

THURSDAY, 9TH APRIL, 1891.

Mr. R. C. HAMERTON'S examination continued.

*Witness:* I think Mr. Loughrey last night asked for the papers in a case which had been referred to in the House. The papers in Burke's case are very voluminous, and tell a very plain and distinct story; and I shall be very glad indeed to explain it, as the matter has been taken notice of in Parliament. It might be well, therefore, that the Commissioners should understand the whole thing thoroughly. Attention was drawn in September, 1890, to the accounts of the Public Trust Office for the realisation of estates, and the Minister was asked to look over one account and say whether he did not think the charges were extortionate. The account referred to was that of John Burke, of Patea. The legal charges on an estate worth £2,362 amounted to £281 9s. The member had seen nothing more scandalous. It was further stated that the Patea solicitor in the estate, whose account was £167, was a brother of the Public Trustee. John Burke died on the 5th May, 1885, leaving a will by which he appointed his wife's brother, Michael Byrne, and a settler named James Ball, his executors. On the 9th January, 1888, the executors sent to me, through the Patea agent, the usual written request to be relieved of their executorship, the widow of the deceased concurring in the transfer to the Public Trustee. On the 10th January—next day—the office Board accepted the trust, and direction was given for the usual order of Court. On the 10th February I received a letter from the agent stating that the order had been applied for, but that one of the trustees had changed his mind and would not render accounts; upon which he was informed that action would be stayed if the solicitor's costs and the amount expended by this office (14s.) were paid—which, however, was not done. One of the executors was very desirous of the transfer to the Public Trustee. Mr. Byrne then took action to rescind the order, Mr. Barton, of Hawera, acting for him. The case was heard before the late Mr. Justice Gillies, who declined to grant the required order: and I may say that the papers will show that Mr. Justice Gillies made some very strong remarks on the occasion respecting the plaintiff, Mr. Byrne. A second action was then raised, Mr. Thomas Hutchison, of Hawera, representing Mr. Byrne. For the second time it was given against the plaintiff. Mr. Byrne then brought the case before the Court of Appeal in Wellington, where upon some technical ground the case was struck out of the cause list. The costs of these three actions were charged against the estate, of course; the first two amounting to £73 10s. 3d., and the appeal case to £116 14s.; total, £190 4s. 3d. The other items of legal charges, which were abnormally increased by the opposition and obstruction of Mr. Byrne, were as follows: Order transferring the trust from the late executors, £36 18s. 3d.; action enforcing payment of rents and agistments, £10 5s. 4d.; proving title and bringing under the Land Transfer Act (against which Mr. Byrne entered caveat), £32 15s. 11d.; and the charges in connection with the sale, in conformity with the provisions of the will, £10 3s. 5d. These sums, with 13s. not chargeable under the foregoing heads, make a total of £281 0s. 2d.—probably four times as much as would have been necessary under ordinary circumstances. The net proceeds of the sale of such realty as was sold amounted to £3,590 4s. 4d. Out of this legacies to the widow (£500) and others were paid, amounting altogether to £558 15s.; small fees out of pocket, £4 13s. 10d.; cost of survey and plans, £19 10s.; cost of fencing, £5 6s. 10d.; Mr. G. D. Hamerton's costs, £167 6s. 8d.; Buckley and Co., £91 4s. 6d.; Brookfield and Son, of Auckland, £22 9s.; total legal costs, £281 0s. 2d.; commissions, £157 5s.; postage and telegrams, £1 9s.: total expenditure, £1,027 19s. 10d.—which shows the amount stated by the member, £2,562 4s. 6d., as the net value of the estate. There still remain about thirty-one acres of land, with a homestead in which the widow and children reside, and of which she has the use during widowhood. As the net proceeds of realty were £3,590 4s. 4d., and the total office-charges amounted to £158 14s., it will readily be seen that 4·42 per cent. was actually charged, and not 10 per cent., as alleged by the member. Now, probably what should have been said in the House, and what was meant by the member, no doubt, was this: "I have got in my hand a statement of account from the Public Trust Office showing 10 per cent. to have been charged." If that had been said it would have been right; but not in connection with the realisation of the estate. The income account is one thing; the account of the realisation of an estate is a totally different thing. The income account rendered to Mrs. Burke showed two items of rent, upon which the office-charge of 5 per cent. was shown, and the additional 5 per cent. which was paid to the local collector of rents—10 per cent. altogether on the rents collected. Well, the point I wish the Commissioners to notice is, that the realisation of the estate cost 4·42 per cent., and it was only on two very small sums of rent that 10 per cent. was charged—and I may say that 2½ per cent. of that has been refunded to the estate.

61. *Mr. Macdonald.*] Why?—The reason is this: I gave directions—I think about September, 1889—bringing in the reduction of the amount to be paid to collectors of rents. It so happened that the instructions were issued shortly after this account was rendered, but I made it revert back to this estate after the affair was pointed out.

62. Was it after the discussion in Parliament?—It was after the discussion in Parliament.

63. *The Chairman.*] Did you allow any other estate that retrospective privilege of reduction?—I cannot reply without referring to the Accountant. I am of opinion No, but cannot say absolutely. I should like to explain to the Commissioners the peculiar difficulties which have attended the administration of this estate. From the outset the opposition of Michael Byrne, who is the brother of the widow, has been very persistent, and at every turn I have found myself blocked, so to speak, by the action of this man and his sister. This is a letter which I wrote to Mr. Michael Byrne on the 22nd August, 1888: "As Judge Gillies has declined to rescind the order of the 14th February last, vesting the estate of the above-named deceased in this office, I now give you formal notice to hand over all books and papers belonging to the estate, and furnish an account of your administration without delay; also, that you hand over to Mr. Horner, my agent at Patea, all unrealised property in your hands, to save further legal costs. If you neglect or refuse to act as now and before