand with regard to Mr. Bartholomew.

Mr. Bell: My learned friend pointed out, and I understand that this lease of Bartholomew's required to be reregistered; but the Public Trustee omitted to bring the action, and if there can be a validation of Mr. Bartholomew's lease in this action there would be no objection on our part. It is a matter which does not concern us. But if Mr. Bartholomew cannot get his title in consequence of action not having been commenced within the six months, we are quite content that there should be a validation of his title by this suit.

Mr. Cooper: I should like to say there has never been any approach by one side or the other for a settlement of the matter. What Mr. Bell has said is absolutely correct. I consider it was only right and courteous that I should intimate to counsel on the other side the course I proposed to adopt, and that was done.

Mr. Bell: Being absolutely at arm's length with the other side, I have not submitted to them the minutes of the decree. I will read them, with your Honour's permission, and my learned friends can say whether they would accept them or adjourn to consider them. [Then followed the proposed minutes.]

Mr. Cooper then asked for a little time to consider the minutes, and that they should be settled before His Honour. He then says: On the question of costs, I ask the Court to bear in mind that the Public Trustee is an officer appointed by statute, and it was his duty to bring this action. He could not avoid bringing this action, and to mulct him in costs for carrying out what was his duty——

His Honour: Personally?

Sir R. Stout: The Public Trustee has half a million of money behind him.

Mr. Cooper: The Public Trustee is directed by the statute to bring this action for the benefit not only of the registered owners themselves but also for those whose dealings are affected, and it is because the matter is in that position that I felt it my duty to state frankly to the Court that we have no evidence to affect Sir Walter Buller's title. Of course, I quite admit that the question of costs is one solely in your Honour's discretion. I am only submitting, as a matter for your Honour's consideration, the statutory position of the Public Trustee under the statute passed by the Legislature, and that there is no provision in the Act as to costs.

His Honour: I suppose he has a good purse behind him?

Mr. Cooper: I consider it my duty to place that question before you; and I submit that in any case, if costs are allowed, they should be only scale costs. There is no provision under which the Court can apply any other principle.

Judgment of Mr. Justice Denniston, delivered February, 1898.

By "The Horowhenua Block Act, 1896," section 10, it is enacted that, "For the purpose of testing the validity of the alienation referred to in subsection (*f*) of section eight herewith, and also of dealings the registration whereof have been cancelled as aforesaid, the Public Trustee is hereby directed and empowered to institute, on behalf of the original registered owners of the said block as set forth in the Second and Sixth Schedules hereto, or any of them, such proceedings in the Supreme Court at Wellington as may be necessary for that purpose within six months from the date of the passing of this Act."

There is no provision in the Act as to the costs of or in connection with such proceedings. No property or interest is by the Act given to the Public Trustee in the land affected by the dealings which are to be the subject-matter of the suit. The effect of establishing the invalidity of these dealings would (assuming them to be onerous upon the land affected) have inured for the benefit of such of the registered owners (if any) as might be ultimately found to be the owners of such land. It is not contended that the persons on whose behalf the action is directed to be brought were liable for costs, and the Public Trustee has no money of theirs in his hands. Any money received by him under the Act is from specific payments, and is by section 20 directed to be held for such purpose and in such relative proportions as the Court determines are entitled to it. It is therefore clear, and was admitted by all parties, that defendants' costs, the subject of these proceedings, if payable by the Public Trustee out of funds at his own disposal, must be paid out of moneys in his hands by virtue of his position as administrator of the "Public Trust Office" as created and defined by the consolidating Act of 1894.

That Act, "The Public Trust Office Consolidation Act, 1894," provided that there should be a "Public Trust Office" administered by an officer called "the Public Trustee," who was constituted a corporation sole, with perpetual succession and a seal of office. His duties under the Act are confined to acting as a trustee, executor, administrator, guardian, committee, agent, or attorney, and to administering and dealing, under the provisions of the Act, with estates placed in the Public Trust Office by his appointment in such capacity. Very full and special powers are given him under the Act, but they are all relative to his position as trustee, executor, &c. See, for instance, section 27, some of the provisions of which were much relied on in the defendants' argument. As to all estates consisting of property other than money, and as to money expressly prohibited from being dealt with as a common fund, the Public Trustee occupies the ordinary position of a trustee. They are trust property, and no question can arise as to the right of the Public Trustee to deal with any part of them, or their proceeds, other than in discharge of their respective trusts. As to all other capital moneys it is provided that they shall become one common fund, which shall be invested as described by the Act, and that any investments made from such common fund shall not be made on account of or belong to any particular estate. A fixed rate of interest on all such investments is to be credited to each estate. If the common fund shall 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.

The effect of these provisions is that such moneys cease to be, as between the beneficiaries and the Public Trustee, trust moneys. The relation of trustee and *cestui que trust* ceases. They become moneys placed on deposit at interest with the colony, with the colony's guarantee for the repayment of principal and interest. As between the colony and the Public Trustee, or rather the Public Trust Office, the latter, through the Public Trustee, invests the moneys as prescribed by the Act. If the transactions of the office, including the administration of this common fund, show a profit, one-fourth part of such is to be invested as an assurance and reserve fund, and the balance is to be paid into the Consolidated Fund. It there is a deficiency, then, after exhausting the assurance fund, the Colonial Treasurer may advance such sums out of the Consolidated Fund as may be necessary to meet such deficiency. The Public Trust Office is, in fact, a trading or banking department, out of which money may be and, in fact, has been made.

I think the Public Trustee has, under the Act, very full powers to manage the business of his office, and, as incident to such management, to pay all proper claims or demands arising out of such management. Such powers are given, *inter alia*, by sections 27 and 54. It was contended for the plaintiffs that section 33, which makes moneys in or payable into the Public Trustee's account the property of Her Majesty for the purposes of this Act, made such moneys subject to the provisions of "The Public Revenues Act, 1891." To support this, counsel were driven to the extreme contention that in strictness the Public Trustee had no power to pay any moneys except by the cumbrous machinery provided by Part 5 of the last-mentioned Act. It was, indeed, necessary for their argument to contend that all payments by the Public Trust Office were

made *ex gratia*, and not as a matter of right, and that there were no means of enforcing payment but by petitioning the Crown. Such a contention, dangerous and damaging as it is to the success of and confidence in the department, is, I think, quite unjustifiable. It is true that "public moneys" are defined to mean and include all moneys payable or belonging to the Crown. And, by section 73 of the Public Revenues Act, moneys payable to the Public Trust Office are declared to be public moneys within the meaning of the Act.

But every general statute must be read subject to the provisions of any special Act dealing with a specific subject-matter, and the provisions of the Public Trust Act, which I have before mentioned, give the Public Trustee power to pay directly out of his account all proper claims.

The further point remains, Is the Public Trustee to expend moneys coming into his hands, under the Public Trust Act, in discharging the duty imposed on him under the Horowhenua Act? There is no reference in the latter Act to the Public Trust Act; and, as I have said, no specific provision for the costs of the action. As I have already pointed out, the Public Trust Act contains very careful provision for dealing with and disposing of all moneys received under it. The effect of paying the costs of the action out of such moneys would, in the state of accounts shown by the affidavits, be to diminish *pro tanto* moneys payable to the reserve fund and the consolidated revenue. To hold that the Public Trustee would be justified in making such payments, is to hold that whenever the Legislature imposes a duty on the Public Trustee it impliedly authorises him at his discretion to pay the costs of so doing out of the consolidated revenue.

I do not think I can so hold. The Horowhenua Act does not refer to the Public Trust Act. It directs the Public Trustee to do a specific thing in pursuance of or under the authority of that Act. The powers, privileges, and rights under the Act are specifically restricted to things authorised to be done under the Act. Under it the Public Trustee is subject to any directions made by the Public Trust Office Board. Could the Board control or interfere with the action of the Public Trustee under the Horowhenua Act? Could the payment of these costs be called a "lawful claim" on the common fund under section 32 of the Act?

It may be said that it cannot be supposed that the Legislature would impose duties on a public officer which assume necessarily the expenditure of moneys without providing for such expenditure. There is, however, provision in section 47 of the Public Revenues Act for unauthorised expenditure—that is, expenditure for which no parliamentary provision is directly made. Under this the expenses of this action have been provided, and the costs ordered to be paid could have been provided. It may be suggested that it could not have been intended that the performance of a statutory duty should be made dependent on the action of the Executive. But I think it must be taken that Parliament has 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 made by the proper authorities.

The view I take of the effect of these statutes does not seem to me to be affected by section 56 of the Public Trust Act. It is, I think, what is called in the marginal note a reservation of existing powers. The statute says "all rights and powers shall remain unrestricted." Nor does the view I have expressed restrict any rights, powers, or remedies given by the Horowhenua Act. The same observations apply to section 4 of "The Public Trust Office Consolidation Act, 1894." The words there used are "have deprived," "have limited." The section seems to have been passed to dispose of any suggestion that the Act of 1894 negatived or took away the powers or duties given to or imposed on the Public Trustee by any then existing statute.

I think, though with some hesitation, that the same reasoning governs the claim against the office furniture or other chattels of the Public Trust Office. I am not satisfied that property supplied to a public department can be said to be the property of the corporate officer, if I may use the expression, who controls and manages such department. The property is held for the purpose of the administration of the business of the Public Trust Office, under the Public Trust Act, and must be taken to be necessary for such administration. If I were to hold that such property was available to discharge debts not payable in respect of such administration I should either interfere with the proper administration of the office, or make it possible by a series of executions to enable the debt to be paid indirectly out of funds which I have held not to be available directly.

For these reasons I am of opinion that no mandamus should issue as asked by the defendant, and that there are no moneys available under the charging order for payment of the costs.

It was hardly contended that the officer for the time being holding the office of Public Trustee was personally liable for acts done by him in the discharge of an obligation imposed on him by statute, and I am satisfied there is no ground for the contention.

In the view I take of the case it is unnecessary for me to answer specifically the questions submitted. I am 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 has not thought it necessary specifically to provide for such expenditure.

There will be no costs.

WEDNESDAY, 31ST AUGUST, 1898.

Mr. H. D. Bell: I produce the document signed by Meiha Keepa Te Rangihiwinui requesting Sir Walter Buller to pay all his costs in the case of the Public Trustee *v.* Sir Walter Buller and Meiha Keepa. [Document read.]

Memorandum re *Horowhenua.*

I hereby request Sir Walter Buller to pay all my costs in the case of the Public Trustee *v.* Sir Walter Buller and Meiha Keepa—both counsel's fees and costs as between solicitor and client, and I hereby undertake to repay him the same together with interest at the rate of 8 per cent. per annum as from the date of such payment.

Dated at Wellington this 10th day of August, 1897. MEIHA KEEPA TE RANGIHIWINUI.

Witness to signature—L. Davis, Native agent, Wanganui.

I also produce the statement of claims against Major Kemp's estate which the Committee desired. [Statement read.]

STATEMENT by Sir Walter Buller (as required by the Public Petitions Committee) giving a summary of his claims against Major Kemp's estate from 15th May, 1896, to 9th February, 1898:—

	£	s.	d.	£	s.	d.
1. Payments to Major Kemp as per receipts				500	0	0
2. Payments made and agreed to be made to solicitors and others on behalf of Major Kemp and by his authority				1,208	0	0
3. Sir W. Buller's fees and costs (subject to taxation by the Registrar of the Supreme Court) for services chiefly, but not exclusively connected with Horowhenua—February to August, 1897:—						
(1.) Fees as counsel in the Native Appellate Court (fee on general brief £105, with £10 10s. per diem); engaged in five cases relating to various subdivisions of the Horowhenua Block, extending over a period of five months	1,596	0	0			
(2.) Solicitors' costs and disbursements for a period of nearly two years, during which the litigation was unceasing	912	15	0	2,509	5	0
				£4,217	5	0

Mr. Baldwin: I was asked to furnish the Committee with the amount of disbursements in the bill of costs rendered by Messrs. Stafford, Treadwell, and Field to the Public Trustee. I have procured it from Mr. Stafford's accountant. The total amount as taxed is £1,055 12s. 9d., of which £791 6s. 7d. is disbursements, including £409 11s. as fees for Mr. Stafford on attendance at Levin, leaving £381 15s. 9d. for disbursements, counsel's fees, and other matters. The balance is £263 6s. 2d.

Mr. Bell: I object to those fees being taken as disbursements.

The Chairman (to Mr. Baldwin).] You might explain what the amount is out of pocket?—They are actually disbursements out of pocket. There is £400, not in connection with this case, but for attendance at Levin. The £381 15s. 9d. would include £150 for Mr. Cooper, £100 to myself, and the balance would be actual cash payments for fees, and matters of that sort. I will put the whole bill in. The total, £791 6s. 9d., would include Mr. Stafford's brief-fee (£73 10s.), and Mr. Baldwin's brief-fee (£36 15s.)

Mr. Bell: If these fees are to be taken as disbursements, then Sir Walter Buller's account has been made up under a misapprehension of what was desired. If Mr. Baldwin's statement is to be taken on your notes, Sir, I hope you will see that Sir Walter Buller's are taken in the same form. I do not care how it is taken so long as it is the same in one as in the other. For the Government solicitors on the one hand to pretend that £260 covers their costs, and that Sir Walter Buller's are £4,000, is simply a mistake, of course. As long as you put the disbursements in the same form in both accounts I have nothing to complain of, but I certainly complain of the statement as it is put in.

The Chairman (to Mr. Bell).] Do you wish to address the Committee on the whole case?—We have done so.

The Chairman.] Is there anything else you want to say, Mr. Baldwin?—No. I am putting in the account with the various items marked in red ink. Mr. Bell seemed to think that I wish in some way or other, undesignedly or designedly, to mislead the Committee. The Committee can see by the red-ink marks what the items are, and I said the amount would include the fees to counsel.

The Chairman: Mr. Bell wants his figures to be in the same position. His disbursements can appear to the Committee in the same form as yours appear.

Hon. Mr. Hall-Jones: It is open to Mr. Bell to do that.

Mr. Bell: You, Sir, directed us to put the accounts in in the form we have. We have followed the specific direction of the Committee, and I ask that Mr. Baldwin's account on the other side should follow the same specific direction. I wish also to say to the Committee that on the last meeting the Committee said Sir Walter Buller ought to pay the amount of his costs before the Committee proceeded further. I have to say that has been done.

Mr. Baldwin: I am quite satisfied if the Committee think that Mr. Bell should amend that statement in any way he likes.

Mr. Bell: Mr. Baldwin ought not to be allowed to say that the costs on his side are £200 odd, and the disbursements so much, when Mr. Stafford and himself have received the money.

The Chairman (to Mr. Baldwin).] Could you not put it in another form, and say that of the disbursements Mr. Stafford received so much, you received so much, and Mr. Cooper received so much?

Mr. Bell: I never heard of fees being called disbursements, where the solicitor receives the fees.

Hon. Mr. Hall-Jones: Have we had Sir Walter Buller's account, in accordance with the request of the Committee, giving the details the same as in other accounts? The resolution was, "That the following statements of accounts as asked for by the solicitor for the Crown be prepared by Sir W. L. Buller and furnished to the Committee—statement by Sir W. L. Buller showing (1.) Amount of payments by him to Major Kemp from the 15th May, 1896, to the 9th February, 1898. (2.) Amount of payments by him to solicitors and others on behalf of Major Kemp from the 15th May, 1896, to the 9th February, 1898. (3.) Amount of fees, costs, and charges of Sir W. L. Buller against Major Kemp from the 15th May, 1896, to the 9th February, 1898." Here we have what purports to be a statement as required, giving only a summary of his claims. There is no mention in the resolution of a summary at all.

The Chairman: Has not Mr. Bell furnished the Committee with the statement we asked for?

Hon. Mr. Hall-Jones: I think not. This is only a summary, and I take it that what is meant here is a statement of account. There is no mention of a summary in the minutes of the Committee.

The Chairman (reading resolution): "(1.) Amount of payments by him to Major Kemp," £500—that is there. "(2.) Amount of payments by him to solicitors and others"—well, the amount

is stated, £1,208. "(3.) Amount of fees, costs, and charges of Sir W. L. Buller against Major Kemp": you have it here in two sums, together making £2,509 5s.

Hon. Mr. Hall-Jones: To get at that amount we should have the details shown.

The Chairman: We have not asked the petitioner for that.

Hon. Mr. Hall-Jones: If we had wanted it the same as it is there we should have said the total amount.

Mr. Bell: The matter arose in this way: Mr. Baldwin asked Sir Walter Buller for the total amount, and then asked him to segregate the disbursements from the profit costs. We objected, but the Committee asked us to do it. I understood the resolution was to require our reply to Mr. Baldwin's question.

The Chairman: Mr. Bell seems to have complied with the resolution, but not in the same manner as some of the members of the Committee expected.

Mr. Baldwin: The wording of the resolution is mine, and perhaps it was not accurately worded. I do not suggest that Sir Walter Buller has not technically complied with the order of the Committee; but it was a statement of accounts that was asked for, and I certainly thought myself that the items would be shown. I thought so for this reason: There was a question about the actual payment of one or two amounts, about which I asked Sir Walter Buller, and my learned friend Mr. Bell did not think I should have done so. It was partly to arrive at these amounts that I asked for the account, and the Committee ordered it to be furnished. The resolution asked for a statement of account. I do not say for a moment that he has not technically complied with the resolution, but to my mind it was intended that he should furnish all the items.

The Chairman (to Mr. Baldwin).] Do you think it necessary that the items of the various amounts should be furnished to the Committee? If so, can you give reasons?—Yes, I think so, for this reason. The difficulty of the position, which must have pressed with Sir Walter Buller right away through, is that the interests of Major Kemp and Sir Walter Buller were so mixed up in this matter that it would be difficult to say, without careful examination, what amount ought to be debited to Sir Walter Buller, what to Major Kemp and Sir Walter Buller, and what to Major Kemp by himself. Now, as I understood the Committee, their desire in having the return was that they might see how far Sir Walter Buller had been personally recompensed for his trouble and worry under this legislation. If the Committee are not informed as to the items of the account, they cannot say how much of that account ought to be debited to Sir Walter Buller himself as between himself and Major Kemp, and how much ought to be debited to Major Kemp. For that reason I submit it would be very advisable to have the items.

The Chairman.] Before you finish, will you sketch out a resolution, so that, if the Committee decides to pass a resolution, there may be no further bother as to the manner in which the account shall be presented.

Hon. Mr. Hall-Jones.] I note also, Sir, that this is a summary of claims. What is asked for are payments.

Mr. Baldwin: This is the resolution I have drafted, "That Sir Walter Buller furnish a further statement of account showing—(1) Details of the payments by him to Major Kemp from 15th May, 1896, to the 9th February, 1898, showing the respective amounts, and the respective dates of payments. (2.) Details of the payments by him to solicitors and others from 15th May, 1896, to 9th February, 1898, showing the respective amounts, the respective persons to whom paid, and the respective dates of actual payment. (3.) Details of the solicitors' costs and disbursements of Sir Walter Buller against Major Kemp from 15th May, 1896, to 9th February, 1898, showing the various items."

The Chairman (to Mr. Baldwin).] I want you, if you can, to give an answer to that order which Mr. Bell put in this morning from Major Kemp to pay all those costs—as to why the Committee should not give effect to that order?—I understood that had already been thrashed out. That has been secured by Sir Walter Buller's mortgage.

The Chairman (to Mr. Baldwin).] That is your answer?—Yes, sir.

The Chairman (to Mr. Baldwin).] There is just one other matter. In the second clause and in the prayer the petitioner asks that additional costs should be paid to him and be taxed?—My other two answers apply *à fortiori* to that. If Sir Walter Buller has been put to this expense by his own fault, or if he has been amply paid, that would lead still more to a refusal to give costs as between solicitor and client than party-and-party costs.

Mr. Bell: If you will allow me to remind the Committee how it came to be suggested that this account of Sir Walter Buller's is relevant at all, I think I shall be able to explain why I ask the Committee to go no further. I contended that this is a petition by Sir Walter Buller for the payment of costs in a particular action in the Supreme Court, which costs have been awarded to him by judgment of the Supreme Court; and I contended that it could not be relevant to that inquiry to ascertain the amount of costs which Sir Walter Buller might have earned in some other matter quite outside of the Supreme Court action. My learned friend Mr. Baldwin made it relevant to his argument in this way: he said Sir Walter Buller has become entitled to a large sum of money for costs in other proceedings, and, therefore, as he has done well out of the Horowhenua Block legislation, he ought not to be paid the costs awarded by the Supreme Court to him in the other matter. In order to show that Sir Walter Buller had done well, Mr. Baldwin contended that a large part of the amount claimed by Sir Walter Buller must be profit costs, and he asked me to render an account showing how much was profit costs, and how much was actually paid out of pocket. The Committee, assuming, I suppose, for the moment that Mr. Baldwin's argument was relevant, ordered me to produce the account. The only way to make it relevant was to segregate the profit part from the other part in order to ascertain what Sir Walter Buller had made out of the other proceedings. Of course, it is plain, and must be frankly admitted by Mr. Baldwin, that his object is mere matter of prejudice.

Mr. Baldwin: You must not put that into my mouth.

Mr. Bell: Then, I say Mr. Baldwin does not frankly admit it—he imputes it. It is pure matter of prejudice. The object is to enable others rightly or wrongly to defend what I claim to be an injustice—to use another weapon—namely, an attack founded on another and separate issue altogether. I, therefore, submit to the Committee, saying at the same time that Sir Walter Buller has nothing to conceal in this matter—that what Mr. Baldwin now asks cannot be made relevant even to the argument, which I venture to designate as grotesque, which the statement now put in was subject to. If I have made my point clear, the items cannot have any bearing upon even the question which Mr. Baldwin suggests for the consideration of the Committee—namely, that the Committee should report to the House that Sir Walter Buller had done, or is about to do, so well out of the other proceedings that he ought not have the costs in the parliamentary action awarded to him by the Supreme Court. Let me, Sir, follow that argument for a moment, and you will see the bearing of it. You now have Mr. Stafford's account, which, as asked for was relevant to my argument and my case. It was only adduced for the purpose of showing that the Government had paid their solicitors' costs in the very proceedings in which we claim costs, they being the losing party, and the solicitors being the solicitors of the Public Trustee. That is why I asked for the account, and the Committee will see that was absolutely relevant to my case. Let me follow Mr. Baldwin's argument. Mr. Stafford appears to have got £409 11s. for appearing for the Public Trustee at the Native Appellate Court, and he did on that assumption very well out of it. Why then, should he be paid costs in the Supreme Court action which he lost?—You have only to pursue the argument in the case of Mr. Baldwin, who also received a substantial fee.

Mr. Baldwin: My fee was only about two guineas a day.

Mr. Bell: I am not at all complaining of the amount paid to Mr. Baldwin, but why should he be paid for the action in the Supreme Court? I am myself presenting that argument because it seems an absurdity; but if it be equity and justice and principle to apply that argument to Sir Walter Buller, then I apprehend that the Committee ought to recommend that the Crown lawyers should be required to refund the amount they received in the Supreme Court on the same ground of equity, principle and good conscience. Thus, sir, you will see why I respectfully contend that this question of Sir Walter Buller's account against Major Kemp, which has to be tried in an entirely different tribunal, and the justice and the quantum of which will be determined, as you are aware, by tribunals competent to decide the matter, is neither relevant to matters before this Committee, nor is one which—I say it with all respect—this Committee, through want of technical knowledge, is qualified to enter into. I therefore submit that we have complied with the request of the Committee as to the matter relevant to Mr. Baldwin's argument, and ought not to be required to go further and add matter which is to be used simply as matter of prejudice. I put it therefore to the Committee, if it can see that all that is desired is to prejudice a petitioner who is putting forward a just claim on another point, that it will not make the order which is sought.

The Chairman (to Mr. Bell).] There is one suggestion I would make, as members of the Committee are not quite clear as to what was intended on the first day. Do you think you have made it clear as to why Sir Walter Buller should have further costs to be taxed as between solicitor and client?—I am obliged to you for giving me the opportunity. Perhaps I did not make it quite clear. I can put it in two sentences. The Supreme Court expressly did not give Sir Walter Buller costs as between solicitor and client, as it had no jurisdiction, as it held, to do so. The Supreme Court held that it could only give costs as between party and party. The second point is that costs were incurred between solicitor and client, and in an action brought by public officers on a public question; and the third point is that the Government paid their own costs as between solicitor and client.

The Chairman (to Mr. Bell).] There was a question put by me asking whether the Chief Justice, when he directed the Registrar to pay the amount of the costs, limited the amount at £300 odd?—You asked me the question before, and I did not appreciate it, and I do not appreciate it now. If you mean whether the Judge awarded all costs he thought we were entitled to, I say the Judge did not. This is what took place, as appears in print. I asked the Judge to give the whole costs of the action. He said that that only applied where the quantum was less than £300, that if the limit of £300 was reached, then the Court could not give more for the whole action; that it is only where the amount is small that the Court can give the whole costs of the action, so as to give a sum up to £300, but £300 is the definitive limit. That is the view he took, and that is what he decided—that so far as the jurisdiction of the Supreme Court went, it was to give costs as between party and party, and he awarded costs as far as he could as between party and party. That there were further costs as between solicitor and client was manifest to the Judge as it is to us. One question was as to the value of property. Sir Walter Buller was accused of acquiring property excessively below its value, and we had a large number of witnesses briefed on that very minute branch of the case, which took a great deal of labour to get up.

Mr. Baldwin: I do not wish the Committee to be under a misapprehension from what Mr. Bell has said. He chose his language in such a way that it might be thought that the Judge expressed the intention that he would, if he could do so, give Sir Walter Buller more than these party-and-party costs. Nothing of the sort was said. A sum was agreed upon between the parties as the amount of the costs to be paid, and that was the amount entered in the decree. The Judge never for a moment expressed an intention of giving anything more than costs as between party and party.

The Chairman (to Mr. Baldwin).] There is a difference between you and Mr. Bell?—As Mr. Bell says, the whole thing is contained in printed matter before the Committee, and the Committee will be able to see for themselves. There was a considerable amount of correspondence between Mr. Stafford and Messrs. Buller and Anderson, and eventually the amount was arranged as in the decree. Mr. Bell said the Judge was anxious to give an amount beyond the amount of the costs as awarded, but I say the Judge never gave any such indication.

Mr. Bell: The Judge declared the principle of costs between party and party. That was all that he decided. What was done afterwards—what Mr. Baldwin calls the agreement—was an agreement with which the Judge had nothing to do. There was a difficulty about ascertaining the quantum upon which the 2½ per cent. should be calculated, and that was left to the two leading counsel to determine. That was the extent to which the Judge determined the principle, and the other matter was left to the leading counsel.

The Chairman (to Mr. Bell).] He affirmed the principle, and you and Mr. Cooper worked it out?—Yes; he never saw the matter from the day he decided to give costs as between party and party on the highest scale. A question I wish to submit is this: when speaking to the Committee I produced a number of documents, which will be in a very disconnected form unless they are connected to the speech I have addressed to the Committee, and I ask the Committee for permission to deliver a copy of what I said on the occasion.

The Chairman (to Mr. Bell): Your speech was not taken down?—No, Sir, I used no oratorical method. I simply referred to certain documents, and connected them with sentences.

The Chairman (to Mr. Bell).] How could you give us your speech if it was not taken down at the time?—Because my memory is equal to the occasion; and, if possible, I would like to have permission this morning in order that I may know what to do.

The Chairman: The Committee will deliberate on that matter, and also on the resolution which has been proposed.

On resuming,

The Chairman: With regard to the report of the speeches I think we have solved the difficulty. We will ask each of you to send in your written statements of the case; not what you said in July, but a statement setting forth what you think the Committee should consider, and that should be put forth. The Committee has unanimously decided on the resolution as submitted by Mr. Baldwin, and also requests Mr. Baldwin to summarise the accounts he submitted to-day. The Committee have no desire to suppress anything. What I wish to make clear is this: that if the Committee did not comply or agree with any suggestion made by the solicitor for the Crown, that it might be suggested from the floor of the House that we were sympathizing in some way with Sir Walter Buller, and in that way Sir Walter Buller would be prejudiced. All will, therefore, see that we have tried to do our best for all parties. It will take some time for you to summarise and furnish the accounts suggested. When will it be convenient to both parties to have our next meeting?

Mr. Bell: I would suggest that it might not be necessary to have another meeting, but that we should be allowed to send in our papers. When we come here all sorts of questions arise which are not anticipated, and, therefore, I suggest that we should send in the papers.

Mr. Baldwin: We could send them in in a week.

Mr. Bell: I and Mr. Baldwin have agreed to let the Committee know later on.

STATEMENT OF CASE FOR THE PETITIONER, PUT IN BY MR. BELL.

1. The Horowhenua Block, containing 52,000 acres, was partitioned by the Native Land Court in 1886, and Division 14, Horowhenua, containing 1,200 acres, was by that Native Land Court of 1886 awarded to Major Kemp. A Land Transfer title was duly issued in Major Kemp's name, and registered in the Land Transfer Registry, at Wellington, on the 19th day of July, 1888, Vol. xlviii., folio 140. In 1892 Major Kemp, who had been for four years the registered proprietor under the Land Transfer Act of this 1,200 acres, executed leases of the same to Sir Walter Buller. Of a small piece, containing 11 acres, he in the same year executed a transfer of the fee-simple to Sir Walter Buller, and in October, 1894, he executed a mortgage of the freehold to Sir Walter Buller to secure moneys due and to fall due.

2. Sir Walter Buller thus in the year 1896 was the registered proprietor in fee-simple of 11 acres, and held a certificate for the same. He was the registered proprietor of leases of the remainder, and held his leases duly registered under the provision of the Land Transfer Act. He was the mortgagee of Major Kemp's freehold interest, and held a mortgage duly registered. Under the provisions of "The Land Transfer Act, 1885," he had an indefeasible title.

3. In the year 1895 it was vaguely suggested that the award of the Native Land Court of 1886 to Major Kemp was intended to be to him as trustee, and not as absolute owner. It was further alleged that Sir Walter Buller had in some vague way notice of this intention of the Native Land Court, and consequently of Kemp's alleged trusteeship at the times when he (Sir Walter Buller) obtained his leases, transfer, and mortgage. The Land Transfer Act confers upon the purchase from a registered proprietor absolute immunity from attack. Even, therefore, on the hypothesis that Major Kemp was a trustee, and that Sir Walter Buller had some notice of such existing trust, the law of New Zealand gave him absolute protection in his title, for by section 189 of "The Land Transfer Act, 1885," it is provided as follows: "Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire into or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase-money or of any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

4. Therefore, in the year 1896, if it were proposed to attack Sir Walter Buller, it was necessary to pass a special law singling him out for the special object of an attack which is prohibited by the statute against all other Her Majesty's subjects, and accordingly a special law was introduced.

5. "The Horowhenua Block Act, 1896," began by declaring void and cancelling the Land Transfer title and registration of certain divisions of the Horowhenua Block, including Division 14,

As originally introduced, it actually confiscated the estate of Major Kemp without remedy and without trial, declaring him to be a mere nominal owner, and directing the Registrar to issue a certificate of title to the Crown for so much as he had not validly alienated in fee-simple. As to Sir Walter Buller, the 6th section of the Act as originally introduced provided that the dealings under which his titles were acquired should be reregistered unless within three months an action was brought, by or on behalf of the persons entitled to the benefit of the alleged trust, to have such dealings declared void.

6. The Act was amended as it passed through the Legislature, and as it emerged and is found on the statute-book it contains the following provisions :—

First : The Land Transfer titles were declared void and cancelled.

Second : The Native Appellate Court was directed to inquire whether Kemp was a trustee. If they found that he was not, then Kemp's original Land Transfer title should be restored.

Third : The Public Trustee was directed to begin an action in the Supreme Court, within six months after the passing of the Act, to attempt to establish against Sir Walter Buller (*a*) that Kemp was a trustee, and (*b*) that Sir Walter Buller had notice of the trust when he acquired his title ; and if Sir Walter Buller succeeded in the action in the Supreme Court his titles should be reregistered.

7. So far as Sir Walter Buller was concerned, this amendment was to his detriment. In the first place, as the Act was originally introduced, his title was confirmed unless an action was brought against him within three months ; and, secondly, the action was to be brought against him by Natives, so that he would have had a complete remedy for costs. It was suggested by Mr. Baldwin that the alteration directing an action to be brought and making the Public Trustee the plaintiff was at the instance of Sir Walter Buller. This is obviously absurd upon the face of it, because, first, the Journals show that the amendment was moved by the Minister of Lands, who is scarcely likely to have accepted a suggestion from Sir Walter Buller ; and, secondly, the last person whom Sir Walter Buller would have proposed to bring an action against him was the Public Trustee, who, in another capacity, had sat as Chairman of the Horowhenua Commission.

8. After the session of 1896 proceedings were commenced in the Native Appellate Court to attempt to establish the trust against Major Kemp. The proceedings lasted a long time. The Native Appellate Court stated questions for the opinion of the Supreme Court. Meantime the six months limited by the statute within which the Public Trustee must commence his action in the Supreme Court was slipping away. If the action was not commenced by the Public Trustee within six months, then Sir Walter Buller's titles disappeared, for the Act made their restoration contingent upon the result of such action. Two or three days before the expiration of the six months the Public Trustee commenced his action.

9. Mr. Baldwin has recounted to the Committee some of the numerous devices and methods adopted by the advisers of the Public Trustee to prevent that action coming on for trial. From first to last, admittedly, the advisers of the Public Trustee endeavoured to avoid, by device after device, the necessity of going to trial in what was a hopeless action. There never was a trust, and they could not prove the trust, still less any notice of it to Sir Walter Buller; but they hoped that possibly the Native Appellate Court might find the existence of a trust, which they felt they could not establish in the Supreme Court. Even then they had to establish notice against Sir Walter Buller, and of this there was not a scintilla of evidence.

10. Sir Walter Buller's advisers met and defeated every such device. They insisted on the plaintiff going to trial. Sir Walter Buller was lying under the imputations contained in the statement of claim filed by the Public Trustee, a copy of which will be found in G.–2B, 1897. He was charged with fraud of various kinds—the words "actual fraud" being used and repeated in paragraphs 28 and 30, and allegations amounting to gross fraud being contained in paragraphs 29, 31, 32, and 33. Until the trial of the action in the Supreme Court, therefore, not only did Sir Walter Buller's titles remain cancelled and void, but he himself lay under imputations such as no man of honour would submit to if he could force the plaintiff who made them into Court and to trial.

11. Among other devices attempted by the plaintiff's advisers was a discontinuance of the action. The Supreme Court ordered the action to be restored. The plaintiffs then amended the statement of claim by striking out every allegation against Sir Walter Buller. Sir Walter Buller's advisers applied to the Court to reinstate those charges, in order that they might be disposed of by trial ; the Court directed the reinstatement, and the plaintiff was forced to attempt to prove the case he had alleged.

12. The trial in the Supreme Court stood fixed for Monday, the 9th August. On Saturday, the 7th August, the Public Trustee's solicitors wrote to Sir Walter Buller's solicitors, the letter appearing in G.–2B, page 14, as follows :—

DEAR SIR,— 7th August, 1898.

Public Trustee and Buller and Kemp.—I hereby give notice that at the hearing of this case the plaintiff will rely upon and argue the questions of law arising upon the amendments annexed to the original statement of claim, and discussed before his Honour the Chief Justice yesterday, and will adduce no evidence other than the proof that the Appellate Court has heard the evidence adduced upon the application to the Court by Major Kemp and others, and that such Court has not yet delivered its decision. No doubt you will admit these facts.

The object of sending this letter to you is to enable you to avoid, as far as possible, the expenses of the attendance of witnesses.

Yours, &c.,

A. P. Buller, Esq., Solicitor, City. E. STAFFORD.

This was the last and despairing effort to avoid the issue. The plaintiff said, "I will not attempt to prove my charges, but I will submit some legal arguments to show that the trial ought not to take place." Immediately thereupon, and on the same day, the 7th August, Sir Walter Buller's solicitors wrote that they themselves would undertake to disprove the charges. The letter is contained on the same page of G.–2B, 1897, and is as follows :—

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.,

E. Stafford, Esq., Solicitor, Wellington. A. P. BULLER.

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

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

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

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-

vented any decision on the question of trust being given until the following November, thus rendering the case for the Public Trustee in the Supreme Court absolutely hopeless. At this point Mr. Cooper was retained as senior counsel for the Public Trustee.

The Action decided on by the Public Trustee.—Some controversy has arisen as to what course was decided upon by the Public Trustee and his advisers. It is asserted by Sir Walter Buller that they definitely concluded to abandon the whole of their case and to admit that Sir Walter Buller was innocent of the charges made against him. This is absolutely incorrect. The extreme length to which it was determined to go prior to the date of the trial was this: It was agreed that no evidence should be offered against Sir Walter Buller and that judgment should be allowed to go for him. The terms of the arrangements between counsel are contained in the following letters:—

Mr. Stafford,— Public Trust Office, Wellington, 17th September, 1897.

THE Hon. the Premier has asked me whether I instructed Mr. Cooper to make the statement which he did make in Court on the 11th August. My recollection of what passed is set out below, but as I am speaking from memory I should be glad if you would say whether my recollection is correct. I am writing a similar letter to this to Mr. Baldwin.

Mr. Cooper, on the evening before the case came on, stated, in effect, that he was clear that the action could not succeed. Mr. Baldwin and yourself concurred. The Chief Justice had previously refused to adjourn the trial until after the Appellate Court's decision, or to have the questions of law which you raised argued before the trial. Mr. Cooper advised, and you and Mr. Baldwin concurred in that advice, that no evidence should therefore be offered, and that judgment should, by consent, go for the defendant, Buller. Mr. Cooper stated that he proposed to inform the Court that, after the evidence which had been taken in the Appellate Court, he was satisfied that the action could not be successfully maintained, and that, therefore, he advised me that I ought to consent to judgment for the defendant. I drew his attention to the fact that the other side would probably not be satisfied with such a statement, and that they would possibly try to call evidence. Mr. Cooper replied that if they did so he should point out to the Judge that he had consented to judgment for the defendant, and if the Judge choose to allow them in the face of that to call evidence that was a matter for the Judge himself, but that he, Mr. Cooper, should decline to cross-examine the witnesses or take further part in the proceedings.

To the best of my recollection, this is all that occurred. I think that Mr. McLean was also present. Would you please let me know as soon as possible if what I have stated is correct?

J. C. MARTIN, Public Trustee.

DEAR SIR,— 17th September, 1897.

Re *Horowhenua*.—We have read your memorandum of the 17th instant addressed to us respectively, and your statement of what transpired at the consultation you refer to is correct. The consultation took place on the Monday preceding the Wednesday, the day of trial, and was a final consultation before the case was called on for trial. Mr. McLean (barrister and solicitor), who had from the first acted as confidential clerk to Mr. Stafford in these proceedings, was present at the consultation, and has the same recollection of what transpired.

Yours, &c.,
E. STAFFORD.
P. E. BALDWIN.

The Public Trustee, Wellington.

The Hearing.—What transpired at the hearing bears this out. If the language of Mr. Cooper is carefully weighed it will be seen that he only stated that he had not the evidence to prove the charges against Sir Walter Buller. One necessary item of proof was the existence of the trust. This Mr. Cooper knew was at that stage and in the Supreme Court incapable of proof. If Mr. Cooper went further he went beyond his instructions.

The Judgment.—Judgment was accordingly entered up for Sir Walter Buller. His counsel applied for costs on the highest scale as between solicitor and client. So did Major Kemp's counsel. The Supreme Court, without indicating in the remotest way that it would do more if it could, held that it could only give costs up to a certain sum, and eventually certain sums were fixed as the amounts which Sir Walter Buller and Major Kemp were to receive as their costs against the Public Trustee. It is these costs that Sir Walter Buller is now applying to receive from the country.

Proceedings subsequent to the Case.—Sir Walter Buller, with characteristic activity, since the decree has left no stone unturned to obtain these costs. He has made repeated applications to the solicitors of the Public Trustee. The final reply was that he must wait until the whole of the costs of both sides was settled and that then the whole would be paid. There was some delay in rendering Messrs. Stafford and Co.'s bills. Sir Walter Buller thereupon turned round and said that he would not wait, that he would not rely on the Government paying, but would himself compel the payment of the costs by the Public Trustee.

At first there were threats and loud warnings in the newspapers. Then the battle commenced, and was bitterly carried on until the judgment of the Supreme Court, which entirely supported the attitude and action of the Public Trustee. And it must not be forgotten that but for the good feeling which prompted the Public Trustee to assist in the matter the result would have been disastrous to Sir Walter Buller. Had the Public Trustee declined to submit certain questions of law to the Supreme Court Sir Walter Buller would have been obliged to take actual steps to enforce his threats, and had he actually taken even one of the steps he threatened he would, upon the principles laid down in the Supreme Court judgment, have committed a grave trespass for which heavy damages would have lain against him. The Supreme Court's decision having been against Sir Walter Buller's right to obtain his costs from the Public Trustee by attachment, execution, or mandamus, Sir Walter Buller turns round again. He now contends that the country should pay.

An Appeal to Parliament.—Having done all in his power to damage the reputation of the Public Trustee and the credit of the Public Trust Office, having done all in his power to vilify the Government and the Liberal Administration, and having failed by these manœuvres to compel payment of his costs, Sir Walter Buller next appeals to Parliament.

How the Claim is based.—Sir Walter Buller's cry is that the Public Trustee, who is the plaintiff, cannot pay him, and asks that the country should do so. To prove the justice of his claim, he must show that by "The Horowhenua Block Act, 1896,"—(1) He was subjected to certain litigation, and to the payment of heavy costs thereunder, without any fault of his own;

(2) and by such legislation and litigation he has become a pecuniary loser to at least the amount claimed.

Both Claims Absolutely Baseless.—Sir Walter Buller is entirely responsible for the incurring of the costs. If the Public Trustee had been permitted he would have simply filed his writ and statement of claim to comply with the statute and take no further step. The statement of claim could not have been made public. Sir Walter Buller could not have been damaged by anything in it. Within the year ordinarily allowed for service the judgment of the Native Appellate Court was given. That judgment showed the action against Sir Walter Buller was hopeless. It found that Kemp was not a trustee. The actual decree is not yet issued. Immediately upon the judgment being given the Public Trustee would have consented to a final decree in favour of Sir Walter Buller. Sir Walter Buller's only costs would have been the trifling amount for drawing up the decree. The larger costs incurred ought not to have been and never would have been incurred if Sir Walter Buller had wished that justice should be done.

His Alleged Reasons for forcing on the Trial.—(1.) The charges against him in the statement of claim: These were known to none but those who filed the writ. To have published them would have been contempt of Court. The ordinary run of man would hardly have considered an abortive, mutilated inquiry the best way to dispose of them. (2.) He wanted his titles put right: Sir Walter Buller knew that until the final decree of the Native Appellate Court his titles could not be put right. Yet that did not prevent his doing everything in his power to hinder the giving of the Native Appellate Court's judgment. (3.) His personal convenience: A matter that requires no comment. Surely it is not of such great national interest that the country should be mulcted in £700 to meet it.

The Real Reason.—Brushing all subterfuge and special pleading aside, the real reason was that Sir Walter Buller feared the decree of the Appellate Court, and wanted the Supreme Court action to be disposed of on an incomplete basis before the Appellate Court decision could be given.

Mr. H. D. Bell has characterized as a grotesque argument the second ground advanced, and has twisted and distorted it to bear that appearance; but he has carefully refrained from facing the real position. Surely the fair way to look at the matter is this: If Sir Walter Buller had asked the country to indemnify him against any loss he had been put to by this litigation, he would have based his claim on as high grounds as could properly be advanced. He cannot be entitled to anything more, and so stated it would be quite obvious that if he had suffered no loss by the litigation, but, on the contrary, had profited by it, the country could not be asked to pay him anything. And that is really what has happened. Far from being a poorer man, Sir Walter Buller by this legislation and litigation is richer by several thousands of pounds. And that in a very ingenious way.

The Position of Major Kemp.—Under the certificates of title Major Kemp was registered as the sole owner of Horowhenua No. 14 and as one of the two owners of Horowhenua No. 11. He was, therefore, concerned in all the litigation affecting both these blocks, and Sir Walter Buller, who was the lessee of No. 14 from Major Kemp, very nobly undertook to commence active work again, and to act as Kemp's agent and solicitor. The result was that at his death Major Kemp was the nominal owner of Horowhenua No. 14, while Sir Walter Buller, under a certain memorandum of mortgage, and under a trust in Kemp's will, is entitled to charge against the land £6,810, which is more than the whole of the land is alleged to be worth by Sir Walter Buller.

Particulars of £6,810.—It appears that £2,920 18s. 7d. were incurred as Kemp's costs up to the date when the Horowhenua Committee sat. Particulars are given at page 343 of G.-2 of 1897. The bulk of this amount—viz., £2,098 8s. 7d.—was for professional costs and disbursements, £822 10s. representing the money advanced. A liability of £3,596 16s. 6d., portion of the balance, was incurred since that date and is made up as follows:—£500 were advances to Major Kemp, £588 1s. 6d. advances to other persons, while the balance of £2,508 15s., were Sir Walter Buller's profit, costs and fees, the great bulk having been incurred since February, 1897. Included in this £6,810 is this very sum of £300 9s., part of the money petitioned for by Sir Walter Buller. Particulars having been refused by Sir Walter Buller of certain items, it is impossible to say exactly how the amounts are made up, although obviously it is a matter of some moment.

How Sir Walter Buller secured himself.—(1.) *Mortgage.*—In October, 1894, when Sir Walter Buller first advanced any considerable sum to Major Kemp, he took from him a mortgage over Horowhenua No. 14 to secure the balance due on the account current for moneys already advanced and owing, and for moneys which might be thereafter advanced and owing. Sir Walter Buller at the date of the Commission and the sitting of the Appeal Court contended that the mortgage would also cover all costs previously incurred, amounting to some £1,000 and upwards, and all costs subsequently incurred.

(2.) *The Will.*—Sir Walter Buller seems to have been shaken in his entire reliance on the mortgage, for within a few short weeks of Kemp's death a will was prepared, which Kemp signed. Under this will, after certain petty bequests, all the real and personal property of Major Kemp was devised upon trust to sell, and out of the proceeds to pay to Sir Walter Buller a definite sum of £6,810. It will be noticed that the trust is not to pay what is really due, or what is found on taxation to be due, but a specific sum. If the will is valid Sir Walter Buller is legally entitled to £6,810 no matter what his costs are taxed at. All the talk about the taxing is beside the point. A definite sum of £6,810 is willed to Sir Walter Buller.

How the Litigation affected Sir Walter Buller.—We find that under the litigation subsequent upon the Horowhenua Block Act of 1896 Sir Walter Buller has secured to himself as actual clean net profit some £2,500, and prior to that Act another £2,000, since 1892.

1. This is absolutely secured to him whatever his costs may be taxed at, and the more his costs are taxed down the more apparent it will be how he has profited. Supposing it to be shown that his costs are £1,000 too much, he is still entitled to the extra £1,000 under the will, and but for the legislation and litigation Kemp would never have made that will.

2. The money was earned at Major Kemp's expense by Sir Walter Buller in defence of Sir Walter Buller's position. Whatever the result of the litigation may be, Major Kemp is left with the very husk of Horowhenua No. 14, a piece of land according to Sir Walter Buller worth less than what it is charged with. Sir Walter Buller has become a secured creditor and an established lessee, and it is to establish him in this position that the whole of Kemp's debt of £6,810 has been incurred.

Summary of the Position.—Summarising the position, we find that the result of the litigation has been to secure Sir Walter Buller's titles, to secure for him thousands of pounds spent, and to entitle him upon the documents to several thousands of pounds, a portion of which is legally due, no doubt, for his personal services, but the great bulk of which was money claimed as due from Major Kemp to Sir Walter Buller to legalise and make safe Sir Walter Buller's own position. The litigation has put into Sir Walter Buller's pockets thousands of pounds, part of which he, no doubt, earned, but all of which was spent in support of his own position and spent at the expense of Kemp's ruin.

If the country were asked merely to indemnify Sir Walter Buller not one farthing could be asked of it. Even Sir Walter Buller's counsel dared not assert that Sir Walter Buller had lost one penny-piece, or would be one penny-piece poorer by this litigation if he were not to receive any part of the £605. The real reason is that Sir Walter Buller having obtained—I do not say wrongfully—Kemp's all in Horowhenua, and seeing that it can be advanced that that all will not cover the whole of his costs as fixed by himself, wishes the country to still further enrich him. He therefore asks to be paid two certain sums, one of which is actually secured to him under Major Kemp's mortgage to him, and under the will the other of which is certainly more than covered under the £6,810, which the will irrevocably leaves to him.

Conclusion.—We therefore find it clearly established: (1.) That Sir Walter Buller is himself responsible for incurring almost every penny of these costs. (2.) That Sir Walter Buller has been paid the amount claimed over and over again, and that he cannot show one penny of loss which the country can be asked to recoup him. Under the circumstances he is surely not entitled to ask the country to pay him anything whatever.

CORRESPONDENCE.

DEAR SIR,— Native Appellate Court, Levin, 23rd April, 1897.

Re Horowhenua No. 14.—Enclosed I send you a copy of the statement of case, &c., prepared for the Supreme Court. Kindly peruse it, and consult Mr. Stafford thereon as to whether it is necessary to superadd any additional matter for the purpose of elucidating the questions of fact and law proposed to be submitted.

A copy of the case has been handed to Sir Walter Buller to be sent to Mr. H. D. Bell for perusal, and, as it is probable that some additional matter may be suggested by Mr. Bell, it seems advisable that the unanimity of action should be arrived at with a view to prevent separate and dissimilar proposals being submitted to the Court in respect of fresh matter to be added to the statement of case as now prepared. It will also be understood that no questions within jurisdiction of the Appellate Court, either of law or of fact, are to form part of any fresh suggestions that may be submitted for consideration.

Yours, &c.,

P. Baldwin, Esq., Solicitor, Wellington. A. MACKAY.

DEAR SIR,— Wellington, 5th May, 1897.

Horowhenua No. 14.—The proposed statement of the case for submission to the Supreme Court has been very carefully considered by us conjointly, and we are very much obliged to you for having sent the case to us for perusal. Prior to returning it we are writing to submit to you reasons for urging that the submission of points to the Supreme Court may be unnecessary, and we feel certain that the Court will fully consider what we are writing before finally deciding to send the case to the Supreme Court.

The reasons which make it, as we respectfully submit, undesirable and quite unnecessary that this case should be referred at the present time are as follows:—

In the first place, as you are aware, the questions stated by the various parties interested must involve a considerable amount of argument. Some of them may require the decision of a further tribunal, and in any case the arguments must, in the course of things, last over a considerable period of time. The expense of this to the various parties interested will be very considerable. Besides this, the time which will elapse before we can secure the attendance of his Honour the Chief Justice may be very great. We do not wish to use exaggerated language in the matter, but especially on the score of expense this application to the Supreme Court must be fraught with a grievous disadvantage, at any rate, to our client, and we presume to Sir Walter Buller also.

Of course, if it is inevitable that the case should go on, the expense will have to be faced, and the persons who are unfortunately compelled to pay it will have no option in the matter; but we do respectfully submit to the Court that no such necessity exists at present. We have all along urged that the sole question for this Court's decision is a simple one. Major Kemp has applied for an order declaring that he is the beneficial owner of Section No. 14, and we submit that it is conclusively proved to this Court that Major Kemp has established no such right. If the Court is of the same opinion, it seems to us, with all respect, that the Court by saying so could obviate entirely any necessity for approaching the Supreme Court. And having in view the very grave expense to

which the various parties will be put in the matter, we submit that the Court will be adopting the most convenient course if it, once and for all, gives its finding on that fact.

Of course, if the Court finds that No. 14 was beneficially given to Major Kemp, it may be that certain matters of law may have to be considered by the Supreme Court; but the finding of the Court upon the point we mention would obviate, if the finding is in one direction, almost the whole of the questions which have been asked.

Under these circumstances we would ask the Court to very seriously consider whether the course we point out may not be the better one to follow. On our clients' behalf we are very loth indeed to throw away any chance of obviating this very considerable expense. The matter, we are perfectly aware, is one of extreme importance, and we do not wish in any way to run counter to anything the Court considers ought to be done; but, before returning the case altered in the form which we think it should go to the Supreme Court, we feel it our duty to lay these considerations before you. We trust you will consider it desirable to make, and we urge upon you to make, a finding upon the issue whether No. 14 was, as a matter of fact, allotted or awarded to Major Kemp beneficially. By so doing the grave expense and other disadvantages attendant on this submission of questions of law to the Supreme Court will be saved.

We trust we have made the position perfectly clear. We, of course, bow to whatever the Court considers ought to be done. If, after consideration of what we are here urging, the Court still thinks, in view of all the circumstances, that the matter should go to the Supreme Court without any definite finding on the point we mentioned, we shall at once forward to your Honour the case as we have altered it.

Yours, &c.,

E. STAFFORD,

His Honour Judge Mackay, Levin. P. E. BALDWIN.

DEAR SIR,— Wellington, 7th May, 1897.

Horowhenua No. 14.—Herewith I return, altered in red ink, the statement of case for the Supreme Court. You will notice that there are several alterations, but in almost every instance they are alterations more of form than of substance.

With regard to 2A, I understand you to say that you would not object to it. The other alterations speak for themselves, with the exception of the alteration made by striking out the five lines at the end of Question 2. We have struck this out, subject to your Honour's approval, for the reason that it is involved in the Question No. 14. Of course, if the Appellate Court is bound by Judge Wilson's evidence, then it will conclude the matter. If not, we submit that it might possibly lead to misapprehension in the Supreme Court, that this Court had conclusively found that such was the finding of this Court with regard to what was done by Judge Wilson in respect to the allotment of No. 14.

I am also forwarding, as requested, a copy of my address, but I beg to point out to the Court that some of the references are not yet complete. The papers in connection with the references are still at Levin, and I shall be unable to officially complete them before I go up there.

In conclusion, I may say that if your Honours think it would be useful or advisable for either Mr. Stafford or myself to go to Levin in connection with any of the suggested alterations by ourselves or by Mr. Bell, that we shall be very happy to fall in with your Honour's wishes. No time will be lost, I may point out, by our not having earlier sent this case forward, inasmuch as his Honour the Chief Justice will not, of course, be available for the lengthy argument which must take place on this case until after the Court of Appeal.

Yours, &c.,

His Honour Judge Mackay, Levin. P. E. BALDWIN.

DEAR SIR,— Native Appellate Court, Levin, 8th May, 1897.

Horowhenua, No. 14.—Your joint letter, with Mr. Stafford's, of the 5th instant, and likewise your own of the 7th instant, came duly to hand, with the statement of case as altered.

Touching the alterations, there is no objection to those merely of form, but the Court cannot accept the alterations which import controversial matter into the case of which there is no specific evidence in support thereof.

Touching the new paragraph marked 2A, I considered the circumstance set out therein on the suggestion made by yourself on the 21st ultimo, but came to the conclusion that, as the evidence relative to the matter was very meagre, it was inadvisable to insert any reference to it in the statement. I have, therefore, not accepted the suggested alteration. I think the five lines struck out at the end of the second question had better be allowed to stand, as the other side will probably object to have those altered, as it is the only place in which the particular matter is stated in that form.

In putting the question in that form, the Court does not pronounce any finding in the matter, it merely states that Judge Wilson's evidence is to that effect, which is indisputable. I can hardly suppose that the Supreme Court can misunderstand the matter. The question as put appears perfectly plain—namely, if the consent of the whole of the owners was necessary, and such consent was not obtained, can it be deemed that an order in Kemp's favour for No. 14 effectively vests such parcel of land in him as the sole beneficial owner, considering the position he held formerly as trustee for the whole of his estate under the title of 1873, notwithstanding Judge Wilson's evidence is to the effect that the Court intended that this section should be allotted to Kemp as his share of the block?

The matter resolves itself into this: If the Supreme Court decides that the consent of all the persons is necessary to effectively vest the land in Kemp for himself, the intention of the Court was of no avail.

Many thanks for a copy of your address, which is a very comprehensive one.

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. Yours, &c.,

P. E. Baldwin, Esq., Wellington. 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.

If your Honours decline or feel yourselves unable to give a decision on the question of fact stated above until the questions of law are dealt with, far be it from us to in any way run counter to the Court's decision. In such a case the sooner we have the decision of the Supreme Court on the points of law the better. In any case the answer to the questions of law might, from the considerations above stated, be different in the case sent by the Appellate Court and in the Supreme Court action. We should leave entirely to the Appellate Court what papers it desires to send forward to the Supreme Court.

Yours, &c.,

His Honour, Judge Mackay, Levin.

P. E. BALDWIN.

DEAR SIR,— Levin, 29th May, 1897.

I was astonished to note, in a letter shown to me yesterday by Mr. A. McDonald from Mr. Stafford, that it was stated "that the case stated by the Appellate Court for the opinion of the Supreme Court upon certain questions of law stated by the Appellate Court will shortly come on for hearing," and asking Wirihana Hunia to authorise him to appear on his behalf. I was under the impression, from the tenor of your joint letter, that you considered it inadvisable that the Appellate Court case should be proceeded with, both on the score of expense and also that, to a certain extent, the questions proposed to be submitted were extra-judicial.

In my letter of the 8th instant I notified you that I would send copies of the statement of case to Wellington to the Registrar of the Native Land Court, to enable the counsel on both sides to meet and settle any point that either side had suggested, in place of either you or Mr. Stafford coming to Levin, as this appeared the most effective mode of bringing all the parties together and getting the questions determined; and, if both sides could agree, the case could have been typewritten in readiness for reference to the Supreme Court. The case was accordingly sent down to the Registrar on the 8th instant, as indicated, and was returned to me on the 15th, with an intimation that counsel had not been to consult on the matter; consequently, I concluded that there was no intention to proceed with the case, and thereupon relinquished the idea of taking further action therein, more especially as most of the points embodied in the Appellate Court case are also included in the statement of case to be submitted by the Public Trustee, it therefore appeared unnecessary to duplicate the proceedings by going over the same grounds twice.

The Court does not decline to give a decision on the matter before it, but it has held the opinion from the outset that the questions of law could first be dealt with by the only Court which can give an authoritative decision on the matter. The Court in all probability will adjourn on the 5th proximo, as Judge Butler has to join the Chief Judge at the sitting of the Appellate Court appointed for Wellington on the 8th proximo.

From what fell from the Chief Justice in Banco on the argument of counsel relative to the affidavits filed by Sir Walter Buller and the Public Trustee, it would seem that the Supreme Court is not likely to pay any attention to what the Appellate Court may do; consequently, it is immaterial, so far as the proceedings by the Public Trustee against Sir Walter Buller are concerned, whether the Appellate Court gives a decision or not. This being the position, those proceedings need not wait on anything the Appellate Court may do in the premises.

Yours, &c.,

P. E. Baldwin, Esq., Solicitor, Wellington.

A. MACKAY.

DEAR SIR,— Wellington, 1st June, 1897.

Horowhenua, No. 14.—I am in receipt of yours of the 29th May, and may say I am very much surprised at its contents. I am sorry you should have been under the impression, from any letters written by us, that we considered it inadvisable for the Appellate Court case to be proceeded with. If you will look at our letters you will find that what we have said unmistakably right away through is this: If the Appellate Court can decide the questions of fact without submitting the questions of law, then we submitted that the Appellate Court should, in order to obviate the expense, give its decision on the facts prior to submitting any case.

In my letter to you of the 17th May I wound up by stating, "If your Honours decline or feel yourselves unable to give a decision on the question of fact stated above until the questions of law are dealt with, far be it from us to in any way run counter to the Court's decision. In such a case the sooner we have the decision of the Supreme Court on the points of law the better. In any case, the answers to the questions of law might, from the considerations above stated, be different in the case sent by the Appellate Court and in the Supreme Court action." That is what we are anxious for. The absence of a decision by the Appellate Court is a most cruel hindrance to the Natives in obtaining their rights in the Supreme Court action, and is also hampering the plaintiffs, inasmuch as they are quite in the dark as to what the decision of the Court will be upon the facts.

With regard to the alteration of the case, we were never notified by the Registrar of the Native Land Court that the case was down here. It is improbable that the parties could agree, and we would therefore prefer that the Court would settle this case itself. If I may say so, I was present and took part in the argument before the Chief Justice, and it is incorrect to say that we suggested that the Court would not be bound by the Appellate Court's decision. That is a question of law which will have to be argued hereafter on the merits. I am strongly of opinion that the Supreme Court is bound by the Appellate Court's decision. In any case, however, we are, I must repeat it, extremely anxious to obtain the decision of the Appellate Court, and, seeing that the Appellate Court feels itself unable to come to a satisfactory conclusion without the opinion of the Supreme Court on the law points, we, on our part, must strongly urge that the case should be submitted to the Supreme Court without any delay whatever.

Yours, &c.,

His Honour Judge Mackay, Levin.

P. E. BALDWIN.

P.S.—This letter, you will understand, is from Mr. Stafford and myself as representing Wirihana Hunia, as was my last letter. I do not suppose there will be any doubt on the matter, but I merely do this to obviate any chance of a misunderstanding.—P.E.B.

EXHIBITS.

EXHIBIT A.

IN the Supreme Court of New Zealand, Wellington District.—Action No. 6147.—Between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

Special case stated by the consent of the parties, pursuant to Rule 241.

1. This action, numbered 6147, was commenced in this Honourable Court by the Public Trustee, as plaintiff, under section 10 of "The Horowhenua Block Act, 1896," against the defendants.

2. The said action came on for hearing on the 11th day of August, 1897, before His Honour the Chief Justice; and by consent of counsel for the plaintiff and the defendants the following decree was made:—

In the Supreme Court of New Zealand, Wellington District.—Action No. 6147.—Between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

This action, coming on for trial before his Honour the Chief Justice on Wednesday, the 11th day of August, 1897, and Mr. Cooper, Mr. Stafford, and Mr. Baldwin appearing as counsel for the plaintiff, and Mr. Bell and Mr. A. P. Buller appearing as counsel for the defendant Sir Walter Buller, and Sir Robert Stout appearing as counsel for the defendant Meiha Keepa te Rangihiwinui.

This Court doth by consent order that, inasmuch as Wirihana Hunia, an aboriginal co-plaintiff, has been struck out by order of his Honour the Chief Justice, made upon the application of the said original co plaintiff, on the 7th day of August, 1897, the statement of claim be amended by substituting the word "plaintiff" for the word "plaintiffs" wherever the latter word appears therein, and by making all consequential grammatical amendments.

And by consent of Sir Robert Stout as counsel for the defendant, Meiha Keepa te Rangihiwinui, and by consent of Mr. Cooper as counsel for the plaintiff, this Court doth order and decree that this action be dismissed as against the said defendant, Meiha Keepa te Rangihiwinui, without prejudice to the determination of any matters which are by "The Horowhenua Block Act, 1896," to be determined by the Native Appellate Court.

And the plaintiff admitting by his counsel that he can adduce no evidence to substantiate the charges against the defendant Sir Walter Buller alleged in the statement of claim, and submitting to a final judgment in favour of the said defendant Sir Walter Buller establishing the validity of the alienations and dealings specified in sub-paragraphs (*a*) and (*f*), inclusive of paragraph 28 of the original statement of claim, this Court doth further decree and order that the validity of each and every of the alienations and dealings specified in sub-paragraphs (*a*) to (*f*), inclusive of paragraph 28 of the original statement of claim, is established by this final judgment in this action.

And all parties consenting that Peter Bartholomew, of Levin, sawmiller, should be added as a party to this action in respect of the dealings appearing upon the certificate of title for Division No. XIV. of the Horowhenua Block as lease numbered 2196, this Court doth order that the name of the said Peter Bartholomew be so added as a defendant in this action; and this Court doth further adjudge and decree that the validity of the said dealing is established by this final judgment in this action.

And this Court doth further adjudge and decree that each and every of the dealings specified in sub-paragraphs (*a*) to (*f*), inclusive of paragraph 28 of the original statement of claim, and the said lease, No. 2196, by the defendant Meiha Keepa te Rangihiwinui to the said Peter Bartholomew is, and each of them are entitled to be re-registered pursuant to section 10 of "The Horowhenua Block Act, 1896."

And this Court doth further adjudge and decree that the plaintiff do pay to the said defendant, Sir Walter Buller, his costs of this action, computed at the sum of £335 8s. 5d.

And this Court doth further adjudge and decree that the plaintiff do pay to the said defendant, Meiha Keepa te Rangihiwinui, his costs of this action, computed at the sum of £300 9s.

By the Court.

W. A. H., D.-R. (L.S.) W. A. HAWKINS, Deputy-Registrar.

3. The defendants under the said decree have applied to the plaintiff, the Public Trustee, for payment of the costs awarded under the said decree. In answer to such application the Public Trustee says that he cannot by law pay these costs.

4. Under an order of his Honour the Chief Justice, made on Wednesday the 13th October, 1897, the Public Trustee was examined before his Honour the Chief Justice as to the matters mentioned in Rule 327. A copy of the evidence given by the Public Trustee on such examination is as follows:—

In the Supreme Court of New Zealand, Wellington District. In Chambers. Before his Honor the CHIEF JUSTICE.—The PUBLIC TRUSTEE v. Messrs. BULLER and KEMP. Saturday, 16th October, 1897.

Examination of Mr. J. C. MARTIN, Public Trustee.

Mr. STAFFORD, with him Mr. BALDWIN, for the PUBLIC TRUSTEE. Mr. SKERRETT, with him Mr. A. P. BULLER, for Messrs. BULLER and KEMP.

Mr. Skerrett (to witness).] Your name is James Crosby Martin?—Yes.

And you are the person holding office as Public Trustee?—I am.

You are aware that in this action judgment has been recovered against you in the sum of £636 as costs?—Yes, I think so. I take your figures for it, but I do not know the exact amount. It is £600 odd.

That decree was obtained by consent of counsel representing yourself?—Yes.

You have not paid the amount of the judgment?—No.

Why?—Because I am advised by my solicitors that I have no property which I can legally apply to the payment of that judgment; nor will the Audit Office pass the amount for payment without the Minister's approval, nor will the Minister approve of my paying it.

Have you taken any steps with a view to place yourself in a position to obtain the necessary funds to pay the amount of the judgment?—Yes.

Have you any objection to state what those steps are?—No.

Do you mind stating what they are?—Before these proceedings were commenced at all, in looking at the Act which directed me to take these proceedings I noticed that no provision had been made for paying the costs, and as the property affected by the action was not in any way vested in me or under my control, I doubted whether I could legally pay any costs under the provisions of the Public Trust Office Act, and as far back as the 18th December I wrote to the office solicitors—Messrs Stafford and Co.—amongst other things, as follows:—"A further question arises in connection with this matter as to which I should be obliged by your advice. It is this: Have I any right to devote the funds of this office to the prosecution of this action? The Horowhenua Block Act contains no provision for furnishing the necessary costs, and it seems to me that, as the block is not an estate in the office, that I have no right to use any of the funds of the office, but must apply to the Government for such moneys as may be necessary to enable me to carry into effect the direction of the Legislature." In answer to that, I received this: "As to applying the funds of the Public Trust Office to the proceedings, under section 10, I am satisfied that you ought not to apply any

of the Public Trust Office funds for the prosecution of this action. You ought to represent to the Government that the costs of these proceedings, which will be undoubtedly expensive, should be paid out of the ordinary revenue." In consequence of that I thereupon sent a copy of this letter to the Government, and was referred to Mr. Sheridan, who is an officer in the Native Land Purchase Department—I think his title is Native Land Purchase Officer—and he told me that any moneys that would be required I could have on application to him. Subsequently, some moneys were required, and I applied to Mr. Sheridan. I wrote to him, but he was then out of town, and I received a telegram in which, amongst other things, he states: "I will be in Wellington on Wednesday. You can have as much money as you like then." I had no reason to believe the money would not be forthcoming, and it was subsequently paid to me. I did not do anything further until after the decree was served upon me, and I forwarded it to the Government with a request that I should be put in funds to pay these costs. Mr. Stafford, in forwarding the decree, says, "The defendants will require payment of these costs at once. Please therefore let me have a cheque for that purpose." I did not get any reply from the Government, and consequently sent the accountant in the office to endeavour to obtain the money. He went several times, and came back and said Mr. Sheridan was unable to give him the money. I then wrote to Mr. Sheridan as follows on the 6th September: "The position is this. The amount of these costs has been settled by the Supreme Court decree, and the defendants are in a position to issue execution if the costs are not paid at once." Then follow certain things that are not material. I then state, "You previously informed me that I could have any money required in connection with Horowhenua. This money is required at once. If the Minister wishes to deal with all the costs at the same time, the difficulty might be got over by my paying out of unauthorised expenditure the amount now required as a temporary thing until Messrs. Stafford and Co.'s costs are received. Please obtain Minister's approval to this course, if he agrees." The message I received was that the Minister wishes to deal with my own solicitor's costs and the costs of Messrs. Buller and Beddard at the same time. On the 6th September we had previously applied verbally. I received no reply. On the 9th September I wrote: "With regard to the costs ordered by the decree to be paid to the defendants, I must beg the Government to place me in a position to pay them. The amount is settled by the order of the Court. The defendant's solicitors have repeatedly, I am informed, asked for it, and are now threatening to issue execution. I have no power to apply my office funds towards liquidating the amount ordered to be paid. Mr. Sheridan assured me that any moneys which I properly required would be paid me on application. My accountant has been to him now five times to endeavour to obtain the amount payable, but without result." Between the 3rd and the 9th September the accountant was going morning and afternoon with instructions to endeavour to get this money. Then, subsequently Mr. Stafford wrote to me, stating, "I think you should finally urge the Government either to furnish you with funds to pay these costs, or to authorise you to pay them out of the Public Trust Office Account. It would be a very deplorable position if execution is put into the Public Trust Office to enforce payment of the costs, or if the Public Trustee is charged with contempt in disobeying the decree of the Supreme Court. Under any circumstances, it appears to me that the Government lay themselves open to criticism in not furnishing you with the funds to pay these costs, or, in the alternative, giving you authority to pay them out of the Public Trust Office Account. If the costs are not paid, then, apart from the public scandal, further costs will be the result, and it is impossible to say what the outcome of the proceedings may be. That you will send this memorandum to the Government is plain, emphasizing the urgent necessity of having the costs paid either by a direct cheque from the Government or by a cheque from yourself, authorised by the Minister, whose sanction is necessary. After this memorandum it seems to me that nothing is left except to await whatever proceedings the defendants may take." I forwarded that to the Hon. the Premier, and still with no result; and so I thought then I would see whether the Audit would pass the amount, and I would put it through without further reference to the Government. I laid the matter before the Audit Inspector, and on the 20th September he informed me that he had seen the Auditor-General and the Audit Office would not pass such payment except out of unauthorised expenditure, and then only on the approval of a Minister. Then the Minister of Lands, who, by arrangement amongst the Ministry, is the Minister to whom the ordinary correspondence of this office is addressed, being out of town, I forwarded the following letter to the Premier with a copy of past correspondence: "As the Hon. the Minister of Lands is, I understand, absent from Wellington, I forward herewith, as the matter is urgent, copy of a letter which I have just received from Mr. Stafford. I also enclose copies of previous correspondence. I understand that the Hon. Mr. McKenzie wished to receive the costs of Messrs. Stafford and Co. before dealing with the matter. These costs, however, have to be made up and taxed, so that some considerable time must elapse before they can be submitted for payment." I received back a memorandum to the effect that as soon as the costs of my solicitors were rendered and taxed, the whole thing would be considered by Cabinet. Then this application was made to the Court. I wrote to the Government on the 5th October: "The defendants have applied to the Court for an order directing me to attend and be examined as to what property is under my control, so that they may ascertain whether I have any property which can be charged and attached to pay their costs. The Chief Justice to-day adjourned their application, but intimated that I ought to apply to the Government and obtain a definite answer as to whether the Government would pay or ask the House to vote the amount of the costs in question, and the matter has to come on again for hearing to-morrow week. I have received this information verbally from Mr. Stafford, and I enclose a copy of a letter which I have received from him. Mr. Stafford's costs have been rendered and are being taxed, and, if the Registrar is available, the taxation should, I think, be completed to-morrow." The following is a copy of the letter from Mr. Stafford, which was enclosed: "The summons taken out by the defendants to examine you as to what debts or sums of money were held by you with respect to which a charging-order could be made came on for hearing before the Chief Justice this morning. Mr. Baldwin and myself appeared for you, to show cause why such an order ought not to be made. The Chief Justice made no order, and intimated that he thought that no charging-order would be of any avail; at the same time, while he thought that your examination by the defendants might be fruitless in disclosing assets which might be made available by a charging-order, yet that he thought that the defendants might be entitled to have you examined. The Chief Justice expressed no decided opinion upon either the right of the defendants to have you examined, or as to whether there was any property against which the charging-order could be enforced. He intimated that the defendants ought to be informed whether or not the Government intended to provide funds to pay the defendant's costs, and, for that purpose, adjourned the summons until Wednesday, the 13th instant, in order that you might, by communication with the Government, ascertain whether they intended to recommend to Parliament the vote of a sum of money to pay these costs. Under these circumstances you should ascertain from the Government whether or not it intends to place on the estimates a sum of money to pay these costs, so that the defendants may know what they are to expect. If the Government will not give you a decided answer on this point, then it appears to me that the Chief Justice may make an order for your examination. I feel satisfied that no charging-order can go against any assets in the Public Trust Office." In the meantime Messrs. Stafford and Co.'s costs had been rendered, and were referred to the Registrar for taxation, and were taxed in due course. Then on the 9th October I received the Registrar's allocator or allowance, and I wrote to the Government informing them that the taxation was completed and at what amount the bill had been allowed. There the matter rests, and I do not know that I could have done more than I have done to endeavour to get these costs.

I understand, Mr. Martin, the Government have given you no reply as to your application either to provide the funds or to your application as to whether they would ask Parliament to vote the necessary amount?—I omitted to mention that I received my memorandum of the 6th September back with a note upon it that the Minister could not authorise payment, and requesting that I would forward him the total cost of the proceedings, so that he might bring the same before the Cabinet, and I received no further communication.

I understand you, therefore, to say that, so far as you are personally concerned, you have done all in your power to provide the necessary funds to satisfy the judgment?—Yes; of course, if I had power to pay them I should pay them immediately.

What bank accounts does the Public Trust Office possess?—The only one is the Public Trust Office Account.

Kept under the provisions of section 29 of the statute?—Yes; under "The Public Trust Office Consolidation Act, 1894."

It is provided by section 30 of the Act that all public moneys become moneys as provided by section 31 of this Act?—Yes.

Where is this account kept?—In the Bank of New Zealand, Wellington.

By whom is that account operated upon?—By cheque drawn by myself, or in my absence by the Deputy Public Trustee, countersigned by the Chief Clerk, and in his absence by the accountant in the Public Trust Office.

Are there moneys lying to the credit of that account?—Yes.

How much?—Last night at closing time it was £17,595 3s. 7d. in cash.

You are required by statute to keep a Profit and Loss Account?—Yes.

Will you indicate generally what that Profit and Loss Account shows?

Mr. Stafford: Are these questions relevant?—The rule says as to what debts are due or accruing due. That is not the question here. That is what paragraph 1 says.

The Chief Justice: Go a little further down than that?

Mr. Stafford: It is simply limited to debts alone.

Mr. Skerrett: Money to the credit in the bank is frequently charged under the rule.

The Chief Justice: Where the opposite party is liable (rule read).

Mr. Skerrett: That has reference to property, your Honour.

The Chief Justice: If there is money liable it is money owing to the Public Trustee.

Mr. Skerrett (to witness): Will you indicate the general character of what the Profit and Loss Account shows? It shows profits made by the working of the office?—Yes. It scarcely shows the profits. It shows there is a balance to the credit of the Profit and Loss Account. It is an account into which everything that comes to the credit of the office goes, and out of which all disbursements are made.

So that the balance standing to the credit of the account would show the net earnings of the office?—Yes.

Have you the Profit and Loss Account?—Yes.

Is that account in credit?—Yes.

To what amount?—I cannot give you the exact figures up to to-day, because it varies from day to day. We balance by law on the 31st March; but I had a balance made for my own information on the 30th September, to see what the office was doing, and that shows a credit of £8,117 15s. 3d. That is including the balance carried forward from the previous year.

That balance to the credit of the Profit and Loss Account is represented by the funds in the hands of the banker to the credit of the Public Trust Office Account?—Yes, that is part of the money lying in the bank at the present moment.

Is that balance at all likely to be reduced by deficiencies arising from the investment of moneys in the Public Trust Office? I understand by the statute that that is payable directly from the Consolidated Fund—that deficiency?—No. I am bound at the annual statutory balance on the 31st March to take a fourth of this account, and it is passed to the Reserve and Assurance Fund Account, and that has to answer for any deficiencies there may be on securities; and then if that Reserve and Assurance Fund Account is not sufficient, the Consolidated Fund is answerable for the balance. The remaining three-fourths of the account I am bound to pay over to the Colonial Treasurer on demand.

Can you tell me the amount lying to the credit of the Reserve and Assurance Fund Account?—Speaking as on the 30th of September, £1,169 0s. 9d.

Have any payments been made to the Consolidated Fund under the provisions which require you to pay three fourths of the credit balance of the Profit and Loss Account to the Crown?—£18,000 has been paid to them, but that was prior to the Act of 1894. Nothing has been paid since. I have never been asked for it.

If this judgment is properly payable out of the Reserve and Assurance Fund Account, that fund has sufficient to pay the judgment?—It has over £1,100. It is more than sufficient.

Also there are more than sufficient funds in the hands of the banker to the credit of the Profit and Loss Account to pay this judgment?—Do not let me mislead you. The banker knows nothing about that Profit and Loss Account. My account is one common general fund. The Profit and Loss Account is kept in our books only.

Has the Public Trustee any properties—is he the beneficial owner of any property?—I do not know of any. It is all part of the common fund. There is no separation in the bank-books of the actual account.

The Reserve and Assurance Fund Account is invested as part of the common fund?—Yes.

In point of fact, you can, with few exceptions, earmark no security on which either the moneys of the Public Trust Office or the moneys of clients of the Public Trust Office are invested?—With very few exceptions I cannot earmark any, except in cases where moneys are not to form part of the common fund.

That is under section 31?—Yes. In those cases we have separate security.

Has the Public Trustee got any interest in property for the purpose of carrying on his business—such as freehold or leasehold interests in offices?—No. Messrs. Buller and Anderson asked me to produce my lease. There is no lease. There was a lease for two years, which expired in February last. I have that here. And then there was a twelve months' tenancy, which was arranged originally by letter but which was verbally altered. I hold the office on a verbal and letter tenancy at a rental of £475 a year. It is the same with regard to offices in other centres. Some are not even yearly tenancies, except in Dunedin, where there is an unexpired lease to run out. I should think it has about two years to run.

The expired lease of the office in Wellington was from Her Majesty the Queen to the Public Trustee?—Yes; the Queen to the Public Trustee.

So the tenancy that now subsists is also a tenancy from the Queen to yourself?—Yes, substantially that must be so. There is a letter from the Commissioner of the Life Insurance Department and one from myself.

I suppose you have a quantity of personal property belonging to you as Public Trustee—office furniture and so on?—Yes, I presume it belongs to me; but that is a matter of law. If we want furniture or stationery in the office, or anything necessary to carry on our business, I requisition the property department, and subsequently a voucher is sent to us by that department, which I pay out of the ordinary common account.

That applies to the furniture both in Wellington and the other offices in the colony?—Yes, the principal offices. In some cases the agents find their own furniture where they carry on business also on their own account. What I have said applies to my own staff.

I ask you this question—you can object to answer it if you like—Have you any objection to facilitate the settlement of the legal question as to whether you have power to pay the judgment in this action out of any fund under your control?—Not the slightest. I should be very glad to facilitate it in any way. It is nothing to me personally. As I have said, I have tried my best to get the money. My solicitor, and I believe the Solicitor-General, have advised that the funds or the property of the Public Trustee are not liable and cannot be used, and the Audit Office has declined to pass the matter for payment. I should be very glad to facilitate the payment in any way I can.

There is no other property you know of?—I do not know of any. Of course the bulk of the property I have is trust property. I do not know of anything else.

(At this stage it was agreed between Mr. Stafford and Mr. Skerrett that a special case should be stated on the facts.)

5. The defendants have issued a writ of sale in the words and figures following:—

In the Supreme Court of New Zealand, Wellington District, No. 6147, between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith.

To the Sheriff of Wellington District. Greeting:

WE command you that of the real and personal estate of the above-named Public Trustee in your district you cause to be made the sum of three hundred and thirty-five pounds eight shillings and fivepence (£335 8s. 5d.), which the

above-named defendant, Sir Walter Lawry Buller, hath recovered against the Public Trustee in our Supreme Court of New Zealand by virtue of a judgment or decree given or made on the eleventh day of August, 1897, together with interest upon the said sum, at the rate of six pounds for every one hundred pounds by the year from the said eleventh day of August, 1897, and cause that money with such interest as aforesaid, immediately after the execution hereof, to be rendered to the said defendant, Sir Walter Lawry Buller.

Witness his Honour the Chief Justice of the Supreme Court of New Zealand, at Wellington, this 23rd day of September, 1897.

(L.S.) W. A. H., D.-R.

In the Supreme Court of New Zealand, Wellington District.—No. 6147.—Between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of Wellington District. Greeting:

WE command you that of the real and personal estate of the above-named Public Trustee in your district you cause to be made the sum of three hundred pounds nine shillings (£300 9s.), which the above-named defendant, Meiha Keepa te Rangihiwinui, hath recovered against the Public Trustee in our Supreme Court of New Zealand by virtue of a judgment or decree given or made on the eleventh day of August, 1897, together with interest upon the said sum at the rate of six pounds for every one hundred pounds by the year from the said eleventh day of August, 1897, and cause that money with such interest as aforesaid, immediately after the execution hereof, to be rendered to the said defendant, Meiha Keepa te Rangihiwinui.

Witness his Honour the Chief Justice of the Supreme Court of New Zealand, at Wellington, this 23rd day of September, 1897.

(L.S.) W. A. H., D.-R.

The Sheriff has not levied under the said writs of sale.

(*b.*) The defendants have issued out of this Court a charging order in the words and figures following:—

In the Supreme Court of New Zealand, Wellington District.—No. 6147.—Between the PUBLIC TRUSTEE, Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G,, and MEIHA KEEPA TE RANGIHIWINUI, Defendants.

IT is ordered that, until sufficient cause be shown to the contrary, all that the debt or sum of money owing by the Bank of New Zealand to the Public Trustee, representing the moneys standing to the credit of the Public Trustee in the Bank of New Zealand, in the City of Wellington, in an account known as the Public Trust Office Account, do stand charged with the sum of six hundred and thirty-five pounds seventeen shillings and fivepence (£635 17s. 5d.), being the amount for the payment of which the above-named defendants have obtained judgment against the plaintiff in the above action, and such interest as is properly payable thereon, and the sum of four pounds fifteen shillings (£4 15s.), the costs of this order.

Dated at Wellington, this 21st day of October, 1897.

W. A. D. B., D.-R. (L.S.) W. A. D. BANKS, Deputy-Registrar.

The defendants have not served the said charging order pending the decision of this honourable Court upon the special case.

The defendants contend—(1.) That under the said decree they are entitled to levy execution against property in the possession of or vested in the Public Trustee. (2.) That they are entitled under the said charging order to charge the moneys mentioned in the said charging order, or some part thereof. (3.) That they are entitled to a mandamus commanding the Public Trustee to pay the said costs out of the Public Trustee's account, and that the said judgment creates a debt owing by the said Public Trustee for the costs so awarded, and that they are entitled to be indemnified out of, and to be paid the same out of, such account. (4.) That under the said decree they are entitled to levy execution against the property of James Crosby Martin, being property of which he is the beneficial owner.

The plaintiff, the Public Trustee, contends—(1.) That under the said decree the defendants are not entitled to levy execution against property in the possession of or vested in the Public Trustee, because he contends that all such property is the property of the Crown, or is held by the Public Trustee in trust. (2.) That the defendants are not entitled to enforce the said charging order, because the said charging order is directed against property which is the property of the Crown, or is held in trust. (3.) That the defendants are not entitled to a mandamus compelling the Public Trustee to pay the said costs out of the Public Trustee's account, because the Public Trustee is an officer of the Crown, and that such mandamus would, in fact, be a command by the Supreme Court to compel payment of (by an officer of the Crown) Her Majesty's moneys. (4.) That before payment of the said costs can be made by the Public Trustee sections 43 and 73 of "The Public Revenues Act, 1891," must be complied with. (5.) No warrant of the Governor has been issued, and no certificate of the Audit Office has been given pursuant to those sections. (6.) That the judgment in this action being against the Public Trustee in his corporate capacity, no execution can be levied against his private property.

The questions for the opinion of the Court are,—(1.) Can, under the said decree, any property, and, if so, what property, be levied upon by way of writ of sale? (2.) Can, under the said charging order, any moneys, and, if so, what moneys, be made available for the purpose of the payment of the said costs? (3.) Are the defendants entitled to a mandamus commanding the Public Trustee to pay the said costs out of any, and if so what, fund under his control? (4.) Is it not a condition, precedent to the Public Trustee paying these costs, that the consent of the Auditor-General or of the Audit Department should be given? (5.) Is it not a condition, precedent to the payment of these costs, that the warrant of the Governor should be given before the said costs can be paid? (6.) Can, under the said decree, an execution be levied upon the private property of James Crosby Martin, the Public Trustee?

If the Court shall be of opinion that a mandamus ought to issue commanding the Public Trustee to pay the said costs out of any funds under his control, then such writ of mandamus shall issue accordingly; and all proceedings are to be deemed and treated as having been taken which may be necessary to entitle the said writ of mandamus to so issue.

Whatever the decision of the Supreme Court may be, either party shall have the right to appeal to the Court of Appeal from such decision.

13. The costs of and incidental to this case, and the argument thereof, shall be in the discretion of this honourable Court, but should not exceed more than fifteen guineas (exclusive of Court fees) as costs for the successful party, and for this purpose the defendants, if successful, shall only be entitled jointly to the costs as so limited, and the plaintiff, if successful, shall only be entitled to one set of costs (so limited) against the defendants jointly.

EXHIBIT B.

In the Native Appellate Court, New Zealand, Wellington District.—In the matter of the application of MEIHA KEEPA TE RANGIHIWINUI for an order under "The Horowhenua Block Act, 1896," declaring him to be the beneficial owner of Subdivision 14 of the Horowhenua Block.

AT a sitting of the Native Land Court, held at Palmerston North on the first day of December, 1886, and subsequent days, an order was made on the third day of December, 1886, in favour of Meiha Keepa te Rangihiwinui for Subdivision 14 of the Horowhenua Block: And whereas it was alleged that the said Meiha Keepa te Rangihiwinui was not the sole beneficial owner of the said subdivision: And whereas an Act was passed, intituled "The Horowhenua Block Act, 1896," which revives and re-enacts "The Native Equitable Owners Act, 1886," and all the amendments thereof, excepting section 18 of "The Native Land Court Act Amendment Act, 1889," for the purposes of the said Act: And whereas, under section 2 of "The Native Equitable Owners Act, 1886," the Court is authorised, on the application of any Natives claiming to be beneficially interested in any land within the scope of the said Act, to inquire into the nature of the title to such land and into the existence of any intended trust affecting the title thereto, and according to the result of such inquiry the Court may declare that no such trust exists; or, if it finds that any such trust does or was intended to exist, then it may declare who are the persons beneficially entitled: And whereas an inquiry has been held by the Native Appellate Court under "The Horowhenua Block Act, 1896," and as the result of such inquiry the Court has decided that no trust was intended to exist in respect of the said Subdivision 14 of the Horowhenua Block.

It is hereby declared that the order of the Native Land Court, dated the 3rd December, 1886, made in the name of Meiha Keepa te Rangihiwinui, was made to him as sole beneficial owner.

As witness the hands of Alexander Mackay, Esquire, and William James Butler, Esquire, Judges, and the seal of the Court, this fourteenth day of April, 1898.

(L.S.) A. MACKAY, Presiding Judge.
W. J. BUTLER, Judge.

After the order was issued, the Native Appellate Court, on the 24th day of April, 1898 amended the same so as to record its intended decision by embodying therein the following additional provision: "Provided, and it is hereby expressly declared, that the foregoing declaration is in the nature of an interlocutory decision, and it is not intended as a vesting order under section 5 of 'The Horowhenua Block Act, 1896.'"

EXHIBIT C.

MEMORANDUM *re* HOROWHENUA.

I HEREBY request Sir Walter Buller to pay all my costs in the case of the Public Trustee *versus* Sir W. Buller and Meiha Keepa—both counsels' fees and costs as between solicitor and client—and I hereby undertake to repay him the same, together with interest at the rate of 8 per cent. per annum as from the date of such payment.

He tono tenei naku ki a Ta Waata Pura kia utua e ia taku kaute ki nga roia whakahaere i te keihi i roto i te Kooti Hupirimi, i runga i te tamana a te Kai-tiaki mo te Katoa, tae noa ki nga roia whakahaere i waho, a, maku ana moni e ata whakahoki atu ki aia, me nga inatareti hoki i runga i te ritenga o te waru pauna mo te rau.

Dated at Wellington, this 10th day of August, 1897. MEIHA KEEPA RANGIHIWINUI.
Poneke, Akuhata 10, 1897.
Witness to signature—L. Davis, Native Agent, Wanganui.

EXHIBIT D.

STATEMENT by Sir WALTER BULLER (as required by the Public Petitions Committee) giving a Summary of his Claims against Major Kemp's Estate from the 15th May, 1896, to the 9th February, 1898.

		£	s.	d.
	1. Payments to Major Kemp as per receipts	500	0	0
	2. Payments made and agreed to be made to solicitors and others on behalf of Major Kemp, and by his authority	1,208	0	0
	3. Sir W. Buller's fees and costs (subject to taxation by the Registrar of the Supreme Court) for services chiefly but not exclusively connected with Horowhenua—			
1897. Feb. to Aug.	(1.) Fees as counsel in the Native Appellate Court (fee on general brief, £105, with £10 10s. per diem), engaged in five cases, relating to various subdivisions of the Horowhenua Block, extending over a period of five months	1,596	0	0
	(2.) Solicitor's costs and disbursements for a period of nearly two years, during which the litigation was unceasing	912	15	0
	Total	£4,216	15	0

EXHIBIT E.

The PUBLIC TRUSTEE to STAFFORD, TREADWELL, AND FIELD.

Re You *v.* Sir W. Buller and Major Kemp, Horowhenua.

1896.		£	s.	d.
Oct. 23.	Attending on receipt of long letter from you enclosing copy of "The Horowhenua Block Act, 1896," and copy of reports of Commissioners and evidence taken before them, and instructing us to commence proceedings against Sir Walter Buller and Major Kemp	0	6	8
	Perusing and considering report of Commissioners and evidence, very long and special; engaged five days	15	15	0
	Writing Messrs. Buller and Anderson as to whether they would accept service of proceedings	0	5	0
Oct. 31.	Letter from Messrs. Buller and Anderson that they are instructed to accept service on behalf of Sir Walter Buller, and perusing	0	3	4
Nov. 1.	Attending you, conferring hereon	0	6	8
Nov. 2.	Writing Messrs. Buller and Anderson in reply to theirs, and as to whether they will accept service on behalf of Major Kemp	0	5	0
Nov. 4.	Letter to you requesting to be provided with certain books and documents from the Native Land Court Office	0	5	0
	Attending on receipt of letter from Messrs. Buller and Anderson that they will accept service on behalf of Major Kemp, and perusing	0	3	4
Nov. 23.	Writing Mr. John Stevens, M.H.R., as to obtaining evidence for this case	0	5	2
Nov. 29.	Attending on receipt of letter in reply, and perusing	0	3	4
	Attending at Land Transfer Office, making long search herein; engaged one day and a half	3	3	0
	Paid search-fee	0	5	0
	Making copy notes of search, forty folios and sixteen plans	1	16	0
Dec. 10.	Attending Mr. Stevens in long and special conference hereon; engaged three hours	3	3	0
Dec. 11.	Writing Mr. Stevens as to obtaining evidence herein	0	5	2
	Attending on receipt of letter in reply, and perusing	0	3	4
	Drawing statement of claim, twenty folios	1	0	0
	Fair copy for your perusal	0	10	0
	Writing you therewith and thereon	0	5	0
Dec. 13.	Attending Native Land Court Office, searching minutes and orders in connection with the Horowhenua Block, and making copies of same; engaged one day and a half	3	3	0
	Paid search-fee	0	2	0
Dec. 14.	Making copy of minutes and orders for use of counsel, thirty folios ...	1	5	0
Dec. 17.	Drawing and engrossing long and special memorandum to you hereon ...	1	1	0
Dec. 18.	Attending on receipt of long letter in reply, and perusing	0	6	8
	Drawing warrant to sue	0	4	0
	Engrossing same	0	2	0
	Writing you therewith for signature	0	5	0
Dec. 18.	Attending at Land Transfer Office, making further search herein, and ordering plan of Horowhenua as settled by Court of 1886	0	6	8
	Paid search-fee	0	2	0
	Paid for plan	2	10	0
1897.				
Jan. 8.	Attending Mr. Sheridan and Mr. Stevens, conferring as to necessity of awaiting Native Land Court's decision of issues to be submitted to it before commencing Supreme Court action, and obtaining copy issues from Mr. Sheridan, and perusing and considering same	0	13	4
Jan. 12.	Attending Mr. Stevens in conference as to authority to be given him to collect evidence, and arranging to see him to-morrow	0	6	8
	Attending you, conferring as to authority to be given to Mr. Stevens ...	0	6	8
Jan. 13.	Attending Mr. Stevens hereon, and notifying him that his services would not be required to make inquiries herein until decision of Native Land Court had been arrived at	0	6	8
Jan. 14.	Attending you, conferring hereon	0	6	8
	Attending Mr. Stevens hereon, and arranging for him to see Mr. Stafford at 10 to-morrow	0	6	8
Jan. 15.	Attending Mr. Stevens, when it was finally arranged that he should proceed to obtain all evidence possible as to claim of persons claiming in the Appellate Court under the Equitable Owners Act, so as to establish trust and all evidence possible as to Sir Walter Buller's knowledge of existence of trust; engaged a long time	1	1	0
Feb. 5.	Attending on receipt of letter from you hereon as to date of sitting of Native Appellate Court at Levin, and perusing	0	3	4
	Attending Mr. Sheridan at Government Buildings hereon	0	6	8
	Writing Messrs. Buller and Anderson that we would dispense with interpretation of statement of claim.			
Feb. 10.	Very long and special memorandum to you hereon, going very fully into matter, and explaining position, thirty-five folios	2	2	0

1897.		£	s.	d.
Feb. 10.	Attending on receipt of letter from Messrs. Buller and Anderson in reply to ours agreeing to dispense with Native interpretation of statement of claim hereon, and perusing	0	3	4
Feb. 11.	Telegram to Mr. Barnicoat at Wanganui as to whether he is acting for any applicants before Appellate Court	0	5	0
	Paid 2s. 11d.	0	2	11
	Attending on receipt of collect telegram in reply that he was not acting, and referring us to Mr. Chapman, and perusing	0	3	4
	Paid 6d.	0	0	6
	Drawing and engrossing long and special letter to Mr. Stevens instructing him as to evidence to be obtained by him for case	0	10	6
	Attending on receipt of letter from you as to obtaining authority to appear for Natives at Appellate Court at Levin, and perusing	0	3	4
Feb. 16.	Attending on receipt of telegram from Mr. Stevens that he would meet Mr. Stafford at Levin on Friday, and perusing	0	3	4
Feb. 18.	Telegram to Mr. Stevens that Mr. Stafford would meet him on Monday ...	0	5	0
	Paid 6d.	0	0	6
	Attending you in conference when you promised to see Minister *re locus standi* in Appellate Court	0	6	8
	Attending on receipt of telegram from Mr. Stevens in reply to ours, and perusing.			
	Counsel's fee to Mr. Stafford on attendance at Levin before Appellate Court; engaged thirty-two days, at £10 10s. per day	336	0	0
	Fee to clerk attending at Levin taking notes of evidence; engaged forty-five days, at £1 1s. per day	47	5	0
	Paid travelling- and hotel-expenses for Mr. Stafford and clerk	37	0	0
Feb. 24.	Having received urgent telegram from Mr. Stafford to obtain certified copy of certificate of title, attending at Land Transfer Office bespeaking same	0	6	8
	Paid therefor	1	8	6
	Paid for collect telegram from Mr. Stafford	0	5	4
	Telegram to Mr. Stafford	0	5	0
	Paid 1s. 2d.	0	1	2
	Attending on receipt of telegram from Mr. Stafford to send certain books and papers to him at Levin.			
	Paid 2s. 10d.	0	2	10
Feb. 25.	Writing him therewith, and attending at Manawatu Station despatching same	0	6	8
	Paid train-fare	0	5	0
Mar. 1.	Attending you hereon, conferring	0	6	8
Mar. 3.	Attending you, conferring and advising as to position of matter	0	6	8
Mar. 8.	Attending you, conferring hereon, and advising as to position of matter ...	0	6	8
	Attending on receipt of letter from Mr. Stafford requesting that further books be sent to him at Levin.			
	Attending Manawatu Station, despatching same	0	6	8
	Paid train-fare	0	5	0
Mar. 15.	Attending on receipt of very long and special memorandum from Mr. Stafford giving details of what had taken place before Appellate Court up to date; going fully into present position of matter, and perusing same.			
	Making copy thereof for your perusal and information, twenty folios ...	0	10	0
	Writing you therewith	0	5	0
	Making copy to send back to Mr. Stafford at Levin, twenty folios ...	0	10	0
	Writing him therewith.			
Mar. 18.	Attending on receipt of letter from Mr. Stafford instructing us to obtain either from Mr. Morison or Mr. Skerrett printed copy of case on appeal and forward to him at Levin.			
	Attending Mr. Skerrett, and found that he had no copy.			
Mar. 18.	Attending Mr. Morison when found he had no copy, but informed us that case printed in Wanganui by Mr. Barnicoat, who would probably be able to let us have them	0	6	8
	Writing Messrs. Borlase and Barnicoat accordingly, and requesting them to forward to Mr. Stafford at Levin	0	5	2
Mar. 19.	Writing Mr. Stafford as to what we had done.			
Mar. 21.	(Mr. Stafford returned from Levin.)			
Mar. 23.	Writing our clerk at Levin hereon	0	5	2
Mar. 24.	Attending on receipt of letter from clerk, reporting, and perusing ...	0	3	4
	Redrawing statement of claim to include information obtained before Appellate Court, fifty folios	2	10	0
	Making fair copy of same for your perusal, fifty folios	1	5	0
	Two letters to clerk at Levin hereon	0	5	4
Mar. 25.	Attending you, conferring hereon, and handing you draft statement of claim for perusal, and advising generally	0	6	8
	Drawing long letter to Mr. Stevens instructing him, and attending you therewith for your perusal	0	6	8

1897.		£	s.	d.
Mar. 25.	Attending on receipt of long letter from clerk at Levin reporting hereon and that Buller's evidence to be taken to-morrow, and perusing ...	0	3	4
	Urgent telegram to him to endeavour to obtain adjournment until afternoon, in order to enable Mr. Stafford to attend.			
Mar. 28.	Paid 2s. 8d.	0	2	8
	Further urgent telegram to him.			
	Paid 1s.	0	1	0
	Attending on receipt of telegram from clerk reporting that Buller's evidence postponed until next week	0	6	8
	Paid 6d.	0	0	6
Mar. 26.	Attending Mr. Sheridan, conferring hereon	0	6	8
	Attending you, conferring as to your suggestion on clauses in draft statement of claim submitted for your approval, and discussing same ...	1	1	0
	Attending on receipt of file with note that proposed letter to Mr. Stevens would suit.			
	Engrossing letter to Mr. Stevens and despatching same	0	5	2
Mar. 28.	Attending you in conference hereon	0	6	8
	(Mr. Stafford left for Levin.)			
April 1.	Attending on receipt of telegram from Mr. Stafford hereon, and perusing	0	1	0
	Paid 1s.	0	1	0
	Attending you thereon	0	6	8
April 2.	(Mr. Stafford returned from Levin.)			
	Attending Mr. Baldwin in long conference as to statement of claim, and when statement of claim very fully considered; engaged a very long time	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Attending with Mr. Baldwin at Supreme Court, searching plan and records in action Kemp *v.* Hunia	0	6	8
	Paid search-fee	0	2	0
	Attending at Supreme Court, serving duplicate subpœna to produce at Appellate Court tracing in Supreme Court on Registrar of Supreme Court	0	4	0
April 3.	Attending Mr. Baldwin in long conference and subsequent attendance with him as to statement of claim	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
April 4.	Attending Mr. Baldwin in long conference hereon	2	2	0
	Paid his fee	1	8	0
April 5.	Telegram from Mr. Baldwin at Levin, and perusing	0	3	4
	Telegram in reply	0	5	0
	Paid 9d.	0	0	9
	Drawing very long and special memorandum to you advising very fully as to position of matter, twenty-four folios	1	4	0
	Making fair copy of proposed statement of claim as altered by Mr. Stafford and Mr. Baldwin for your perusal, fifty folios	1	10	0
	Attending you therewith and thereon	0	6	8
	Attending on receipt of telegram from clerk at Levin that Mr. Stafford's attendance urgently required at Levin, and perusing			
	Paid therefor	0	1	0
	Attending on receipt of long letter from you in reply to our memorandum, and perusing	0	6	8
	(Mr. Stafford left for Levin.)			
April 8.	(Mr. Stafford returned from Levin.)			
	Attending on receipt of further memorandum from you, and perusing same	0	6	8
	Telegram to Mr. Baldwin at Levin	0	5	0
	Paid 1s. 4d.	0	1	4
	Attending Mr. Baldwin in long conference, and retaining him as junior counsel	2	2	0
	Consultation with Mr. Baldwin on statement of claim, and settling form of same, and making additions thereto.			
	Fee to Mr. Stafford	2	2	0
	Fee to Mr. Baldwin	1	8	0
April 9.	Consultation with Mr. Baldwin as to joinder of Wirihana Hunia, and, after long and careful consideration, it was decided, in view of wording of section 10 of "The Horowhenua Block Act, 1896," that he should be joined.			
	Fee to Mr. Stafford	2	2	0
	Fee to Mr. Baldwin	1	8	0
	Amending statement of claim accordingly, engrossing statement of claim to file, seventy folios	1	15	0
	Copy to serve on Buller, seventy folios	1	15	0
	Copy to serve on Major Kemp, seventy folios	1	15	0
	Copy to keep, seventy folios	1	15	0
	Drawing writ	0	5	0
	Copy to file	0	2	6
	Copy to serve on Buller	0	2	6

1897.		£	s.	d.
April 9.	Copy to serve on Kemp	0	2	6
	Copy to keep	0	2	6
	Drawing warrant to sue on behalf of Wirihana Hunia	0	4	0
	Engrossing same	0	2	0
	Drawing warrant to sue on your behalf	0	4	0
	Engrossing same	0	2	0
	Attending you therewith for signature	0	6	8
April 10.	Attending Mr. Baldwin, conferring as to position generally, and as to sealing writ, and when provisions of section 10 carefully considered as to duty of Public Trustee in matter, and when decided matter must go on	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
	Attending Court, sealing and filing writ, and two duplicates and two warrants to sue	0	6	8
	Paid fees	1	12	0
April 11.	Attending Mr. Baldwin conferring as to service of writ, and when it was decided that for time being writ should not be served until decision of Appellate Court had been given.			
	Paid Mr. Stafford's fee	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
April 14.	Attending Mr. Baldwin and Public Trustee in long conference, and when it was finally decided that Sir Walter Buller and Major Kemp should not be served, as before serving them it was most desirable to obtain Appellate Court's decision.			
	Paid Mr. Stafford's fee	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
April 15.	Attending Mr. Percy Buller conferring as to whether or not we were going to institute proceedings before six months expired, and informing him that writ issued yesterday in compliance with statute, but that we could not tell him when service will be affected	0	6	8
April 23.	Attending Mr. Baldwin in long conference *re* special case to be sent to Supreme Court, going very carefully through case, amending and correcting same; engaged whole day.			
	Paid Mr. Stafford's fee	5	5	0
	Paid Mr. Baldwin's fee	3	10	0
May 3.	Attending on receipt of summons to strike Wirihana Hunia's name out of proceedings, and for delivery of statement of claim and perusing same	0	6	8
May 4.	Attending Mr. Baldwin conferring as to case, and when it was determined to write to Judge Mackay deprecating sending case to Supreme Court, and when letter was prepared and settled.			
	Paid Mr. Stafford's fee	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Drawing affidavit by Mr. Stafford in reply to summons, twelve folios ...	0	12	0
May 6.	Attending Mr. Baldwin, conferring as to affidavit and finally settling same	0	6	8
	Copy to file	0	6	0
	Copy to serve on Buller	0	6	0
	Copy to serve on Kemp	0	6	0
	Copy to keep	0	6	0
	Engrossing exhibits to attach to affidavit, sixteen folios	0	8	0
	Attending swearing affidavit	0	6	8
	Paid oath and three exhibits	0	3	6
	Attending filing affidavit	0	6	8
	Paid 3s.	0	3	0
	Attending Land Transfer Office searching titles as to various blocks, engaged a long time	0	13	4
	Paid search-fee	0	2	0
May 7.	Attending Mr. Baldwin in long conference *re* case and Judge Mackay's letter, and considering and amending case.			
	Paid Mr. Stafford's fee	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
May 9.	Consultation with Mr. Baldwin at some length as to summons to strike Wirihana Hunia's name out to be argued on following day.			
	Paid Mr. Stafford's fee	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
May 10.	Fee to counsel attending chambers on summons when Chief Justice ordered Wirihana Hunia's name to remain and gave fourteen days for delivery of statement of claim	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
	Attending filing statement of claim	0	6	8
May 13.	Attending Mr. Baldwin in conference *re* Judge Mackay's letter, and when reply prepared; engaged one hour.			
	Mr. Stafford's fee...	1	1	0
	Paid Mr. Baldwin's fee	1	1	0
	Attending on receipt of order for delivery of statement of claim, and perusing	0	6	8

1897.		£	s.	d.
May 14.	Attending Mr. Baldwin in conference *re* form of order served upon us and generally hereon at length.			
	Paid Mr. Stafford's fee	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Drawing and engrossing long memorandum to you hereon	1	1	0
May 20.	Attending Mr. Baldwin in long conference as to whether it was advisable to alter statement of claim, in view of what Chief Justice stated in chambers, and when we carefully considered statement of claim and drew suggested amendments, but after anxious and careful consideration decided not to amend at present	2	2	0
	Fee to Mr. Baldwin	1	8	0
May 21.	Attending Mr. Baldwin in conference as to agreeing to strike out Wirihana Hunia's name as plaintiff, and when it was finally decided to retain his name for the present; engaged long time	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
May 22.	Attending serving writ and statement of claim on Buller	0	4	0
	Attending serving writ and statement of claim on Kemp	0	4	0
	Preparing affidavit of service	0	5	0
	Copy to file	0	2	6
	Copy to keep	0	2	6
	Attending swearing same	0	6	8
	Paid oath	0	2	0
May 25.	Attending filing same	0	6	8
	Paid 3s....	0	3	0
	Attending Mr. Baldwin in conference as to setting down case for June sittings; long conference hereon considering matter	1	11	6
	Paid his fee	1	1	0
	Writing Registrar of Supreme Court that we objected to case being set down at June sittings, and setting out reasons therefor	0	5	0
May 26.	Attending Mr. Baldwin in very long conference as to interrogatories, perusing and considering evidence already adduced, and rough-casting interrogatories; engaged most of the day.			
	Fee to Mr. Stafford	5	5	0
	Fee to Mr. Baldwin	3	10	0
May 27.	Attending on receipt of order for leave to file defence, and perusing same	0	6	8
	Attending Mr. Baldwin in long conference hereon, and to alter and amend interrogatories...	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
	Writing Mr. Beddard	0	5	0
	Writing Messrs. Buller and Anderson	0	5	0
May 28.	Attending on receipt of statement of defence.			
	Attending Mr. Baldwin in long conference, perusing and considering statement of defence; engaged whole day.			
	Fee to Mr. Stafford	5	5	0
	Fee to Mr. Baldwin	3	10	0
May 29.	Attending Mr. Baldwin, conferring as to statement of defence, and as to getting struck out of June list	1	11	6
	Paid his fee	1	1	0
	Drawing summons to show why case should not be struck out of June list	0	5	0
	Copy to file	0	2	6
	Copy to serve on Buller	0	2	6
	Copy to serve on Kemp	0	2	6
	Copy to keep	0	2	6
	Attending Court issuing summons	0	6	8
	Paid 10s.	0	10	0
May 30	(Sunday). Attending Mr. Baldwin in long conference, engaged two hours, and when we finally settled form of interrogatories, and generally hereon	2	2	0
	Paid his fee	1	8	0
May 31.	Attending on receipt of letter from Mr. A. McDonald, and perusing ...	0	3	4
	Drawing questions of law (twenty-four folios)	1	4	0
	Consultation with Mr. Baldwin, going through and settling questions of law; engaged three hours.			
	Fee to Mr. Stafford	3	3	0
	Fee to Mr. Baldwin	2	2	0
	Drawing summons in support of questions of law	0	5	0
	Copy to file	0	2	6
	Copy to keep	0	2	6
	Copy to serve on Buller	0	2	6
	Copy to serve on Kemp	0	2	6
	Drawing joint affidavit by you and Mr. Stafford	0	5	0
	Copy to file	0	2	6
	Copy to serve on Buller	0	2	6

1897.		£	s.	d.
May 31.	Copy to serve on Kemp	0	2	6
	Copy to keep	0	2	6
	Attending you on swearing affidavit...	0	6	8
	Paid oath	0	2	0
	Attending Court, issuing summons, and filing affidavit...	0	6	8
	Paid 13s.	0	13	0
June 1.	Consultation with Mr. Baldwin as to question to be argued in chambers on following day	3	3	0
	Paid his fee	2	2	0
	Attending chambers on summons to strike case out of June list, when, after argument, Chief Justice decided that it was a question that ought to be settled between counsel, and suggested a compromise, which we decided to accept provided you were agreeable.			
	Fee to Mr. Stafford	3	3	0
	Fee to Mr. Baldwin	2	2	0
	Attending you conferring when decided we should accept compromise as to date of hearing	0	6	8
June 3.	Attending Mr. Bell conferring as to arranging date of trial	0	6	8
June 4.	Letter from Mr. Bell hereon, and perusing	0	3	4
	Writing him in reply	0	5	0
	Attending Mr. Baldwin in conference *re* postponement of trial.			
June 5.	Attending Mr. Baldwin in conference *re* letter received from Judge Mackay, considering position and generally, and when letter and telegram settled to Appellate Court	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Attending despatching letter and telegram.			
	Paid 1s. 9d.	0	1	9
June 7.	Attending Wirihana Hunia and Mr. A. McDonald in very long conference hereon, when Wirihana Hunia requested to be indemnified against costs in the action; engaged three hours	3	3	0
	Writing you explaining position, and asking for indemnity required by Hunia	0	5	0
	Attending on receipt of letter from Mr. Bell in reply to ours of the 4th, and perusing same	0	3	4
June 8.	Writing Mr. Beddard as to bringing on summons relating to questions of law	0	5	0
	Writing Messrs. Buller and Anderson to same effect	0	5	0
	Attending on receipt of letter from Judge Mackay, and perusing ...	0	3	4
June 9.	Attending Mr. Baldwin, conferring with him as to letter received from Judge Mackay, and settling reply...	0	10	6
	Mr. Baldwin's fee	0	10	6
June 10.	Attending on receipt of letter from you indemnifying Hunia against costs, and perusing	0	3	4
	Attending Mr. Baldwin conferring hereon	0	10	6
	Mr. Baldwin's fee	0	10	6
June 16.	Attending on receipt of copy of special case as finally stated by the Appellate Court from Judge Mackay, and perusing and considering same ...	1	1	0
	Writing Judge Mackay acknowledging	0	5	2
June 17.	Writing you in reply to yours of the 10th instant	0	5	0
June 19.	Telegram from Mr. Baldwin at Levin, and perusing	0	3	4
June 25.	Long telegram to Judge Mackay hereon	0	5	0
	Paid 9s. 6d.	0	9	6
	Attending on receipt of telegram in reply, and perusing	0	3	4
June 26.	Writing Mr. H. D. Bell with notice of our intention to apply to Judge in chambers to have special case set down for hearing at next Banco sitting	0	5	0
	Attending on receipt of long telegram from Mr. Sheridan instructing us to send notes of Judge Wilson's evidence and minutes of Court of 1886 to Judge Mackay, at Levin, and perusing.			
	Telegram to Judge Mackay	0	5	0
	Paid 1s. 8d.	0	1	8
	Attending on receipt of letter from you authorising us to indemnify Wirihana Hunia against costs, and perusing	0	3	4
	Making copy Judge Wilson's notes and minutes of Court of 1886, 245 folios	6	2	6
June 28.	Attending Mr. Baldwin in long conference as to position with regard to special case, and as to prudent action in consequence, and as to questions of law	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Writing Judge Mackay with copy of Judge Wilson's notes and minutes ...	0	6	0
June 30.	Attending on receipt of long letter from Judge Mackay *re* special case, and perusing	0	6	8
	Attending Mr. Baldwin in conference hereon	0	6	8
	Fee to Mr. Baldwin	0	6	8

1897.		£	s.	d.
July 1.	Attending on receipt of further letter from Judge Mackay acknowledging receipt of papers and enclosing copy of Schedule A and copy *Gazette* notice appointing sitting of Court in 1886, and perusing	0	6	8
	Attending Mr. Baldwin conferring hereon, going through matter finally and considering same, and generally; engaged a long time	1	11	6
	Fee to Mr. Baldwin	1	1	0
July 5.	Writing Mr. Bell, giving him notice of intention to bring on summons for questions of law on Friday next, and also to ask Judge to fix date for hearing of special case	0	5	0
	Similar letter to Mr. Buller	0	5	0
	Similar letter to Mr. Beddard	0	5	0
July 7.	Attending on receipt of letter from Mr. Bell in reply, and perusing ...	0	3	4
	Attending Mr. Baldwin in conference hereon; engaged one hour ...	1	1	0
	Fee to Mr. Baldwin	0	14	0
July 8.	Writing Mr. Bell in reply	0	5	0
July 9.	Writing Judge Mackay hereon, and enclosing copy of letter from Mr. Bell and of our reply	0	5	4
	Making copies to enclose, six folios	0	3	0
July 12.	Attending Mr. Sheridan in long conference at his office	0	13	4
	Paid cab	0	2	0
July 15.	Long consultation with Mr. Baldwin as to questions of law and summons to be argued following day; engaged three hours	3	3	0
	Paid his fee	2	2	0
July 16.	Fee to counsel attending chambers *re* questions of law when Chief Justice decided that questions of law were to be decided at trial, and that special case should stand over until five Judges can hear it in October ...	3	3	0
	Paid Mr. Baldwin's fee on like attendance	2	2	0
	Long telegram to Judge Mackay reporting	0	5	0
	Paid 7s. 9d.	0	7	9
July 17.	Attending Mr. Baldwin in long conference in the evening, engaged from 8 to 10	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Drawing and engrossing long memorandum to you reporting hereon, and enclosing copy notes taken in chambers, twenty folios	1	1	0
	Making copy notes to enclose, thirty folios	0	15	0
July 18 (Sunday).	Attending with Mr. Baldwin in long conference; engaged three hours	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
July 19.	Attending Mr. Bryant, arranging for preparation of certain plans for purposes of case	0	6	8
	Attending on receipt of letter from you, and perusing	0	3	4
	Attending Mr. Baldwin in conference hereon; engaged one hour ..	1	1	0
	Paid his fee	0	14	0
	Urgent telegram to Wirihana Hunia to come down	0	5	0
	Paid 1s.	0	1	0
July 20.	Attending Wirihana Hunia and Mr. Freeth, interpreter, in very long and special conference; engaged three hours and a half	3	3	0
	Paid Wirihana Hunia's expenses	1	6	5
	Paid interpreter	1	1	0
	Attending Mr. Baldwin, discussing and deciding to endeavour to obtain postponement until after argument of Appellate Court's case	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Drawing summons accordingly	0	5	0
	Copy to file	0	2	6
	Copy to serve on Buller	0	2	6
	Copy to serve on Kemp	0	2	6
	Copy to keep	0	2	6
	Attending issuing summons	0	6	8
	Paid 10s.	0	10	0
	Attending you conferring hereon	0	6	8
July 21.	Attending on receipt of letter from you hereon requesting advice on certain points and enclosing opinion of Mr. Skerrett, and perusing and considering letter and opinion	1	1	0
	Attending Mr. Baldwin, conferring at length hereon	1	11	6
	Paid his fee	1	1	0
	Attending serving summons on Mr. Beddard	0	4	0
	Attending serving summons on Messrs. Buller and Anderson	0	4	0
	Attending on receipt of letter from Mr. Beddard, and perusing	0	3	4
July 22.	Writing him in reply	0	5	0
	Consultation with Mr. Baldwin as to questions of law and as to summons to postpone trial	1	11	6
	Paid his fee	1	1	0

1897.		£	s.	d.
July 23.	Fee to counsel attending chambers on argument of summons as to questions of law, and also on summons to postpone trial, when, after argument, both were dismissed	3	3	0
	Paid fee to junior counsel on like attendance	2	2	0
	In conference with Mr. Baldwin, drawing, settling long letter to you in reply to yours of 20th, advising fully on points set out in your letter, and subsequently sending same	1	1	0
	Paid Mr. Baldwin's fee	0	14	0
July 24.	Letter from Messrs. Buller and Anderson, requesting to be furnished with copy of Judge Wilson's evidence, and pointing out that the copy of Judge Wilson's evidence sent to us by the Government was really Sir Walter Buller's.			
	Making copy accordingly, 245 folios ... ... Writing them therewith.	6	2	6
July 25 (Sunday).	Long and special conference with Mr. Sheridan hereon; engaged two hours	3	3	0
	Telegram to Mr. A. McDonald as to obtaining attendance of witnesses at trial on 9th August	0	5	0
	Paid 4s. 2d.	0	4	2
	Telegram to Mr. Stevens as to his and Natives' attendance at trial ...	0	5	0
	Paid 1s. 7d.	0	1	7
	Writing Mr. Sheridan, requesting to be provided with printed evidence at once	0	5	0
July 26.	Long consultation with Mr. Baldwin as to witnesses, interpreters, &c. ...	1	11	6
	Paid his fee	1	1	0
	Attending on receipt of telegram from Mr. McDonald, and perusing ...	0	3	4
	Paid 1s. 6d.	0	1	6
	Long memorandum to you hereon, and as to obtaining interpreters and shorthand-writer, &c. (twenty-five folios)	1	5	0
	Telegram to Mr. Nicholson (witness)	0	5	0
	Paid 10d.	0	0	10
	Attending on receipt of plans from Mr. Bryant	0	6	8
	Paid therefor	4	7	0
July 27.	Attending Mr. Baldwin in long conference as to discontinuance, and considering and discussing matter at very great length	3	3	0
	Paid his fee	2	2	0
	Drawing discontinuance of action	0	5	0
	Copy to file	0	2	6
	Copy to serve on Buller	0	2	6
	Copy to serve on Kemp	0	2	6
	Copy to keep	0	2	6
	Attending with Mr. Baldwin, filing same, and when office demurred to accepting same but finally agreed to accept	0	6	8
	Paid fee...	0	10	0
	Attending serving Buller and Anderson	0	4	0
	Attending serving Mr. Beddard	0	4	0
	Attending on receipt of notice of motion to strike out discontinuance, and perusing and considering same	0	6	8
	Attending Mr. Baldwin, conferring thereon	1	1	0
	Paid his fee	0	14	0
	Drawing and engrossing long memorandum to you on Mr. Skerrett's opinion advising fully thereon (twenty folios)	2	2	0
	Writing Mr. A. P. Buller as to subpœnaing Sir Walter Buller	0	5	0
	Writing Mr. Beddard as to subpœnaing Major Kemp	0	5	0
	Attending on receipt of reply from Mr. Buller, and perusing	0	3	4
	Attending on receipt of letter from you in reply to our last memorandum, and perusing same	0	6	8
July 28.	Attending with Mr. Baldwin whole day searching *re* Waiwori and Horowhenua caveats	3	3	0
	Paid his fee	3	3	0
	Paid search-fees	0	7	0
	Telegram to agent, Wanganui, to see Nicholson and arrange for his attendance at Wellington on trial	0	5	0
	Paid 2s. 2d.	0	2	2
July 29.	Telegram from agent, Wanganui, reporting and perusing	0	3	4
	Telegram from Mr. Stevens, and perusing	0	3	4
	Attending Mr. Baldwin in long conference, discussing notice of motion to strike out discontinuance	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Attending Mr. Le Grove, shorthand-writer, arranging for him to take notes of argument on motion for discontinuance	0	6	8
July 30.	Fee to counsel in chambers, when, after short discussion, Chief Justice agreed to let matter stand over until following day	3	3	0

1897.		£	s.	d.
July 30.	Fee to junior counsel	2	2	0
	Attending Mr. Cooper, Mr. Baldwin, and you in long conference; engaged one hour	1	1	0
	Paid Mr. Baldwin's fee	1	1	0
	Attending Mr. Cooper and Mr. Baldwin in long conference in the evening; engaged two hours	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Telegram to Mr. Stevens	0	5	0
	Paid 6d.	0	0	6
July 31.	Fee to counsel attending Court on motion to strike out discontinuance, when, after argument, discontinuance ordered to be struck out ...	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Urgent telegram to Mr. Snelson, valuer, Palmerston North, to come down for instructions *re* valuation of property	0	5	0
	Paid 2s. 6d.	0	2	6
	Attending on receipt of reply, and perusing.			
	Attending on receipt of copy notes taken by Mr. Le Grove.			
	Paid his charges	8	8	0
	Attending on receipt of order to strike out discontinuance, and perusing same	0	6	8
	Attending Mr. Snelson, instructing him as to valuation required; engaged long time	1	1	0
	Attending Mr. Cooper and Mr. Baldwin in conference, and going through Mr. Cooper's opinion, when Mr. Stafford and Mr. Baldwin concurred in same	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
	Paid for certified copies of titles	5	11	6
Aug. 2.	Drawing subpœna for Sir Walter Buller	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending serving same	0	4	0
	Drawing subpœna, D.T., for Major Kemp	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending serving same	0	4	0
	Drawing subpœna for D. G. A. Cooper	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending serving	0	4	0
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for E. Buckle	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending serving same	0	4	0
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for A. W. J. Marchant	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for Judge Ward	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to keep	0	2	6
	Copy to serve	0	2	6
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for Mr. Scott	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for Mr. McDonald	0	5	0
	Attending issuing same	0	6	8

1897.		£	s.	d.
Aug. 2.	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for Nicholson	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending interpreter instructing him to interpret same.			
	Attending on receipt of interpretation	0	6	8
	Making copy to serve in Maori	0	2	6
	Drawing and engrossing affidavit of service to attach	0	5	0
	Drawing subpœna for Nireha Tamaki	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending interpreter instructing him to interpret	0	6	8
	Attending on receipt of interpretation.			
	Making copy to serve in Maori	0	2	6
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for John Jury	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve	0	2	6
	Copy to keep	0	2	6
	Attending interpreter instructing him to interpret	0	6	8
	Attending on receipt of interpretation.			
	Making copy to serve in Maori	0	2	6
	Drawing and engrossing affidavit of service	0	5	0
	Drawing subpœna for Wirihana Hunia, Himiona Kohai, and Rahi Peeti...	0	5	0
	Attending issuing same	0	6	8
	Paid 5s.	0	5	0
	Copy to serve on Wirihana Hunia	0	2	6
	Copy to serve on Himiona Kohai	0	2	6
	Copy to serve on Rahi Peeti	0	2	6
	Copy to keep	0	2	6
	Attending interpreter instructing him to translate same.			
	Attending on receipt of translation	0	6	8
	Making three copies to serve in Maori	0	7	6
	Paid interpreter's charges for interpreting six subpœnas	6	6	0
	Writing agent, Wanganui, with subpœna for service on Nicholson, and instructing him thereon.			
	Telegram to him	0	5	0
	Paid 2s. 3d.	0	2	3
	Telegram to Mr. Stevens	0	5	0
	Paid 6d.	0	0	6
	Telegram to Mr. A. McDonald	0	5	0
	Paid 2s. 9d.	0	2	9
	Telegram to Judge Ward	0	5	0
	Paid 8d.	0	0	8
	Telegram from Wanganui agent reporting service on Nicholson, and perusing	0	3	4
	Telegrams from Mr. Stevens and Mr. McDonald in reply to ours, and perusing	0	3	4
	Writing agent, Palmerston North, with subpœna for service on Mr. Scott	0	5	4
	Letter from you hereon, and perusing	0	3	4
	Attending Mr. Cooper and Mr. Baldwin in long consultation as to calling evidence	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
	Telegram to Mr. McDonald	0	5	0
	Paid 4s. 4d.	0	4	4
	Telegram to Mr. Scott	0	5	0
	Paid 1s. 4d.	0	1	4
	Telegram to Mr. Snelson not to proceed further with valuation ...	0	5	0
	Paid 3s. 2d.	0	3	2
	Telegram to agent, Wanganui, instructing him to stop Nicholson coming down	0	5	0
	Paid 3s.	0	3	0
	Letter from Mr. McDonald hereon, and perusing	0	3	4
	Attending on receipt of letter from you hereon, and perusing	0	3	4
Aug. 4.	Attending on receipt of further letter from you, and perusing	0	3	4

1897.		£	s.	d.
Aug. 4.	Drawing summons to have Wirihana Hunia's and Major Kemp's names struck out of proceedings	0	5	0
	Copy to file	0	2	6
	Copy to serve on Buller	0	2	6
	Copy to serve on Kemp	0	2	6
	Copy to keep	0	2	6
	Attending issuing summons	0	6	8
	Paid 10s.	0	10	0
	Attending serving Messrs. Buller and Anderson	0	4	0
	Attending serving Mr. Beddard	0	4	0
	Attending chambers in support of summons when Wirihana Hunia struck out	2	2	0
	Paid Mr. Baldwin's fee	1	8	0
	Subsequently attending Mr. Cooper and Mr. Baldwin in consultation; engaged one hour	1	1	0
	Paid Mr. Baldwin's fee	0	14	0
	Attending on receipt of letter from agent, Palmerston North, reporting service of subpœna on Mr. Scott, and perusing	0	3	4
	Paid his charges	2	18	5
	Letter from Wanganui agent, reporting and perusing	0	3	4
	Paid his charges	4	6	10
	Drawing amended statement of claim, thirty-two folios	1	12	0
	Fair copy for perusal of Mr. Cooper	0	16	0
	Fair copy for perusal of Mr. Baldwin	0	16	0
	Attending Mr. Cooper and Mr. Baldwin going through and finally settling amended statement of claim	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Engrossing copy to file, thirty-two folios	0	16	0
	Copy to serve on Messrs. Buller and Anderson	0	16	0
	Copy to serve on Mr. Beddard	0	16	0
	Copy to keep	0	16	0
	Attending filing same	0	6	8
	Paid 3s.	0	3	0
	Attending serving copy on Messrs. Buller and Anderson	0	4	0
	Attending serving copy on Mr. Beddard	0	4	0
	Attending on receipt of summons to strike out amended statement of claim, and perusing	0	6	8
	Attending Mr. Cooper and Mr. Baldwin in conference as to summons to strike out amended statement of claim	1	11	6
	Paid Mr. Baldwin's fee	1	1	0
Aug. 6.	Attending chambers on argument of summons to strike out amended statement of claim when leave refused	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Telegram to Wirihana Hunia to come down	0	5	0
	Paid 6d.	0	0	6
	Fee to Mr. Cooper, with brief	150	0	0
	Fee to Mr. Stafford, with brief	73	10	0
	Fee to Mr. Baldwin, with brief	36	15	0
Aug. 7.	Attending Mr. Cooper and Mr. Baldwin in very long and special conference reviewing evidence, when finally decided not to call evidence but to rely on questions of law	5	5	0
	Paid Mr. Baldwin's fee	3	10	0
	Writing Messrs. Buller and Anderson to that effect	0	5	0
	Attending on receipt of letter from Messrs. Buller and Anderson strongly objecting to course we proposed, and perusing	0	3	4
Aug. 8	(Sunday). Attending Mr. Cooper and Mr. Baldwin at Mr. Cooper's room, Club Hotel, in long conference; engaged three hours	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
	Attending on receipt of long letter from Mr. Snelson reporting and enclosing memorandum of his charges and also of Mr. Bennett's charges for valuations made, and perusing	0	3	4
	Paid Mr. Snelson's charges	3	10	11
	Paid Mr. Bennett's charges	4	8	4
Aug. 9.	Attending Mr. Cooper and Mr. Baldwin in very long consultation	3	3	0
	Paid Mr. Baldwin's fee	2	2	0
Aug. 10.	Attending Mr. Cooper and Mr. Baldwin, conferring as to case, and going through Mr. Cooper's opinion	1	11	0
	Paid Mr. Baldwin's fee	1	1	0
	Typing opinion of Mr. Cooper (sixteen folios) and despatching same to you	0	8	0
	Attending at Court when judgment confessed as against Sir Walter Buller, and case dismissed as against Major Kemp.			
	Fee to Mr. Stafford	3	3	0
	Fee to Mr. Baldwin	2	2	0

1897.		£	s.	d.
Aug. 12.	Attending Mr. Cooper conferring	0	6	8
	Attending Mr. Sheridan and Mr. Cooper conferring	0	6	8
	Attending you conferring	0	6	8
	Attending Messrs. Buller and Anderson's office with reference to decree ...	0	6	8
	Attending you, Mr. Cooper, and Mr. Baldwin at Club Hotel in evening discussing proposed decree drawn by Mr. Bell.			
	Clerk's attendance at Club Hotel taking down letters at Mr. Cooper's dictation to Messrs. Buller and Anderson and Beddard, and subsequently typing same and attending at Club Hotel therewith; engaged long time	3	3	0
	Fee to Mr. Baldwin	2	2	0
Aug. 13.	Attending despatching letters.			
	Attending on receipt of letter from Messrs. Buller and Anderson in reply, and perusing	0	3	4
	Writing them in reply	0	5	0
Aug. 15.	Long telegram to Mr. Cooper as to terms of decree	0	5	0
	Paid £1 8s. 3d.	1	8	3
Aug. 16.	Attending on receipt of letter from Messrs. Buller and Anderson as to costs to be inserted in decree, and perusing	0	3	4
	Attending Mr. Baldwin hereon in conference; engaged some time ...	1	11	6
	Paid his fee	1	1	0
	Attending on receipt of collect telegram from Mr. Cooper in reply to ours, and perusing	0	3	4
	Paid 12s.	0	12	0
	Attending in consultation with Mr. Baldwin as to terms of decree ...	1	11	6
	Paid his fee	1	1	0
	Urgent telegram to Mr. Cooper hereon	0	5	0
	Paid 10s. 2d.	0	10	2
	Attending on receipt of collect telegram in reply, and perusing	0	3	4
	Paid 10s.	0	10	0
Aug. 17.	Attending on receipt of further letter from Mr. Buller as to costs, and perusing	0	3	4
Aug. 18.	Drawing and engrossing long memorandum to you hereon, twenty folios...	1	1	0
Aug. 19.	Mr. Baldwin's attendance on Mr. Bell, discussing basis agreed upon by him and Mr. Cooper on which costs were to be assessed	0	13	4
	Letter from Mr. Baldwin thereon, and perusing	0	3	4
	Writing you hereon and embodying copy of letter from Mr. Baldwin ...	0	5	0
Aug. 20.	Letter from Mr. Cooper on question of costs, and perusing same ...	0	3	4
	Attending you and Mr. Baldwin, conferring hereon	1	1	0
	Paid Mr. Baldwin's fee	0	14	0
	Writing you hereon	0	5	0
	Writing Messrs. Buller and Anderson hereon...	0	5	0
Aug. 23.	Letter from Messrs. Buller and Anderson in answer to ours of 20th, and perusing	0	3	4
Aug. 24.	Letter from Messrs. Buller and Anderson hereon as to costs, and perusing	0	3	4
	Drawing and engrossing memorandum to you on question of costs to defendants and setting out costs as settled by Mr. Cooper and Mr. Bell, fourteen folios	1	1	0
	Attending you and Mr. Baldwin therewith and conferring thereon, when you instructed us to consent to defendants inserting in decree costs as set out in our memo.	1	1	0
	Paid Mr. Baldwin's fee	0	14	0
	Letter from you verifying instructions, and perusing.			
	Writing Messrs. Buller and Anderson consenting to costs as set out in letter	0	5	0
Aug. 25.	Attending on receipt of letter from Messrs. Buller and Anderson enclosing fair copy decree for our perusal.			
	In conference with Mr. Baldwin, perusing and considering and altering draft decree	1	11	6
	Paid his fee	1	1	0
	Fair copy same as altered.			
Aug. 26.	Writing Messrs. Buller and Anderson as to question of type-writing expenses	0	5	0
	Attending on receipt of letter from Messrs. Buller and Anderson in reply to ours *re* type-writing expenses, and as to Judge Wilson's expenses, and perusing	0	3	
	Writing Messrs. Buller and Anderson, returning draft decree approved as altered	0	5	0
	Subsequently attending on receipt of decree as sealed, and perusing same	0	6	8
Aug. 27.	Attending on receipt of letter from Mr. Stevens hereon, and perusing same	0	3	4
	Attending Mr. Sheridan hereon	0	6	8
Aug. 31.	Writing Mr. Stevens in reply to his...	0	5	2
Sept. 1.	Telegram to Mr. Cooper	0	5	0
	Paid 6d.	0	0	6

		£	s.	d.
1897.				
Sept. 1.	Attending on receipt of telegram in reply, and perusing	0	3	4
	Writing you hereon	0	5	0
Sept. 4.	Letter from Messrs. Buller and Anderson requesting payment of amount of costs set out in decree, and perusing.			
	Drawing and engrossing long memorandum to you fully reporting on case, sixty folios	3	0	0
	Making copies of correspondence to attach thereto, 130 folios	3	5	0
	Attending Mr. Baldwin hereon, conferring; engaged long time	1	1	0
	Paid his fee	0	14	0
Sept. 8.	Attending on receipt of long letter from Mr. Cooper as to case, and perusing same	0	6	8
	Letter from Messrs. Buller and Anderson insisting on payment of costs, and perusing	0	3	4
	Writing you with copy of letter from Mr. Cooper	0	5	0
	Making copy to enclose, nine folios	0	4	6
Sept. 9.	Attending you conferring hereon as to to questions of costs to defendants, and receiving instructions to write Messrs. Buller and Anderson that you had no funds out of which you could legally pay costs	0	6	8
	Writing them accordingly	0	5	0
Sept. 13.	Attending on receipt of letter from Messrs. Buller and Anderson threatening to put an execution into the Public Trust Office, and perusing ...	0	3	4
	Attending Mr. Baldwin hereon in conference as to position generally; engaged long time	1	11	6
	Paid his fee	1	1	0
	Writing you with copy same and thereon	0	5	0
	Making copy to enclose, five folios	0	5	0
Sept. 14.	Attending on receipt of letter from you in reply, instructing us to reply to Messrs. Buller and Anderson, and perusing	0	3	4
	Writing them accordingly	0	5	0
		£1,190	12	3

EXHIBIT F.

STATEMENT in regard to Messrs. STAFFORD, TREADWELL, and Co.'s BILL of COSTS in Public Trustee *v.* Buller and Kemp.

	£	s.	d.	£	s.	d.
Bill as taxed				1,055	12	9
Disbursements:—						
Mr. Stafford, counsel fee at Levin	336	0	0			
Mr. Stafford's clerk	7	16	0			
Travelling- and hotel-expenses	37	0	0			
Mr. Cooper, fee	150	0	0			
Mr. Stafford, fee	73	10	0			
Mr. Baldwin, fee	36	15	0			
Other disbursements	150	5	7			
				791	6	7
Profit costs				£264	6	2

EXHIBIT G.

STATEMENT in Detail by Sir WALTER BULLER in terms of the Resolution of the 31st August, 1898 (as from the 15th May, 1896, to the 9th February, 1898).

		£	s.	d.	£	s.	d.
1.	Payments to Major Kemp:—						
	June 1, 1896, cash	100	0	0			
	June 2, 1896 "	20	0	0			
	Feb. 4, 1897 "	150	0	0			
	Aug. 9, 1897 "	130	0	0			
	Dec. 3, 1897 "	100	0	0			
					500	0	0
1897. 2.	Payments to solicitors and others:—						
Mar. 5.	Payment to Judge Wilson on account of expenses as witness in Native Appellate Court	22	5	0			
April 29.	Native Appellate Court fees	6	18	0			
May 30.	"	23	2	0			
	"	1	17	6			

		£ s. d.	£ s. d.
1897. Feb. to June.	Payments as under :—		
	Mr. Beddard, junior counsel, on account of out-of-pocket-expenses	20 0 0	
	Subpœnas, conduct-money, and refreshments to Native witnesses	12 13 0	
	Typewriting, telegrams, and postages	7 18 6	
	Manuscript copy of evidence at former Courts ...	3 3 0	
	Rates on Tuwhakatupua land belonging to Major Kemp	6 10 0	
	Payments through Messrs. Buller and Anderson, as under :—		
Aug. 9.	Supreme Court fees	5 1 3	
Aug. 12.	Judge Wilson's expenses as witness in Supreme Court	22 0 11	
Aug. 24.	Messrs. Bell, Gully, and Bell	94 0 6	
Dec. 2.	Messrs. Bell, Gully, and Bell	85 19 4	
1898.	Payments through Messrs. Buller and Anderson, as under :—		
April 25.	Sir Robert Stout's fee as counsel	157 10 0	
Feb. 8.	Mr. Beddard's costs	119 2 6	
			588 1 6

(NOTE.—The above is exclusive of unpaid accounts for the same period, for which undertakings to pay have been given.)

3. Sir Walter Buller's costs and disbursements :—

(1.) Fees as counsel in the Native Appellate Court at Levin :—

	Fee on general brief as agreed	105 0 0	
	Fee of £10 10s. per diem, as agreed, for appearing in five cases, viz. : (*a*) Horowhenua Subdivision XIV. ; (*b*) Horowhenua Subdivision XI., as to existence of trust ; (*c*) Horowhenua Subdivision XI., as to ascertainment of beneficiaries ; (*d*) Horowhenua Subdivision VI. ; (*e*) Horowhenua Subdivision XII. :—		
1897. Feb. 23 to June 5 inclusive.	One hundred and three days	1,081 10 0	
June 24 to July 31 inclusive.	Thirty-eight days	399 0 0	
Aug. 2.	One day	10 10 0	
			1,596 0 0
	(2.) Solicitors' costs and disbursements, as shown in bills of costs as rendered		912 15 0
			£3,596 16 6

EXHIBIT H.

The EXTRACTS from Sir WALTER BULLER'S BILL of COSTS against Major KEMP, referred to in Mr. H. D. Bell's Letter of 14th October, 1898.

1896.	*Solicitor's Costs.*	£ s. d.
May 29 to June 5 inclusive.	Special visit to Wanganui and Woodville, as instructed by you—	
	Eight days absent, at £4 4s. per diem	33 12 0
	Eight days' expenses, at £1 1s. per diem	8 8 0
Oct. 24 to 26 inclusive.	Special visit to Horowhenua for purposes of keeping appointment with Muaupoko tribe, and (*inter alia*) getting lists of residential owners settled, and applications to the Court signed by representative chiefs of the various hapus, as arranged with you—	
	Three days absent, at £4 4s. per diem	12 12 0
	Three days' expenses, at £1 1s. per diem	3 3 0
Nov. 6 to 10.	Special visit to Levin and Wanganui, as instructed by you—	
	Five days absent, at £4 4s. per diem	21 0 0
	Five days' expenses, at £1 1s. per diem	5 5 0
Nov. 17.	Visit to Otaki, as directed by you, for purpose of making preliminary arrangements *re* Horowhenua hearing in Native Appellate Court ...	4 4 0
	Expenses for one day	1 1 0
Dec. 7.	Paid your land-tax, as authorised	4 16 11

1896.		£	s.	d
Dec. 22.	Attending at Native Appellate Court, Wellington, on the hearing of the claim by the Hunia family to the purchase-money of the State farm, now in hands of the Public Trustee (£4,000), and watching the case on your behalf and in the interests of the tribe, who contend that the allotment of the State farm exhausts Hunia's share in the estate—			
	Two days, at £4 4s. per diem	8	8	0
Dec. 24 to Jan. 1, 1897.	Special trip to Manawatu District and to Hawke's Bay for the purpose of collecting information required in support of your case, both in Supreme Court and Native Appellate Court, including two visits to Horowhenua for the purpose of briefing Maori witnesses—			
	Eight days absent, at £4 4s. per diem	37	16	0
1897.	Nine days' expenses, at £1 1s. per diem	9	9	0
Jan. 12 to Feb. 14 inclusive.	Special visit to Wanganui and Auckland, as authorised, for purpose of briefing evidence required by counsel, and generally to give effect to your instructions—			
	Twenty-five days absent, at £4 4s. per diem	105	0	0
	Twenty-five days' expenses, at £1 1s. per diem	26	5	0
Feb. 16.	Visit to Levin, as arranged with you, for the purpose of meeting Muaupoko claimants on your side—			
	Engaged the whole day selecting the witnesses, &c.	4	4	0
	Expenses for one day	1	1	0
May 23.	Attending on Mr. H. D. Bell, and long conference with him at his house, and appointment made for to-morrow	0	13	4
May 24.	Conference with Mr. Bell and Mr. Beddard, and settled form of pleadings; long and special	1	11	6
June 8.	Long conference with Mr. Bell, by appointment, at his house	1	1	0
Nov. 2.	Attending Mr. Bell, by appointment, at his house in the evening, and engaged till midnight considering points raised by Judge Mackay's special case for the Supreme Court	2	2	0
Nov. 3 to 5.	Engaged for three days in the Court of Appeal attending and instructing Mr. Bell, as counsel, at £4 4s. per diem	12	12	0
Dec. 10 to 13 inclusive.	Special visit to Horowhenua, as instructed by you, for purpose of collecting evidence before applying to Supreme Court for injunction—			
	Four days absent, at £4 4s. per diem	16	16	0
	Four days' expenses, at £1 1s. per diem.	4	4	0
Dec. 25.	Special visit to Horowhenua, as instructed by you—			
	Two days absent, at £4 4s. per diem	8	8	0
	Two days' expenses, at £1 1s. per diem	2	2	0
Dec. 31.	Amount forwarded to Judge Wilson, by your direction, on account of his expenses as a witness attending from Auckland	10	0	0
	Amount paid, by your instructions, in settlement of an old claim for rates due by you, legal proceedings having been threatened	4	13	9
		£350	8	6

14th October, 1898. W. L. BULLER.

CORRESPONDENCE UPON THE CASE AS BEFORE THE COMMITTEE.

SIR,— Wellington, 13th September, 1898.

I have the honour to forward herewith the further statement asked for by your Committee on the 31st ultimo.

It is strictly in compliance with the terms of the resolution, except as to the one item of solicitor's costs. I have given full particulars of the fees charged by me as counsel in the Native Appellate Court, and also the total amount of my costs and disbursements as solicitor; but, in the face of the inclosed letter from Mr. Bell, it is obviously impossible for me to place the details of these costs before the Committee.

I have, &c.,
W. L. BULLER.

The Chairman, Public Petitions Committee A to L,
House of Representatives.

DEAR SIR,— Panama Street, Wellington, 12th September, 1898.

You must remember that you, as a solicitor, are prohibited by the rule of law as to professional confidence from producing any bill of costs containing statements of the nature of work done for your client. The privilege is the client's, not the solicitor's, and any attempt on the solicitor's part to disclose privileged matter will be restrained by injunction.

So strict is this rule that the Court of Appeal in England sits in private in such matters alone to hear motions for injunction. See Mellor *v.* Thompson, 31 Ch. Div. 55.

The rule applies equally to bills of costs as to other documents. See Annual Practice for 1898, p. 604. And it applies with greater force after the death of the client.

You cannot, therefore, in giving the particulars required by the Public Petitions Committee, give details of the matters charged for in your solicitor's costs.

Yours, &c.
H. D. BELL.

Sir Walter L. Buller, K.C.M.G., Wellington.

Panama Street, Wellington, 14th September, 1898.

SIR,— *Sir Walter Buller's Petition.*

I have the honour to enclose herewith statement of the case for the petitioner as submitted to the Committee.

I have arranged with Mr. Baldwin that neither of us is to see the statement put in by the other. This is in order to avoid the alternative necessary arrangement that we should both put in our statements on the same day.

I have therefore to ask that no copy of my statement may be submitted to Mr. Baldwin, or to any person who instructs Mr. Baldwin, until Mr. Baldwin's statement is received.

I have, &c.,

The Clerk, Public Petitions Committee A to L, H. D. BELL.
Parliament Buildings.

DEAR SIR,— 14, Brandon Street, Wellington, 30th September, 1898.

I have read Mr. H. D. Bell's opinion to Sir Walter Buller, which you were good enough to forward me for my opinion.

I cannot agree with the view therein set out. With all due deference to the weight of Mr. Bell's authority, he seems to me to have set forward a view which is utterly untenable, and which, if acquiesced in by your Committee, will very injuriously affect the privileges of Parliament.

In the House of Representatives, and in proceedings before a Committee, a witness has never been held to have the same privilege as is recognised in the law-courts.

A claim of privilege, except as to matters of State, has never been acceded to so far as I can discover, and neither May nor Dicey, the best accredited authorities, recognise any such privilege. To allow the question of privilege to enter would be to subordinate the authority of Parliament to the authority of outside tribunals.

If a question is asked a witness, the witness may no doubt submit to the Committee reasons which make it inexpedient that it should be answered; but, after a question has been asked by the Committee, or by its order, it is gross contempt to refuse to answer; and to plead privilege is, without offence to Mr. Bell, utterly absurd and improper, and no answer at all.

I submit that unless Sir Walter Buller obtains from the Committee a retraction of their previous command to furnish particulars of his bills of costs, he is guilty of a serious breach of privilege in refusing to comply with their order.

Mr. Bell's quotations and authorities are entirely beside the point, and refer to court proceedings only.

Yours faithfully,

The Chairman, A to L Committee, House of Representatives. P. E. BALDWIN.

SIR,— Panama Street, Wellington, 3rd October, 1898.

I have the honour, with reference to an opinion I have given Sir Walter Buller, copy of which I understand has been attached to the further account sent in by him, to state, for the information of the Committee, that I am informed that many of the items of the solicitor's bill relate to matters separate from the Horowhenua Block, and, further, that many of them relate to matters strictly private and confidential as between Major Kemp and Sir Walter Buller. A statement of these items would be simply to reveal Major Kemp's private and personal matters to the Committee. This Sir Walter Buller has personally no objection to, but the privilege is the client's, and not the solicitor's; and, as you are aware, the solicitor has been held bound to refuse to disclose such matters. To take an instance of a circumstance which has not occurred: Suppose for a moment that one of the items in the accounts were charges for advice given to the client on the question of whether a child was legitimate or illegitimate.

I have only to add that I have very greatly regretted being compelled to advise Sir Walter Buller as I have, because I am aware that the failure to supply the details of the items in the solicitor's account may be made the subject of misrepresentation; but you, Sir, as a member of the legal profession, will at least be able to appreciate that no other advice could possibly be given by myself, and no other course could properly be taken by Sir Walter Buller.

I have, &c.,

The Chairman, Public Petitions Committee A to L, H. D. BELL.
Parliament Buildings.

DEAR SIR,— 14, Brandon Street, Wellington, 10th October, 1898.

I beg to acknowledge receipt of Mr. H. D. Bell's letter of the 3rd instant. It appears that Mr. H. D. Bell has been informed that many of the items of the solicitor's bill relate to matters separate from the Horowhenua Block, and, further, that many of them relate to matters strictly private and confidential, although Sir Walter Buller, I observe, has not himself put forward this reason to the Committee.

But, even supposing the facts to be so, it should have afforded no real valid objection to a substantial compliance with what the Committee really require.

I assume that the Committee will not be extreme in the matter, and that if Sir Walter Buller will supply a detailed list giving substantially the items without the full details that would disclose anything of improper or criminal or confidential import that may, as suggested by Mr. H. D. Bell, be contained in the transactions referred to in bills of cost, the Committee will be satisfied; but I do strongly submit that the failure in whole to comply with the order of the Committee is not warranted, and that if Sir Walter Buller persists in refusing the information in the qualified form above suggested he should abide the consequences.

Yours, &c.,

The Chairman, Public Petitions Committee A to L, P. E. BALDWIN.
Parliament Buildings.

SIR,— Public Petitions A to L Committee, 11th October, 1898.

By order of my Chairman I have the honour to forward you the enclosed copy of a letter received from the solicitor for the Crown (Mr. Baldwin), *in re* the items of the solicitor's bill, as between Sir W. L. Buller and the late Major Kemp, which have not as yet been fully particularised —namely, the sum of £912 15s.

My Chairman instructs me to state that the Committee will be satisfied that its instructions have been carried out if Sir W. L. Buller furnishes further particulars in the terms of Mr. Baldwin's letter—*i.e.*, "that he gives substantially the items without the full details that would disclose anything improper, &c." I have, &c.,

W. E. PEARSON,
Clerk of Committee.

H. D. Bell, Esq., Wellington.

Sir. Panama Street, Wellington, 14th October, 1898.

Petition of Sir Walter Buller.—1. I have the honour to acknowledge receipt of your letter of the 11th instant, covering copy of the letter addressed by Mr. Baldwin to the Chairman of the Public Petitions Committee.

2. In deference to the wish of the Chairman, I have myself inspected the solicitor's costs, there being no breach of confidence in my doing so, as I was myself counsel for Major Kemp in the Native Appellate Court.

3. I am able to say that by far the greater majority of the items of the account convey information of Major Kemp's private affairs which Sir Walter Buller is absolutely debarred from laying before the Committee.

4. Sir Walter Buller has, in deference to the wish of the Committee, extracted certain of the items, which I have advised him he may properly supply, and these will be forwarded to the Committee as soon as possible.

5. Mr. Baldwin appears from his letter to be better acquainted than I am with what "the Committee really require." I confess that I presumed that the Committee really required Sir Walter Buller to supply such information as the law permits him to furnish, and Sir Walter Buller and myself have endeavoured to comply with that requirement. I have, &c.,

The Clerk, Public Petitions Committee A to L, Parliament Buildings. H. D. BELL.

EXHIBIT I.

MAJOR KEMP (RANGIHIWINUI) in account with Sir WALTER L. BULLER, Barrister and Solicitor.

1898.		£ s. d.	£ s. d.
Feb. 9.	Amount of money advanced on mortgage of Horowhenua Subdivision No. 14 (dated the 9th October, 1894) ...	500 0 0	
	Interest thereon at 8 per cent. from the 9th October, 1894, to the 9th February, 1898 (3 years and 223 days) ...	144 8 8	
			644 8 8
Feb. 8.	Amount of costs and disbursements from July, 1892, to the 9th May, 1896 (see Exhibit BD, Horowhenua Royal Commission Report)	2,098 8 7	
	Interest thereon (in terms of mortgage) from the 9th May, 1896, on which date statement of account put in before Royal Commission, to the 9th February, 1898 (1 year and 276 days)	167 16 8	
			2,266 5 3
Feb. 8.	Amount advanced to Mr. Skerrett, with your approval ...	52 10 0	
	Interest at 8 per cent. from the 19th July, 1895, to the 9th February, 1898 (2 years and 205 days)...	10 13 0	
			63 3 0
	Amount advanced to you	30 0 0	
	Interest at 8 per cent. from the 14th November, 1895, to the 9th February, 1898 (2 years and 85 days)	5 7 4	
			35 7 4
	Amount advanced to Mr. W. B. Edwards in payment of balance of account, with your written approval	240 0 0	
	Interest thereon at 8 per cent. from the 3rd April, 1896, to the 9th February, 1898 (1 year and 312 days)	35 12 0	
			275 12 0
	Amount advanced to you (as per receipt)	130 0 0	
	Interest at 8 per cent. from the 9th August, 1897, to the 9th February, 1898 (184 days)	5 4 8	
			135 4 8
Feb. 9.	Amount advanced to Messrs. Bell, Gully, and Bell in payment of their costs, as approved by you in writing	94 0 0	
	Interest at 8 per cent. from the 28th August, 1897, to the 9th February, 1898 (165 days)	3 8 0	
			97 8 0
	Amount advanced to Messrs. Buller and Anderson in payment of costs, as approved by you in writing	44 2 0	
	Interest at 8 per cent. from the 29th August, 1897, to the 9th February, 1898 (164 days)	1 11 6	
			45 13 6

	Costs and disbursements: Counsel's fees in Native Appellate Court from the 23rd February to the 5th June, 1897, and solicitor's costs, including disbursements, to the 5th June, as settled and agreed to by you in writing to the 5th June ...				1,399	0 0
	Further costs and disbursements: Counsel's fees in Native Appellate Court from the 24th June to the 2nd August, and solicitor's costs, including disbursements, to the 24th June, 1897, as settled and agreed to by you in writing ...				525	4 0
	Amounts advanced to you (as per receipt)	150	0	0		
	Interest thereon at 8 per cent. from the 4th February, 1897, to the 9th February, 1898 (1 year and 5 days) ...	12	3	3		
					162	3 3
	Amount advanced to you (as per receipt)	100	0	0		
	Interest at 8 per cent. from the 1st June, 1896, to the 8th February, 1898 (253 days)	5	10	10		
					105	10 10
	The like (as per receipt)	20	0	0		
	Interest at 8 per cent. from the 2nd June, 1896 (252 days)	1	2	0		
					21	2 0
Feb. 9.	Solicitor's costs and disbursements to 21st February, 1897, as per account rendered				705	9 0
	Solicitor's costs and disbursements from the 3rd November, 1897, to the 31st December, 1897, as per account rendered...				132	11 0
	Amount advanced to you on the 3rd December, 1897 (as per receipt)				100	0 0
	Amount authorised by you (in writing) to be paid to Messrs. Bell, Gully, and Bell for argument on special case before full Court	85	19	4		
	Ditto to Mr. A. P. Buller, as junior	10	10	0		
					96	9 4
	Total				£6,810	11 10

Examined—W. L. BULLER.—8th February, 1898.

Kua riro mai i au tetahi kape o tenei kaute; a, kua whakamaramatia ki au e tetahi kaiwhakamaori-raihene. Heoi, e tino marama ana. A, e tino whakaae ana au kia utua mariretia e au enei moni, e ono mano e waru rau kotahi te kau pauna 11/10 ki a Ta Waata Pura, ki ona kai Whakakapi ranei.

MEIHA KEEPA RANGIHIWINUI.

Wanganui, 15th Pepuere, 1898.

Witness to signature of Meiha Keepa te Rangihiwinui, after due explanation of the contents—Thomas McDonnell, Justice of the Peace and Licensed Interpreter.

[TRANSLATION.]

I have received a copy of this account, and it has been explained to me by a licensed interpreter. Enough. I am perfectly clear about it; and I absolutely consent to pay this amount, £6,810 11s. 10d., to Sir Walter Buller or to his representatives.

Wanganui, 15th February, 1898. MEIHA KEEPA TE RANGIHIWINUI.

I te mea kua mate a Meiha Keepa, a kua taka mai ki au ona rawa katoa, e whakaae ana au maku enei moni e utu ki a Te Pura, e ono mano e waru rau me te kau pauna, tekau ma tahi herengi, me nga mea hoki o muri nei kua oti i a ia te whakatika, i runga i te ata tuhituhi. A, ko enei moni katoa me whakamau ki runga ki te mokete o Horowhenua nama XIV., ma reira anake e whakamana. I tuhia e au tenei pukapuka ki Wanganui i te 25 o nga ra o Aperira, 1898.

Witness—L. Davis, Native Agent. WIKITORIA KEEPA.

[TRANSLATION.]

Inasmuch as Major Kemp is dead, and I have succeeded to the whole of his estate, I agree that this amount shall be paid by me to Sir Walter Buller—viz., £6,810 11s. 10d., together with any further sums that he (Major Kemp) may have certified to in writing. Let all these moneys be placed on the mortgage of Horowhenua No. XIV., and let that be the only means of discharging the debt.

Witness—L. Davis, Native Agent. WIKITORIA KEEPA.

DEAR SIR,— Wellington, 4th November, 1898.

The Hon. Mr. Hall-Jones examined me last night upon my statement of account of 9th February, as rendered to Major Kemp before the execution of his will. As may be gathered from my first answer, I assumed that this document was in evidence, being then under the impression that Mr. Baldwin had put it in. As I understand now that this is not the case, and as I have no wish to conceal anything from the Committee, I would ask the Chairman's leave to put the statement in myself as an exhibit, and I accordingly forward a signed copy herewith.

I am, &c.,

W. E. Pearson, Esq., W. L. BULLER.

Clerk to A to L Committee, House of Representatives.

ADDITIONAL MINUTES OF EVIDENCE.

THURSDAY, 3RD NOVEMBER, 1898.—(Mr. J. JOYCE, Chairman.)

Mr. Gray: I have been requested by Mr. Baldwin, who has been obliged to leave town, to appear for him this evening.

The Chairman: The Committee yesterday resolved that Sir Walter Buller should be asked to be present this evening in order that some members of the Committee might have an opportunity of putting some questions to him. Before doing so I have a suggestion to offer to both you, Mr. Bell, and to Mr. Gray. The suggestion arose in my mind from seeing a report of a case which was before the Native Appellate Court yesterday. Also, remembering that, in all probability, the session will close to-morrow night or during the early hours of Saturday, I thought I would make the suggestion, firstly, that we should lay the evidence which we have taken upon the table of the House and allow the rest of the business to be held over until next session. That is one aspect of the matter. The other is—it may be incorrect on my part, but the thought occurred to my mind—that there were questions suggested in the argument before the Appellate Court yesterday which may go to the root of the whole thing, and, therefore, to the proceedings we have before us at the present time. If the main question is involved in the case which was before the Court yesterday, then surely the matters ought to be settled by the Courts of law before Parliament should decide what shall be done. However, these are thoughts which have occurred to me, and I would ask you both whether it would not be advisable that the evidence we have taken so far should be laid on the table, and the matter be left over until next year. If that is not done, and we take evidence now, that will have to be revised, and the Committee will have to meet again. In that case there would be no chance of any report this session. I merely point that out to you gentlemen who represent your clients. The Committee will be guided by suggestions you may have to make.

Mr. Bell: May I ask the Hon. Mr. Hall-Jones when the supplementary estimates are to come down?

Hon. W. Hall-Jones: To-morrow night, probably. We hope to have them down to-morrow night.

Mr. Bell: I quite understand the effect of that. I gather, Sir, from what you have said that you are of opinion that the Committee could not report to-morrow upon this petition.

The Chairman: That is what occurs to my mind.

Mr. Bell: Is that your opinion?

The Chairman: Well, I put it to you that, if we take evidence, that evidence will have to be revised, and the Committee will have to meet to-morrow. Of course, it could be done; but I am only making a suggestion to you.

Mr. Bell: I would like to make this statement, and then relegate the matter to the Committee: We presented this petition in the early days of the session, and nobody, I think, can suggest that the matter has in any way been delayed by us. In the absence of Mr. Baldwin, I do not want to say a single word which would lead the Committee to think that I suggest that the matter has been unduly delayed by the Government solicitor; but it is only fair to say this: that the engagements of the solicitor for the Crown did involve a considerable delay in the presentation of the case before this Committee. The result has been, therefore, through no fault of ours, that we have been sent for in the last days of the session. I would like to put it to the Committee that it is very exceptional, where a petition is presented so early in the session, dealing with a matter which, after all, is very simple to determine, to have further evidence taken at so late a period of the session. I would like also to say that the proceedings in the Native Appellate Court have nothing to do with the Horowhenua Block Act. They are proceedings quite apart from that Act, which have been taken under the Native Land Court Act for the purpose of attacking the title of the Native owner. It has already been decided by the Supreme Court that in the *mandamus* to issue a title to Sir Walter Buller that no question can now be raised as to his title. In so far as the petitioner is concerned, he is not in the slightest degree affected; nor do these proceedings purport to affect him, and the proof of that is in the fact that the Native Appellate Court has no jurisdiction in a matter which affects a European. It is a curious proceeding which is authorised by the Act of 1884 in the nature of *certiorari* between Maoris, and is a special case. I should not state any point here which is in question in Mr. Baldwin's absence, but *locus standi* has been denied to the petitioner in the Native Court on the ground that the European title is not affected; so that anything taking place in the Native Appellate Court could not affect the proceedings before you. It is impossible for me to do more than leave the matter in the hands of the Committee at this stage, because if the Committee really think that it is fair and just at this stage of the proceedings to require further evidence to be taken upon a petition which, as I say, has certainly not been delayed by us, and if the Committee think that the taking of that evidence will necessarily delay them so much that they could not report to-morrow, it is idle for me to ask the Committee to take any other course than that which seems to them to be necessary. But I think I am entitled to put it to you, Sir, and the Committee that it is very unusual, after all the evidence has been taken on both sides, at the end of a session like this, to delay the report upon a question of ordinary justice—I am not saying on which side the justice is—by going into further extraneous matter. The evidence is extraneous to the question. All that the Committee is asked to determine is whether the House intended that Sir Walter Buller was to defend this action at his own cost. A great deal of extraneous evidence has been brought in which—I say it quite respectfully—was solely matter of prejudice, and I submit it is a very exceptional thing at this stage of the session—

I am not suggesting that that is the object—to bring up further matter that will have the effect of preventing a report being made. Fairness to the petitioner entitles me to submit to the Committee that it ought not to take that course. If the Committee determine to take that course, then I am in the hands of the Committee; and if they think they cannot report, then the course you suggest of reporting the proceedings so far is better for us than nothing.

The Chairman: Before calling on you, Mr. Gray, I wish to point out an unintentional omission in Mr. Bell's address. Mr. Bell will probably remember that, while this petition has been before the Committee a very long time, the delay has been owing to Sir Walter Buller not complying with an order which the Committee made. I am not saying how that matter was settled, but I would like Sir Walter Buller to admit that, so far as the Committee is concerned, there has been no delay, but that it has been in consequence of correspondence which has been passing between the parties. These are matters, probably, that Mr. Gray has no knowledge of, but I would point out that that is an omission which Mr. Bell has made.

Hon. W. Hall-Jones: I may point out that the resolution of the Committee asking for certain information as to certain accounts was passed on the 31st August, and the last account submitted by Mr. Bell did not reach us until the 14th October.

The Chairman: I do not want it to appear on the records of our proceedings that there is an innuendo that the Committee has been delaying this matter.

Mr. Symes: There is more than an innuendo.

The Chairman: I do not think Mr. Bell intended to cast any reflection upon the Committee.

Mr. Bell: I did not for a moment suggest that the Committee had delayed the matter, either by innuendo or otherwise, but I did intend and did say directly that the Committee had gone into evidence which was extraneous.

Hon. W. Hall-Jones: The Committee is competent to form an opinion upon that point.

Mr. Bell: The Committee will know that I am speaking here as representing Sir Walter Buller, and that what I say is a mere submission. You are the judges, and I regret very much if I have given offence to any member of the Committee. I never intended to suggest that there was any delay on the part of the Committee. When you said there was a non-production of the accounts you did not suggest that the matter was prolonged by us. The real reason was this: First of all, the report was not sent in; then, Mr. Baldwin being away some time, there was a delay before he took exception to the account; and then we represented the matter to you, and there was some time taken up by counsel for the Government. The gaps were not due to us. We were asked to supply you with copies of the account, and then there was a further gap caused by the comment by the Government counsel. You did not suggest—and, if you did, I submit it would not be just—that this long period, as mentioned by Mr. Hall-Jones, was a period covered by our delinquency, because our responses were quite prompt without any suggestion from you.

Mr. Symes: Why I said that it was more than an innuendo was because Mr. Bell said it was not on their own account or on Mr. Baldwin's, and therefore it must have been caused by the Committee.

Mr. Bell: Allow me to say that I expressly attributed no intentional delay to Mr. Baldwin. I said I would not do it, because Mr. Baldwin was absent, and I did not intend to do it if he was here. It was caused by his attendance at Napier on important Government business.

Mr. Gray: All I desired to say was that no unnecessary delay could be attributed to Mr. Baldwin, and that any delay that had occurred was unavoidable; but that was rendered unnecessary by Mr. Bell's last explanation.

The Chairman: Have you anything to say as to the Native Appellate Court proceedings?

Mr. Gray: I am not familiar with the Horowhenua Block proceedings. You will, however, have observed, from the report of what was in the morning paper, that there was a distinct difference of opinion between counsel yesterday—Sir Robert Stout and Mr. Bell—in the matter before the Appellate Court, but I am not in a position to deny what Mr. Bell stated.

The Chairman: Then, as to the other point—supposing we cannot finish up the whole thing in time before the supplementary estimates are presented—as to laying part of the evidence so far taken before the House, and adjourning the matter till next session.

Mr. Gray: That, of course, I have not had an opportunity of considering; but if the Committee has resolved to take evidence to-night, then I assume there will be time to consider that matter to-morrow.

The Chairman: We have decided to take evidence to-night.

ROBERT C. SIM examined.

1. *The Chairman.*] What are you?—Registrar of the Native Land Court, Wellington.

2. Do you produce the will of the late Major Kemp?—Yes; I have it here, dated 15th February, 1898: "This is the last will and testament of me, Meiha Keepa te Rangihiwinui, of Putiki, near Wanganui, an aboriginal Maori chief of New Zealand. I give and bequeath the full-length portrait of myself in oils by Lindauer unto the Town of Wanganui, to be carefully preserved and exhibited in the museum or some other public institution. I give and bequeath my military uniform, my presentation sword received from Her Majesty the Queen, my Imperial war-medal, and my New Zealand Cross decoration unto my nephew, Haruru-ki-te-Rangi, the son of Hakaraia Korako. I give, devise, and bequeath all my real and personal estate not hereby otherwise disposed of unto my daughter, Wiki Keepa, upon trust to sell, call in, and convert into money the same or such part thereof as shall not consist of money, and to stand possessed of the proceeds thereof upon trust—Firstly, to pay my funeral and testamentary expenses, not to exceed the sum of one hundred pounds (£100); secondly, to pay to Sir Walter Lawry Buller, of the City of Wellington, K.C.M.G., his executors, administrators, or assigns, the sum of six thousand eight hundred and ten pounds (£6,810) now due and owing by me to him, and also any further sums of money that he

may hereafter advance to me or pay for me under my direction or on my account, together with interest thereon at the rate of six pounds (£6) per centum per annum on the said sum of six thousand eight hundred and ten pounds (£6,810) from the date hereof, and on any such other sums from the date the same shall respectively be advanced or paid until payment thereof; thirdly, to pay all other debts due and owing by me at the time of my decease; and, lastly, to stand possessed of the residue of the said moneys for her own absolute use and benefit. And I appoint my said daughter sole executrix of this my will. In witness whereof I, the said Meiha Keepa te Rangihiwinui, have hereunto subscribed my name to this my will, this fifteenth day of February, one thousand eight hundred and ninety-eight. Signed and acknowledged by the said Meiha Keepa te Rangihiwinui, the testator, as and for his last will and testament, after the contents had been interpreted and explained to him by a duly licensed interpreter, when he appeared clearly to understand the purport and meaning of the same, in the presence of us, both being present at the same time, who, at his request and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.—(Signed) MEIHA KEEPA RANGIHIWINUI. (Signed) J. H. Keesing, Justice of the Peace in the Colony of New Zealand, Wanganui; (signed) Alf. Gray, cabinetmaker, Wanganui; (signed) Thos. McDonnell, licensed interpreter, Wanganui."

3. Are there any codicils?—No.

4. Has that will been proved?—No.

5. Is that the only will you have?—It is the only will that has been lodged in the Native Land Court.

6. Have you any other papers?—I have the application made in connection with this will.

7. An application by whom?—An application for probate by Wiki Keepa, and dated 28th June, 1898—a declaration as to the death of Major Kemp.

8. And the value of the estate?—That will be supplied to the Court at the hearing. There were two caveats lodged for what they were worth.

9. The first by whom?—George Hutchison, solicitor for Natives. Shall I read it?

10. Yes?—"To the Registrar, Native Land Court, Wellington.—On behalf of Werera Kingi, Ripeka Tauri, Weta Puna, and Wiki Karoro I beg to enter an objection to succession being granted to any person under the will of the late Te Keepa Rangihiwinui (Major Kemp) in respect of the following lands, which are claimed by the above mentioned, acting for themselves and on behalf of others: 1. Paranuiamata No. 2, 15 acres 3 roods 27 perches, part of Putiki Native Reserve. 2. Kohipo, acres roods perches, part of same reserve. 3. Matawerohia, 43 acres 3 roods 29 perches, part of same reserve. 4. Waitahanui No. 4, 13 acres 2 roods 15 perches, part of same reserve. Dated at Wellington, this 13th day of July, 1898.—G. HUTCHISON, solicitor for the above-named objectors."

11. And the second?—The second is lodged by a Native—Rora Korako. It is in Maori. The translation is: "In the Native Land Court of New Zealand, Wellington District.—In the matter of an application by Wikitoria Keepa for probate of the will of Meiha Keepa te Rangihiwinui, deceased.—I, Rora Korako, of Whanganui, sister of Meiha Keepa te Rangihiwinui, do hereby make objection to the application of Wikitoria Keepa to the Court to grant probate of the said will of Meiha Keepa: 1. This is not the last will of Meiha Keepa te Rangihiwinui. 2. If it is found that Meiha Keepa has executed the said will, it is not by him, but by a European—by Sir Walter Buller. Dated this 5th day of August, 1898.—(Signed) RORA KORAKO. Witness—Wiremu Mawhete." Those are the only papers.

12. *Mr. Gray.*] Is there anything on the will itself to show who prepared it?—The will is indorsed on the back by Messrs. Buller and Anderson, solicitors, Wellington.

13. When did Kemp die?—There is a declaration here by Wiki Kemp to the effect that Major Kemp died at Wanganui on or about the 15th day of April, 1898.

14. *Hon. W. Hall-Jones.*] That is all the information on the papers you produce in connection with Major Kemp?—These are the whole of the papers in connection with the application for probate.

15. Do you know anything about an account rendered by Sir Walter Buller to Major Kemp of which that is said to be a copy [document handed to witness]?—There is no copy or original of it that has been lodged in the Native Land Court.

WALTER LAWRY BULLER examined.

16. *Mr. Symes.*] I understood, Sir Walter, that you had the title for the 11 acres?—That is so. When we applied for a *mandamus* I got the title. The Judge ordered the certificate of title to issue for my freehold, but not for the leasehold. A judgment in the Native Land Court was given in Major Kemp's favour. The Supreme Court ordered that when that judgment was made final my dealings should be registered on the certificate of title then ordered to issue.

17. That referred to 400 acres of leasehold?—More than that—some 1,196 acres. That was the portion that I was first in possession of, and then a portion fell into my hands later on. Part of the block was under timber-lease to Peter Bartholomew. That is covered now by my lease.

18. It is held under different titles?—The same title, but there are different pieces. The portion on the western side of the railway-line I have been in possession of since 1892. The portion on the eastern side of the railway-line was subject to a six-years' timber-license in favour of Peter Bartholomew. I took a lease of that at a peppercorn rent until the expiration of the timber-license. I am in possession of the whole block now.

19. With regard to this 400 acres at a peppercorn rent: Was it £6 for improvements or £6 an acre that you had effected upon the 400 acres that you had leased for fifteen years?—That would be on the western side. My improvements are all on the western side of the railway.

20. Then, it will be the improvements up to £6 an acre?—Hardly that. The three gentlemen appointed to value the estate for the Royal Commission reported that the whole property, with the improvements both east and west of the railway-line, represented a value of £6 10s. an acre including improvements.

21. Are these improvements protected?—Not in any way. I give them up at the end of the lease.

22. You had possession of this leasehold land and the 11 acres for the whole time; you have not been disturbed in the possession of them?—I have been in actual possession of the land on the western side of the railway, but have not been in a position to deal with it in any way.

23. But still you have had the full benefit of that?—Yes; in fact, I have been able to sublet part of it to a tenant.

24. Then, you have not suffered loss in that respect?—I cannot say that I have, except that my property has been rendered unmarketable.

25. There is some memorandum that was signed by Kemp—really an order—for you to pay his costs in this case. Was the order signed in Wanganui or in Wellington?—Is that the order that has been put in before the Committee?

26. Yes?—I could not tell unless I saw it; there are so many orders. Major Kemp spent a great deal of his time in Wellington, and many of the documents were signed here.

27. It is Exhibit C, on page 37 of the evidence [referred to]?—I should think it was signed in Wellington, because the date is one day before the hearing in the Supreme Court. I cannot charge my memory, but think it was.

28. It is witnessed by L. Davis?—Yes.

29. What was he?—He calls himself a Native agent. He is a half-caste, and a son-in-law of Major Kemp, and acted generally as his secretary.

30. Of course, it was given at Wanganui?—Yes; he always signed as at Wanganui. He attended Major Kemp at Wellington, and did his clerical work from dictation.

31. Wiki Kemp is the sole executrix of the will?—She is of the will produced to-night.

32. Rora Korako is a sister of Major Kemp?—Yes; a sister of Major Kemp.

33. Is she still living?—Still living.

33A. The other Natives who have instructed Mr. George Hutchison to lodge a caveat are Putiki Natives?—Yes; and they have a claim upon the Putiki Reserve, and they appear to think it is affected by the will.

34. Mr. Buller, of Buller and Anderson, who prepared the will, is your son?—My son.

35. And he is practising as a solicitor in Wellington?—Yes. I may state that he had nothing to do with the preparation of the will. The will was prepared by Mr. Anderson, his partner.

36. *Hon. W. Hall-Jones.*] The last time you were here we had the question of costs before us, and you were asked to supply certain information. I do not know if the Committee considers that the costs as supplied are in accordance with the requisition of the Committee, but I should like to know, in addition to what you show here, how much was paid in cash to Mr. Beddard specifically for the costs in the Supreme Court case?—Paid for Major Kemp in the Supreme Court action—Mr. Beddard, £119 2s. 6d.

37. Is that in the accounts you rendered?—I think so. Sir Robert Stout, as counsel for Kemp, received £157 10s.

38. Have these accounts been paid in actual cash?—The amount actually paid by myself is £300 9s. in cash. The amount paid to Messrs. Buller and Anderson for some witnesses' expenses was £23 16s. 6d.; to Mr. Beddard, £119 2s. 6d.; and to Sir Robert Stout, £157 10s.: making a total of £300 9s., quite apart from my own costs of £335, which have also been paid.

39. How much has actually been paid in cash to Messrs. Bell, Gully, and Bell specifically in this action?—Messrs. Buller and Anderson act as my solicitors, and they received exactly the same sum as Mr. Beddard. They agreed to divide the costs. They received £119 2s. 6d., because they divided them equally with Mr. Beddard. And then there were some out-of-pocket expenses; I do not know exactly what they were. Mr. Bell's fee was the same as Sir Robert Stout's, and was paid by myself—£157 10s. But there were some other expenses that fell upon myself—for example, Judge Wilson's expenses from Auckland. Major Kemp's costs were £300 9s., and mine were £335.

40. Had you all those accounts before the Committee?—I had. Mr. Bell had declined to be paid until the Committee met, but he then accepted payment. I paid him the next morning, and he was good enough to give me a receipt.

41. Can you produce the receipts?—Yes.

42. Under Major Kemp's will there is a trust to sell all landed property?—Yes.

43. Including Subdivision 14?—There is no exception. I had nothing to do with it. Major Kemp's instructions to Messrs. Buller and Anderson were to charge his estate with the debt. I had to make advances to Kemp, and then it was proposed that he should execute a will and give me a charge on his landed estate.

44. At that time you had a mortgage over Subdivision 14?—Yes; but it was in peril.

45. Is not Subdivision 14 over 640 acres?—Yes; nearly 1,200 acres.

46. Can that be sold under the trust?—Assuming that Kemp's title is safe. The Native Appellate Court declared that Kemp was the absolute owner, and then for some reason recalled their judgment, treating it as interlocutory.

47. One condition of the trust is to pay you this £6,810?—Yes; and any other advances or payments I might make under his direction.

48. After hearing the will read, do you say that there is anything in that will showing that that sum is for costs?—No; it was simply acknowledging the debt.

49. It is simply to pay you this £6,810?—Simply to acknowledge the debt as owing at that time. The particulars were set out in the account.

50. And if the will is proved you would be entitled legally to insist upon payment, and the trustees would have to pay you this £6,810?—That is simply a question of law. I simply claim that amount as a creditor.

51. And if the will is proved you will be entitled to the £6,810?—I do claim it, but I do not know what the result will be.

52. That will come out of Major Kemp's estate?—The estate is liable.

53. That is altogether apart from the question of the mortgage?—It is not at all apart from that: they run concurrently. The mortgage might not have been worth sixpence to me. My position was a very perilous one, as the Land Transfer title had been destroyed, and I explained to Major Kemp that I could not go on advancing any more money to him without some protection.

54. Who were Major Kemp's solicitors at the time the will was prepared?—Messrs. Buller and Anderson had been retained by him as his solicitors.

55. That is, your son?—My son and his partner, but my son had nothing to do with the will.

56. And you are a beneficiary under the will for this £6,810?—I am.

57. Had Major Kemp any independent advice?—The only other advice he had was from Colonel McDonnell. McDonnell is a Native interpreter.

58. Were you present when the will was signed?—Yes; but I withdrew for a time when McDonnell was present.

59. Who drew up the will?—Messrs. Buller and Anderson.

60. Who gave the instructions?—Major Kemp gave the instructions through myself.

61. Were they in writing?—They were not in writing.

62. You say you received instructions from Major Kemp: who communicated them to the solicitors?—I did. I had previously, in 1894, prepared a will for Major Kemp, and my instructions to Mr. Anderson were to adhere to that will, and not to evade it in any way except as to charging the estate with the debt that Major Kemp acknowledged was owing to me. That will is in the possession of Messrs. Borlase and Barnicoat, solicitors, of Wanganui.

63. What was the date of Major Kemp's death?—15th April, 1898.

64. Did you render him accounts for the £6,810 for your benefit?—I did; but I had previously submitted the accounts in draft from time to time, and obtained his approval in writing. Copies of these accounts have been forwarded to the solicitors.

65. Is that a copy of the account rendered by you on the 9th February last [produced]?—It is before the Committee—a summary of the costs.

66. Is there not included in this sum of costs the whole of the amount for which you are petitioning the Committee?—None whatever—not a shilling. I am petitioning the Committee for the costs of the Supreme Court action, and there is not a shilling of that included there. I took authority to pay Major Kemp's costs, and did pay them.

67. Will you turn to page 51 of the printed evidence. On the 2nd December there is a payment to Messrs. Bell, Gully, and Izard of £85 19s. 4d?—Yes, I find it. These were charges incurred through Mr. Bell being specially sent for to attend the Native Appellate Court and argue points of law.

68. That is in connection with this case?—It is quite apart from the Supreme Court action. This was the case where Kemp's title was being attacked in the Native Appellate Court, and Mr. Bell came up at a great inconvenience to himself to argue points of law that had arisen in the case. I was directed in writing by Major Kemp to pay Mr. Bell, and paid the amount accordingly. In every instance I have Major Kemp's direction to make the payment. It has absolutely nothing to do with the Supreme Court case. Then, there is another payment in August to Messrs. Bell, Gully, and Bell. That was for arguing before the Court of Appeal a special case sent by Judge Mackay to the Supreme Court. Mr. Bell was retained to argue the case on behalf of Major Kemp. Those payments have nothing to do with the Supreme Court action.

69. With regard to the issue of the writ: Supposing a Native had issued a statement of claim setting out all the facts as stated in the statement of claim by the Public Trustee, how long would the Supreme Court code allow that to lie before it declared that action could not be taken?—That is a matter of practice, and I am afraid I cannot answer that with any certainty.

70. Would it not be twelve months?—Twelve months is the period usually allowed, but I stated before that I absolutely refused to allow this matter to hang over my head for a moment longer than was necessary.

Mr. Bell: The question was discussed, and, as far as I remember, the Chief Justice said that a man who was slandered was entitled to force a matter on. I think he said that it was not good law that a man could place a series of damaging allegations on the file of the Court and then not go on with the action.

71. *Hon. W. Hall-Jones.*] But these allegations were afterwards withdrawn?—They were withdrawn at the trial, but I was prepared to disprove them. I was there with my witnesses, and the allegations were not withdrawn until they were before the Court and these costs had been incurred.

72. If this petition is decided against you, will you be without any remedy whatsoever through the Courts?—I take it that I should be entitled to recover my claim against Major Kemp under the mortgage—that is, assuming that the land under lease will bring anything like the total claim; but as to my own costs I have no remedy.

73. Have you any intention of taking other proceedings?—I have not troubled myself to consider what I should do, and I do not for one moment contemplate that this Committee will give an unfavourable report.

74. Reverting to these accounts, what amount did I understand you to say was for costs incurred included in the account that went in on the 9th February?—Not a shilling of the costs

incurred in the Supreme Court action. If the Committee decide against me I shall, of course, try to recover from Major Kemp's estate what I paid on his behalf.

75. *Mr. Gray.*] I understand you to say that the £6,810 does not include any part of Kemp's costs?—No.

76. But you do claim under the mortgage—you have a right to claim that payment of £300?—Yes, as for "further advances."

77. Therefore you claim this to be a further advance which is secured to you under that mortgage?—Yes.

78. *Hon. W. Hall-Jones.*] And, failing the mortgage, under the will?—Not under the will except that there is the general protection of further payments made by Kemp's direction. At any rate, it is not under the special devise of £6,800. The will protects further payments made by direction in writing.

79. Therefore you have a claim under both?—I have a claim under both clearly.

80. Is the mortgage registered?—Yes; but the effect of the legislation was to destroy all titles.

81. *Mr. O'Regan.*] I think I understood you to say that certain allegations in connection with the Horowhenua Block were withdrawn?—At the trial, not before.

82. By whom were the allegations made?—By the Public Trustee, and put on the file of the Supreme Court. I was accused of deliberate fraud.

83. Did he afterwards withdraw them?—Yes.

84. You maintain that Parliament did not intend that you should pay these costs?—Yes. Had I lost I am perfectly sure that Parliament would have made me pay the costs.

85. You say that that was the intention?—The intention of Parliament, I submit, was to put me on my trial, and that if I succeeded my costs should be paid.

86. And, having no legal remedy, you come before the Committee?—Yes.

87. Your right to claim this £6,000 is not contested by anybody?—Not that I am aware of. The position is this: that there is a Maori will that was signed by Major Kemp while I was away in England.

88. *The Chairman.*] Some years ago?—Yes. He quarrelled with his daughter, and made a will disinheriting her; but when I came back from England I talked Kemp into a proper frame of mind, and he executed another will in favour of his daughter.

89. Where is that will?—I handed it over to the solicitors for the executrix. He revoked his former will.

90. There were only three wills?—There was one made when I was acting solicitor for him in 1874. That was in favour of his daughter; but the effect of the Maori will would have been to destroy that will.

91. *Mr. O'Regan.*] Only one of these several wills can be the correct one?—Yes; that is the last, of course, because it revoked all previous wills, and he actually noted the revocation on the old will.

92. And in that last will he wills you the £6,810?—He makes it a charge on the estate. These four Maoris are not disputing my claim, but they say it may prejudice their rights in the Putiki Reserve.

93. *Mr. Gray.*] I understood you to say that the allegations of fraud were withdrawn at the trial only, and not before the trial?—They were absolutely withdrawn at the trial; but they tried to put on the file of the Court a statement of claim with the allegations of fraud omitted.

94. I merely wish to direct your attention to the statement of Mr. Bell in paragraph 11 with regard to the plaintiffs discontinuing the action?—They filed a notice of discontinuance.

95. But the Supreme Court, on your application, ordered the action to be restored?—Yes, at our instance.

96. Did they withdraw all the allegations?—They did not go so far as that. They struck out the allegations of fraud.

97. They filed an amended statement of claim, leaving out the allegations of fraud?—I think they did.

98. *Mr. Bell:* That was when Mr. Cooper came on the scene, a week before the trial.

99. *Mr. Gray.*] Then, as Mr. Bell has stated, your advisers declined to allow that, and applied to the Court for a reinstatement of the charges, and the Court directed the reinstatement?—Yes.

100. There was therefore a withdrawal of the charges—in that sense?—They might have brought these charges again. There was nothing to prevent their filing another statement of claim with similar allegations of fraud, and we said, "No; you must reinstate these charges."

101. *Mr. Bell.*] They filed an amended statement of claim at the last moment?—Yes, omitting all the allegations of fraud.

102. Leaving out all their original gross allegations against you?—That is so.

103. And you and your advisers insisted upon their reinstating them, in order that you could disprove them?—Yes.

104. Because you were able to disprove them, you insisted on them going before the Court?—Yes; and I may add that I was ready there with all my witnesses.

105. You remember that in your petition you set forth what Mr. Justice Denniston said as to the intention of Parliament?—Yes.

106. Do you remember this: His Honour said, "But I think it must be taken that Parliament has 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 made by the proper authorities. The view I take of the effect of these statutes does not seem to me to be affected by section 56 of the Public Trust Act. It is, I think, what is called in the marginal note 'a reservation of existing powers.' The statute says 'all rights and powers

shall remain unrestricted.' Nor does the view I have expressed restrict any rights, powers, or remedies given by the Horowhenua Act. The same observations apply to section 4 of 'The Public Trust Office Consolidation Act, 1894.' The words there used are 'have deprived,' 'have limited.' The section seems to have been passed to dispose of any suggestion that the Act of 1894 negatived or took away the powers or duties given to or imposed on the Public Trustee by any then-existing statute. I think, though with some hesitation, that the same reasoning governs the claims against the office furniture or other chattels of the Public Trust Office. I am not satisfied that property supplied to a public department can be said to be the property of the corporate officer, if I may use the expression, who controls and manages such department. The property is held for the purpose of the administration of the business of the Public Trust Office under the Public Trust Act, and must be taken to be necessary for such administration. If I were to hold that such property were available to discharge debts not payable in respect of such administration, I should either interfere with the proper administration of the office or make it possible by a series of executions to enable the debt to be paid indirectly out of funds which I have held not to be available directly. For these reasons I am of opinion that no *mandamus* should issue as asked by the defendant, and that there are no moneys available under the charging order for the payment of the costs. It was hardly contended that the officer for the time being holding the office of Public Trustee was personally liable for acts done by him in the discharge of an obligation imposed on him by statute, and I am satisfied there is no ground for the contention. In the view I take of the case it is unnecessary for me to answer specifically the questions submitted. I am 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 has not thought it necessary specifically to provide for such expenditure." That is the opinion of Mr. Justice Denniston, delivered on the argument before him as to whether costs had been specifically directed to be paid by the Public Trustee. You remember that?—Yes, I remember that. I was present.

107. *The Chairman.*] Have you made any other advances since the 15th February?—Yes. Major Kemp had an advance of £180 cash, and then there are divers accounts which I have undertaken to pay.

108. Amounting to what?—I could not say off-hand. There are law-costs, and a sum of £75 due to one of his agents. There is a considerable sum that I feel bound to pay whether I lose the money or not. I had his direction to pay these sums, and gave him my promise that I would pay them.

Mr. Bell: I would like to say that Sir Walter Buller has stayed in the colony now for three years, and been kept here entirely by this question. The matter is over now, and judgment has been given in his favour, and his petition for his costs is in your hands to decide. If the Committee are unable to decide this question now, I have to ask that Sir Walter Buller's evidence shall be taken as it has been given and put before the Public Petitions Committee next year when the case comes on. If they say they cannot decide now, surely they will take Sir Walter Buller's evidence as having been given, and we shall not be met next year with the objection that the petitioner is not here.

Approximate Cost of Paper.—Preparation, not given; printing (1,425 copies), £35.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1898.

Price 1s. 3d.